

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2002-CA-001327-WC

JEAN MARIE HARRIS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-01-86773

THE PANTRY, INCORPORATED;  
JAMES L. KERR,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: BARBER, BUCKINGHAM AND HUDDLESTON, JUDGES.

BARBER, JUDGE: The Appellant, Jean Marie Harris, seeks review of an Opinion of the Workers' Compensation Board, affirming the Administrative Law Judge's dismissal of her claim. We reverse and remand.

On August 17, 2000, Harris was working for a clerk at the Appellee, The Pantry, when it was robbed at gunpoint. Harris sustained no physical injury during the robbery, but

allegedly developed psychiatric and physical problems as a result thereof.

On February 6, 2001, the ALJ rendered an Opinion and Order:

KRS 342.0011 excludes from the definition of injury psychological, psychiatric, or stress related change in the human organism unless it is the direct result of a physical injury. In the present claim, plaintiff argues that plaintiff incurred a traumatic event as required by the definition of injury. She further argues that her current psychiatric impairment is definitely related to the psychological trauma experienced on the date of the robbery. She finally argues that her chest pain constitutes physical symptoms related to stress. She therefore requests benefits under the Act, stating that her injury has met the definition found in KRS 342.0011(11). However, the Administrative Law Judge must disagree. The definition of injury excludes psychological, psychiatric or stress-related changes in the human organism unless they are the direct result of a physical injury. It is found that plaintiff suffered no physical injury during the robbery. Further, two recent cases, Coleman vs. Emily Enterprises Inc., Ky., 58 S.W.3d 459 [sic] and Lexington Fayette Urban County Government vs. West, Ky., 52 S.W.3d 564 [sic] both have interpreted the statute as requiring a physical event. As plaintiff has not incurred a physically traumatic event, the Administrative Law Judge cannot conclude that her symptoms, including those physical symptoms which are stress related, meet the definition as contained in KRS 342.0011(1), and plaintiff's claim may not be sustained.

Harris appealed to the Board which affirmed in a unanimous opinion entered May 22, 2002, holding that "[h]owever unfair it may seem, the injury experienced by Harris is the

classic "mental-mental" injury and while it resulted from a real work occurrence arising out of and in the course of employment, it is not a workers' compensation injury by definition and is not covered under the . . . Act."

On June 21, 2002, Harris filed a Petition for Review in this Court, contending that: (1) her injury is compensable; and (2) the provision of the Act denying recovery for psychological injuries is unconstitutional, and she should have a right to bring her action in circuit court.<sup>1</sup>

On October 17, 2002, the Supreme Court rendered a decision in *McCowan v. Masushita Appliance Co.*,<sup>2</sup> which dealt with whether KRS 342.0011(1) permits compensation for a physical change resulting from mental or emotional trauma. There, the claimant became very upset and ultimately suffered a heart attack, following a confrontation with her supervisor. The Supreme Court examined the amendment of KRS 342.0011(1), and its apparent goal of eliminating compensation for "mental-mental" claims. The Court concluded that there was no indication the Legislature intended to preclude compensation for "mental-physical" claims as well, interpreting the last sentence of KRS

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<sup>1</sup> In her Petition for Review, Harris states that she has filed a claim against the Appellee, The Pantry, in the Henderson Circuit Court for compensatory damages resulting from this work injury. Whether or not she can maintain that action is an issue that must first be decided by the Henderson Circuit Court.

<sup>2</sup> McCowan v. Masushita, Ky., 95 S.W.3d 30 (2002).

342.0011(1) to apply only to *mental changes* which must directly result from a physically traumatic event to be compensable. Although the trauma experienced in *Masushita* was emotional in nature, the harmful changes included the heart attack and its consequences; thus, the last sentence of the statute did not apply.

Here, the ALJ concluded Harris' symptoms, "including those physical symptoms which are stress related," did not meet the definition in KRS 342.0011(1), because she had not experienced a "physically-traumatic" event. In light of the Supreme Court's holding in *Masushita*, we reverse and remand to the Administrative Law Judge for further findings consistent therewith.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeanie Owen Miller  
Owensboro, Kentucky

BRIEF FOR APPELLEE, THE PANTRY  
INCORPORATED:

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