

Kentucky Supreme Court
Cases of Note
July-August, 2015

Note: To open hyperlink, take one of the following steps:

1. Hold down the control (“Ctrl”) key and click on the link.
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Note: No Court in July

WORKERS COMPENSATION

Alton Livingood v. Transfreight LLC, et al.

[2014-SC-000100-WC](#) August 20, 2015

Opinion of the Court by Justice Barber. All sitting; all concur. Appellant, Alton Livingood, injured his shoulder at work. He sought temporary total disability benefits while on light duty, because he did not perform his customary work as a forklift operator. Appellant also maintained that he was terminated due to his disabling shoulder injury, and that he was entitled to the two multiplier under KRS 342.730(1)(c)2. The ALJ denied the request for temporary total disability benefits, because Appellant had performed most of his light-duty activities before the injury and was paid the same rate. The ALJ was not persuaded that Appellant was terminated due to his injury and declined to award the two multiplier under KRS 342.730(1)(c)2 and *Chrysalis House v. Tackett*, 283 S.W.3d 671 (2009). The Workers’ Compensation Board and the Court of Appeals affirmed. The Supreme Court affirmed the denial of temporary total disability benefits, and reversed and remanded with respect to the two multiplier. The Court also overruled *Chrysalis House* to the extent that it held the reason for cessation of work at the same or greater wage under KRS 342.730(1)(c)2 must relate to the disabling injury. The Court held that KRS 342.730(1)(c)2 permits a double income benefit during any period that employment at the same or a greater wage ceases “for any reason, with or without cause,” except where the reason is the employee’s conduct shown to have been an intentional, deliberate action with a reckless disregard of the consequences either to himself or to another.

Garrard County Fiscal Court v. Julie Camps; Honorable J. Landon Overfield, Chief Administrative Law Judge; Honorable Allison E. Jones, Administrative Law Judge; and Workers’ Compensation Board

[2014-SC-000610-WC](#) August 20, 2015

Opinion of the Court. All sitting; all concur. Garrard County Fiscal Court filed this appeal to argue that wages from Julie Camps’s former concurrent employer should not be included in calculating her average weekly wage (“AWW”). Camps worked for Garrard County as a paramedic and also for Clark County in the same capacity. Camps quit her job with Clark County hoping to find employment closer to her home. However, before she obtained new concurrent employment, she suffered a work-related injury while working only for Garrard County. She filed for workers’ compensation arguing that the wages she earned while working for Garrard County and Clark County should be included in her AWW calculation.

The Administrative Law Judge, relying on *Wal-Mart v. Southers*, 152 S.W.3d 242, 246-47 (Ky. App. 2004), found that since Camps was not employed by both Garrard 15 County and Clark County on the day of her injury, she could not include both wages in her AWW calculation. The

Board affirmed. The Court of Appeals, in a two-to-one opinion, found that Southers misconstrued the test for when an injured party can claim concurrent employment and reversed. The majority held that as long as there was “proof the claimant was working under contracts with more than one employer during the relevant look-back period” and proof the employer knew of the other job, the concurrent employment wages could be used. Thus, even though Camps was not employed by Clark County on the date of her work-related injury with Garrard County, those wages could be included in the AWW calculation.

The Court reversed. Southers correctly stated the test for concurrent employment. This conclusion was supported by a reading of the plain language of KRS 342.140(5). Thus, to be able to claim concurrent employment, the employee must be working under two contracts for hire at the time of the injury and the employer at which the claimant was injured must be aware of the second job. Since Camps was no longer employed by Clark County at the time of her injury, she was not concurrently employed for purposes of her AWW calculation.