

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-000616-WC

CWI

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-79836

RICHARD CROTZER; HON. R. SCOTT
BORDERS, ADMINISTRATIVE LAW
JUDGE; WORKERS' COMPENSATION
BOARD; AND JEFFERY ROBERTS

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** * **

BEFORE: MOORE AND NICKELL, JUDGES; HARRIS,¹ SENIOR JUDGE.

NICKELL, JUDGE: CWI appeals from a decision of the Workers' Compensation

Board affirming the award of permanent partial disability benefits to Richard

Crotzer with a two-times multiplier. CWI argues use of the two-times multiplier

¹ Senior Judge William R. Harris 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.

was erroneous under the recent Supreme Court of Kentucky decision in *Chrysalis House, Inc. v. Tackett*, 283 S.W.3d 671 (Ky. 2009). We reverse and remand.

CWI employed Crotzer as a mechanic. Crotzer sustained a crush injury to his right middle finger while changing the brakes on a truck. Following a surgical procedure and a period of temporary total disability, Crotzer returned to work at CWI at his pre-injury wage. After several months of continued employment, Crotzer accepted a voluntary lay-off to spare the job of a younger worker with a family.

Following a hearing, the Administrative Law Judge (ALJ) determined Crotzer had sustained a permanent partial disability based upon a twelve percent impairment rating. The ALJ further found Crotzer retained the physical capacity to return to his former work and he did return to work justifying the application of the two-times multiplier pursuant to KRS 342.730(1)(c)2. On appeal, the Board affirmed and did not address CWI's arguments regarding the constitutionality of KRS 342.730(1)(c)2. In the meantime, the Supreme Court of Kentucky rendered its decision in *Chrysalis House* and CWI now asks this Court to apply that decision to this case.

KRS 342.730.730(1)(c)2 provides for the application of the two-times multiplier and states as follows:

If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of

injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payment.

In *Chrysalis House*, 283 S.W.3d at 674, the Supreme Court held:

KRS 342.730(1)(c)2 appears at first blush to provide clearly and unambiguously for a double benefit during a period of cessation of employment at the same or a greater wage “for any reason, with or without cause.” It is, however, a subsection of KRS 342.730(1), which authorizes income benefits to be awarded for “disability” that results from a work-related injury. We conclude for that reason that, when read in context, KRS 342.730(1)(c)2 permits a double income benefit during any period that employment at the same or a greater wage ceases “for any reason, with or without cause,” provided that the reason relates to the disabling injury.

Crotzer urges this Court to distinguish the facts of his case from those presented in *Chrysalis House*, but we see no such distinction. Although Tackett’s job ended due to theft, our Supreme Court did not reverse the application of the two-times multiplier in *Chrysalis House* because the reason for the cessation of employment was immoral, rather the application of the multiplier was reversed because the cessation of employment was unrelated to the disabling injury. *Id.*

In the present case, the only evidence relating to the end of Crotzer’s employment was his statement that he voluntarily accepted a lay-off to spare the

job of a younger worker with a family. Therefore, we are constrained to follow the precedent of the Supreme Court announced in *Chrysalis House* and remand this matter to the Workers' Compensation Board with instructions to remand to the ALJ to make a finding on whether the cessation of Crotzer's employment was related to his disabling injury.

Accordingly, the decision of the Workers' Compensation Board is reversed and remanded with instructions.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE,
RICHARD CROTZER:

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