

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-003124-WC

ROBERT L. WHITTAKER, DIRECTOR  
OF THE SPECIAL FUND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-96-00230

SHERAL LEE BYARD; TITAN  
FABRICATORS, INC.; AND THE  
HONORABLE SHEILA LOWTHER,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DYCHE, GUIDUGLI, AND JOHNSON, JUDGES.

DYCHE, JUDGE: The Special Fund brings this appeal from an opinion of the Workers' Compensation Board affirming an award of disability benefits to appellee Byard. The sole question involved herein is whether the Special Fund was joined as a party in a timely fashion.

Byard received a work-related injury on December 7, 1995; appellee Titan Fabricators, Inc., his employer, paid him temporary total benefits from December 8, 1985, through March 11,

1996. His claim against Titan was filed October 21, 1997. The Special Fund was not joined until May 11, 1998. The Special Fund argues that the limitations period contained in Kentucky Revised Statutes ("KRS") 342.185 expired March 11, 1998, and it was thus not timely joined as a party.

Byard argues here, as he did below, that the Special Fund was timely joined, as he had no medical evidence which would support such joinder until May 7, 1998; the joinder of the Special Fund four days later was "as soon as practicable" pursuant to the then-existing version of KRS 342.120(2):

A claimant may name the special fund as a party in the original application for benefits, or either party shall as soon as practicable, by motion, unless there is a showing of good cause, request the administrative law judge to and the administrative law judge shall, cause the special fund to be made a party to the proceedings if . . . (b) The employee is found to have a dormant nondisabling disease or condition which was aroused or brought into disabling reality by reason of a subsequent compensable injury by accident or an occupational disease.

It was not until the doctor's report was received on May 7, 1998, that Byard had any reason to join the Special Fund.

Although the application of "as soon as practicable" might appear to be problematic, it would be no more so than the use of the same phrase in KRS 342.185(1) which mandates notice to the employer notice of a work-related accident within the same time period. It is our duty to reconcile statutes if some apparent conflict exists, with a view to promote their objects,

and carry out the intent of the General Assembly. KRS 446.080.

And, as Chief Justice Palmore said,

[C]ompensation laws are fundamentally for the benefit of the injured workman, a just claim must not fall to rules of order unless it is clearly necessary in order to prevent chaos.

Messer v. Drees, Ky., 382 S.W.2d 209, 212 (1964). To allow the Special Fund to be joined "as soon as practicable" in a claim that has otherwise been prosecuted within the statutory period would certainly not invite chaos. We think this is the better interpretation, and serves the purpose of the Act. We trust in the discretion of the Administrative Law Judges to make informed and deliberative decisions as to when "as soon as practicable" might be under the facts of each case.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE  
SHERAL LEE BYARD:

Jeanie Owen Miller  
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BRIEF FOR APPELLEE  
TITAN FABRICATORS, INC.

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