

Kentucky Supreme Court
Cases of Note
July-August, 2019

Note: No Court in July

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”.

WORKERS COMPENSATION

Samuel Wetherby v. Amazon.com, et al.

2018-SC-000542-WC August 29, 2019

Opinion of the Court by Justice Hughes. Minton, C.J.; Buckingham, Keller, VanMeter, and Wright, JJ., sitting. All concur. Lambert, J., not sitting. Samuel Wetherby suffered a work-related back injury and was awarded 6% permanent partial disability benefits. Wetherby suffered an unrelated back injury to a different part of his spine 30 years prior. The ALJ found a 31% whole person impairment but deducted 25% as attributable to Wetherby’s prior injury. On appeal, Wetherby argued that the Administrative Law Judge (ALJ) failed to make sufficient findings to exclude a pre-existing condition pursuant to *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007). A pre-existing active condition must be symptomatic and impairment ratable immediately prior to the work injury. While Wetherby’s condition was impairment ratable, it was not symptomatic, thereby not qualifying as an active or dormant condition. Therefore, the ALJ did not need to apply *Finley*. The deduction of 25% for the prior injury was not a “carve out” in the sense of a pre-existing active condition, but rather a requirement of the AMA Guides regarding spinal impairment. Because substantial medical evidence supported the 6% impairment rating, the Court of Appeals decision reinstating the ALJ’s award and order was affirmed.

Geoffrey Hampton v. Intech Contracting, LLC, et al.

2018-SC-000611-DG August 29, 2019

Opinion of the Court by Justice Buckingham. All sitting; all concur. Employee filed a workers’ compensation enforcement action against his employer. The Circuit Court granted partial summary judgment in favor of the employee. The Court of Appeals dismissed the subsequent appeal in part because the appeal was from an interlocutory order, but considered the appeal insofar as the Employer argued that the circuit court was without jurisdiction because the Employer’s challenge to jurisdiction was the functional equivalent of a challenge based upon immunity from lawsuit. Upon review the Court held: The Circuit court’s order granting employee award for payment of a wheelchair and award for reimbursement of expenses for medically-related trip to Oklahoma, was nonappealable interlocutory order because employee’s complaint included a request for attorney fees, and the circuit court’s order did not resolve the employee’s request for attorney fees, so that attorney fee issue remained pending at time appeal was filed, and, further, the order did not include any finality language. CR 54.01, 54.02; the Court of Appeals erred by treating the employers challenge to jurisdiction as the equivalent of a claim of immunity from lawsuit because the issue did not constitute a substantial public interest, and thus order was not immediately appealable under collateral order doctrine, even assuming circuit court lacked subject matter jurisdiction and this equated to absolute immunity of employer from suit, in employee’s workers’ compensation enforcement action against employer;

the collateral order doctrine, under which orders may be immediately appealable when they implicate a right that cannot be effectively vindicated after the trial occurs, requires that an order (1) conclusively decides an important issue separate from the merits of the case, (2) is effectively unreviewable following final judgment, and (3) involves a substantial public interest that would be imperiled absent an immediate appeal; and all elements of the collateral order doctrine must be met before there will be jurisdiction to consider an interlocutory appeal based on a denial of immunity.

LaFarge Holcim v. James Swinford, et al.

[2018-SC-000627-WC](#) August 29, 2019

Opinion of the Court by Justice Wright. All sitting; all concur. James Swinford had worked for his employer, Lafarge Holcim, or its predecessor entity, for more than four decades when he sustained a work-related injury at seventy-five years of age. The Administrative Law Judge (ALJ) awarded Swinford permanent partial disability (PPD) benefits based on his treating doctor's impairment rating of 15%. That award and the duration of Swinford's benefits were appealed to the Workers' Compensation Board and then the Court of Appeals. They were also the subject of this appeal to the Supreme Court of Kentucky. The Court first held that the ALJ relied upon substantial evidence in finding Swinford's work injury to be the combination of the exacerbation of a dormant pre-existing condition and a new injury and also relied upon substantial evidence in determining that Swinford has a whole-body impairment resulting from his work-related injury. The Court then reversed the Court of Appeals' on the issue of the retroactivity of KRS 342.730(4), holding the new amendments to the statute are retroactive. The Court held that the statute was exempt from normal codification requirements, as it is temporary in nature. Therefore, the legislature had made a declaration concerning retroactivity in this case through the Legislative Research Commission's note following the statute. Therefore, the Court reversed the Court of Appeals on these grounds and remanded the case to the ALJ to determine the amount of Swinford's benefits under the amendment.