

Kentucky Legal Cases of Note

February 18, 2007

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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”.

KY COURT OF APPEALS:

Workers Compensation

[Case No. 2005-CA-001887-WC](#)

Hill v. Hospitality Resources, Inc.

Rendered 1/12/07. To be published.

The plaintiff filed for reinstatement of TTD benefits during the 4-year reopening period and later, after the original 4-year period had expired, petitioned to reopen to seek an increase in the award of disability. The plaintiff argued that the reinstatement of TTD constituted reopening. The ALJ agreed, but the WC Board reversed the ALJ. The COA affirmed the WCB.

[Case No. 2006-CA-000895-WC](#)

Frazier v. Moresy, Inc.

Rendered 1/19/07. To be published.

The employee/decedent died as a result of a work related injury, and his widow received benefits pursuant to KRS 342.750. However, a dispute arose as to when the benefits would terminate. The limiting statute states that all benefits cease when the employee qualifies for normal old-age retirement under the Social Security Act, which is 65 for many people and increases to 67 based on year of birth. However, the statute goes on to say that spouse and dependents benefits cease when the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security benefits. Although this language resulted in four different interpretations by the parties, the ALJ, and the Workers’ Compensation Board, the Court of Appeals felt that the language was unambiguous and required an interpretation that the benefits terminate when the widow would have qualified for widows’ benefits under the Social Security act, the month after she would turn 62.

[Case No. 2006-CA-001132-WC](#)

Finley v. DBM Technologies

Rendered 1/26/07. To be published.

The Court of Appeals reversed the Workers’ Compensation Board regarding the finding that pre-existing scoliosis of the spine was not a compensable condition. After a work-related injury which caused the need for laminectomy surgeries, the claimant did not improve and underwent a multilevel fusion to correct scoliosis, a congenital condition of the spine. The ALJ ruled that this further fusion surgery was to correct a non-work related condition, and therefore not the responsibility of the employer. The WCB Affirmed. The claimant appealed, arguing that it was undisputed that the scoliosis was asymptomatic prior to the injury, and therefore was a condition aroused into disabling reality by the injury. The Court of Appeals reversed in a very well researched opinion, holding that the arousal of a dormant non-disabling condition is a compensable injury. It is the employer’s burden to show a pre-existing active condition, or to show that the pre-existing condition was only temporarily aroused and reverted to its pre-injury state.

Unfair Claims Settlement Practices Act

[Case No. 2005-CA-000233-MR and No. 2005-CA-000426-MR](#)

Hamilton Mutual Ins. Co. v. Buttery

Rendered 1/26/07. To be published.

Hamilton Mutual Insurance Company of Cincinnati appealed a judgment of the Knox Circuit Court following a jury verdict in favor of its insured, Terry G. Buttery. Buttery filed a complaint alleging bad faith on the part of Hamilton Mutual for its failure to act in timely fashion to settle his claim for the burglary and vandalism of his home. The COA affirmed the jury's verdict and the trial court's judgment "in every respect".

KY SUPREME COURT:

Nothing of note listed in Kentucky Cases