

**Kentucky Court Of Appeals**  
**Cases of Note**  
**[September-October, 2015](#)**

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**WORKERS’ COMPENSATION**

**Flagship Transportation LLC vs. Estate of Cory Keeling**

**[2015-CA-000718-WC](#) 10/2/2015**

Workers Compensation. Interest on lump sum death benefit accrues from date of death and not appointment of administrator of estate.

COA Published Decision Affirming. Workers Compensation Board

JONES, JUDGE: This appeal comes to us following a decision by the Workers’ Compensation Board (“Board”) holding that interest on a lump-sum death benefit begins to accrue at the time of death as opposed to the date an administrator is appointed by the court to represent the estate in probate. On appeal, the Appellant, Flagship Transportation LLC, argues that interest should not begin accruing until the later date. For the reasons set forth below, we affirm.

The statute does not say that the payment is due when the administrator is appointed or when some other action in probate has been accomplished. It states that the payment is due to the “decedent’s estate.” The estate comes into existence at the moment of the death.

**Miller v. Go Hire Employment Development, Inc.**

**[2014-CA-000379-WC](#) 10/09/2015 473 S.W.3d 621**

Opinion by Judge Nickell; Judge J. Lambert concurred; Judge Kramer concurred in part, dissented in part, and filed a separate opinion. Employee alleged work-related injuries to her chest, back, right arm, and both legs arising from a motor vehicle accident. Her employer vigorously denied liability for any work-related carpal tunnel syndrome (CTS). Finding all alleged injuries to be work-related, the ALJ awarded medical benefits and permanent partial disability (PPD) benefits based on an aggregate 11% whole person impairment rating pursuant to the AMA Guides, encompassing a 5% rating attributable to employee’s uncontested back condition and a 6% rating attributable to her contested CTS. The Workers’ Compensation Board vacated the ALJ’s determination of work-related CTS and award of medical benefits for CTS and remanded the matter with instructions for the ALJ to specify factual findings supportive of any such legal conclusion. The Board also reversed the ALJ’s award of any PPD benefits, concluding that the ALJ erred in finding a 6% impairment rating for CTS because the rating was improperly assigned prior to the employee reaching maximum medical improvement (MMI). On appeal, the Court of Appeals affirmed in part, reversed in part, and remanded. The Court first affirmed the Board’s decision to vacate and remand the ALJ’s conclusion that employee sustained work-related CTS and the award of medical benefits due to the ALJ’s failure to provide a sufficient explanation of the basis for the decision. The Court held that the employer was entitled to know the evidentiary basis of the ALJ’s findings of fact and conclusions of law. Moreover, appellate review requires the ALJ to recite basic facts supporting his/her ultimate legal conclusion to establish whether the opinion is supported by substantial evidence and reasonable. Next, the Court reversed the Board’s reversal of the ALJ’s award of PPD benefits based, in part, on the 6% impairment rating assigned to employee’s contested CTS. The Court

held that the Board should have vacated the award of PPD benefits in the same manner it had vacated medical benefits, thereby not precluding the ALJ from awarding PPD benefits if justified by further evidentiary findings establishing that employee sustained work-related CTS. The Court agreed with the Board that MMI is required for an assignment of an impairment rating under the AMA Guides. However, where a treating physician provisionally opined, “If no further treatment for [CTS] is approved, then she is at [MMI],” the ALJ might reasonably infer from the opinion specifically addressing CTS - and the employer’s vigorous denial of recommended medical treatment for the condition - that employee had, in fact, reached MMI, thereby justifying an assignment of a rating and allowing the ALJ to weigh it in determining PPD benefits. The Court noted that the treating physician caused some confusion when opining generally that employee had not reached MMI relative to her constellation of conditions, including her uncontested back. In addition, the Court noted the employer’s evaluating physician, who opined that employee reached MMI at a later date, was logically referencing only employee’s uncontested back condition since he found “no evidence for [CTS].” Because the ALJ had adopted the MMI date offered by the employer’s evaluating physician, the Court held that when more than one work-related injury is alleged, the ALJ’s opinion must specify the condition to which the factual findings pertain. If, on remand, the ALJ found employee’s CTS to be work-related, and if the ALJ found that employee had reached MMI as of the date her treating physician assigned a 6% impairment rating, the ALJ would be free to weigh the rating for CTS in determining employee’s PPD benefits. In dissent, Judge Kramer submitted that the treating physician’s opinions, no matter how construed, could not qualify as evidence capable of sustaining an award of PPD relative to any work-related CTS. The dissent characterized the treating physician’s assessment as a hypothetical or conditional impairment rating prohibited by the AMA Guides, citing the unpublished case of *Czar Coal Corp. v. Jarell*, Nos. 2007-SC-000233-WC & 2007-SC-000234-WC, 2008 WL 746605 (Ky. Mar. 20, 2008).

**Uninsured Employers Fund vs. Poplar Brook Development LLC**

**[2014-CA-001758-WC](#) 10/9/15**

Workers Compensation.

COA Published Opinion Affirming in Part, Vacating in Part and Remanding