

**Commonwealth Of Kentucky**

**Court Of Appeals**

No. 1998-CA-000355-WC

NORTON-CHILDREN'S HOSPITAL  
(now Alliant)

APPELLANT

v.

PETITION FOR REVIEW  
OF A DECISION OF  
THE WORKERS' COMPENSATION BOARD  
WC-94-013826

JOAN STROTMAN;  
ROBERT L. WHITTAKER,  
Director of Special Fund;  
HON. THOMAS A. DOCKTER,  
Administrative Law Judge; and  
WORKERS' COMPENSATION BOARD

APPELLEES

**OPINION**  
**REVERSING AND REMANDING**

\* \* \* \* \*

BEFORE: BUCKINGHAM, GARDNER, and KNOFF, Judges.

BUCKINGHAM, JUDGE. Norton-Children's Hospital (now Alliant)  
(the hospital) petitions for review of an opinion by the Workers'  
Compensation Board (the Board) which affirmed in part and  
reversed in part and remanded an award by an administrative law

judge (ALJ) in favor of Joan Strotman (Strotman). We reverse and remand.

In July 1976, Strotman, a registered nurse, contracted the herpes virus while handling a child who was being treated at the hospital for seizures associated with cerebral palsy. Strotman developed a blister on one of her fingers, and the blister was lanced under the assumption that it was caused by a common staph infection. The cause was later determined, however, to be the herpes virus.

From 1976 through 1996, Strotman was hospitalized over thirty times due to intermittent outbreaks of the herpes virus. She has continued to work at the hospital when she is not suffering an outbreak, but her choice of work assignments has been limited by her illness. Due to uncertainties concerning when her illness would erupt again, Strotman has declined to pursue continuing education or training which would have led to her career advancement.

The hospital paid Strotman temporary total disability (TTD) benefits each time she was hospitalized and unable to work. The last period of TTD ceased on August 8, 1996. Later that month, Strotman filed an Application for Adjustment of Claim, alleging permanent occupational disability. An ALJ awarded her twenty-five percent permanent occupational disability benefits to commence on August 9, 1996. Strotman filed a petition for reconsideration, arguing that the benefits should commence on

July 8, 1976--the date of "the injury."<sup>1</sup> After her petition for reconsideration was denied, Strotman appealed to the Board, which agreed with her and reversed the ALJ's decision with directions that benefits commence on July 8, 1976. The hospital now petitions this court for review.

The hospital contends that the ALJ's determination that benefits would commence upon the expiration of the last period of TTD should be reinstated. The Board relied upon KRS 342.040 in reversing the ALJ and holding that benefits should commence upon the date of the injury. KRS 342.040(1) provides in pertinent part:

[N]o income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. 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 . . . .

The Board interpreted this statute to require that permanent partial disability benefits commence on the date of the injury. The hospital argues that the statute does not require that benefits commence on the date of injury but requires that permanent benefits commence when the disability commences,

---

<sup>1</sup> All references to "the injury" in this opinion signify the incident resulting in Strotman's contracting the herpes virus from the child. The exact nature of the incident is not readily apparent from the briefs or record.

pointing to the language "injury or disability." (Emphasis added.)

We note initially that the parties apparently assumed that "income benefits," as used in KRS 342.040, signifies only permanent disability benefits. KRS 342.0011(12) defines "[i]ncome benefits" as "payments made under the provisions of this chapter to the disabled worker . . . excluding medical and related benefits." The statutory definition of "income benefits" is thus not restricted to permanent disability benefits, but it also encompasses benefits paid to disabled workers to replace their income during periods of temporary disability.

We further note that the statute requires that "income benefits" commence within seven days after the injury or "disability resulting from an occupational disease." (Emphasis added.) In other words, income benefits should commence within seven days of the date of injury in injury cases and within seven days of the resulting disability in occupational disease cases. Since Strotman sought benefits for her contraction of herpes rather than for the incident which resulted in her contracting it, this case appears to be an occupational disease case rather than an injury case. See KRS 342.0011(1) and (2).

In Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992), the Kentucky Supreme Court held:

The function of further review of the WCB [Board] in the Court of Appeals is to correct the Board only where the the [sic] 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.

We conclude that the Board has misconstrued KRS 342.040. That statute requires only that a disabled worker receive some form of income benefits, whether temporary or permanent disability benefits, within seven days of suffering a disabling injury or becoming disabled as a result of an occupational disease. Strotman received temporary total disability benefits as late as August 8, 1996, after which time she was determined to be permanently partially disabled and entitled to additional benefits. The ALJ correctly determined that such benefits should commence on August 9, 1996.

The opinion of the Board is reversed and remanded for proceedings consistent with this opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:

William P. Swain  
Peter J. Glauber  
Louisville, KY

BRIEF FOR APPELLEE, STROTMAN:

Wayne C. Daub  
Louisville, KY

BRIEF FOR APPELLEE,  
SPECIAL FUND:

David W. Barr  
Labor Cabinet  
Louisville, KY