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TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2015-CA-000718-WC

FLAGSHIP TRANSPORTATION, LLC

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-13-85946

ESTATE OF CORY KEELING (DECEASED),  
ADMINISTRATRIX MINDY KEELING (WIFE);  
HON. R. ROLAND CASE, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: JONES, D. LAMBERT, AND THOMPSON, JUDGES.

JONES, JUDGE: This appeal comes to us following a decision by the Workers' Compensation Board ("Board") holding that interest on a lump-sum death benefit begins to accrue at the time of death as opposed to the date an administrator is appointed by the court to represent the estate in probate. On appeal, the Appellant,

Flagship Transportation LLC, argues that interest should not begin accruing until the later date. For the reasons set forth below, we affirm.

## **II. Factual and Procedural Background**

The facts relevant to the issue on appeal are not in dispute. Cory Keeling drove a semi-tractor trailer for Flagship. On April 19, 2013, while on duty, Keeling was involved in a motor vehicle accident in Pecos, Texas. He suffered multiple injuries in the accident and died later that same day.

Keeling died intestate. On May 6, 2014, Keeling's widow, Mindy Keeling, was appointed as the administratrix of his estate. On June 13, 2014, Flagship, through its workers' compensation carrier, paid the lump-sum death benefit to Mindy, as administratrix of the estate, in the amount of \$73,988.98, plus \$583.37 interest from May 6, 2014. Eventually, the parties settled the bulk of the compensation claim, but agreed to submit to the Administrative Law Judge ("ALJ") their dispute concerning whether Keeling's estate was entitled to interest from the day of his death, which the ALJ resolved in the estate's favor. Flagship appealed to the Board. The Board affirmed the ALJ. This appeal followed.

## II. Standard of Review

This appeal concerns only an issue of statutory interpretation.

Statutory interpretation is a matter of law reserved for the courts, and courts are not bound by the ALJ's or the Board's interpretation of a statute. *Halls Hardwood Floor Co. v. Stapleton*, 16 S.W.3d 327, 329-330 (Ky. App. 2000). Indeed, the appellate court's province is to ensure that ALJ decisions, and the Board's review thereof, are in conformity with the Workers' Compensation Act. Kentucky Revised Statutes ("KRS") 342.290; *Whittaker v. Reeder*, 30 S.W.3d 138, 144 (Ky. 2000). *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 874-75 (Ky. App. 2009). Accordingly, our review of this matter is *de novo*. *Saint Joseph Hosp. v. Frye*, 415 S.W.3d 631, 632 (Ky. 2013) ("The issue presented concerns statutory interpretation, which is purely a question of law, which we review *de novo*.").

## III. Analysis

We begin our review with KRS 342.750(6). It states,

In addition to other benefits as provided by this chapter, if death occurs within four (4) years of the date of injury as a direct result of a work-related injury, ***a lump-sum payment . . . shall be made to the deceased's estate***, from which the cost of burial and cost of transportation of the body to the employee's place of residence shall be paid. Annually, the commissioner shall compute, in accordance with KRS 342.740, the increase or decrease in the state average weekly wage, and consistent therewith, shall adjust the amount of the lump-sum payment due under this subsection for injuries occurring in the succeeding year.

*Id.* (emphasis added). The Kentucky Supreme Court has held that the lump sum benefit provided by KRS 342.750(6) is an "income benefit." *Realty Improvement Co. v. Raley*, 194 S.W.3d 818, 822 (Ky. 2006). "[I]nterest accrues on a lump-sum death benefit under KRS 342.040(1) just as it does on other past-due income benefits awarded under Chapter 342." *Bradley v. Commonwealth*, 301 S.W.3d 27, 30 (Ky. 2009).

Interest payable on workers' compensation income benefits is governed by KRS 342.040(1). It provides:

All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of twelve percent (12%) per annum on each installment from the time it is due until paid[.]

*Id.* Thus, the question becomes when Flagship's obligation to pay the benefit arose. Flagship argues that it did not become obligated to pay the death benefit until the "deceased estate was opened and a representative appointed." According to Flagship, the "'deceased estate' did not exist until May 6, 2014, when Mindy Keeling was appointed as the administratrix of her late husband's estate." We disagree.

The statute does not say that the payment is due when the administrator is appointed or when some other action in probate has been accomplished. It states that the payment is due to the "decendent's estate." The estate comes into existence at the moment of the death. Indeed, *Black's Law*

*Dictionary* (10th ed. 2014) defines a decedent's estate to include all "[t]he real and personal property that a person possesses *at the time of death* and that passes to the heirs or testamentary beneficiaries." (Emphasis added). Mr. Keeling's estate came into existence at the very moment of his death. Because his death was the result of a work-related injury, Flagship became responsible for making the lump-sum payment to the estate at the moment of death. The liability existed regardless of whether an administrator had been appointed to represent the estate and interest began accruing on the payment when it was due.

#### **IV. Conclusion**

For the reasons set forth above, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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