

Kentucky Legal Cases of Note

January 17, 2007

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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”.

Here are more cases which I thought you might find of interest:

KY COURT OF APPEALS:

WORKERS COMPENSATION

CASE NO. 2006-CA-000001-WC, rendered 12/22/06. To be published.

Sayre Christian Valley Nursing Home v. Ramsey The issue in this case is whether an employee who suffered a work-related back injury and who claims depression resulting from that injury, may recover medical expenses related to the depression after the expiration of the two-year limitations period in Kentucky Revised Statute (KRS) 342.270 despite the fact she did not seek benefits for depression when she filed and settled her back injury claim. The ALJ had found that the claimant was barred by the statute, but the WC Board reversed that. The COA reversed the Board.

Link: <http://opinions.kycourts.net/coa/2006-ca-000001.pdf> (COA)

WORKERS COMPENSATION

CASE NO. 2006-CA-000401-WC AND NO. 2006-CA-000513-WC, rendered 12/22/06. To be published.

Bartee v. University Medical Center

This case concerns an award of temporary total disability benefits following a motion to reopen filed by the employer disputing medical expenses. The employee alleged that the TTD award should have been made from the date of her surgery and the employer cross-appealed objecting to any award of TTD benefits. The WC Board found for the employee and the COA reversed the Board.

Link: <http://opinions.kycourts.net/coa/2006-ca-000401.pdf> (COA)

WORKERS COMPENSATION

CASE NO. 2006-CA-000502-WC, rendered 12/22/06. To be published.

University of Kentucky Family Practice v. Leach The employer petitioned for review of an opinion of the WCB which affirmed the ALJ’s determination that the employee timely filed her worker’s compensation claim for medical benefits based upon upper extremity problems arising from cumulative trauma. The COA affirmed the WCB.

Link: <http://opinions.kycourts.net/coa/2006-ca-000502.pdf> (COA)

WORKERS COMPENSATION

CASE NO. 2005-CA-002619-WC, rendered 12/15/06. To be published.

Continental General Tire v. Looper

Continental General Tire petitioned for review of an opinion of the WCB which affirmed an order by the ALJ vacating an agreed order which had modified Looper’s entitlement to temporary total disability (TTD) benefits. The COA affirmed having concluded that the Board did not overlook or misconstrue controlling case law in affirming the ALJ.

Link: http://www.kycases.com/2007/01/workers_comp_co.html (KY Cases)

TORTS

CASE NO. 2006-CA-000473-MR, rendered 12/1/06. To be published.

Pinkston v. Audubon Area Community Services, Inc.

Pinkston appeals Daviess Circuit Ct's summary judgment on her PI claim against her landlord, Audobon. Pinkston fell at her apartment complex on a slick set of stairs inside her apartment, which she had previously reported to the landlord and requested repair. She had also sought repairs of a handrail for the stairs that coincidentally broke away from the wall when she grabbed it in an attempt to catch herself during the fall. She alleged the landlord had failed to keep the premises in a safe and habitable condition. The landlord moved for summary judgment based on the longstanding rule that a tenant takes the premises as she finds them and that in absence of a contractual agreement to do so, it has no obligation to repair the leased premises. The landlord also argued that it was not legally liable for injuries caused by defects in the leased premises unless the condition is unknown by the tenant and not discoverable through reasonable inspection. Here, Pinkston knew of the condition (since she had reported it to the landlord). The TC agreed and granted summary judgment. The COA affirmed.

Link: http://www.kycases.com/2006/12/torts_pinkston_.html (KY Cases)

TORTS (FELA)

CASE NO. NO. 2005-CA-002568-MR, rendered 12/15/06. To be published.

Booth v. CSX Transportation

Appellant alleged that he suffered degenerative knee condition as a result of walking on large "ballast" (gravel), as opposed to smaller ballast, in the course of his employment. Appellant's industry engineering consultant testified that the ballast was too large; his treating physician testified that appellant's working conditions was one factor that could contribute to the condition and that walking on rough, uneven surfaces can contribute. TC granted SJ, holding that appellant could not prove within reasonable degree of medical probability that the large ballast caused his condition.

The COA reversed, holding that FELA plaintiffs have a lower standard of proof than plaintiffs in ordinary negligence cases and that to survive SJ they must only prove (by entirely circumstantial evidence, if necessary) that the employer's actions played "any part at all" in the injury.

Link: http://www.kycases.com/2007/01/torts_fela_boot.html (KY Cases)