

RENDERED: October 31, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000968-WC

AMERICAN COLD STORAGE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
CLAIM NO. 00-54742

SAMUEL SINEGRA; WORKERS' COMPENSATION
BOARD; and JAMES L. KERR, Administrative
Law Judge

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: McANULTY and SCHRODER, Judges; HUDDLESTON, Senior
Judge.¹

HUDDLESTON, Senior Judge. American Cold Storage has
petitioned for a review of an opinion of the Kentucky
Workers' Compensation Board which affirmed the opinion and

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by
assignment of the Chief Justice pursuant to Section 110(5)(b) of the
Kentucky Constitution and KRS 21.580.

award of Administrative Law Judge James L. Kerr, holding that Samuel Sinegra was entitled to twice his functional impairment compensation pursuant to Kentucky Revised Statutes (KRS) 342.730(1)(c)(2) even though he was terminated for stealing from American Cold Storage. Because the alleged theft was inadequately substantiated, and because we agree with the Board that the plain language of the statute mandates a doubling of Sinegra's benefits, we reject the American's argument that we create a public policy exception to the statute.

Sinegra was employed as a forklift operator by American, a meat storage business. On January 22, 2001, he fell at work and injured his back. He eventually had surgery to relieve numbness in his left arm caused by the back injury. Sinegra returned to work after the surgery but he was fired in January 2002 for allegedly stealing meat. Sinegra was thereafter unable to find another job. He submitted a workers' compensation claim. The ALJ found that Sinegra had a sixteen percent functional impairment but was able to return to work and perform his regular duties. However, because Sinegra had been fired, the ALJ awarded him the statutory doubling of benefits provided by KRS 342.730(1)(c)(2), which provides in part that:

During any period of cessation of . . . employment, temporary or permanent, **for any reason, with or without cause**, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection.²

The ALJ's decision was affirmed by the Board.

American argues that Sinegra is not entitled to the statutory doubling of his benefits because, as a matter of public policy, individuals should not be allowed to benefit from their illegal acts. The company maintains that the statute implicitly permits doubling of benefits only if employees are terminated "with or without cause" for legal reasons, such as refusing to sign a non-compete agreement, not when they are terminated for committing illegal acts such as theft.

American's argument cannot be sustained, however, in part because the evidence in the record pertaining to Sinegra's alleged theft is inadequate. According to American, Sinegra committed theft when he accepted meat from drivers making deliveries to the company. The only

² Emphasis applied.

evidence provided is Sinegra's own deposition testimony, the pertinent parts of which follow.

Q. Why did they fire you, if you know?

A. They said that they thought that I was stealing.

Q. What did they think you had stolen?

A. Food.

Q. Is there any litigation or criminal charges or anything at this time?

A. No.

Q. What kind of food did they have there that they thought you were stealing?

A. I don't know. They said ribs and several -

Q. Steaks, things like that?

A. Right.

Q. Were you?

A. No.

Q. How did they claim that they caught you doing that? Did they have surveillance cameras or -

A. No. They asked me.

Q. They came up and said "Are you stealing?"-

A. Right, and I told them I have took stuff out of the trucks that truck drivers gave me and they said that was stealing.

Q. So then you were taking some items? There was a question as to who was able to give you those items?

A. Right, and they said that was more or less their stuff and that I was stealing it.

Q. How long had you been accepting those gifts from the truck drivers?

A. Oh, I have no idea.

There were no charges filed, no investigation, no request for restitution and no other inquiry into the matter. On this basis, we cannot agree with American that Sinagra committed theft. We need not, therefore, reach the issue of whether there is an implicit public policy exception to the statute.

The Supreme Court has held that "[t]he function of further review of the WCB in the Court of Appeals is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice."³

Were we prepared to assess the merits of American's argument, we would agree with the opinion of the

³ Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687 (1992).

Board that the plain language of the statute governs this situation. We reproduce the relevant parts of the Board's opinion below.

A termination for stealing is certainly a termination "with cause" as that term is commonly accepted. Since the language of the Act is plain and unambiguous, no statutory construction is required. [Hardin] County Schools v. Foster[] Ky., 40 S.W.3d 865 (2001). We are bound, as a matter of law, by the literal interpretation of the plain meaning of the phrase "for any reason, with or without cause." This is true even if we think a better outcome or policy should result. See [Overnite] Transport.[] Co. v. Gaddis, Ky. App., 793 S.W.2d 129 (1990) and Bailey v. Reeves, Ky., 662 S.W.2d 832 (19[8]4). The Legislature is presumed to know the common meaning of these terms. The Legislature, by its language, established the only consideration for the multiplier to be the employee's weekly wage upon cessation in relation to his wage at the time of injury. We see no basis that it intended the compensation system to become a forum for the

litigation of matters tangential to the compensation claim.

The purpose of the statutory scheme for calculating permanent partial disability benefits in KRS 342.730(1)(c) "is to motivate workers to return to work and to encourage employers to retain injured workers at wages equal to or greater than those earned before the injury."⁴ In our view, the language of KRS 342.730(1)(c)(2) "for any reason, with or without cause" coupled with the provision of the double benefit also promotes the public policy of discouraging employers from dismissing injured employees on pretextual grounds.

The Board's opinion is affirmed.

ALL CONCUR.

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⁴ Carte v. Loretto Motherhouse Infirmary, Ky. App., 19 S.W.3d 122, 125 (2000).