

RENDERED: AUGUST 7, 2020; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000802-WC

DARRELL MONYHAN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-14-00029

DENNIS MCGREGOR;  
UNINSURED EMPLOYERS' FUND;  
HONORABLE R. ROLAND CASE,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION  
REVERSING AND REMANDING

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BEFORE: DIXON, KRAMER, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Darrell Monyhan petitioned this Court for review of the May 4, 2018, decision of the Kentucky Workers' Compensation Board (the Board) affirming the Administrative Law Judge's (ALJ's) January 22, 2018, opinion,

order, and award, and the February 6, 2018, order on the petition for reconsideration. The only issue on appeal is whether the ALJ applied the correct version of Kentucky Revised Statute (KRS) 342.730(4).

Monyhan asserts that the Board erred in reviving the 1994 version of KRS 342.730(4) based upon the Kentucky Supreme Court's ruling in *Parker v. Webster County Coal, LLC (Dotiki Mine)*, 529 S.W.3d 759 (Ky. 2017), that the 1996 version of the statute was unconstitutional. He argues that "[t]he savings statute [KRS 446.090] allows the court to apply the remainder of KRS 342.730, as written, while disregarding KRS 342.730(4) because it is unconstitutional." However, considering the 2018 amendment to KRS 342.730(4) and recent decisions from this Court and the Kentucky Supreme Court, Monyhan's argument is without merit. Regardless, for reasons that follow, we must reverse the opinion of the Board and remand the case to the ALJ for an order and award consistent with the 2018 amendment to KRS 342.730(4).

The facts of this case are undisputed, and according to the ALJ, are as follows.

The plaintiff, Darrell Monyhan, filed a claim against the defendant-employer, Dennis McGregor and the Uninsured Employers [sic] Fund with the defendant-employer on May 13, 2013 when he fell off a roof. An Interlocutory Opinion and Award was rendered on September 30, 2014 regarding the bifurcated issues of employer/employee relationship vs. partnership, maximum medical improvement and entitlement to

temporary total disability benefits. The ALJ found the plaintiff reached maximum medical improvement as of March 12, 2013 and was entitled to an award of temporary total disability benefits in the sum of \$150.54 per week from May 13, 2013 through March 13, 2014. The ALJ further determined the plaintiff was not a partner of the defendant Mr. Dennis McGregor and that the parties had not entered into a joint enterprise. The ALJ found that the plaintiff was acting as an employee of the defendant on the date of injury. The undersigned Administrative Law Judge issued an Order May 2, 2017 directing the Uninsured Employer's [sic] Fund to pay the previously awarded temporary total disability benefits with interest to the plaintiff and noted that the Uninsured Employers' Fund retained the right to seek reimbursement from the defendant employer for the benefits paid to the plaintiff.

Following the ALJ's opinion, order, and award, Monyhan filed a petition for reconsideration with the ALJ arguing the ALJ erred "in finding that [Monyhan's] benefits are subject to the limitations set forth in KRS 342.730(4) as amended in 1994." The petition was denied and Monyhan appealed to the Board, which affirmed the ALJ's decision. This petition for review followed.

During the pendency of Monyhan's appeal, the Kentucky General Assembly passed House Bill (HB) 2, effective July 14, 2018, which amended KRS 342.730(4) as follows:

All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee reaches the age of seventy (70), or four (4) years after the employee's injury or last exposure, whichever last occurs.

Recently, this Court determined that this amendment retroactively applies to workers' compensation cases that are not final. *Lone Mountain Processing v. Turner*, 593 S.W.3d 72, 74 (Ky. App. 2020). The Court reasoned:

In Section 20(3) of HB 2, the General Assembly expressly declared the newly amended version of KRS 342.730(4) “shall apply prospectively and retroactively to all claims” where the injury occurred after December 12, 1996, and the claims “have not been fully and finally adjudicated, or are in the appellate process, or for which time to file an appeal has not lapsed, as of the effective date of this Act.” 2018 Ky. Acts ch. 40 (HB 2), § 20(3) (effective July 14, 2018). In *Holcim [v. Swinford]*, 581 S.W.3d 37 (Ky. 2019), the Supreme Court held that this language clearly evidenced the General Assembly’s intention that the statute apply retroactively, even though it was included in a non-codified portion of the statute. 581 S.W.3d at 43-44. *See also Baker v. Fletcher*, 204 S.W.3d 589, 597 (Ky. 2006). Therefore, we conclude the claim at bar satisfies the conditions for retroactive application of the newly-amended version of KRS 342.730(4).

*Id.*; *see also Holcim*, 581 S.W.3d 37 (the Kentucky Supreme Court reversed the decision of the Court of Appeals determining the ALJ had correctly applied the 1994 version of KRS 342.730(4) because the 2018 amendment applied retroactively to cases that were not final).

In the case *sub judice*, Monyhan’s injury occurred in 2013, and the matter is still in the appellate process. Therefore, it meets the necessary requirements for the 2018 amendment of KRS 342.730(4) to apply retroactively. As a result, we need not consider Monyhan’s argument on appeal.

Accordingly, the May 4, 2018 opinion of the Board is reversed and remanded with direction that the ALJ enter a new order consistent with the 2018 amendment to KRS 342.730(4).

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

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