

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 10, 2020

CLAIM NO. 201898128

STEPHEN FLYNN

PETITIONER

VS. APPEAL FROM HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

BUYERS PARADISE FURNITURE, INC. and  
HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and RECHTER<sup>1</sup>, Members.

**ALVEY, Chairman.** Stephen Flynn (“Flynn”) appeals from the August 12, 2019 Opinion, Award and Order, and the August 27, 2019 Orders rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”), awarding temporary total

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<sup>1</sup> Although Board Member Rechter’s term expired on January 4, 2020, she is permitted to serve until January 22, 2020 pursuant to KRS 342.213(7)(b), and will participate in decisions rendered by this Board through that date.

disability, permanent partial disability, and medical benefits. Flynn and Buyers Paradise Furniture, Inc. (“Buyers Paradise”) filed petitions for reconsideration regarding the limitation of the award pursuant to the amended version of KRS 342.730. In separate orders rendered August 27, 2019, the ALJ reaffirmed that the award of benefits is subject to the limitations set forth in the newly amended version of KRS 342.730(4).

On appeal, Flynn’s sole argument is that the ALJ erred in limiting income benefits pursuant to the amended version of KRS 342.730(4) effective July 14, 2018. The ALJ’s decision is in conformity with the holding by the Kentucky Supreme Court in Holcim v. Swinford, 581 S.W.3d 37 (Ky. 2019), and on that issue, we affirm. Because this Board lacks the authority to make determinations on constitutional issues, we affirm.

Flynn sustained a crush injury to his hand in the course of his employment with Buyers Paradise on December 29, 2017. Flynn was 67 years old on the date of injury. After noting she did not have the authority to address constitutional issues, the ALJ found Flynn’s award is subject to the limitations set forth in KRS 342.730(4) as amended effective July 14, 2018.

On appeal, Flynn argues the ALJ erred in applying the limitations of the amended version of KRS 342.730 to his claim. Flynn contends the holding in Parker v. Webster County Coal, 529 S.W.3d 759 (Ky. 2017) which held the 1996 version of KRS 342.730 is unconstitutional and mandates his permanent partial disability award must be for 425 weeks rather than subject to an age limitation. Flynn argues the application of any age limitation is unconstitutional. Flynn

contends KRS 342.730(4) as amended in 2018 violates the 14<sup>th</sup> amendment to the United States Constitution and provisions of the Kentucky Constitution.

House Bill 2 became effective July 14, 2018. Section 13 of that bill amended KRS 342.730(4) to provide as follows:

All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee reaches the age of seventy (70), or four (4) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate as of the date upon which the employee would have reached as seventy (70) or four (4) years after the employee's date of injury or date of last exposure, whichever last occurs.

In accordance with the holding by the Kentucky Supreme Court in Holcim v. Swinford, supra, we affirm the ALJ's application of KRS 342.730(4) as amended in 2018. In that case, the Kentucky Supreme Court determined the amended version of KRS 342.730(4) regarding the termination of benefits at age seventy has retroactive applicability. Because Flynn's claim was pending on the effective date of the amended statute, his award is governed by the limitations set forth in the amended statute. The Board, as an administrative tribunal, has no jurisdiction to determine the constitutionality of a statute. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Consequently, we are without authority to render a decision upon Flynn's argument regarding the constitutionality of the amended statute. Thus, we affirm.

Accordingly, the August 12, 2019 Opinion, Award and Order, and the August 27, 2019 Orders rendered by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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