

RENDERED: DECEMBER 8, 2017; 10:00 A.M.
TO BE PUBLISHED

**Commonwealth of Kentucky
Court of Appeals**

NO. 2017-CA-000448-WC

RONALD OVERSTREET

APPELLANT

v.
PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-15-99349 AND WC-14-78055

AMERICAN PRINTING HOUSE
FOR THE BLIND; COMMONWEALTH
OF KENTUCKY, WORKERS'
COMPENSATION BOARD; AND THE
HONORABLE DOUGLAS GOTT,
ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
REVERSING AND REMANDING

*** * * * *

BEFORE: CLAYTON, J. LAMBERT, AND THOMPSON, JUDGES.

LAMBERT, J., JUDGE: Ronald Overstreet has petitioned this Court for review of the February 17, 2017, decision of the Workers' Compensation Board (the Board) affirming the November 15, 2016, order of the Administrative Law Judge (ALJ)

decision that Overstreet's permanent partial disability benefits terminate when he reaches normal old-age Social Security retirement age pursuant to Kentucky Revised Statute (KRS) 342.730(4). We reverse and remand.

The facts are not in dispute: Overstreet suffered separate work-related injuries to his knee (from a fall) and shoulder (from lifting a heavy object) in June and December 2014, respectively. He underwent surgeries and filed to receive benefits to compensate him for his partial disability. The parties settled the amount of the claims, and Overstreet reserved for review the issue of the constitutionality of the statute which cuts short the duration of those benefits. Both the ALJ and the Board ruled against Overstreet because the Kentucky Supreme Court had addressed this issue adversely to Overstreet's argument in *McDowell v. Jackson Energy RECC*, 84 S.W.3d 71 (Ky. 2002), and the ALJ and the Board were without jurisdiction to address or decide constitutional issues. See *Commonwealth v. DLX, Inc.*, 42 S.W.3d 624 (Ky. 2001) (citing *Goodwin v. City of Louisville*, 309 Ky. 11, 215 S.W.2d 557 (1948)).

However, in *Parker v. Webster Cty. Coal, LLC (Dotiki Mine)*, No. 2014-SC-000526-WC, 2017 WL 1536470 (Ky. Apr. 27, 2017) (Finality November 2, 2017), the Kentucky Supreme Court reversed its holding in *McDowell, supra*, stating thus:

KRS 342.730(4) states in pertinent part that:

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.

....

At the outset, we note that this Court previously determined that KRS 342.730(4) as it presently exists is constitutional. *See McDowell v. Jackson Energy RECC*, 84 S.W.3d 71 (Ky. 2002); and *Keith v. Hopple Plastics*, 178 S.W.3d 463 (Ky. 2005), as corrected (Dec. 13, 2005). We also are cognizant of the strong presumption of constitutionality afforded to legislative acts. *Id.* at 468. However, having reviewed our prior opinions, we now determine that they were incorrectly decided regarding the issue of equal protection. In doing so, we are:

as always, mindful of the value of precedent and the doctrine of stare decisis. The doctrine of stare decisis “is the means by which we ensure that the law will not merely change erratically, but will develop in a principled and intelligible fashion.” Changing the “ebb and flow of settled law” is not something we take lightly, and we do so only after careful consideration. While stare decisis “permits society to presume that bedrock principles are founded in the law rather than in the proclivities of individuals,” it does not necessitate that this Court “unquestioningly follow prior decisions” when we are otherwise compelled. This Court is not assigned the

duty of maintaining the watch as the law ossifies.

Osborne v. Keeney, 399 S.W.3d 1, 16–17 (Ky. 2012) (footnotes omitted).

2017 WL 1536470, at *4. The Court went on to hold that “KRS 342.730(4) favors those who will not qualify for normal old-age Social Security retirement while discriminating against those who do qualify[.]” *Id.* at *7. It concluded:

Having reviewed the record and the arguments of the parties, we discern no rational basis or substantial and justifiable reason for the disparate treatment of two groups of injured older workers. Thus, KRS 342.730(4) violates the right to equal protection and is constitutionally infirm. Our opinions to the contrary are hereby overruled[.]

Id.

Accordingly, we reverse the Board’s decision, and this matter is remanded to the ALJ for entry of an opinion and award consistent with this opinion and the holding in *Parker v. Webster Cty. Coal, supra*.

ALL CONCUR.

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