RENDERED: NOVEMBER 20, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-0188-WC

KY EXPRESS — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-24-00857

ESTATE OF WALTER CASE/LYNN MARIE MARTINI; ARMIN AHMETOVIC; HONORABLE STEPHANIE KINNEY, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD OF KENTUCKY — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CALDWELL, ECKERLE, AND TAYLOR, JUDGES.

CALDWELL, JUDGE: KY Express appeals an order of the Workers' Compensation Board ("Board") dismissing its appeal of the award by an Administrative Law Judge ("ALJ") of the lump sum death benefit to the Estate of

Walter Case ("Estate") and widow's benefits to Lynn Marie Martini ("Martini"). KY Express argues the Board improperly dismissed the appeal on procedural grounds and failed to consider the merits of the appeal. We affirm.

BACKGROUND

On May 25, 2023, Walter Case ("Case") died as a result of injuries he sustained in a motor vehicle accident while driving as a long-haul trucker in Killeen, Texas. Case resided in Albany, Kentucky at the time of his death. A Texas Peace Officer's Crash Report detailed the investigation of the accident. The report identified Armin Ahmetovic ("Ahmetovic") as the owner of the 18-wheeler Case was driving at the time of the accident and Kentucky Express ("KY Express" or "Petitioner") as the carrier.

Martini was appointed administratrix of the Estate in June of 2023 by Clinton District Court. Thereafter, she filed the workers' compensation claim seeking widow benefits in her individual capacity and a lump sum death benefit on behalf of the Estate.

The original Form 101 application for benefits that counsel for the Estate/Martini submitted was filed with the Litigation Management System ("LMS") for the Kentucky Department of Workers' Claims ("DWC") on August 30, 2024. The application listed "Armin Ahmetovic, d/b/a KY Express" as the single Defendant/Employer. Attached to the application were copies of a marriage

certificate, probate documents filed with Clinton District Court, a certification of the Texas Department of Transportation, and the Texas Peace Officer's Crash Report of the accident and investigation.

A certificate of coverage submitted on behalf of KY Express, LLC, was also filed on August 30, 2024. The certificate indicated that a policy through Zurich American Insurance Company ("Zurich") was in effect at the time of the accident and provided coverage for all employees and drivers under a trucking-industry governmental classification.

On October 17, 2024, defense counsel filed a notice of representation in the action through LMS. The notice identified counsel, and the party for whom counsel was entering the appearance, as follows: "Comes Lori Daniel and gives notice of representation on behalf of Armin Ahmetovic D/B/A KY Express in the above referenced claim." Administrative Record ("A.R."), p. 25.

A week later, on October 24, 2024, defense counsel filed a Form 111 Claim denial, as well as an amended Form 111 Claim denial, through LMS. Both forms asserted that Case was not employed by the defendant on the date of the alleged injury, along with a reservation of the right to amend the denial with an indication that discovery was ongoing. The amended form selected additional reasons for denial including that the alleged injury did not arise out of and in the course of employment and an unspecified "other reason for denial." In the space

provided in the form for a styling, "Ahmetovic d/b/a KY Express" was listed as Defendant/Employer, consistent with the original Form 101. While the form provided spaces for a defendant to name any "additional parties" along with a "Reason for Joinder," all spaces in either form submitted by defense counsel remained blank.

The Estate/Martini filed the initial disclosure for plaintiff in December 2024. Later that same month, a deposition of Martini took place. In January 2025, defense counsel filed a motion to extend the deadline for proof. The ALJ granted the motion and extended the deadline to March 8, 2025.

An April 15, 2025, order of the ALJ followed a benefits review conference in the case. The order identified the contested issues in the matter as being the average weekly wage, appropriate death benefits, and employment relationship. The order noted that "[p]roof time ha[d] expired" and advised that "[n]o proof filed outside of proof time will be considered without a motion for leave." A.R., p. 131

A telephonic status conference occurred on May 9, 2025. An order from the ALJ that followed described the conference:

> The purpose of the conference was to discuss proof addressing average weekly wage. Proof on that submitted issue has not yet been submitted, but it is the ALJ's understanding that it will be done in the near future. There was also a discussion about whether Armin Ahmetovic should be joined separately as a party. The

> ALJ notes that coverage was previously certified in this claim. The ALJ leaves it to counsel whether a motion needs to be filed to join parties. All this will be discussed at the upcoming status conference as scheduled [on May 16, 2025].

A.R., p. 134.

Close in time to this order, defense counsel filed a notice stipulating in the record to an average weekly payout of $1457.71. The notice attached earnings statements issued to Case from 2022 and 2023 by KY Express.

On May 16, 2025, defense counsel filed three separate documents in LMS on the claim: "Notice of Filing Independent Contractor Agreement"; "Notice of Filing Driver Contract"; and "Motion to Join Uninsured Employer's Fund."

The Motion to Join the Uninsured Employer's Fund contained a request for:

> the ALJ to join the Uninsured Employer's Fund as a Defendant herein. As grounds therefore, the undersigned states that Defendant, Armin Ahmetovic, the Defendant who retained the services of Plaintiff Walter Case, has not appeared to provide a defense to this claim and does not appear to have been covered by a policy of workers' compensation insurance.

A.R., p. 232.

On its face, the "Independent Contractor Agreement" submitted by defense counsel detailed terms of a May 7, 2018, agreement between "Armin Ahmetovic" and "KY Express, LLC." The document described an agreement for

services loading and transporting freight by Ahmetovic for the company. Paragraphs to the document had titles including "Employees Furnished by IC"; "Accident Reports and Litigation"; and "No Authority to Bind Company." A paragraph titled "Responsibility for Workers' Compensation" stated that: "No workers' compensation insurance shall be obtained by the Company covering the IC and his/her employees, if any." Additionally, the section stated that: "[t]he IC [independent contractor] agrees to obtain workers' compensation coverage for himself/herself and his/her employees and to furnish a copy of his/her workers' compensation coverage to the Company." Signatures on the document were attributed to Kemal Hrvacic on the line supplied for "owner" and to Armin Ahmetovic in the space for "independent contractor."

An order of the ALJ followed a telephonic conference which took place on May 16, 2025. The order noted that defense counsel had filed the documents earlier on that day but that the ALJ had no opportunity to review them prior to the conference. The order provided a schedule for the Estate/Martini to respond to the motion filed by defense counsel.

The Estate/Martini filed a response in opposition to the motion on May 22, 2025. The response contained an "objection to the filing of [the "Independent Contractor Agreement" and "Driver Contract"], as proof was noted to be closed, with the exception of wage records, by Order dated May 12, 2025."

A.R., p. 236. Nevertheless, the Estate/Martini argued, the "Driver Contract," (the only submitted document that Case actually signed), confirmed that Case was working as an employee of the Defendant, and not an independent contractor, at the time of his death.

The Estate/Martini argued the "Driver Contract" demonstrated an intended long-term and ongoing relationship between Case and "KY Express, LLC." The Estate/Martini emphasized that the Driver Contract itself was branded with KY Express's logo and contact information, and nowhere in its text was Case identified as an independent contractor. The Estate/Martini noted that the "Driver Contract" indicated that Case would be paid per mile per load, at KY Express's direction, consistent with wage records in the record.

Furthermore, the Estate/Martini argued, the "Driver Contract" confirmed that plaintiff had correctly identified the Defendant/Employer in the claim. The Estate/Martini argued that document unambiguously indicated an employment relationship between driver and carrier, the two parties to the agreement. And, the Estate/Martini argued, the face of the document plainly indicated that Ahmetovic's endorsement occurred while holding himself out as an authorized agent of KY Express to Case and that Ahmetovic was hiring Case as an employee on behalf of KY Express.

The Estate/Martini noted that "[t]he only reference to Armin Ahmetovic as an 'independent contractor'" which occurs in the "Driver Contract" was in a statement "that the mileage rate will be paid by him" along with a subsequent reference "that 'independent contractor and carrier agreed that the carrier shall settle with the driver.'" Elsewhere, the document detailed the relationship between carrier, KY Express, and driver, Case, which the Estate/Martini argued plainly outlined an employer/employee relationship.

The Estate/Martini argued the "carrier" party to the driver agreement was clearly KY Express, whose logo was at the top of the document and was specifically referenced throughout the document. The Estate/Martini pointed out that, while the signature of Ahmetovic appeared on the document, it was on a line with the printed designation of "carrier." The Estate/Martini argued that, regardless of whether he had been authorized to do so, the document indicated Ahmetovic held himself out as the agent of KY Express to Case and signed on behalf of KY Express.

The Estate/Martini argued there was no evidence of any objection by KY Express to Ahmetovic's representation of himself as an agent authorized to employ Case on its behalf, nor any withdrawal of its implied consent to his acting as its agent. After Ahmetovic had retained Case's employment on behalf of KY Express and for its benefit, the Estate/Martini contended, KY Express continued to

utilize Case as an employee. Thus, the Estate/Martini argued that any alleged prior agreement between Ahmetovic and KY Express which limited Ahmetovic's authority to act on KY Express's behalf was of no legal consequence to Case's employment status. Accordingly, the Estate/Martini maintained, any provisions of the alleged "Independent Contractor Agreement" between Ahmetovic and KY Express were irrelevant to a determination of whether Case had been an employee of the defendant in the claim.

In a June 2025 order, the ALJ denied the motion to join the uninsured employer's fund. As reasoning for the denial, the order cited to the certification of insurance coverage for the single defendant, Armin Ahmetovic d/b/a KY Express, in the record, coupled with a procedural history where: "At no point during the proof schedule was a motion to join made."

The final hearing before the ALJ took place on July 31, 2025. The contested issues included the employment relationship and appropriate death benefits, as identified early in the litigation. Additionally, a contested issue of whether Martini was legally married to Case at the time of his death was identified as a matter for the ALJ's determination.

Martini testified during the hearing. She had been questioned extensively about her marriage and relationship with Case during her deposition, which was submitted to the ALJ. She testified more briefly concerning the same

subject matter during the hearing. Martini testified that she and Case had married in 1990 but separated later in the same decade. She conceded that she had once believed she and Case were divorced, and she had agreed to marriages with other men subsequent to their separation but had later learned none were valid because she had never actually been divorced from Case.

On September 17, 2025, defense counsel submitted several documents including a brief, then a corrected brief, through LMS. Each document filed by defense counsel on this date utilized an altered styling of the case that had appeared on no prior document in the record. Rather than identifying the single entity of "Ahmetovic d/b/a KY Express" as the sole "Defendant" or "Employer/Defendant," as the styling had appeared on prior documents in the record, "Armin Ahmetovic *and* KY Express" were listed as the plural "Defendants" in the action. A.R. 310, 311, 321, 322 (emphasis added).

The corrected brief made no mention of the entity, Ahmetovic d/b/a KY Express, which had been named as the single Defendant/Employer on the original application for benefits and was likewise identified throughout the prior record in the case, including in documents filed by defense counsel. Rather, the corrected brief asserted that defense counsel had:

> filed a Form 111 on behalf of Kentucky Express pursuant to a policy of insurance with Zurich on October 24, 2024. Zurich did not provide coverage for Mr. Ahmetovic or his interests. Mr. Ahmetovic has not entered an

> appearance personally or through counsel, so no defense has been presented on his behalf. At this point, he is therefore in default.

The corrected brief asserted that the ALJ needed to resolve two issues in this case. One was whether Martini was entitled to widow's benefits. The other was whether Case "was an employee *of Kentucky Express* at the time of his death[.]" A.R., p. 343 (emphasis added). The argument in the corrected brief on this issue discussed Ahmetovic and KY Express as separate and distinct co-defendants to the claim. The corrected brief maintained that "KY Express" should escape liability because it had no employment relationship whatsoever with Case. According to this argument, Case had been retained by Armin Ahmetovic, who was an independent contractor to "Kentucky Express," was not authorized to hire employees or conduct business on behalf of the company and had agreed to provide workers' compensation insurance himself for any employees he retained.

The ALJ issued an Opinion on September 29, 2025, concluding that Martini was entitled to widow benefits and the Estate was entitled to the lump sum death benefit. In regard to the contested issue of whether Martini had been legally married to Case at the time of his death, the ALJ concluded that Martini was Case's widow and had been married to Case from 1990 until the time of his death. The ALJ noted that Martini's 1990 marriage to Case in New York was substantiated by a marriage certificate, and that the evidentiary record contained no

subsequent marriage certificates of Martini or Case to other people, nor any decree of divorce to their marriage. Furthermore, the ALJ concluded, Martini was not disqualified because of abandonment.

As to the contested issue of the employment relationship, the ALJ concluded that Case had been an employee of Defendant, Armin Ahmetovic d/b/a KY Express, at the time of his death, which had resulted from injuries sustained during the course of his employment. Consequently, the ALJ determined, Case's widow was entitled to the benefits resulting from his demise, until the time he would have reached age 70, subject to statutory limiting factors. Furthermore, the ALJ determined, Case's estate was entitled to the one-time death benefit contained in KRS[1] 342.750(6).

The ALJ concluded Martini was entitled to widow benefits at the weekly rate of $508.38 beginning on May 25, 2023, and continuing until Case's 70th birthday on July 23, 2034. Additionally, the ALJ determined Case's estate was entitled to the lump sum death benefit in the amount of $99,871.64.

Following the opinion of the ALJ, no Petition for Reconsideration was filed. However, on October 29, 2025, a Notice of Appeal was filed in the action by the counsel who previously defended the claim. The Notice of Appeal filed by defense counsel listed "KY Express" as the Petitioner. In addition to the

[1] Kentucky Revised Statutes.

Estate/Martini and the ALJ, the list of Respondents in the Notice of Appeal also included "Armin Ahmetovic," who was described as a "*co-Defendant in the original action* who did not appear to defend the claims presented in the underlying claim[.]" A.R., p. 339 (emphasis added).

On November 28, 2025, counsel submitted a brief to the Board on behalf of "KY Express" which listed Ahmetovic individually as a Respondent to the appeal. The brief included a factual assertion that "Ahmetovic has not entered an appearance personally *or through counsel*, so no defense has been presented on his behalf [and] he is therefore in default." A.R., p. 343 (emphasis added).

On December 3, 2025, the Board issued a show cause order containing specific directives to Petitioner, KY Express, as well as counsel for Petitioner. The order noted that the record indicated a Notice of Representation had been filed on behalf of "Armin Ahmetovic d/b/a KY Express," the sole defendant listed in the claim. Furthermore, the order noted, counsel who signed the Notice of Representation for "Armin Ahmetovic d/b/a KY Express" had also signed the Notice of Appeal with the allegation that Ahmetovic had never entered an appearance or defended himself, by counsel or otherwise, in the underlying claim:

> [t]here is no indication in the record that counsel for Petitioner, KY Express, ever moved to withdraw her representation of Respondent, Armin Ahmetovic. By all accounts, she appears to still represent Respondent,

> Armin Ahmetovic, and her assertions to the contrary are disingenuous, at best, and, frankly, are seemingly patently untrue.
>
> Further review of the claim fails to demonstrate that counsel for Petitioner, KY Express, ever filed a separate Notice of Representation for KY Express. The claim below was defended as a single entity, Armin Ahmetovic D/B/A KY Express. Consequently, it is improper for KY Express to file an appeal against Respondent, Armin Ahmetovic, since they were treated as one entity throughout the litigation of the claim. It was not until the defendant below filed its brief on September 17, 2025 and changed the style of the case from Armin Ahmetovic D/B/A KY Express to Armin Ahmetovic and KY Express that there was any attempt to suggest the entities were separate.

A.R., p. 355.

The order placed the appeal in abeyance and issued separate directives to Petitioner and its counsel:

> Petitioner, KY Express, is given fifteen (15) days to SHOW CAUSE why this appeal should not be dismissed for improperly naming the parties on appeal. Counsel for Petitioner, KY Express, must also provide the date she abandoned her representation of Respondent, Armin Ahmetovic, as well as the method she employed to advise Respondent, Armin Ahmetovic, that she no longer represented him. She must further provide the manner and dates she provided notice of the status of the claim to him since she has asserted he failed to appear or defend claims against him despite her Notice of Representation of him. Finally, counsel for Petitioner, KY Express, must provide the date she entered an appearance for KY Express separately from the interests of Respondent, Armin Ahmetovic. Failure to provide adequate explanation shall result in dismissal of this appeal.

A.R., p. 355.

Defense counsel filed a response to the show cause order on December 18, 2025. She did not attach any affidavit to this unsworn document and the factual assertions in the document were attributed to defense counsel as "the undersigned." The response asserted that counsel was retained by KY Express's insurer, Zurich, and that counsel had never communicated with Ahmetovic. Counsel argued that no abandonment of her representation to Ahmetovic had ever occurred because no representation had ever been provided to him in the first place.

In the response, counsel argued that it was the Estate/Martini who had named an improper defendant in the original Form 101. The response asserted that Ahmetovic did not own or operate KY Express but was an independent contractor who, under terms of his contract, was required himself to carry workers' compensation coverage for any employee he retained. Counsel maintained that Ahmetovic had never been properly served with the claim. The response did not explicitly identify why counsel was making this assertion on behalf of Ahmetovic as someone she did not represent.

The response included an assertion that an amended notice of representation had been filed by defense counsel "because the LMS site does not afford the opportunity to differentiate between two parties named as a single

entity[.]" Furthermore, the response asserted, counsel had "pointed out in [the] amended notice of representation . . . that representation was being provided to KY Express by the undersigned, and not to Armin Ahmetovic."

The response attached the amended notice of representation defense counsel asserted had been filed at the outset of litigation. A certification of counsel on the attached document indicated it was filed through the LMS system on October 24, 2024, the same date defense counsel had filed the Form 111 denials. The attached document reads:

> Comes now the undersigned, by and through counsel, and hereby provides notice/clarification that representation is only being provided to KY Express in this case. Armin Ahmetovic was not doing business as KY Express nor acting on behalf of said entity, but instead was an independent contractor providing services to Ky Express at the time of the incident in question.

A.R., p. 372.

After counsel submitted the response to the show cause order, the Board dismissed the appeal in an opinion that was entered on January 16, 2026. The fifteen-page opinion detailed the procedural history of the litigation before the ALJ, as reflected by the record. The Board determined the underlying claim had been fully litigated against a single defendant, Armin Ahmetovic d/b/a KY Express, who had been represented throughout the litigation by the same counsel

who made no attempt to join, separate, realign, or amend the parties anywhere in the record.

Furthermore, the Board concluded, the ALJ had properly considered the evidence before her and awarded benefits against the sole defendant of record. In conclusion, the Board noted that:

> At no time did Petitioner seek to separate itself from Respondent Ahmetovic. Counsel for Petitioner maintains she filed an Amended Notice of Representation on October 24, 2024, separating KY Express's interests from Ahmetovic, but no such document exists in the record. Counsel for Petitioner's attempt to shift liability to Respondent Ahmetovic for whom she had undertaken representation is not well taken and is not supported by the record.
>
> The claim was defended below on behalf of Armin Ahmetovic d/b/a KY Express, and there was no attempt to rename, join, amend, or realign the parties. KY Express improperly listed Ahmetovic as a Respondent despite the fact no motion was ever filed to separate the two entities, in effect filing the appeal against itself. Because the parties were not properly listed in the Notice of Appeal, this appeal is hereby DISMISSED.

Opinion Dismissing, A.R., pp. 398, 411.

KY Express filed a petition for review of the Board's Opinion. Additional background will be developed as necessary in our analysis.

ANALYSIS

Petitioner argues that the Board improperly dismissed its appeal by narrowly focusing upon how the parties were captioned in the styling, rather than

properly providing a substantive analysis. As a result, Petitioner contends, the Board erroneously failed to engage in any independent evaluation of the ALJ's decision, outside of summarily declaring that it had rested on substantial evidence. Petitioner restates the two substantive allegations of error by the ALJ that it presented to the Board: challenging the ALJ's determination that Case had been an employee of KY Express, rather than of Ahmetovic, and the ALJ's determination that Martini was not disqualified from an award of survivor's benefits as a result of abandonment.

The Estate/Martini maintains that both the ALJ's original award and the Board's dismissal were correctly decided and argues that the appeal to the Board was procedurally improper and, even on the merits, unsupported by law.

Standard of Review

"This Court's standard of review in workers' compensation appeals is well-settled in the Commonwealth." *Roberts v. Commonwealth Dodge*, 644 S.W.3d 543, 544 (Ky. App. 2022). The Court is tasked with review of the opinions of the Board and "to correct the Board only where [the] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." *Id*. (quoting *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992)).

The Procedural Reasoning for the Board's Dismissal of the Appeal Did Not Cause Gross Injustice

To this Court, Petitioner argues that "dismissal of this claim based on the parties named to the appeal was not appropriate based on the law and facts of the underlying procedural timeline herein." Petition for review, p. 7. However, there is a notable scarcity of citations to any specific law in support of this proposition in its brief. Instead, Petitioner focuses upon factual assertions relating to the procedural background of the case, emphasizing those assertions which are cited in support of Petitioner's position that defense counsel never actually represented Ahmetovic.

The Estate/Martini argues the Board correctly discerned that, through the entirety of proceedings before the ALJ, counsel for KY Express defended the single entity "Armin Ahmetovic d/b/a KY Express" and never filed any motion to separate, rename, or withdraw representation from Ahmetovic. Martini argues that counsel for KY Express made no clear attempt to distinguish her client as a separate party from Ahmetovic until the matter had reached the appellate briefing stage, which the Board correctly determined was procedurally improper.

803 KAR[2] 25:010 § 22(2)(a) provides that a notice of appeal to the Board may be filed by "*any party* aggrieved by [a final award, order, or decision

[2] Kentucky Administrative Regulations.

rendered by an ALJ pursuant to KRS 342.275(2)]." The notice of appeal to the Board was filed by Kentucky Express and identified Ahmetovic as a co-defendant in the original action. In doing so, Kentucky Express characterized itself as a distinct entity from "Ahmetovic d/b/a Kentucky Express," the party litigant to the claim against whom the final decision of the ALJ was entered.

In the brief submitted to this Court, Petitioner focuses upon the directives in the show cause order of the Board which were aimed at "Counsel for Petitioner" to provide specific information regarding representation of Ahmetovic. However, the same order also directed "Petitioner, KY Express" to provide cause for "why this appeal should not be dismissed for improperly naming the parties on appeal." The Order Dismissing concluded Petitioner had failed to address this directive. And naming improper parties was the specific reason given for dismissal of the appeal by the Board.

On appeal to this Court, Petitioner leaves the issue of naming improper parties still unaddressed in any meaningful way. Petitioner scarcely acknowledges that the specific reason for dismissal given in the Order Dismissing was the naming of improper parties. Where Petitioner does acknowledge this to any degree, it is within dismissive characterizations such as: "[t]he Board's Opinion took issue with the manner in which the appeal was styled and the parties against whom the appeal was taken." Petition for review, p. 3.

However, the effect of Petitioner's attempt to rearrange the parties on appeal to the Board was not confined to the styling of the documents filed. Rather, there was a material misrepresentation to the Board of the parties to the original litigation. In the Notice of Appeal to the Board, Petitioner asserted that "Armin Ahmetovic" was a "co-Defendant" to KY Express in the original action and "did not appear to defend the claims presented in the underlying claim[.]"

Counsel unambiguously presented "Ahmetovic" and "KY Express" as co-defendants to an action that, in fact, had "Ahmetovic d/b/a KY Express" as the single defendant. A brief submitted on behalf of KY Express on November 28, 2025, also listed Ahmetovic and KY Express as separate defendants in the styling.

Furthermore, when describing procedural events relevant to the arguments therein, the brief continued to imply that Ahmetovic and KY Express were separate and distinct co-defendants to the claim before the ALJ, even if the assertion from the notice of appeal was not explicitly repeated. The brief also failed to mention that the notice of representation filed in the action by KY Express's counsel states: "Ahmetovic has not entered an appearance personally or through counsel, so no defense has been presented on his behalf [and] he is therefore in default."

In an appeal to the Board, the signature of counsel on a petitioner's brief "shall constitute a certification *that the statements contained in the document*

are true and made in good faith[.]" 803 KAR 25:010, § 22(7) (emphasis added). 803 KAR 25:010 § 22(12) enumerates various sanctions the Board may elect to impose where a party has filed a brief that is not in conformity with the administrative requirements. These include affirmation of the final order of the ALJ, as well as dismissal of the appeal. 803 KAR 25:010 § 22(12)(a), (e).

The Notice of Appeal to the Board contained a statement of fact asserting Armin Ahmetovic's status was a "co-Defendant" to the underlying litigation, when in fact there was only a single defendant in the original action. While this assertion by KY Express was not directly restated in its brief to the Board, it certainly was not corrected. Moreover, in its brief, as alluded to above, Petitioner referenced and described Ahmetovic *as though* he had been a co-defendant in the underlying action.

The Board took notice of the statement and issued the show cause order. The response filed by counsel for KY Express then mischaracterized the record to the Board even further, incorrectly asserting that an amended notice of representation had been filed by counsel for KY Express shortly after the initial notice of representation.

In its brief to this Court, Petitioner argues that defense counsel made clear, from the outset of litigation before the ALJ, that no representation was being provided to Ahmetovic, and "that Armin Ahmetovic was not doing business as KY

Express[.]" Petitioner's brief, p. 9. The same argument appeared in the response submitted to the show cause order of the Board. However, Petitioner also now acknowledges that its response to the show cause order erroneously asserted to the Board that defense counsel filed an amended notice of representation early in the litigation. Review of Petitioner's response to the show cause order confirms that this unfiled document was relied upon as support of its contention that counsel promptly clarified any matters concerning representation and parties.

When responding to the show cause order of the Board, Petitioner contended that an amended notice of representation was filed by defense counsel on the same date as the Form 111 denial:

> The Petitioner pointed out in its amended notice of representation (an amended notice was filed because the LMS site does not afford the opportunity to differentiate between two parties named as a single entity) that representation was being provided to KY Express by the undersigned, and not to Armin Ahmetovic . . . . The notice further pointed out that Armin Ahmetovic was not in fact doing business as KY Express, and that his relationship to KY Express was that of independent contractor[.]

A.R., p. 359. Aside from this amended notice of representation, the only support in the record that Petitioner pointed to was the Form 111 denial, emphasizing that the document contained the above statement. The Board noted that no such document appeared to have been filed.

On page 8 of its brief to this Court, Petitioner asserts that, while its counsel "drafted an Amended Notice of Representation on the same day the Form 111 was filed, the same was inadvertently not filed into LMS [and counsel] did not discover this until the Board pointed it out in its Order." However, the Board gave no indication that the absence of this document from the record was a significant factor in its decision.

That unfiled amended notice of representation indicated it was being filed in order to "provide [] notice/clarification that representation is only being provided to KY Express in this case[.]" However, the Board expressed that, had the document been filed, it alone could not have effectively withdrawn representation by defense counsel:

> [e]ven if properly filed, the submission of an amended notice does not alter the representation. To properly withdraw representation a motion is required, and the ALJ must issue an order permitting the withdrawal. In this claim no such motion was ever filed.

Order Dismissing, p. 12.

Although the Board was understandably concerned with matters regarding counsel's professional and ethical obligations concerning representation under the code of conduct, this was not the primary reasoning for the dismissal. And there is no indication that the filing of an amended notice of representation in

the record might have convinced the Board that the appeal should not be dismissed for naming improper parties.

While Petitioner continues to argue that counsel provided notice from the onset, the sole document in the record that Petitioner points to in support of is the Form 111 denial. The Board rejected this same argument:

> While the Notice of Claim Denial filed on October 24, 2024, indicates KY Express as responding to the claim, it does not separately reference Respondent Ahmetovic in any fashion, nor does it address joining, amending, realigning, or renaming of the parties. It only stated Case was not employed by the "defendant" on the date of the injury. The style of the case reflects the defendant was Armin Ahmetovic d/b/a KY Express.

Order Dismissing, p. 12.

In its brief to this Court, Petitioner acknowledges that the original Form 101 named "Ahmetovic d/b/a KY Express" as a single defendant. Nevertheless, elsewhere in its brief, Petitioner continues to discuss the case as though Ahmetovic, as an individual, was a co-defendant in the litigation before the ALJ. It argues to this Court that "[t]he lack of service of the Claim Application on Mr. Ahmetovic means that he was not properly before the ALJ as a party to this action."

Petitioner offers this assertion in support of its general denial that defense counsel ever provided representation to Ahmetovic. This is consistent with Petitioner's arguments in this appeal, which appear primarily focused upon

addressing the requirement in the Board's show cause order for counsel to identify when and how she "abandoned" representation of Ahmetovic. Petitioner seemingly asserts that the Board's ultimate decision rested on a flawed premise: that its counsel had provided representation to Ahmetovic and then abandoned it. But, since counsel never provided representation to Ahmetovic in the first place, Petitioner argues, there was nothing for counsel to abandon.

Petitioner also restates arguments made in response to the show cause order of the Board. Petitioner asserts that the Estate/Martini improperly identified the Employer as "Ahmetovic d/b/a KY Express" on the initial application. However, as the Board pointed out, "the only Notice of Representation of record clearly states that counsel for Petitioner represented Armin Ahmetovic d/b/a KY Express, the only defendant listed in the claim [.]" A.R., p. 407.

Petitioner also continues to argue that Ahmetovic was an independent contractor with no authority to conduct business on behalf of KY Express. However, the Board determined that, "other than the improper submission of two unauthenticated agreements" by Petitioner, there was no support for this assertion on the record. And regardless, the Board determined, "there was no follow-up to realign or properly designate parties, nor was a motion ever filed for permission to withdraw from representation of Respondent Ahmetovic." A.R., p. 407.

Petitioner argues that there is no evidence from which to infer Ahmetovic himself might have believed that counsel was providing him with legal representation in the matter. However, Petitioner points to nothing in the record to substantiate this assertion, aside from its own unsworn representations of counsel.

The arguments in Petitioner's brief leave much unstated as to Petitioner's position on what exactly occurred in the case, procedurally. For example, it is difficult to discern whether Petitioner contends that some specific procedural event(s) effectively rendered Ahmetovic and KY Express into separate co-defendants before the ALJ, or that procedural event(s) *should have* prompted the ALJ to treat them as separate co-defendants, or whether Petitioner is oscillating between the two positions. The paucity of specific law cited by Petitioner adds to this problem.

The Board, in dismissing the appeal, pointed out that there had been "no attempt to join, separate, realign, or amend the parties" on the part of Petitioner. Now appealing the Board's dismissal, Petitioner provides no explanation as to why it elected to file no motion to join Armin Ahmetovic separately as a party during the litigation before the ALJ. More importantly, it provides no direct argument that it *did* effectively join, separate, realign, or amend the parties, nor cites to any authority for it being unnecessary to have done so.

The procedure for seeking joinder is in 803 KAR 25:010 § 2(3)(b): "Joinder shall be sought by motion as soon as practicable after legal grounds for joinder are known." Where a party makes a timely motion for joinder of a person as a defendant who was not named in a workers' compensation claim but might be liable in the action, the ALJ must order that person joined as a defendant. *See* 803 KAR 25:010 § 2(3)(a) ("All persons shall be joined as defendants against whom the ultimate right to relief pursuant to KRS Chapter 342 may exist, whether jointly, severally, or in the alternative. An administrative law judge shall order, upon a proper showing, that a party be joined or dismissed.").

Per Petitioner, the Estate/Martini incorrectly named the single entity Ahmetovic d/b/a KY Express as a defendant because Ahmetovic was not authorized to conduct business on behalf of KY Express. And, per its own arguments and factual assertions to this Court, this allegation was known to Petitioner from the onset of litigation. The unfiled amended notice of representation, which Petitioner asserts was prepared to be filed with its Form 111 denial in October 2023, states that "Armin Ahmetovic was not doing business as KY Express nor acting on behalf of said entity, but instead was an independent contractor providing services to KY Express at the time of the incident in question." A.R., p. 372.

However, Petitioner fails to establish why the Estate/Martini should have been aware of this. On the record, the first direct assertion that Ahmetovic was an independent contractor providing services to KY Express occurred well after the close of discovery, when the independent contractor agreement was filed. And, as the Board pointed out, "other than the improper submission of two unauthenticated agreements" by Petitioner, there was nothing on the record to support the assertions regarding the relationship of Ahmetovic and KY Express. And regardless, the Board determined, "there was no follow-up to realign or properly designate parties . . . ." Opinion Dismissing, p. 12.

Counsel failed to directly address the Board's inquiries concerning representation of Ahmetovic and instead offered an argument that the Board's inquiries were not well founded. More important to this appeal, Petitioner failed to address, in any meaningful way, the requirement directed at Petitioner, rather than Petitioner's counsel: "Petitioner, KY Express, is given fifteen (15) days to SHOW CAUSE why this appeal should not be dismissed for improperly naming the parties on appeal." Petitioner provided no direct denial that it had improperly named the parties on appeal, and it cited to no specific legal authority for why this should be excused. Neither did Petitioner request leave to amend the pleadings submitted to the Board; it concluded its response to the show cause order by asserting that

"there is just cause for this appeal to continue with the case as presently styled and requests that the Board so find."

We cannot say Petitioner established that the Board overlooked or misconstrued any controlling statutes or precedent in dismissing the appeal for naming improper parties. *Commonwealth Dodge*, 644 S.W.3d at 544; *Kelly*, 827 S.W.2d at 687-88. Neither can we say Petitioner has identified any error committed by the Board in assessing the evidence before that was so flagrant as to cause gross injustice. *Id*.

The Opinion Dismissing Affirmed the Order of the ALJ

Petitioner alleges that the underlying issues raised by the appeal were left unaddressed by the opinion and order of the Board. It complains that, other than the Board's stating that the ALJ's opinion was based on substantial evidence, the opinion provided no analysis of the merits of the substantive issues of the appeal. Petitioner does not argue those substantive issues in detail but "in an abundance of caution" restates that two arguments it asserts should have been addressed in greater detail by the Board:

> [T]he Petitioner submits that the ALJ erred *as a matter of law* in finding that Walt Case was an employee of KY Express rather than an employee or independent contractor of Armin Ahmetovic, and further erred in concluding that Lynn Marie Martini was entitled to survivor's benefits as a result of the death of Walt Case, insomuch as she was not a dependent of Mr. Case and

> had remarried more than two decades prior to Mr. Case's death.

Petitioner's brief, p. 3 (emphasis added).

Petitioner contends that these were both errors of law, rather than fact, and so no Petition for Reconsideration was warranted.

The Estate/Martini argues that the substance of the appeal fails: the ALJ acted within her authority as factfinder, relied on substantial evidence, and adequately explained her reasoning on both the employment relationship and the marital status/benefits entitlement — so both findings should be affirmed.

Employment Relationship

"An appeal based on the contention that an ALJ misapplied the law is allowable, even if that party did not file a petition for reconsideration." *Uninsured Employers' Fund v. Stanford*, 399 S.W.3d 26, 31 (Ky. 2013). "[I]ssues regarding questions of law need not be preserved pursuant to a petition for reconsideration, but rather, may be appealed directly to the Board." *Brasch–Barry Gen. Contractors v. Jones*, 175 S.W.3d 81, 83 (Ky. 2005).

Petitioner's argument to the Board that the ALJ erred by rejecting its liability defense, and finding instead that "Case was KY Express's employee (rather than Ahmetovic's employee or contractor)," is closely related to the issue of the parties named in the appeal. It is premised upon, at the least, the implicit

assertion of false procedural history: that Ahmetovic and KY Express had been co-defendants in the action before the ALJ.

To analyze the employment status of Case, the ALJ utilized the economic realities test adopted by the Kentucky Supreme Court in *Oufafa v. Taxi, LLC*, 664 S.W.3d 592, 599 (Ky. 2023). The *Oufafa* Court identified the central question of the economic realities test as an evaluation of "the worker's economic dependence upon the business for which he is laboring[.]" *Id*.

The ALJ included consideration of the six factors of the test. For the factor of the permanency of the relationship between the parties, the ALJ pointed to a continuing relationship being evidenced by the driver contract and discerned that to be more in line with an employer/employee relationship. Regarding the degree of skill required for the rendering of services, the ALJ noted that driving a freight truck required some degree of skill. As to the factor of a worker's investment in equipment or materials for the task, the ALJ noted that Case did not invest in any materials and the truck he operated was owned by Ahmetovic. Looking to the factor of the degree of the alleged employer's right to control the manner in which the work is performed, the ALJ noted that the "Driver Contract" provided instructions regarding loads, logbooks, pre-trip inspections, required the driver to report his location daily, and also contained provisions that the driver could be terminated for dishonesty and fighting. The ALJ discerned this to be

further evidence supporting an employee/employer relationship. As to the factor of whether the service rendered is an integral part of the alleged employer's business, the ALJ noted that KY Express was a freight hauling company, so the operation of freight trucks was obviously an integral part of their business. After the discussion of the *Oufafa* factors, the ALJ decision concluded that Case was an employee.

To the Board, Petitioner argued in detail as to how certain factors from the economic realities test under *Oufafa* should have been weighed by the ALJ. However, this argument focused overwhelmingly upon the relationship between Ahmetovic and KY Express, as defined by interpretation of the "Independent Contractor Agreement."

The argument concluded that: "[b]ased on the totality of the factors herein and the economic realities test set forth in *Oufafa*, the Petitioner submits that Armin Ahmetovic was an independent contractor for KY Express, and Walt Case was either an employee or an independent contractor of Armin Ahmetovic, and as such, would not be entitled to recover from KY Express under Kentucky's workers' compensation law." A.R., pp. 350-51.

Petitioner relied heavily upon the "Independent Contractor Agreement" in support of its assertions that Ahmetovic could not have acted as an agent of, or been doing business as, KY Express and that Ahmetovic had accepted

responsibility to provide workers' compensation insurance for Case by retaining him under the contract. These assertions are repeated to this Court, with Petitioner continuing to rely upon the "Independent Contractor Agreement" as support.

The allegation and the evidence primarily relied upon for it was restated in Petitioner's response to the show cause order:

> (8) The independent contractor agreement setting forth the relationship between KY Express and Armin Ahmetovic makes it clear under numerical paragraph 5 (A) on page 3 of the agreement that Ahmetovic is to be responsible for workers' compensation insurance for the individuals retained to perform services under the independent contractor agreement (Exhibit 4).

However, the Board explicitly rejected any notion that the ALJ erred by determining that Case was an employee of the Defendant/Employer, based upon this document:

> We additionally note that in response No. 8, Petitioner asserted the improperly submitted and unauthenticated contracts support its position regarding liability. However, as we have noted previously, those documents constitute hearsay, the method of submission does not comply with the submission of documentary evidence set forth in 803 KAR 25:010, and they are not dispositive of liability.

Order Dismissing, pp. 12-13.

The Board described its objection earlier:

> On May 16, 2025, defense counsel improperly submitted unverified notices of filing of a purported independent contractor agreement between Ahmetovic and KY

> Express, as well as a driver contract allegedly signed by the Decedent. Those documents were improperly submitted by notice without verification, not attested to or sponsored by any Witness, and not served upon Respondent Ahmetovic. Those documents do not satisfy any of the exceptions set forth in 803 KAR 25 010(8), (9), or (14), and therefore do not constitute evidence upon which the ALJ could rely. The ALJ improperly referenced those documents in her decision, however, her decision was not based upon those inappropriate filings.

Order Dismissing, pp. 4-5.

The independent contractor agreement was not filed until after the close of discovery, to which the Estate/Martini made a specific written objection in a response. No affidavit, certification, testimony or other manner of authentication is cited by Petitioner or apparent from the record. Petitioner nowhere addresses or makes any specific allegation of error regarding these findings or conclusions of law of the Board.

To the extent that Petitioner alleged an error in the application of law by the ALJ to the Board on the issue of the employment relationship, it alleged she failed to recognize the "Independent Contractor Agreement" as determinative of liability. In the Order Dismissing, the Board explicitly rejected any argument that the "Independent Contractor Agreement" should have been dispositive of the ALJ's decision concerning liability or the employment relationship. Consequently, we disagree with Petitioner that the Board failed to address the substantive merits

of its appeal on the issue. Furthermore, Petitioner makes no allegation that the Board overlooked or misconstrued any controlling precedent in doing so.

Marriage of Case and Martini and Abandonment

Petitioner also argued to the Board that the ALJ erred by failing to recognize that Martini could not be a dependent of Case because she had abandoned him and remarried more than two decades prior to his death.

More than thirty years prior to his death, Case had married Martini. Martini testified about the circumstances of the marriage in a deposition and again during the final hearing before the ALJ. Martini testified that she and Case were married on October 14, 1990, in Moravia, New York, where Case was then incarcerated. A certificate of the marriage, signed by the local clerk, was entered into evidence during Martini's testimony before the ALJ.

The newlyweds soon resided together for a period in New York, following Case's release from incarceration. However, Martini testified this arrangement did not work out, and the couple separated sometime during the 1990s. Martini testified that at some point thereafter she saw a lawyer and had Case served with divorce papers. She recalled that Case had told her he would take care of the matter. Martini testified that she had believed the two were divorced but that she had never appeared before a judge, attended court proceedings, or seen any finalizing paperwork. She testified that Case would never

fully confirm their divorce when she asked him about it later and would sometimes remark that they were probably still married.

Martini testified that she had agreed to other marriages after her separation from Case. She testified about a subsequent relationship with a man named Brian Martini and confirmed she had participated in a marriage ceremony with him in September 1999, in St. Paul, Minnesota. Martini testified she believed that Brian had obtained a license for the marriage. However, she also testified that she could not recall ever having received a marriage license. She testified that a lawyer had later advised her that any marriage to Brian had been invalid because she had never been divorced from Case, and that seeking formal divorce or annulment for any marriage to Brian was consequently unnecessary.

Martini testified that she and Case had remained in contact after their separation in the 1990s until the time of his death. She testified that Case would frequently attempt to persuade her to move to Kentucky to live with him during their telephone conversations. Martini testified that she would always decline to do so because she believed that Case resided there with a girlfriend or fiancée at the time. Nevertheless, Martini testified, she always believed she would eventually move back in with him — and held this belief around the time of his death.

Martini was informed of Case's death by her daughter. She made

further inquiries regarding the status of her marriage to Case. After being prompted by her daughter at the time of Case's death, she investigated a long-standing suspicion that they had remained legally married, according to her testimony.

In the corrected brief submitted to the ALJ, Petitioner argued that pursuant to KRS 342.075(1)(a), Martini could not be considered a dependent of Case because she had voluntarily abandoned Case prior to the time of his accident. Per KRS 342.075(1)(a), a surviving spouse "shall be presumed to be wholly dependent upon a deceased employee" if the decedent had not been voluntarily abandoned by the surviving spouse at the time of the accident, "or who having been abandoned by the decedent has not engaged in such conduct since his abandonment as would at common law constitute grounds justifying the abandonment of such wife by her husband or such husband by his wife[.]" Petitioner argued that by agreeing to subsequent marriages, Martini had either abandoned Case or had engaged in conduct since Case's abandonment of her that would at common law constitute grounds justifying Case's abandonment of her. Furthermore, Petitioner argued, Martini's testimony established that she and Case were voluntarily separated at the time of his death, so it should be presumed that Martini was not a dependent. Petitioner cited to *Davis v. Mitchell*, 266 Ky. 151 (1936).

The corrected brief submitted by Petitioner to the ALJ contained supplemental language "recogniz[ing] that subsequent caselaw as set forth in *Brusman v. Newport Steel Corp.*, 17 S.W.3d 514 (Ky. 2000), indicates that the enactment of KRS 342.750 and 342.730 supersede the dependency requirement for widows, widowers and children." A.R., p. 353.

> Under KRS 342.075(1)(a), a surviving spouse is presumed to be wholly dependent upon a deceased employee if the surviving spouse had not voluntarily abandoned the decedent at the time of the accident, or who having been abandoned by the decedent has not engaged in such conduct since the abandonment as would at common law constitute grounds justifying the abandonment of such wife by her husband or such husband by his wife.
>
> Martini married Case in 1990 in New York. A divorce decree has not been submitted and the evidentiary record does not contain any other marriage certificates. This ALJ relies on the marriage certificate to find that Martini remained married to Case on the time of his untimely death on May 25, 2023. She remained his wife at the time of his death and remained in contact with him. Accordingly, the ALJ finds that Martini was Case's wife at the time of death and is not disqualified on the basis of abandonment. Consequently, she is entitled to widow benefits[.]

A.R., p. 337.

In the petitioner's brief submitted to the Board, Petitioner did not directly dispute the conclusion of the ALJ that Martini had been legally married to Case at the time of his death. Furthermore, Petitioner again recognized that the

death benefits awarded to Martini contained no statutory dependency requirement for widows. Nonetheless, Petitioner argued that the ALJ erred because "dependency should still be a consideration," under the facts of the case because "the failure to sever the marital bond was the result of clerical error rather than the intent of the parties to remain married[.]" Arguing Martini's testimony established that she and Case had "made the assumption that they were divorced by marrying other people," Petitioner contended the award of benefits to Martini would represent "a windfall rather than actual compensation," and consequently, the award of the ALJ did "not fit within the purpose of Kentucky's Workers' Compensation law[.]"

When a worker's injury results in death, KRS 342.750(1) allows for benefits to be paid to certain other individuals. *Morsey, Inc. v. Frazier*, 245 S.W.3d 757, 758 (Ky. 2008). KRS 342.750(1) contains an explicit requirement of actual dependence upon the deceased worker for some of the individuals identified in the statute to qualify for benefits; these include children of the age of majority who are otherwise capable of self-support, and certain other relatives of the worker. *Id*. Prior to *Brusman*, our Supreme Court had held that a widower's claim for benefits under KRS 342.750 was nonetheless subject to the requirement of dependency, as defined in KRS 342.075. 17 S.W.3d at 518, *overruling White v. Stewarts Dry Goods Co*., 531 S.W.2d 504 (Ky. 1975). However, *Brusman*

recognized that, "with respect to death benefits for widows . . . the provisions of KRS 342.075 were superseded by the enactment of [KRS 342.750 and KRS 342.730(3)]." 17 S.W.3d at 518.

A discussion of KRS 342.075(1)(a) precedes the finding in the ALJ opinion that Martini "remained in contact with" Case. The finding might be read as supporting a legal conclusion that Martini was "not disqualified on the basis of abandonment." A.R., p. 337. Since the ALJ had determined that Martini was Case's widow, the dependency definition in KRS 342.075(1)(a) had no potential applicability to Martini's KRS 342.750 claim for death benefits. As a result, even if the finding that Martini had remained in contact with Case were inadequate support for a legal conclusion that Martini had not abandoned Case pursuant to KRS 342.075(1)(a), it would make no difference to the KRS 342.750 claim.

Aside from KRS 342.075 and caselaw applying the statute which predates *Brusman*, Petitioner cited no legal authority in support of its argument concerning abandonment to the Board. Furthermore, Petitioner explicitly recognized that the authority it cited had been superseded by the enactment of KRS 342.750 and KRS 342.730(3), and that KRS 342.075 did not contain a requirement of dependency for widows.

To the Board, Petitioner argued the ALJ "erred in concluding that Lynn Marie Martini was entitled to survivor's benefits as a result of the death of

Walt Case, insomuch as she was not a dependent of Mr. Case and had remarried more than two decades prior to Mr. Case's death." A.R., p. 343. However, Petitioner simultaneously conceded to the Board, correctly, that the survivor's benefits awarded to Martini contained no legal requirement for dependency. Furthermore, Petitioner conceded to the Board, at least implicitly, that any "remarriage" Martini testified about had been legally void. Accordingly, we discern no misapplication of controlling precedent or failure to recognize that the evidence compelled a different outcome by the Board's affirmation of the ALJ's opinion on the issue of abandonment. *Kelly*, 827 S.W.2d 687–88.

Further arguments raised by the parties but not discussed herein have been determined to lack merit or relevancy to our resolution of this appeal.

CONCLUSION

For the foregoing reasons, we AFFIRM the Board.

ALL CONCUR.

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BRIEF FOR APPELLEES ESTATE OF WALTER CASE/LYNN MARIE MARTINI:

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