

RENDERED: January 23, 2004; 10:00 a.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court Of Appeals**

NO. 2003-CA-001200-WC

TRANSCRAFT CORPORATION,  
AS INSURED BY KIGA

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
CLAIM NO. WC-99-59956

CARTER LOVELY;  
HON. DONNA TERRY,  
ADMINISTRATIVE LAW JUDGE; and  
WORKERS' COMPENSATION BOARD

APPELLEE

OPINION

AFFIRMING

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BEFORE: McANULTY, MINTON, AND SCHRODER, JUDGES.

MINTON, Judge: Transcraft Corporation (Transcraft), as insured by Kentucky Insurance Guaranty Association (KIGA), seeks review of a May 14, 2003, Workers' Compensation Board (Board) opinion affirming an administrative law judge's opinion and

award in favor of Carter Lovely. Transcraft asserts that the Board incorrectly applied legal authority and governing principles of equity in ruling that Lovely's claim was not barred by the applicable statute of limitations found in Kentucky Revised Statutes (KRS) 342.185(1).

In May 1999, Lovely began working as a factory assembler of flat-bed trailers at Transcraft's Mt. Sterling, Kentucky, plant. On September 7, 1999, he was using a nail gun to fasten a truck bed onto a trailer when it misfired, shooting two nails at once, and kicked back. When the nail gun kicked back, Lovely experienced a popping sensation in his right shoulder. He reported the injury to Transcraft and sought medical treatment. Dr. Anup Chattha, an orthopedic surgeon, diagnosed a slap lesion, or labral tear, and right shoulder tendonitis. When injections in Lovely's shoulder and physical therapy failed to alleviate his symptoms, Dr. Chattha performed arthroscopic surgery on Lovely's right shoulder. After post-surgical physical therapy, Lovely returned to light duty on January 27, 2000, and then to full duty on March 28, 2000. He aggravated his right shoulder condition on May 22, 2001, when the nail gun he was using again misfired and kicked back. Following further treatment from Dr. Chattha, Lovely returned to work a few days later under physical restrictions. On May 29,

2001, Lovely sustained a work-related injury to his right knee<sup>1</sup> which required knee surgery. After recuperating from knee surgery, Lovely returned to work with work restrictions based on both his right knee condition and his right shoulder condition. Because Transcraft was unable to accommodate these work restrictions, he was laid off.

Lovely received voluntary temporary total disability (TTD) payments for his 1999 shoulder injury from September 8, 1999, through November 22, 1999. Pursuant to KRS 342.040(1), Transcraft then notified the Department of Workers' Claims (Department) through its workers' compensation insurance carrier that it had terminated voluntary TTD payments to Lovely. The Department sent Lovely a notice letter, dated March 28, 2000, instructing him that any claim for additional benefits as a result of his September 1999 shoulder injury would be forever barred unless it were filed within two years of the date of his injury or within two years after the final voluntary payment of income benefits, whichever last occurred. This letter

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<sup>1</sup> Lovely filed a workers' compensation claim concerning his right knee injury which was consolidated with his claim concerning his September 7, 1999, shoulder injury. However, the issue of Lovely's knee injury was resolved by settlement between the parties before the ALJ's opinion and award was entered. The only matter on review is claim 99-59956 concerning Lovely's 1999 shoulder injury.

incorrectly listed October 31, 1999, as the date that voluntary payments of income benefits to Lovely were suspended.

Transcraft's insurance carrier later determined that it had inadvertently underpaid Lovely a total of \$500.29 in voluntary TTD payments between September 8, 1999, and November 22, 1999. In a letter dated June 27, 2000, the insurance carrier informed Lovely of its mistake and stated that a check in the amount of \$500.29 would be issued to him under a separate cover letter. Both parties acknowledge that Lovely received this check on or shortly after the date that he received the June 27, 2000, letter.<sup>2</sup> Transcraft informed the Department of this additional \$500.29 payment to Lovely. The Department sent Lovely another notice letter, dated August 3, 2000, which was identical in every respect to its earlier notice letter except that the second letter listed November 22, 1999, as the termination date for voluntary TTD payments to Lovely.

Lovely filed his application for adjustment of claim on June 13, 2002. Transcraft first raised the affirmative defense of the relevant statute of limitations, KRS 342.185(1), in a special answer filed without objection on October 17, 2002. On January 3, 2003, Administrative Law Judge (ALJ) Donna Terry issued an opinion and award in Lovely's favor, based in part on

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<sup>2</sup> Neither this check nor the separate cover letter which was mailed with the check are in the record.

her determination that his application for adjustment of claim was timely filed pursuant to KRS 342.185(1). The Board affirmed this opinion and award on May 14, 2003.

The statute of limitations governing when an injured worker who has received TTD payments may file an application for adjustment of a claim for workers' compensation is established in KRS 342.185(1) as follows:

If payments of income benefits have been made, the filing of an application for adjustment of claim with the department within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the accident, whichever is later.

It is undisputed that Lovely received "payments of income benefits" in the form of voluntary TTD payments after his September 7, 1999, accident. Pursuant to KRS 342.185(1), the two-year statute of limitations for Lovely's application for adjustment of claim began to run "following the suspension of payments" of his income benefits. In order to determine whether Lovely's application for adjustment of claim filed June 13, 2002, was timely, meaning filed within two years of the suspension of payments of income benefits, it is necessary to

determine exactly when these TTD payments were suspended. The Board affirmed the ALJ's determination that the TTD payments were not suspended until after Transcraft's final payment to Lovely of \$500.29, which occurred on or shortly after June 27, 2000. Consequently, the ALJ held that the two-year statute of limitations pursuant to KRS 342.185(1) began to run on or shortly after June 27, 2000, rendering Lovely's June 13, 2002, application for adjustment of claim timely.

Transcraft asserts that the Board erred by affirming the ALJ's ruling that Lovely's claim was not barred by the applicable statute of limitations, KRS 342.185(1). The central issue on appeal is whether the \$500.29 check issued to Lovely on or shortly after June 27, 2000, to remedy the deficiency in the previous TTD payments to him was a payment of income benefits within the meaning of KRS 342.185(1) such that the two-year statute of limitations did not begin to run until after it was made. Transcraft asserts that this June 2000 check was not a payment of income benefits within the meaning of KRS 342.185(1) because it came well after Lovely's period of temporary total disability. Transcraft characterizes this payment as "simply a reimbursement."<sup>3</sup> According to Transcraft, the last payment of income benefits to Lovely, or what the statute refers to as the

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<sup>3</sup> Brief for Appellant at 7.

"suspension of payments,"<sup>4</sup> occurred on November 22, 1999; and the two-year statute of limitations began to run on that date.

This is purely an issue of statutory interpretation. Both parties agree on the dates and amount of the payments made to Lovely. The only issue is how to characterize the final payment made to Lovely on or shortly after June 27, 2000, and its effect on the running of the statute of limitations. Because statutory interpretation is a matter of law reserved for the courts, we are not bound by the Board's interpretation.<sup>5</sup> Statutory language must be interpreted with regard to its common and ordinary usage.<sup>6</sup> In making this determination, we must look to the actual language of the statute rather than speculating as to what may have been intended but was not expressed.<sup>7</sup> In other words, a court may not interpret a statute in a manner at variance with its stated language.<sup>8</sup> While any statutory analysis must be grounded in the plain language of the statute, the

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<sup>4</sup> KRS 342.185(1).

<sup>5</sup> Halls Hardwood Floor Co. v. Stapleton, Ky.App., 16 S.W.3d 327, 330 (2000).

<sup>6</sup> KRS 446.080(4).

<sup>7</sup> Commonwealth v. Allen, Ky., 980 S.W.2d 278, 280 (1998).

<sup>8</sup> Layne v. Newberg, Ky., 841 S.W.2d 181, 183 (1992); Gurnee v. Lexington-Fayette Urban County Government, Ky.App., 6 S.W.3d 852, 856 (1999).

Court's ultimate goal in statutory analysis is to implement the intent of the legislature.<sup>9</sup>

We must also consider that the function of the Court of Appeals upon review is to correct the Board only when we perceive that 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."<sup>10</sup> In this instance, the Board correctly interpreted and applied the governing statute, and we perceive no error in its assessment of the evidence. Because we agree with the Board's reasoning as to the dispositive issue in this case, we adopt the following portion of its opinion as our own as set forth below:

The term "benefits," meaning "income benefits," is defined pursuant to KRS 342.0011(12) as "payments made under the provisions of this chapter to the disabled worker. . . ." Since "suspension" is nowhere defined within the Act, we are bound to look to the ordinary definition of that

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<sup>9</sup> KRS 446.080(1); Wesley v. Board of Education of Nicholas County, Ky., 403 S.W.2d 28, 29 (1966).

<sup>10</sup> Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

term to determine its plain meaning and application.<sup>11</sup> The root of the word "suspension" is the word "suspend." Webster's Dictionary defines "suspend" in relevant part as the failure "to make payments or to fulfill obligation." Hence, for purposes of the Act we must conclude the literal interpretation of the phrase "suspension of benefits"<sup>[12]</sup> means the last date a voluntary income payment is actually received by the disabled worker, which fulfills an employer's voluntary obligation to that disable[d] worker.

In this instance, Transcraft did not cease all payments until June 2000, nor did it fulfill its obligation to Lovely for the full amount of TTD benefits it voluntarily allowed it owed until the date of that last payment. Based upon the plain meaning of

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<sup>11</sup> Board of Education of Nelson County v. Lawrence, Ky., 375 S.W.2d 830 (1963); Clark v. Riehl, Ky., 230 S.W.2d 626 (1950).

<sup>12</sup> KRS 342.185(1) actually uses the phrase "suspension of payments," but, as it is clear from the context of the statute that it is referring to the suspension of payments of income benefits, this distinction does not affect the merits of the Board's analysis.

KRS 342.185(1), the fact that the final single payment Transcraft made to Lovely was not for any new period of TTD, but was only intended by the petitioner as a corrective "reimbursement" relating back to his original period of voluntary payments ending November 22, 1999, is of no consequence. The June 27, 2000, payment was nevertheless Transcraft's final voluntary payment and as such, suspension of payments did not occur until that time. Since Lovely's claim for additional benefits was filed prior to June 27, 2002, we find no error.<sup>13</sup>

Transcraft also asserts that the Board's determination that Lovely's claim was not barred by the statute of limitations is inequitable. Transcraft focuses on the fact that, but for its spontaneous payment to Lovely on approximately June 27, 2000, to remedy an underpayment in the previous TTD benefits paid to him, the statute of limitations would have expired on November 22, 2001, well before Lovely filed his application for

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<sup>13</sup> Layne, 841 S.W.2d 181; Clyde N. Fannin Wholesale Co. v. Thacker, Ky.App., 661 S.W.2d 477 (1983).

adjustment of claim. Transcraft characterizes the decision as unjustly punishing Transcraft for doing the right thing in notifying Lovely of the underpayment and remedying the same. Because we agree with the Board's analysis and application of the statute of limitations, this issue is moot. As Kentucky's highest court has stated, "The wisdom or folly of Legislative enactments, within constitutional bounds, may not be weighed in judicial construction of a statute free of ambiguity."<sup>14</sup> The Kentucky Supreme Court again reiterated in Kordenbrock v. Commonwealth<sup>15</sup> that a court's opinion of the fairness or unfairness of a statute is irrelevant as this is a matter already decided by the legislature. We note, however, that even if this were not the case, Transcraft's equity argument is unpersuasive. To the extent that the initial underpayment of TTD benefits extended the time period in which Lovely had to file his application for adjustment of claim, this was due to the error of Transcraft or its workers' compensation insurance carrier and, hence, within Transcraft's control. Contrary to Transcraft's assertions, it is not inequitable for it to have to bear the burden of this mistake.<sup>16</sup>

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<sup>14</sup> Clark, 230 S.W.2d at 628-29.

<sup>15</sup> 700 S.W.2d 384, 386 (1985).

<sup>16</sup> Cf. Ingersoll-Rand Co. v. Rand, Ky., 883 S.W.2d 514, 515-16 (1994) (holding that the applicable statute of limitations was

For the foregoing reasons, the Board's opinion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kamp T. Purdy  
FERRARI & FOGLE  
Lexington, KY

BRIEF FOR APPELLEES:

William C.O. Reaves  
Ashland, KY

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equitably tolled as a matter of public policy and legislative intent in favor of an injured worker who, due to the error of an unknown party, did not receive notice from the Department that his employer had ceased making TTD payments, despite the fact that the employer acted in good faith, did not attempt to manufacture a statute of limitations defense, apparently notified the Department of the suspension of TTD benefits, and had no way of knowing that the employee did not receive actual notice).