

**Kentucky Supreme Court**  
**Cases of Note**  
**November-December, 2008**

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1. Hold down the control (“Ctrl”) key and click on the link.
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**WORKERS’ COMPENSATION**

**Allene Hall v. Hospitality Resources, Inc. et al**

**2007-SC-000153-WC 11/26/2008**

Opinion by Justice Scott; Justice Cunningham, Justice Noble and Justice Schroder concur. Hall was injured on the job in 1995. Her workers compensation claim was resolved in 1997 with benefits based upon a 60% permanent partial disability. After Hall’s impairment worsened over a period of years, her temporary total disability benefits were reinstated in 2001. In 2003, Hall filed a motion to reopen, seeking an increase in her permanent disability award. The Workers’ Compensation board decided the claim was time barred by KRS 342.125(3), since it was filed more than four years after Hall’s original award. In reversing, the Supreme Court held that where an order granting or denying benefits is entered subsequent to the original award, the four-year limitation period should be calculated from the latter date. The Court focused its analysis on the fact that “maximum medical improvement” (MMI) is required before impairment can be deemed permanent. Permanency, in turn, is part of the claimant’s burden of proof upon reopening. Under the Board’s interpretation of the statute, the Court held, it would be impossible for her to meet her burden of proof within the limitations period. In his dissent, Chief Justice Minton (joined by Justice Abramson and Justice Venters) argued that the majority was ignoring the statute’s plain language and intent of the legislature to establish definitive time limits on reopening workers compensation awards. The minority noted that KRS 342.125 was emergency legislation, enacted by the General Assembly during a special session, for the express purpose of limiting the time in which claims could be reopened in order to avoid a “looming financial catastrophe.”

**Sandra Toy v. Coca Cola Enterprises; Hon. Sheila Lowther, ALJ; Workers’ Compensation Board**

**2008-SC-000149-WC 12/18/2008**

Memorandum opinion of the court; all sitting; all concur. To furnish an incentive for partially disabled workers to work as much as they are able, KRS 342.730 provides that they receive a basic income benefit regardless of their post-injury income. In the event that the worker’s employment subsequently ceases, that benefit is doubled. Appellant returned to work after she and her employer agreed to a weekly benefit of \$59.65 for 425 weeks. Shortly thereafter, Appellant’s employment was terminated and her weekly benefit doubled. Her former employer later learned that Appellant had taken a new job earning as much or more than she did previously and reduced her benefit to the original amount. Appellant filed a motion with the ALJ contesting the reduction, claiming that KRS 342.730 referred only to the cessation of employment to which she originally returned and that her former employer should not benefit simply because she was able to find other work. The ALJ, Workers’ Compensation Board and Court of Appeals all ruled in favor of the employer. The Supreme Court affirmed, holding KRS 342.730 applies “without regard to whether the worker returns to the employment in which the injury occurred or to other employment.”

**T.J. Maxx v. Christine L. Blagg; Hon. John B. Coleman, ALJ; Worker's Compensation Board**

**[2007-SC-000939-WC](#) 12/18/2008**

Memorandum opinion of the court; all sitting, all concur. After the ALJ had already taken a worker's compensation claim under submission, he ordered claimant to undergo a university evaluation stating that the evidence was "in great conflict." The employer objected, arguing that the ALJ's order established that the claimant had failed to meet her burden of proof. In reversing, the Supreme Court held that while KRS 342.315 permits referral for a university evaluation whenever a medical issue is at question, the statute "evinces no intent to depart from regulations governing the taking of proof." The Supreme Court remanded the case with instructions for the ALJ to make a decision based on the evidence of record at the time it took the claim under submission.

**Trico County Development & Pipeline v. Scotty Smith; Hon. Grant S. Roark, ALJ; Worker's Compensation Board**

**[2007-SC-000556-WC](#) 12/18/2008**

Memorandum opinion of the Court; all sitting; Chief Justice Minton, Justice Noble and Justice Venters dissent by separate opinion.

ALJ dismissed worker's compensation claim because claimant failed to prove he had given his employer notice of his injury "as soon as practicable" as required by KRS 342.185. The Supreme Court reversed, holding that the delay was excused under KRS 342.200 since the employer had actual knowledge of the accident via claimant's contact with employer's insurance carrier. The dissenting Justices stated that they considered the ALJ's decision to be reasonable and noted that permitting a worker to bypass the employer by giving notice to the insurance carrier delays the employer's opportunity to address the problem and prejudices the employer if another worker is injured as a consequence.