Kentucky Supreme Court
Cases of Note
May-June, 2015

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WORKERS COMPENSATION

City of Ashland v. Taylor Stumbo et. al. AND Taylor Stumbo v. City of Ashland, et al.
2014-SC-000190-WC May 14, 2015
2014-SC-000212-WC May 14, 2015
Opinion of the Court by Justice Keller. All sitting. Minton, C.J.; Abramson, Cunningham, Keller and Noble, JJ., concur. Barber, J., concurs by separate opinion in which Venters, J., joins. Stumbo suffered a left knee injury while working for the City of Ashland. Following the injury and a course of conservative care, Stumbo underwent arthroscopic surgery. The surgery temporarily aggravated a pre-existing condition, causing Stumbo to suffer a recurrent deep vein thrombosis. The medical evidence regarding the extent of Stumbo's disability was mixed, with several physicians opining that he had little to no impairment rating or functional impairment and others opining that he is significantly impaired. The ALJ found Stumbo to be totally disabled. The City appealed to the Board, which vacated and remanded to the ALJ for additional findings. In doing so, the Board found that the ALJ improperly relied on the opinions of a physician whose impairment rating was based on the 6th edition of the AMA Guides. Stumbo appealed, arguing that the ALJ's opinion was supported by evidence of substance. The City of Ashland cross-appealed, arguing that the ALJ could not, as a matter of law, find Stumbo to be totally disabled. The Court of Appeals affirmed the Board and found that it could not, as a matter of law, declare that Stumbo was only partially disabled. 7 The Supreme Court affirmed the Court of Appeals. In doing so, the Court held that the ALJ's opinion was deficient in its reasoning and that he did not follow the proper procedure necessary to make a finding of total disability. The Court further held that making such a finding is a five-step process, and the ALJ fell short on all but the first step. In particular, the Court noted that the ALJ failed to determine what impairment rating, if any, Stumbo has, and he failed to delineate what functional impairment is related to Stumbo's work injury and what is related to his pre-existing condition. The Court stated that, based on the record, it would be difficult for the ALJ to justify an award of total disability; however, it agreed with the Court of Appeals that making that determination is within the ALJ's purview. In his separate concurring opinion, Justice Barber noted that an ALJ can give credence to a claimant's self-imposed limitations in assessing the extent and duration of his disability. Furthermore, he noted that, if the ALJ again determined that Stumbo is totally disabled, the City of Ashland could reopen should Stumbo return to work.

Gardens Glen Farm v. Bethany Taylor Balderas, et al.
2014-SC-000401-WC May 14, 2015
Opinion of the Court. All sitting; all concur. Gardens Glen Farm filed this appeal arguing that the ALJ erred by refusing to give it a dollar for dollar credit based on the lump sum settlement it entered into with Bethany Balderas. Balderas was injured while exercising a horse. She entered into a lump sum settlement with Gardens Glen. Several years later, Balderas filed a motion to

reopen alleging a worsening of her disability. The ALJ determined that Balderas met her burden of proof to reopen and determined she was entitled to additional workers' compensation. The ALJ then calculated the value of Balderas's original award was less than the amount of the settlement between the parties. Gardens Glen received a credit in that lesser amount. Gardens Glen appealed arguing that it should receive a credit based on the settlement amount. The Court disagreed. When a settled claim is reopened, the monetary value of the original negotiated settlement may not reflect the claimant's actual disability. The change in a claimant's occupational disability should be calculated as the difference between the actual disability on the date of the settlement, as determined by the ALJ, and the occupational disability at the time of reopening.

Kentucky Employers' Mutual Insurance v. Randy Ellington, Etc., et al.
2013-SC-000802-WC May 14, 2015
Opinion of the Court by Justice Noble Reversing. All sitting; all concur. The Appellee, the owner of a sole proprietorship, had a workers' compensation insurance policy with the Appellant that named both him and his sole proprietorship as "insureds." At the same time, it also expressly excluded the owner from bodily-injury coverage under the policy. The owner suffered a work injury several years after purchasing the policy and filed a claim for workers' compensation benefits, naming the Appellant as the payment obligor. Appellant 8 disputed coverage, and the Administrative Law Judge ultimately agreed, finding that the insurance policy provided coverage only for work injuries by employees of the business and that Appellee, as owner rather than employee of the sole proprietorship, was excluded from coverage by the clear language of the policy. The Workers' Compensation Board affirmed the ALJ. The Court of Appeals reversed the Board and the ALJ, finding that the policy contained an ambiguity because it could reasonably be interpreted to exclude the Appellee from coverage in his capacity as owner of the business while simultaneously covering him in his capacity as its sole employee, and holding that the ALJ erred by construing this ambiguity against the Appellee rather than strictly against the drafter of the insurance contract and also by failing to construe it in favor of the insured's reasonable expectations that he was covered under the policy. The Supreme Court reversed the Court of Appeals, holding that the clear language of the policy excluded Appellee from coverage and contained no ambiguity.

Cassandra Falk, Etc., et al. v. Alliance Coal, LLC
2013-SC-000655-DG June 11, 2015
Opinion of the Court by Justice Keller. All sitting; all concur. Three miners were killed in two separate accidents at River View Coal, LLC and Webster County Coal, LLC, wholly owned subsidiaries of Alliance Coal, LLC. The survivors of the deceased miners filed civil claims against Alliance alleging that the deaths were caused, in part, by Alliance's independent acts of negligence. Alliance, as parent company, was self-insured for workers' compensation purposes and it "self-insured" its two subsidiaries. In order for the subsidiaries to be self-insured, Alliance had to guarantee that it would pay any benefits due if the subsidiaries could or would not. In 4 fact, Alliance paid all of the workers' compensation benefits to the survivors. Alliance moved for summary judgment arguing that it was a "carrier" and thus entitled to the immunity provided to carriers by the Workers' Compensation Act. The survivors appealed and the Court of Appeals affirmed.
The Supreme Court granted discretionary review, in part, to clarify and correct Boggs v. Blue Diamond Coal Co., 590 F.2d 655 (6th Cir. 1979) and to provide the Federal District Court for the Eastern District of Kentucky with guidance regarding a case currently pending before it.

The Supreme Court also affirmed. In doing so, the Court held that a parent company that insures itself as well as its subsidiaries is a carrier under the Act and thus entitled to immunity. The Court noted that the Act does not define "carrier" as "insurance company" or even as "insurance carrier." It defines "carrier" as an "insurer" authorized to insure the liability of employers. Because a parent company is authorized to "self-insure" the liability of its subsidiaries, a parent company that does so is a carrier. In this case Alliance was such a parent company.

The Court then addressed the 6th Circuit's holding in Boggs that a parent company, unless it is an up-the-ladder contractor, is not immune for its own acts of negligence. The Court noted that, absent some other relationship, the holding in Boggs was correct. However, since the Court found a special relationship in this case - Alliance completely "self-insured" River View and Webster County - Alliance was entitled to immunity.

Joseph Jewell v. Ford Motor Company, et al.
2014-SC-000234-WC June 11, 2015
Opinion of the Court by Justice Keller. All sitting; all concur. The only issue before the Court was whether an ALJ should include unemployment benefits when calculating average weekly wage. During the highest quarter in the fifty-two week period preceding his injury, Jewell had been laid off for two weeks. Ford completed the paperwork necessary for Jewell to receive unemployment benefits. Once he began receiving those benefits, Ford made supplemental or "sub-pay" payments sufficient to increase the combined amount Jewell received to 95% of his base pay rate. Jewell wanted to include both the amount of unemployment benefits and his sub-pay in the average weekly wage calculation. Ford wanted to exclude both. The ALJ found middle ground by including the sub-pay but excluding the unemployment benefits. The Board agreed with Ford that both should be excluded. The Court of Appeals reversed the Board and reinstated the ALJ's opinion. Jewell appealed the decision to exclude unemployment benefits, but Ford did not appeal the decision to include sub-pay.

The Supreme Court held that unemployment benefits should not be included when calculating average weekly wage. In doing so, the Court noted that wages are "money payments for services rendered . . . received from the employer." KRS 342.140(6). As did the Court of Appeals, the Supreme Court determined that 5 unemployment benefits are not received from the employer and are paid when an employee is not rendering any service to the employer. Furthermore, the Supreme Court, citing to Professor Larson and cases from other jurisdictions, noted that workers' compensation benefits are designed to insure against work place injuries, not against fluctuations in the labor market.