Kentucky Supreme Court
Cases of Note
March-April, 2021

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WORKERS COMPENSATION

Viwin Tech Windows & Doors, Inc. v. Mark E. Ivey, et al.
2019-SC-0370-WC March 25, 2021

Opinion of the Court by Justice VanMeter. All sitting. Minton, C.J.; Conley, Hughes, and Lambert, JJ., concur. Keller and Nickell, JJ., concur in result only. The issue before the Court was whether Appellee Mark Ivey's pre-employment lower back disc herniation and two surgeries required an impairment rating to be carved out of his permanent partial disability rating for which his employer, ViWin Tech, would be responsible. The Court held that such carve-out is required, and therefore remanded the case to the Board for remand to the ALJ to make a factual determination of that carve out percentage in accordance with the AMA Guides.

Nathaniel Edward Maysey v. Express Services, Inc., et al.
2020-SC-0132-WC March 25, 2021

Opinion of the Court by Justice Hughes. All sitting; all concur. Nathaniel Edward Maysey sustained a serious work-related injury while employed by Express Services, Inc., a temporary staffing company. Express Services placed Maysey at Magna-Tech Manufacturing, LLC where he worked for five days operating machinery before being involved in an accident that resulted in the amputation of his left arm above the elbow. Maysey settled with Express Services prior to the final adjudication of his workers' compensation claim, and the sole remaining issue was whether Maysey was entitled to a 30% enhancement of benefits from Express Services as a result of workplace safety violations pursuant to Kentucky Revised Statute (KRS) 342.165(1). The ALJ denied the enhancement and the Workers' Compensation Board and Court of Appeals affirmed. The Supreme Court reluctantly affirmed the Court of Appeals based on KRS 342.165(1). Finding Maysey's case virtually identical to Jones v. Aerotek Staffing, 303 S.W.3d 488 (Ky. App. 2010), the Court held that Maysey was required to prove that Express Services, not Magna-Tech, intentionally failed to comply with a safety statute or regulation. While several obvious safety violations existed at the Magna-Tech facility, Express Services had no knowledge of the unsafe practices and therefore could not have intentionally failed to comply with safety statutes or regulations. Despite Jones being rendered in 2010, the legislature has not amended KRS 342.165 and the Court cannot rewrite the statute to extend its application to temporary staffing employers, who have little to no control over the workplace where the injury occurred.

Diane Anderson v. Mountain Comprehensive Health Corporation, et al.
2020-SC-0133-WC March 25, 2021

Opinion of the Court by Justice Keller. All sitting; all concur. Diane Anderson appealed the Court of Appeals' affirmation of the Administrative Law Judge's dismissal of her 5 cumulative trauma injury claim as untimely under KRS 342.185(1). Anderson filed her claim in October 2018. Anderson left her job as a nurse for Mountain Comprehensive Health Care in November 2017 due to debilitating pain, and Anderson testified at her deposition she was first informed of the injury's connection to her work the following January, which would have been January 2018.

At Anderson's hearing before the ALJ, however, the doctor's report entered into evidence was dated January 2017. The ALJ accepted the date on the doctor's report and found Anderson's 618-day delay in providing notice to her employer was insufficient and not "as soon as practicable" under KRS 342.185(1). The Board and Court of Appeals affirmed the ALJ, holding the typographic error was not the type of mistake that a petition for rehearing is meant to correct and did not constitute newly discovered evidence. Anderson appealed to the Kentucky Supreme Court as a matter of right. The Kentucky Supreme Court reversed, holding that the ALJ, Board, and Court of Appeals applied the wrong provision of KRS 342.185. Effective July 2018, the Kentucky General Assembly added KRS 342.185(3) to govern notice of cumulative trauma injuries. The new notice provision instituted a two-year statute of limitations from when the worker is first informed of her injury's work-related nature. Unlike the notice provision in subsection one, the notice provision associated with cumulative trauma does not include the limitation that such notice be given "as soon as practicable after the happening thereof." Furthermore, the Kentucky General Assembly made the operation of the statute retroactive, and thus it applied to Anderson's claim. Based on the new notice provisions of KRS 342.185(3), Diane Anderson's claim was timely whether the doctor first informed her of the work-related nature of her injury in January 2017 or January 2018. For this reason, Anderson's case was reversed and remanded to the ALJ for further proceedings consistent with the opinion.

Alice Jolly v. Lion Apparel, Inc., et al.
2019-SC-0631-WC April 29, 2021
Opinion of the Court by Justice Lambert. Minton, C.J.; Conley, Hughes, Keller, Lambert, and VanMeter, JJ., sitting. All concur. Nickell, J., not sitting. Workers' Compensation. Petition for Reconsideration. Time for Appeal. An improper petition for reconsideration does not toll the running of time to file an appeal. Where a party improperly filed a second petition for reconsideration of a decision outside the 14-day window of KRS 342.281, and the same party thereafter appealed to the Board, the appeal was untimely.

Brownwood Property, LLC v. Sheena Thornton, et al.
2020-SC-0167-WC April 29, 2021
Opinion of the Court by Justice Lambert. All sitting; all concur. The employee was injured while working on a horse farm owned by the employer. At the time of the employee's injury, the farm was in the process of being restored to a fully functioning horse farm. It was undisputed that the employer was an employer "solely engaged in agriculture" under KRS 342.630(1). Therefore, the dispositive issue was whether the employee was a "person employed in agriculture" in accordance with the definition of agriculture under KRS 342.0011(18), i.e., whether her job duties were "any work performed as an incident to or in conjunction with the farm operations." The Court held that her job duties, which primarily consisted of mowing grass around the numerous residences on the farm in addition to cleaning one of the guest houses, met the definition of agriculture. Accordingly, the agricultural exception to workers' compensation coverage applied, and the employee was not entitled to workers'