

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000777-WC

RANDY LEWIS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-00277

FORD MOTOR COMPANY;
HON. JAMES L. KERR, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: THOMPSON, VANMETER, AND WINE, JUDGES.

THOMPSON, JUDGE: Randy Lewis filed a workers' compensation claim against Ford Motor Company alleging entitlement to total disability benefits as the result of work-related injuries sustained on two different dates. The issue presented is whether Lewis can be awarded income benefits pursuant to concurrent awards of

permanent partial disability (PPD) benefits in excess of what he would have been awarded pursuant to an award of permanent total disability (PTD) benefits.

In Lewis's first claim, 01-88767, he allegedly sustained injuries to his lumbar spine on March 26, 2001, and September 27, 2002. Lewis's second claim, 06-00277, was filed after he allegedly injured his cervical spine on October 18, 2005.

At the benefit review conference, the parties stipulated that temporary total disability (TTD) benefits had been paid for claim 06-00277 in the amount of \$45,296.72. Additionally, Ford paid \$34,237.89 for medical expenses in claim 01-88767 and \$44,296.72 in claim 06-00277. The stipulated average weekly wage at the time of the 2001 injury and 2005 injuries were \$1,081.92 and \$919.10, respectively.

After a final hearing, the ALJ rendered his order finding that Lewis suffered a 23% impairment rating in claim 01-88767 and a 26% impairment rating in 06-00277. Pursuant to KRS 342.730(1), the ALJ applied the three multiplier to both claims and, in 01-88767, awarded TTD benefits as paid and PPD benefits at the rate of \$315.46 per week for 425 weeks beginning August 17, 2004, and medical expenses. In claim 06-00277, the ALJ awarded TTD benefits at the rate of \$607.23 per week from October 2, 2005, through November 21, 2007, and awarded PPD benefits of \$498 per week. However, the amount was inexplicably reduced to \$479.55 per week for 425 weeks beginning November 22, 2007. Ford received credit for payments made, including TTD benefits.

Thus, pursuant to the ALJ's order, Lewis would receive \$795.01 per week in PPD benefits beginning on November 22, 2007, and throughout the period of overlap of the two awards. Because the amount exceeded the permanent total disability rate for 2005 as provided for in KRS 342.730(1)(b), Ford filed a petition for reconsideration asserting that it should only be responsible for payment of the award in 06-00277 during the period the awards overlapped.¹

The ALJ modified the award in 06-00277 to give Ford credit for any payment of compensation made, including PTD benefits and "the payment of \$315.46 being paid pursuant to Claim No. 01-88767." It is the quoted language and its meaning that was the basis for Lewis's appeal to the Board. Lewis alleged that he was entitled to the entire amount of both awards during the period the awards overlapped even though the payments would be an amount higher than if he was awarded permanent total disability.

The Board disagreed. It concluded that the combined awards for PPD could not exceed the maximum payable for PTD. As a result, it ordered that during the period the awards overlapped, Lewis would receive the entirety of the first award and the amount from the second award not to exceed the maximum PTD effective in 2005. We agree with the Board.

In *Matney v. Newberg*, 849 S.W.2d 526 (Ky. 1992), the Court held that the claimant who was totally occupationally disabled due to coal workers' pneumoconiosis and twenty percent occupationally disabled due to injury was

¹ Ford conceded that the ALJ erred when it reduced the amount to \$479.55. The Board remanded the case to the ALJ to order an award of \$498 for the 06-00277 claim. Because Ford has not appealed from that part of the Board's opinion and order, it is affirmed.

limited to benefits not to exceed the state average weekly wage. Citing the pertinent statutes then in effect, the Court reasoned:

Both KRS 342.732 and KRS 342.730 limit the benefit for total occupational disability to 66 2/3% of a claimant's average weekly wage, so long as that amount does not exceed 100% of the state average weekly wage as determined by KRS 342.740. Neither statute authorizes a benefit greater than 66 2/3% of a claimant's average weekly wage. To do otherwise would allow a claimant such as the one herein to receive an award for more than 100% occupational disability. Such a result is contrary to the long-standing principle that a claimant may not, at one time, be compensated for more than total occupational disability because he can, in fact, be no more than totally, occupationally disabled. See *General Refractories v. Herron*, Ky., 566 S.W.2d 433 (1977); *Cabe v. Skeens*, Ky., 422 S.W.2d 884 (1967); *Osborne Mining Corporation v. Blackburn*, Ky., 397 S.W.2d 144 (1965); *Dunn v. Eaton*, Ky., 26 S.W.2d 513 (1930); Larson, *Workmen's Compensation Law*, § 59.41. We find no indication that the legislature intended to authorize benefits for combined awards exceeding those for total occupational disability.

Id. at 527.

Subsequently, in *McCoy Elkhorn Coal Corp. v. Sullivan*, 862 S.W.2d 891 (Ky. 1993), the Court reaffirmed the principle expressed in *Matney* that a worker who receives multiple compensation awards cannot receive benefits in excess of the maximum amount permitted by statute for total occupational disability. *Id.* at 892.

Although *Matney* involved an occupational disability prior to the current version of our workers' compensation law and the claimant was 100% occupationally disabled due to coal worker's pneumoconiosis and twenty percent due to an injury, its reasoning is nevertheless applicable. The Court's logic extends to Lewis's case. During any period to which he is entitled to benefits,

Lewis cannot be more than totally disabled. Thus, the Board properly ordered that his award be reduced to the maximum PTD rate for 2005 because Lewis's combined awards equal \$813.46 during the overlapping period.

For the foregoing reasons, the opinion and order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Wayne C. Daub
Louisville, Kentucky

BRIEF FOR APPELLEE:

Wesley G. Gatlin
Elizabeth M. Hahn
Louisville, Kentucky