

Kentucky Supreme Court
Cases of Note
November-[December](#), 2014

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1. Hold down the control (“Ctrl”) key and click on the link.
2. Right-click on the link and select “Open Hyperlink”.

Note: No Court in November

WORKERS COMPENSATION

Martin County Coal Co./Pilgrim Mining Co. v. William Goble; Honorable Douglas Wayne Gott, Administrative Law Judge; And Workers’ Compensation Board
[2013-SC-000230-WC](#) December 18, 2014

Opinion of the Court by Justice Keller. All sitting; all concur. Goble suffered a work-related low back injury with an associated psychological injury. In support of his psychological claim, Goble offered an opinion from a psychologist that he had mild depression related to the physical injury and an "estimated" AMA impairment rating of 5%. However, the psychologist opined that Goble's impairment could improve with treatment, treatment Goble never received. The ALJ awarded Goble benefits based on a 12% total impairment rating - 7% for the low back injury and 5% for the psychological injury. Martin County Coal challenged the validity of the award attributable to Goble's psychological condition. The Workers' Compensation Board, the Court of Appeals, and the Supreme Court affirmed the ALJ's award. Martin County Coal argued that, because there was no medical opinion that Goble had reached maximum medical improvement for his psychological condition, an award based on an "estimated" psychological impairment was inappropriate. The Supreme Court noted that the AMA Guides provides that a patient may refuse treatment and that refusal neither increases nor decreases that patient's impairment. Therefore, Goble's failure to treat did not preclude the assessment of an impairment rating.

US Bank Home Mortgage v. Andrea Schrecker, Honorable J. Landon Overfield,
Administrative Law Judge; And Workers’ Compensation Board
[2012-SC-000665-WC](#) December 18, 2014

Opinion of the Court by Justice Keller. All sitting. Minton, CJ, Abramson, Noble, and Venters, JJ., concur. Scott, J, dissents by separate opinion in which Cunningham, J., concurs. Schrecker was struck by a car and injured while crossing the street to get something to eat on her break. At the time, Schrecker was in the middle of the block and, after being waived on by the car in the outside lane, she walked in front of a car in the middle lane. The ALJ awarded Schrecker benefits and the Workers' Compensation Board and the Court of Appeals affirmed. The Supreme Court reversed. The Court reviewed existing Kentucky law regarding the personal comfort doctrine and the going and coming rule noting that the cases dealt with employees with no fixed place of employment. The Court noted that this case differed because Schrecker had a fixed place of employment and no Kentucky law governed such situations. Therefore, the Court referred to Professor Larson's treatise on workers' compensation. Relying on that treatise, the Court stated that such cases need to be decided on a case-by-case basis. In doing so, the ALJ should consider the following non-exclusive list of factors: whether the employee is paid during the break; the length of the break; the extent to which the employer limits the employee's activities during the break; how far from the employer's premises the employee was when injured; whether the employee's activity during the break amounted to a substantial deviation from seeking personal comfort; whether the hazard encountered by the

employee flowed from employment or was part of normal going and coming activities; and whether the employee's activity was expressly or impliedly prohibited by the employer. The Court determined that Schrecker's activity - crossing in the middle of the block and walking into an oncoming vehicle - took her so far outside the normal going and coming activities as to negate her entitlement to benefits.