

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000895-WC

CYNTHIA FRAZIER, WIDOW OF
DANIEL FRAZIER, DECEASED

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-84884

MORSEY, INC.; HON. IRENE STEEN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: JOHNSON¹ AND TAYLOR, JUDGES; BUCKINGHAM,² SENIOR JUDGE.

JOHNSON, JUDGE: Cynthia Frazier, the widow of Daniel Frazier,
has petitioned for review of an opinion of the Workers'

Compensation Board entered on March 31, 2006, which reversed and
remanded the Administrative Law Judge's opinion and award of

¹ Judge Rick A. Johnson completed this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

widow's benefits entered on November 28, 2005, which terminated Cynthia's widow's workers' compensation benefits on January 15, 2009, the date Daniel would have turned age 66. Instead, the Board determined that the proper termination date for Cynthia's widow's benefits should be February 15, 2010, the date she would turn age 60. Having concluded that the Board has overlooked or misconstrued controlling statutes or precedent³ and that the proper termination date for Cynthia's widow's benefits is March 1, 2012, the month after Cynthia would turn age 62, we reverse and remand.

The facts of this case are not in dispute. Daniel, who was born on January 15, 1943, was a pipe fitter and had worked on construction jobs at different times for Morsey, Inc. On June 7, 2004, during the course of his employment with Morsey, Daniel was injured when a steel pipe was dropped on his left foot.⁴ While initially Daniel received one week of outpatient treatment, on June 13, 2004, he was diagnosed with a diffuse hemorrhage of his foot and admitted to the hospital. Serious medical complications arose, including multi-organ failure and cardiac arrest, and the work-related injury caused Daniel's death on June 17, 2004, at age 61. At the time of his

³ Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992).

⁴ Daniel had a pre-existing medical history of diabetes mellitus, elevated liver enzymes, renal insufficiency, idiopathic thrombocytopenic purpura, hypertension, and he had had surgery previously on his left leg.

injury, Daniel had been married to Cynthia for many years. Cynthia, whose date of birth is February 15, 1950, worked as a clerical employee for a local union. The couple had one child, Brooke Frazier, who was Daniel's dependant on the date of his injury.⁵

On December 13, 2004, Cynthia and Brooke filed an application for resolution of injury claim with the Department of Workers' Claims. Physicians, who treated Daniel during his hospitalization, stated that the work-related injury was a substantial contributing factor in causing his death.

On September 9, 2005, the ALJ entered an interlocutory order requiring the payment of death benefits. The ALJ noted in the interlocutory order that the parties had not agreed upon the potential duration of Cynthia's entitlement to widow's benefits and that "[t]his concerns the proper interpretation of KRS 342.730(4) which, so far as the parties and the [ALJ] are aware, has not yet been authoritatively interpreted by the Kentucky courts."

All benefits awarded pursuant to KRS 342.750, except the lump-sum death benefit provided in KRS 342.750(1)(c), are subject to the limitations contained in KRS 342.730(4), which states as follows:

⁵ Brooke was born on March 28, 1983, and because she was under 22 years of age and a full-time student, she was entitled to dependent child's benefits from the date of Daniel's injury until her marriage on February 12, 2005.

All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs. In like manner all income benefits payable pursuant to this chapter to spouses and dependents shall terminate when such spouses and dependents qualify for benefits under the United States Social Security Act by reason of the fact that the worker upon whose earnings entitlement is based would have qualified for normal old-age Social Security retirement benefits [emphasis added].

The first sentence of KRS 342.730(4) establishes that income benefits payable to the employee shall terminate as of the date the employee qualifies for normal old-age Social Security retirement benefits. The confusion lies within the second sentence which uses the phrase, "[i]n like manner" which indicates, to some extent, that it refers back to the first sentence. The wording of the second sentence of KRS 342.730(4) has resulted in four different interpretations by the parties, the ALJ, and the Board.

The ALJ accepted Morsey's original position and found that the benefits would terminate on January 15, 2009, the date Daniel would have turned age 66. In its opinion and award of widow's benefits entered on November 28, 2005, the ALJ stated, in relevant part, as follows:

Although this Statute may appear to be confusing when first read, it is the opinion of this ALJ that there is no ambiguity in this Statute and that the sentence "the worker upon whose entitlement is based" are the operating (sic) words of the Statute. To this ALJ this sentence dictates in this case that the decedent/employer is the worker upon whose earnings entitlement is based and that he would have otherwise qualified for normal [old-]age Social Security at the age of 66 and that, therefore, his dependents' income benefits are directly linked to when the deceased employee would have qualified for Social Security Retirement Benefits.

After having read the parties' briefs, it is the decision of this ALJ that [Cynthia's] widow's benefits shall cease when her husband, the decedent herein, Daniel [], would otherwise have qualified for normal old-age Social Security Retirement Benefits and that the widow, Cynthia [], shall be entitled to receive the sum of \$294.22 per week until January 15, 2009[,] or earlier in the event of her remarriage.⁶

Cynthia appealed to the Board, which entered its opinion reversing the ALJ's award on March 31, 2006.⁷ The Board agreed with the ALJ that there was no ambiguity in the statute; however, the Board rejected the ALJ's interpretation that Cynthia's benefits would terminate on January 15, 2009, the date

⁶ Throughout the remainder of the Opinion, we will discuss the termination date without regard to remarriage as provided in KRS 342.750(1)(a)&(c).

⁷ The ALJ's decision on a question of law is due no deference by the Board, nor the appellate courts. See Jecker v. Plumbers' Local 107, 2 S.W.3d 107 (Ky.App. 1999); and Ford Motor Co. v. Forman, 142 S.W.3d 141 (Ky. 2004).

that Daniel would have turned age 66 and qualified for normal old-age Social Security retirement benefits. The Board stated that the ALJ had erroneously concluded that the operative words in KRS 342.730(4) are "the worker upon whose earnings entitlement is based[.]" However, the Board also rejected Cynthia's proposed benefits termination date of March 1, 2012, the first month after Cynthia would turn age 62. Rather, the Board held that Cynthia's benefits would terminate on February 15, 2010, the day she would turn age 60, and would qualify for widow's benefits, pursuant to 42 U.S.C. § 402(e). This petition for review followed.

In her petition for review, Cynthia identifies the question of law as "what age would Cynthia [] qualify for Social Security benefits by reason of the fact that the worker upon whose earning[s] entitlement is based [Daniel] would have qualified for normal old-age Social Security retirement benefits?" Pursuant to 42 U.S.C. § 402(b), if Daniel had lived to qualify for normal old-age Social Security retirement benefits, Cynthia would have become eligible for Social Security benefits (by reason of Daniel's having qualified for normal old-age Social Security benefits) on March 1, 2012, the month after she would have turned age 62.

Cynthia contends "that the Board has mistakenly adopted the standard for Social Security widow's benefits instead of

Social Security spouse benefits." Cynthia notes that widow's benefits are triggered by the worker's death, while spouse's benefits are based upon retirement age, and that KRS 342.730(4) uses the triggering event—"worker . . . would have qualified for normal old-age Social Security retirement benefits." Cynthia emphasizes the distinction between the two types of benefits, and argues that unlike spouse benefits, "when a wage earner dies, his widow can receive Social Security widow benefits or widower's benefits the month after the month they turn 60 years of age. It does not matter how old the worker was when he or she died."

Cynthia asserts that the benefits termination date established by KRS 342.730(4) is consistent with 42 USC § 402(b), and thus, her workers' compensation benefits should terminate on March 1, 2012, when she would have qualified to receive Social Security benefits by reason of Daniel's entitlement to normal old-age Social Security retirement benefits. Cynthia argues that the Legislature's use of the language "would have qualified" in KRS 342.730(4) recognized the contingency that the worker would have to be deceased for the spouse or dependent to receive the benefit, and that the Legislature chose to use the date the spouse or dependent would have qualified for benefits based upon the worker's earnings entitlement to normal old-age Social Security retirement

benefits and not the date of a spouse's entitlement to widow's benefits. She states, "[t]he Board [erroneously] adopted Social Security widow's benefits, 42 USCA sec. 402(e), which are triggered by the worker's death, not his hypothetically reaching retirement age."

Contrary to Cynthia's argument, Morsey states that the Board did not confuse the type of benefits at issue, but rather that the Board "recognizes there should not be an overlap in benefits paid to the widow, nor should there be a gap in the benefits paid to the widow." While Morsey originally argued in favor of the benefit termination date chosen by the ALJ, Morsey now contends that the Board chose the correct benefits termination date because the Board's interpretation accounts for the entire language of KRS Chapter 342.

Our review of a question of law is de novo.⁸ The purpose of review by this Court is to correct the Board only where we perceive that 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."⁹ It is well established that interpretation and construction of a

⁸ Uninsured Employers' Fund v. Garland, 805 S.W.2d 116 (Ky. 1991).

⁹ Huff Contracting v. Sark, 12 S.W.3d 704, 707 (Ky.App. 2000) (quoting Western Baptist Hospital, 827 S.W.2d at 687-88).

statute is a matter of law for the Court.¹⁰ “[A]ny analysis of a workers’ compensation issue is necessarily an exercise in statutory interpretation[,]”¹¹ and a liberal construction should be afforded the Kentucky Workers’ Compensation Act on questions of law.¹²

As a general rule, we must interpret statutes according to their plain meaning and in accordance with the intent of the Legislature.¹³ “To determine legislative intent, a court must refer to ‘the words used in enacting the statute rather than surmising what may have been intended but was not expressed.’ . . . Similarly, a court ‘may not interpret a statute at variance with its stated language.’”¹⁴ In order to give full effect to the legislative intent embodied in a statute, construing a statute in such a way as to render a word or phrase mere surplussage is disfavored.¹⁵ Even when construing

¹⁰ Floyd County Board of Education v. Ratliff, 955 S.W.2d 921, 925 (Ky. 1997).

¹¹ Williams v. Eastern Coal Corp., 952 S.W.2d 696, 698 (Ky. 1997).

¹² See AK Steel Corp. v. Childers, 167 S.W.3d 672 (Ky.App. 2005).

¹³ Ratliff, 955 S.W.2d at 925.

¹⁴ McDowell v. Jackson Energy RECC, 84 S.W.3d at 77 (quoting Hale v. Combs, 30 S.W.3d 146, 151 (Ky. 2000)). See also Commonwealth v. Allen, 980 S.W.2d 278, 280 (Ky. 1998).

¹⁵ See Kurtsinger v. Board of Trustees of Kentucky Retirement Systems, 90 S.W.3d 454, 457-58 (Ky. 2002); and State Street Bank & Trust Co. of Boston, Massachusetts v. Heck’s, Inc., 963 S.W.2d 626, 630 (Ky. 1998).

unambiguous statutory language, it is proper to look to previous constructions of analogous statutes or rules for guidance.¹⁶

We conclude that the statute in question is unambiguous and that the Board misconstrued the statute and misapplied the law. Cynthia is correct that the Legislature triggered the benefits termination date to the date the spouse or dependent would have qualified for Social Security benefits based upon the earnings entitlement of the worker who would have qualified for normal old-age Social Security retirement benefits, if not for the worker's work-related death. By selecting this date, the Legislature recognized the contingency of the worker having died as the result of a work-related injury and the fact that he would not qualify for normal old-age Social Security retirement benefits because of his death. Any other interpretation of KRS 342.730 (4) results in the language "would have qualified" being meaningless.

Based upon the foregoing reasons, we reverse the opinion of the Workers' Compensation Board and remand this matter for an award consistent with this Opinion.

ALL CONCUR.

¹⁶ Prudential Building & Loan Association v. City of Louisville, 464 S.W.2d 625, 626 (Ky. 1971).

BRIEF AND ORAL ARGUMENT FOR
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