

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 7, 2018

CLAIM NO. 201660237

SYKES ENTERPRISES, INC.

PETITIONER

VS.

APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

LONNIE HENDRIX
And HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
VACATING IN PART
AND REMANDING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

RECHTER, Member. Sykes Enterprises appeals from the April 2, 2018 Opinion, Award and Order¹ and the May 9, 2018 Order rendered by Hon. Monica Rice-

¹ The opinion states it was rendered on April 2, 2017. However, the Litigation Management System maintained by the Department of Workers' Claims indicates the opinion was entered on April 2, 2018.

Smith, Administrative Law Judge (“ALJ”). The ALJ awarded Lonnie Hendrix permanent total disability benefits subject to the tier-down provision of the pre-1996 version of KRS 342.730. On appeal, Sykes argues the recently amended version of KRS 342.730 is applicable to the claim. For the reasons set forth herein, we vacate and remand.

Hendrix sustained a low back injury on November 22, 2016. The ALJ awarded her permanent total disability benefits and applied the pre-1996 version of KRS 342.730(4), directing that benefits be tiered down beginning on Hendrix’s 65th birthday. Sykes filed a petition for reconsideration arguing the recently amended version of KRS 342.730(4) should apply to this case. In the Order on Reconsideration rendered May 9, 2018, the ALJ overruled the petition for reconsideration, noting the amendment to KRS 342.730(4) would not become effective until mid-July.

On appeal, Sykes argues the amendment specifies that Section (13)(4) of the Act is remedial and applies to all claims, regardless of the date of injury, and shall apply prospectively and retrospectively to all claims for injury occurring on or after December 12, 1996 that are not fully and finally adjudicated, or are in the appellate process. Thus, the Opinion and Award must be amended to show that all income benefits shall terminate as of the date Hendrix reaches the age of 70.

We begin by noting the ALJ correctly applied the law in effect at the time she rendered her decision. However, House Bill 2 became effective July 14, 2018. Section 13 of that bill amended KRS 342.730(4) to provide:

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.

Section 20(2) & (3) of House Bill 2 state as follows:

(2) Sections 2, 4, 5 and subsection (7) of Section 13 of this Act are remedial and shall apply to claims irrespective of the date of injury or last exposure, provided that, as applied to any fully and finally adjudicated claim the amount of indemnity ordered or awarded shall not be reduced and the duration of medical benefits shall not be limited in any way.

(3) Subsection (4) of Section 13 of this Act shall apply prospectively and retroactively to all claims:

- (a) For which the date of injury or date of last exposure occurred on or after December 12, 1996; and
- (b) That have not been fully and finally adjudicated, or are in the appellate process, or for which time to file an appeal has not lapsed, as of the effective date of this Act.

The General Assembly indicated the revisions would apply to all claims "that have not been fully and finally adjudicated." It also applies to all claims "for which a date of injury ... occurred on or after December 12, 1996." Hendrix's claim satisfies both of these conditions, and therefore the newly revised statute is applicable. In his brief to the Board, Hendrix asserts application of the amended statute to his claim violates prohibitions contained in the Kentucky and United

States Constitutions. As an administrative tribunal, this Board is without authority to consider the constitutionality of a statute. Blue Diamond Coal Co. v. Cornett, 189 S.W.2d 963 (Ky. 1945).

Accordingly, the April 2, 2018 Opinion, Award and Order and the May 9, 2018 Order rendered by Hon. Monica Rice-Smith, Administrative Law Judge, are hereby **VACATED IN PART** and this claim is **REMANDED** for entry of an amended award applying the 2018 version of KRS 342.730(4).

ALL CONCUR.

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