

Kentucky Supreme Court
Cases of Note
September--October, 2017

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

1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

Note: No Court in October.

WORKERS COMPENSATION

Uninsured Employers Fund v. Jose Acahua, et al.

2016-SC-000252-WC September 28, 2017

Opinion of the Court by Justice Keller. Minton, C.J.; Cunningham, Hughes, Keller, and Venters, J., concur. Wright, J., dissents by separate opinion. VanMeter, J., not sitting. Silva Lamas was injured when he fell from a ladder working as a brick mason’s helper. He brought an application for resolution of injury claim against his employer, Acahua, and later joined Lopez as a defendant/employer. The employers did not have workers’ compensation insurance and the Chief ALJ joined the UEF as a party. The ALJ sent a copy of the joinder order to Lopez by first-class mail. SilvaLamas filed a second application for resolution of injury claim and the Commissioner of the Department of Workers’ Claims sent a copy of the application to Lopez via first-class mail. The mailing was returned stamped undeliverable. The ALJ found that Silva-Lamas was permanently and totally disabled. The UEF contested whether Lopez was properly notified of the claim and asserted the DWC lacked jurisdiction to proceed against him. The Workers’ Compensation Board and the Court of Appeals affirmed the ALJ. The issue presented by this case was whether the DWC was required to notify Lopez of the claim by registered mail under KRS 342.135, or whether notice by first-class mail was sufficient. The Court held that the first-class mailing was sufficient to provide notice. KRS 342.135 states that notice is considered properly given if sent by registered mail or if the notice is given and served like notices in civil actions. The Court analyzed the statute as providing that notice by registered mail is adequate, but nothing in the statute requires notice be given solely by registered mail. In construing the statute as a whole, two methods of giving notice were acceptable. The first-class mailing in this case complied with giving notice pursuant to CR 5.01 and 5.02. The Court affirmed the Court of Appeals.