

Kentucky Court Of Appeals
Cases of Note
January-February, 2013

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1. Hold down the control (“Ctrl”) key and click on the link.
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INSURANCE

Pryor v. Colony Insurance

2012-CA-000227 02/01/13

Opinion by Judge Clayton; Judges Combs and Nickell concurred.

Language in a commercial general liability policy precluding coverage for liability arising out of injuries to employees, as well as language in an endorsement broadening the exclusion by barring coverage to anyone performing duties related to the conduct of the insured’s business, supported entry of summary judgment on claims related to the death of person hauling timber for the insured. Even if trial court had construed decedent to have been acting as an independent contractor at the time of his death, that status falls within scope of endorsement which precluded coverage for performing duties related to the conduct of the insured’s business.

WORKERS COMP

Pro Services Inc. v. Wilson

2010-CA-001322-WC 01/04/2013

Opinion by Judge Nickell; Judges Clayton and VanMeter concurred.

Workers’ Compensation Board properly reversed and remanded award of the Administrative Law Judge for additional findings concerning calculation of claimant’s average weekly wage based upon his concurrent employment where evidence on this issue had been presented to ALJ, but was not mentioned in the opinion and award. Where ALJ’s analysis on an issue is incomplete and insufficient to afford proper review, Board did not substitute its judgment for the fact-finder in remanding for further findings. Board did err, however, in asserting that it “is common knowledge that “full-time” employment is a 40-hour work week,” as the Act does not define the number of hours which must be worked to be considered “full-time” employment.

JJ’s Smoke Shop, Inc.,

2012-CA-000851 02/01/13

Opinion by Judge VanMeter; Judges Caperton and Lambert concurred.

Employer failed to present sufficient evidence to KRS 342.680 presumption that employee’s murder was work-related where the ALJ had discretion to draw reasonable inferences from evidence. ALJ properly found that it was because of employee’s knowledge of and access to store security system that he was lured into perpetrator’s car under pretext of buying drugs, forced to disable the alarm and open store doors and safe, and then murdered on store premises in the course of a robbery. ALJ’s refusal to accept as true employer’s evidence that death was not work-related did not convert the rebuttable presumption into an irrebuttable one.

Twin Resources, LLC v. Workman

2012-CA-001504 02/22/13

Opinion by Judge Moore; Judges Keller and Lambert concurred.

Court of Appeals affirmed sua sponte determination of the Workers' Compensation Board that the Chief Administrative Law Judge acted in excess of his statutory and regulatory authority in resolving a post- award medical fee dispute. It is within the province of the Board to determine a question of law, such as whether an ALJ's opinion is in conformity with Chapter 342 and thus Board had authority to raise question of whether the CALJ acted without or in excess of his statutory or regulatory powers on its own motion. After CALJ determined that the motion to reopen the medical fee dispute was supported by a prima facie showing, the Board correctly concluded that under 803 KAR 25:012 ss 1(6)(c) the CALJ's only option was to assign the motion for further proof time and an adjudication on the merits and he could not assign the medical fee dispute to himself or otherwise retain jurisdiction.