

RENDERED: FEBRUARY 23, 2007; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2006-CA-001742-WC

JAMES MUNCY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-03-93415

ELMO GREER & SONS;  
HON. HOWARD E. FRASIER, JR.,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ABRAMSON AND DIXON, JUDGES; HOWARD,<sup>1</sup> SPECIAL JUDGE.

ABRAMSON, JUDGE: The sole issue presented by this appeal is whether the applicable limitations period for filing a workers' compensation claim was tolled during the time in which Appellant James Muncy received personal injury protection (PIP) benefits from

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<sup>1</sup> Special Judge James I. Howard completed this opinion prior to the expiration of his Special Judge assignment effective February 9, 2007. Release of the opinion was delayed by administrative handling..

his employer's automotive insurance carrier. Finding no error in the Workers' Compensation Board's decision that PIP benefits are not “income benefits” under the applicable statute and thus the limitations period was not tolled, we affirm.

On February 28, 2003, James Muncy was injured in a motor vehicle accident. At the time of the accident, he was operating a vehicle owned by Elmo Greer & Sons (Elmo Greer) and was in the course and scope of his employment. Elmo Greer, through its workers' compensation insurance carrier, paid Muncy temporary total disability benefits from March 1, 2003, through July 18, 2003. Muncy also received PIP benefits from Elmo Greer's automotive insurance carrier until October 2, 2003.

On August 8, 2003, the Department of Workers' Claims sent a Notice of Termination of income benefits to Muncy. The notice informed Muncy that payment of his income benefits ceased effective July 18, 2003. The notice further stated that if he wished to seek additional benefits, an application “must be filed within two years after the date your injury occurred, or, within two years after the last voluntary payment of income benefits . . . .” (Emphasis in original.)

Muncy filed an application for additional benefits on July 25, 2005. On September 23, 2005, the Department of Workers' Claims issued a Notice of Claim Denial. One of the reasons given for denial of Muncy's claim is that the statute of limitations found in Kentucky Revised Statute (KRS) 342.185 barred his claim because he did not file it within two years of the cessation of voluntary income benefit payments. Muncy sought review with the Board, arguing that the PIP benefits he received from Elmo Greer's automotive insurance carrier constituted “excess” workers' compensation

benefits and therefore the true termination date for the payment of income benefits was October 2, 2003, rather than July 18, 2003. Following a hearing, the Administrative Law Judge (ALJ) upheld the denial of further benefits after finding that Muncy's application was not timely filed. The ALJ disagreed with Muncy's contention that the PIP benefits constituted "excess" workers' compensation benefits, stating:

Despite his failure to file a claim within two years of the suspension of the payment of income benefits by the Defendant under its workers compensation policy, the Plaintiff argues that since he continued to receive PIP benefits until October 3, 2003, from the insurance carrier for the motor vehicle insurance on the vehicle he was driving at the time of the accident, his claim was timely filed. Mr. Muncy is relying upon the language contained in the PIP Worksheet that such benefits were being paid in excess of workers compensation coverage.

However, the problem with this argument is that the PIP benefits were not paid in lieu of or in the place of workers compensation benefits but IN ADDITION to workers compensation benefits. As correctly argued by the Defendant, PIP benefits are designed to pay 100% of lost wages up to the maximum amount permitted by law while workers compensation benefits are paid at a rate of no more than 2/3's of the average weekly wage prior to the time that the Plaintiff reaches MMI or is able to perform his customary work.

...

Basic reparation benefits are designed to provide for wage loss and medical benefits in the context of a motor vehicle accident regardless of whether such accident is work-related. An employee could use his personal vehicle for a business purposes [sic] and his personal automobile insurance would provide him with basic reparation benefits whether or not he files a claim for workers' compensation benefits. On the other hand, workers compensation benefits are intended to

compensate injured workers whether or not such accident occurs in the context of a motor vehicle accident.

The undersigned finds that in light of the completely different purposes of the two statutes, the Kentucky Legislature did not intend for “income benefits” in KRS 342.185 to include the payment of basic reparation benefits under an automobile or truck insurance policy. To hold otherwise would completely defeat the process of notification of termination or suspension of benefits and the ability of an employer and workers compensation carrier to restart the running of the statute of limitations.

By providing a statute of limitations for the filing of workers compensation claims, the Kentucky Legislature has intended to encourage the prompt filing of claims. Just as the Legislature tolls the need to file such a claim while TTD is being paid to an employee, the Legislature has chosen to resume the running of the statute of limitation after termination and prompt notice of such benefits. Any tolling of the need to file a workers compensation claim because of the payment of PIP benefits under a motor vehicle policy would be contrary to such purposes.

ALJ's Opinion and Order, pp. 4-6.

Muncy appealed the ALJ's decision and the Board affirmed in a July 21, 2006 decision. Muncy now seeks review in this Court. Finding no error in the Board's decision, we affirm.

When reviewing a final decision of the Board, this Court gives great deference to the Board's findings and only intervenes where its action constitutes a flagrant error resulting in gross injustice. *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685 (Ky. 1992). This matter, however, turns only on a question of law. As a result, we give no deference to the Board's findings, and our review is *de novo*.

The statute of limitation at issue herein is found in KRS 342.185(1), which states:

Except as provided in subsection (2) of this section, no proceeding under this chapter for compensation for an injury or death shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for compensation with respect to the injury shall have been made with the office within two (2) years after the date of the accident . . . whether or not a claim has been made by the employee himself for compensation. . . . If payments of income benefits have been made, the filing of an application for adjustment of claim with the office 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.

The sole question now before us concerns the date on which this two-year period began to run with respect to Muncy's claim for additional benefits. If, as the Board found, the statute of limitations began to run with the cessation of total temporary disability benefits on July 18, 2003, rather than with the cessation of the PIP payments, Muncy's claim was not filed before expiration of the limitations period.

As noted above, the running of the statute of limitation is triggered with the suspension of income benefit payments. "Income benefits" are defined in KRS 342.0011(12) to be those payments "made under the provisions of this chapter to the disabled worker or his dependents in case of death, excluding medical and related benefits." Under this definition, we must agree with the Board that PIP benefits are not income benefits because they are not made pursuant to the provisions of KRS Chapter

342. Rather, PIP benefits, also referred to as basic reparation benefits, are defined in, and their purpose and use governed by, KRS 304.39-010 *et seq.*

Moreover, as “income benefits” and PIP benefits do not compensate for the same loss, the latter cannot be deemed to simply be an extension of the former. While “income benefits” excludes “medical and related benefits,” PIP benefits provide reimbursement for all “net loss suffered through injury” as the result of an automobile accident. The reason for this is obvious—PIP benefits are meant to provide for a loss resulting from a motor vehicle accident *regardless* of whether the vehicle being used was owned by an employer or was being operated for any work-related purpose. Conversely, workers' compensation income benefits are designed to replace income which is lost as a result of a work-related injury. *See, e.g., Leeco, Inc. v. Crabtree*, 966 S.W.2d 951 (Ky. 1998). As a result, the fact that Muncy's injuries occurred while performing a work-related task is immaterial to whether he was entitled to PIP benefits. It was merely his operation of the vehicle in question, not his purpose for using it, that triggered his entitlement to PIP benefits.

Because of the distinction between “income benefits” and PIP benefits, the automotive insurance carrier's single handwritten notation on a PIP worksheet that the PIP benefits paid to Muncy were “excess workers comp” cannot change their character from an automotive insurance benefit to a workers' compensation benefit. It was therefore incumbent upon Muncy to file his application for additional benefits by or before July 18, 2005. He did not do so, and thus we affirm the Board's decision dismissing his claim as untimely.

ALL CONCUR.

BRIEF FOR APPELLANT:

McKinnley Morgan  
Morgan, Madden, Brashear & Collins  
London, Kentucky

BRIEF FOR APPELLEE:

Ronald J. Pohl  
Crystal L. Moore  
Pohl, Kiser & Aubrey, P.S.C.  
Lexington, Kentucky