

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2003-CA-000218-WC

NORTH AMERICAN STAINLESS STEEL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-84589

HAROLD R. WALLACE;  
HON. DONALD G. SMITH,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BAKER, GUIDUGLI, AND PAISLEY, JUDGES.

BAKER, JUDGE. North American Stainless Steel (NASS) petitions this Court to review a decision of the Worker's Compensation Board (Board) which vacated and remanded the decision of the Administrative Law Judge (ALJ), Donald G. Smith. We affirm.

On November 27, 1999, Harold Wallace (Wallace) suffered an injury while working as a welder for NASS. Although Wallace initially returned to work following the accident, pain resulting from his injury has prevented him from returning to NASS or any other employment since January 28, 2000.

On September 18, 2000, Wallace was issued a check from NASS in the amount of \$2388.00. The stub from the check contained the following notation: "ADV. DISAB/\*\*6WKS@398." Additionally, the handwritten letters "WC" appeared on the stub below the notation.

On November 27, 2001, exactly two years from the date of his accident at NASS, Wallace filed an Application for Resolution of Injury Claim with the Department of Workers' Claims (DWC). Because of deficiencies, the application was returned to Wallace twice. As a result, the final amended application was not filed with the DWC until January 2, 2000.

Ultimately, the ALJ held that the filing of the final amended application on January 2, 2002, was outside the two-year statute of limitations required by Kentucky Revised Statute (KRS) 342.185, and therefore, Wallace's claim was time-barred. The ALJ rejected Wallace's argument that the statute of limitations was tolled by the September 18, 2000, check. Wallace claimed that the check was a "voluntary payment" of his workers' compensation benefits from NASS.

A January 2, 2003, opinion of the Workers' Compensation Board vacated and remanded the ALJ's decision. The Board concluded that the ALJ had applied the wrong standard of law in determining whether the check from NASS constituted a "voluntary payment" that would toll the statute of limitations. This review follows.

NASS argues that the Board erred in holding that "the measure utilized by the ALJ in ruling on this issue (was)

not the correct legal standard delineated by controlling case law." Opinion of the Workers' Compensation Board at 10. We disagree.

According to KRS 342.185, a claim for workers' compensation must be filed within "two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later." Here, the injury suffered by Wallace occurred on November 27, 1999. The alleged voluntary payment was made on September 18, 2000. The final amended application was filed with the DWC on January 2, 2002.

Kentucky law clearly establishes that "voluntary payments which will toll the limitations statute are those which the employer intended or the employee had grounds to reasonably believe were in lieu of workmen's compensation benefits." Kentucky West Virginia Gas Co. v. Spurlock, Ky. App., 415 S.W.2d 849, 851 (1967)(emphasis added). See also Holbrook v. Lexmark Int'l Group, Inc., Ky., 65 S.W.3d 908, 913 (2001). We view the Spurlock standard as creating alternative means of determining whether voluntary payments were made "in lieu of workmen's compensation benefits." Spurlock, 415 S.W.2d at 851.

There is no contention that the record lacks evidence regarding whether NASS intended the payment to Wallace to constitute workers' compensation; however, there is conflicting evidence concerning whether Wallace reasonably believed the check constituted a voluntary payment that would toll the statute of limitations. It appears that on direct examination, Wallace testified he believed the payment from NASS was an "advance"

until his workers' compensation benefits began. However, on cross-examination, Wallace apparently testified that NASS advanced him money "because his disability insurance would not begin making payments for four months." Brief for Appellant at 4. As the ALJ is the ultimate finder of fact in an administrative proceeding, see McNutt Construction/First General Services v. Scott, Ky., 40 S.W.3d 854 (2001); KRS 342.285(1)(2), we think the Board was correct to remand this issue to the ALJ for a finding upon whether Wallace reasonably believed the check to be a voluntary payment in lieu of workers' compensation. We, therefore, affirm the holding of the Board and remand to the ALJ.

ALL CONCUR.

BRIEF FOR APPELLANT:

Emily A. Faith  
O'BRYAN, BROWN & TONER  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Merritt K. Alcorn  
ECKERT ALCORN GOERING & SAGE  
Madison, Indiana