

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002537-WC

EDWARD D. HAYS, ATTORNEY FOR THE
CLAIMANT, GLYNDON W. BALLARD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-93-24327

GLYNDON W. BALLARD; RAMSAY & ASSOCIATES;
ROBERT L. WHITAKER, DIRECTOR OF SPECIAL FUND;
HON. SHEILA LOWTHER, ADMINISTRATIVE LAW JUDGE;
HON. WALTER W. TURNER, COMMISSIONER OF
DEPARTMENT OF WORKERS' CLAIMS; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, HUDDLESTON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Appellant petitions for review of an opinion of the Worker's Compensation Board (Board) affirming the Administrative Law Judge's (ALJ's) decision to limit appellant's attorney fee to \$2,000. Because the Board did not err in its interpretation and application of KRS 342.320, we affirm.

The injured employee, Glyndon W. Ballard, was injured on June 3, 1993 while an employee of Ramsay and Associates Construction. He was paid temporary total disability benefits

until March of 1997. Ballard first consulted with attorney Edward D. Hays, appellant, on June 12, 1998, and on July 23, 1998 contracted with appellant to represent him concerning his claim. On January 12, 1999, the Arbitrator determined Ballard to be totally and permanently disabled. Ballard was awarded benefits in the amount of \$320 per week for 23.5 years or 1,222 weeks, for a total of over \$300,000. The agreement between appellant and Ballard would have permitted appellant to receive a fee of \$20,110. However, appellant filed a motion for approval of an attorney fee of \$12,000.

In orders dated February 24, 1999 and March 9, 1999, the Arbitrator awarded appellant a fee of \$2,000, the maximum fee permitted pursuant to KRS 342.320, as amended effective December 12, 1996. Appellant appealed to the ALJ, who affirmed the order of the Arbitrator limiting the attorney fee to \$2,000. The ALJ stated as follows:

KRS 342.320(2)(a), is [sic] amended effective December 12, 1996, provides that attorney's fees for representation of parties at the Arbitrator level shall not exceed \$2,000.00. Mr. Ballard and his counsel argue that this provision does not apply to this claim, since the subject injury occurred prior to the enactment of House Bill 1. However, the only exception contained in KRS 342.320 is for claims arising out of injuries prior to the enactment of House Bill 1, where

the attorney/client employment contract was also entered and signed prior to that date.

Based upon the foregoing, it is the finding of the Administrative Law Judge that the clear and specific language of KRS 342.320(2)(a) is controlling in this claim. Land v. Newsom [sic], Ky., 614 S.W.2d 948 (1981); Claude [N.] Fannin Wholesale Co. v. Thacker, Ky. App., 661 S.W.2d 477 (1983). Pursuant to that provision, Mr. Hays' fee was properly limited to the sum of \$2,000.00. . . .

Appellant appealed to the Board, and, on September 24, 1999, the Board affirmed the decision of the ALJ. The Board, in interpreting KRS 342.320 as limiting appellant's fee to \$2,000.00, stated:

. . . Hays argues that the date of injury is the threshold issue and should be controlling as to the amount of the attorney fee even under KRS 342.320 as amended. Hays points out that KRS 342.320(2)(a) provides that attorney fees at the Arbitrator level shall not exceed \$2,000. However, Hays directs our attention to Section .320(3), which states, inter alia, "the date of injury

or last exposure shall control the applicable maximum attorney's fee." Hays argues that although these sections appear to be in conflict, they are not. Petitioner contends that the language of the statute clearly suggests the Legislature intended this to be an "either/or" situation. Either the \$2,000 maximum applies for injuries subsequent to December 11, 1996, or the applicable maximum under the law in effect at the time of the injury shall apply to all injuries prior to December 12, 1996. . . .

. . . Unfortunately for Hays, Section .320(2)(d) as amended also provides as follows:

(d) Attorney-client employment contracts entered into and signed prior to December 12, 1996 for injuries or date of last exposure occurring 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.

When a provision is consistent with existing law at the time the statute was adopted and is consistent with the plain language of the statute, then an appealing body is to give it its plain and stated purpose. Bailey v. Reeves, Ky., 662 S.W.2d 832 (1984). As we have previously stated, however, the statutory analysis does not stop there. When there appears to be a conflict between two provisions in a statute dealing with the same or similar subject matter, it is the obligation of the reviewing body to harmonize those statutory provisions to the extent possible. Reisinger v. Grayhawk Corp., Ky. App., 860 S.W.2d 788 (1993); Ledford v. Faulkner, Ky., 661 S.W.2d 475 (1983). When this process involves the interpretation of a new statute replacing a prior statute in conjunction with the retention of a previous statute, then the reviewing body must review both in an attempt to ascertain the intent of the new statute. Fields v. Twin City Drive-In, Ky., 534 S.W.2d 457 (1976). If one of the two statutory provisions deals with the subject matter in a general way while the other is more specific, then the specific statute controls. Land v.

Newsome, Ky., 614 S.W.2d 948 (1981); Claude [N.] Fannin Wholesale v. Thacker, Ky. App., 661 S.W.2d 477 (1983).

Here, the limitation of \$2,000 for performance of services before an Arbitrator is specific. This is also true of the language contained in Section .320(2)(d) cited above. We believe the language contained in KRS 342.320(3) is more general in nature. Therefore, with the specific controlling over the general, KRS 342.320(2)(a), when read in conjunction with Section .320(2)(d) limits the fee to \$2,000 before an Arbitrator.

Appellant argues on appeal that the Board erred in its interpretation and application of KRS 342.320. Appellant argues that the provisions in the statute do not conflict, and therefore there was no need for the Board to determine which was more specific or general. Appellant argues that the language in KRS 342.320(3) clearly states, "the date of injury or last exposure shall control the applicable maximum attorney's fee." Therefore, because Ballard's injury occurred prior to December 12, 1996, appellant argues that he is not subject to the \$2,000 limit. Appellant contends that, contrary to the Board's opinion, the language in KRS 342.320(3) is not "general" or "non-specific",

but clearly evidences that the legislature intended that the date of injury should control the maximum attorney fee. We disagree.

KRS 342.320, as amended effective December 12, 1996, states in pertinent part:

(1) All fees of attorneys and physicians, and all charges of hospitals under this chapter, shall be subject to the approval of an administrative law judge or arbitrator pursuant to the statutes and administrative regulations.

(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.

(d) Attorney-client employment contracts entered into and signed prior to December 12, 1996, for injuries or date of last exposure occurring 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.

(3) In approving an allowance of attorney's fees, the administrative law judge or arbitrator shall consider the extent, complexity, and quality of services rendered . . . The date of injury or last exposure shall control the applicable maximum attorneys fee. (emphasis added).

The amended statute specifically states that attorney-client contracts entered into before December 12, 1996 concerning an injury which occurred before December 12, 1996 are not bound by the \$2,000.00 limit. It can therefore be inferred that a contract entered into after this date is bound by the limitation.

Although this language appears to be in conflict with KRS 342.320(3), we agree with the Board's analysis that the more specific language of KRS 342.320(2)(d) controls over the general language of 342.320(3). See, Williams v. Commonwealth, Ky. App., 829 S.W.2d 942 (1992). Further, KRS 342.0015 specifically declares the provisions of KRS 342.320 to be remedial. 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). Although Ballard's injuries occurred prior to December 12, 1996, the attorney-client contract was not entered into until July 23, 1998. As such, we adjudge that the ALJ correctly applied KRS 342.320 in limiting appellant's fee to \$2,000.00.

The decision of the Worker's Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edward D. Hays
Danville, Kentucky

BRIEF FOR APPELLEE, SPECIAL
FUND:

David R. Allen
Frankfort, Kentucky