

Kentucky Supreme Court
Cases of Note
September-October, 2008

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 relevant cases in September.

EVIDENCE

David Ray Burton v. CSX Transportation, Inc.

2006-SC-000695-DG 10/23/2008

Opinion by Chief Justice Minton; all concurring. Former railroad worker appealed Court of Appeals decision affirming defense verdict in favor of former employer in suit claiming permanent brain damage as a result of exposure to toxic fumes contained in industrial solvents.

At trial, much of the testimony centered on whether the worker’s condition was caused by toxic encephalopathy from exposure to fumes or by multiple sclerosis. On appeal, former worker argued trial judge improperly allowed testimony from CSX expert which was critical of studies linking solvent exposure to brain damage. The expert’s testimony was not based upon independent research, but rather was based on a “literature review” of existing studies. In affirming, the Supreme Court held where an expert witness is not testifying from their own independent research, their testimony is admissible provided the expert a) is highly qualified in a relevant specialized field; and b) their conclusions are supported by objective sources showing compliance with the scientific method, as practiced by at least a recognized minority of scientists in that field.

WORKERS COMPENSATION

Hitachi Automotive Products USA, Inc. v. Chester R. Craig, Jr.;

Hon. James L. Kerr, ALJ; and Worker’s Compensation Board

2007-SC-000631-WC 10/23/2008

All concur; Justice Abramson not sitting. Where employer’s insurance carrier violates KRS 342.267 and 803 KAR 25:240 such that these violations reasonably induce a late filing by the insured, the employer is estopped from asserting a limitations defense. The employer initially argued that since it had been more than two years since the claimant’s last temporary total disability payment, the action was time-barred. However, the adjuster had a) failed to timely advise claimant whether claim was accepted or denied; b) failed to provide specific reasons in writing for denying permanent income; and c) failed to inform the claimant if more information was needed from him before a decision to accept the claim could be made—all of which is required by 803 KAR 25:240. KRS 342.267 sets penalties for unfair worker’s compensation claims settlement practices but does not include an explicit remedy for claimants. However, the Court concluded that equity requires that a claimant induced into filing a tardy claim by the insurer’s dilatory practices be given an opportunity to present the case on its merits.

Anthony Durham v. Peabody Coal

[2007-SC-000792-WC](#) 10/23/2008

Glen Lutz v. Energy Conversion Corp.,

[2007-SC-000793-WC](#) 10/23/2008

Gary Middleton v. Centennial Resources, Inc.

[2007-SC-00794-WC](#) 10/23/2008

Opinion of the court; Justice Scott dissents. Each of the appellants in these cases challenged the constitutionality of KRS 342.316. That statute governs workers' compensation claims for coal workers' pneumoconiosis (a.k.a. "black lung"). Where the workers' and employers' expert reports are not in consensus, the statute requires that the x-rays be referred to a panel of three "B readers" whose determination may only be rebutted upon clear and convincing evidence. Appellants herein all had their cases dismissed by the ALJ when they did not rebut the panel's consensus. On appeal, Appellants argue the statute was unconstitutional since workers claiming pneumoconiosis were required to submit clear and convincing evidence to rebut the panel's consensus, while other workers have only to prove their injury by a preponderance of the evidence. Further, Appellants claimed the statute's requirement that pneumoconiosis may only be proved by x-ray evidence, to the exclusion of worker's "credible testimony regarding breathing difficulties and the length and nature of the exposure to coal dust" was also unconstitutional since workers claiming traumatic injuries bore no such limitation. The Supreme Court upheld dismissal of the claims and upheld the constitutionality of KRS 342.316. The Court noted that the Commonwealth has a legitimate interest in treating workers differently since pneumoconiosis claims are diagnosed and categorized by use of x-ray while the existence and extent of traumatic injuries vary with the type of injury.