RENDERED: July 23, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-003038-WC

GARY STILL AND DAVID ALLEN APPELLANTS

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-78367

LEGGETT & PLATT, INC.;
SPECIAL FUND;
THOMAS A. NANNEY,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: EMBERTON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Gary Still and David B. Allen (appellants) ask us to review an opinion of the Workers' Compensation Board (board) rendered November 6, 1998. Ky. Rev. Stat. (KRS) 342.290. We affirm.

Still suffered two work-related back injuries while in the employ of Leggett & Platt, Inc. They occurred October 20, 1995, and December 9, 1996, respectively. Still sought workers'

compensation benefits. KRS Chapter 342. On April 17, 1997, appellants entered into a contract whereby Allen was to represent Still in his pursuit of benefits. On November 26, 1997, the arbitrator determined Still to be 10% occupationally disabled. This decision resulted in a total award of $15,096.00 to be paid over 425 weeks. Thereafter, Still requested a *de novo* review before an administrative law judge (ALJ). On May 15, 1998, the ALJ concluded Still was 25% occupationally disabled. The result was a total award of $34,000.00 to be paid over 425 weeks. On July 17, 1998, Allen filed a motion for $6,350.00 in attorney fees. Based on the formula set forth in KRS 342.320, the ALJ approved a $5,780.80 fee. Appellants appealed this fee to the board, which, affirmed the ALJ's decision. This appeal followed.

Appellants' complaints center upon KRS 342.320, which reads in relevant part as follows:

> (2) Attorney's fees for services under this chapter on behalf of an employee shall be subject to the following maximum limits:
>
> (a) Twenty-percent (20%) of the award not to exceed two thousand dollars ($2,000) for services performed up to and including the date of a written determination by the arbitrator. This fee shall be paid by the employee from the proceeds of the award or settlement.
>
> (b) Upon an appeal by an employee from a written determination of an arbitrator or an award or order of an administrative law judge, a fee to be fixed by the administrative law judge upon consideration of the extent, quality, and complexity of services not to exceed twenty percent (20%) of the first twenty-five thousand dollars ($25,000) of any increased income benefits awarded, ten percent (10%) of the next fifteen thousand ($15,000) of increased income benefits, and five percent (5%) of the

> remainder of the additional income benefits awarded and not to exceed in all ten thousand dollars ($10,000). This fee shall be paid by the employee from the proceeds of the award or settlement and shall be in addition to the fee, if any, awarded under paragraph (a) of this subsection.
>
> . . .
>
> (d) Attorney-client employment contracts entered into and signed prior to December 12, 1996, shall not be subject to the conditions of paragraphs (a), (b), and (c) of this subsection, and the law existing at the date of the injury or last exposure to the hazards of an occupational disease shall apply.

We shall address appellants' arguments in what we believe to be the logical order. First, they contend that KRS 342.320 is unconstitutional as it closes the courts to injured workers by placing a cap on attorney fees. The effect of the cap, they maintain, is to deter competent attorneys from accepting these cases. We disagree. The legislature has long placed a cap on attorney fees in workers' compensation cases and Kentucky courts have approved. See Vanderpool v. Goose Creek Mining Co., 293 Ky. 719, 170 S.W.2d 32 (1943).

Appellants next argues that the 1996 amendment to KRS 342.320 (the amendment) constitutes a substantive change in the law and should not be applied retroactively. They assert that the law existing at the date of injury controls. Still's injuries occurred prior to December 12, 1996, the amendment's effective date. Thus, appellants maintain, the amendment should not have been applied in setting Allen's fee.

KRS 342.0015 specifically declares the amendment to be remedial. Appellants fail to convince us that this designation

is erroneous. The amendment, therefore, does not fall under the general rule against the retrospective operation of statutes. See Peabody Coal Company v. Gossett, Ky., 819 S.W.2d 33 (1991). Pursuant to KRS 342.320(d), the amendment applies to all attorney-client employment contracts entered into and signed subsequent to December 12, 1996, regardless of the date of injury. Appellants' attorney-client employment contract was entered into and signed on April 17, 1997. As such, we believe the amendment was properly applied in setting Allen's fee.

Last, appellants claim that the ALJ miscalculated Allen's fee under KRS 342.320. We disagree. KRS 342.320 specifically states that "[a]ttorney's fees for services under this chapter . . . shall be subject to the following maximum limits . . . ." The statute then sets forth the maximum fee an attorney shall receive for his services at the arbitrator level and at the appeal level, respectively. In the case *sub judice*, the ALJ awarded Allen the statutory maximum of $2,000.00 for his services at the arbitrator level and the statutory maximum of $3,780.00--%20 of the increased benefit[1]--for his appellate services. It is our opinion that the ALJ correctly applied KRS 342.320 in calculating Allen's fee.

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANTS: David B. Allen

[1]$34,000.00 less $15,096.00 = $18,904.00

Lexington, KY

BRIEF FOR APPELLEE/LEGGETT:

F. Allon Bailey
Lexington, KY

BRIEF FOR APPELLEE/SPECIAL FUND:

Benjamin C. Johnson
Louisville, KY