

# Commonwealth Of Kentucky

## Court Of Appeals

No. 1998-CA-000025-WC

TOMMY STATON

APPELLANT

v.

PETITION FOR REVIEW  
OF A DECISION OF  
THE WORKERS' COMPENSATION BOARD  
WC-96-002432

SPECIAL FUND;  
HON. RICHARD H. CAMPBELL, JR.,  
ADMINISTRATIVE LAW JUDGE; and  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\* \* \*

BEFORE: BUCKINGHAM, KNOX, AND SCHRODER, JUDGES.

KNOX, JUDGE: Tommy Staton (Staton) was determined by the Administrative Law Judge (ALJ) to be 100% permanently occupationally disabled as a result of work-related injuries. In awarding Staton benefits under his claim, the ALJ ordered:

At such time as plaintiff attains age sixty-five (65), the weekly amount of the income benefits awarded herein shall be reduced in accordance with the provisions of KRS 342.730(4); and the weekly benefit originally awarded for plaintiff's permanent disability

shall be utilized in computing each annual reduction required by said statute.

Staton appealed to the Worker's Compensation Board (Board), arguing only that the tier-down provision of KRS 342.730(4) were unconstitutional in that they were discriminatory with respect to age. The Board rejected that argument, and Staton makes that same argument in this appeal.

We believe Staton's argument that KRS 342.730(4) constitutes age discrimination has recently been answered by our highest Court in Wynn v. Ibold, Inc., Ky., 969 S.W.2d 695 (1998). We accordingly affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffery Hinkle  
Inez, Kentucky

BRIEF FOR SPECIAL FUND:

Benjamin C. Johnson  
Louisville, Kentucky