

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-000645-WC

NATHAN HAM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-85171

GIBSON PLUMBING & PIPING;  
LADEGST & HEFFNER;  
HON. THOMAS A. NANNEY,  
ADMINISTRATIVE LAW JUDGE;  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BARBER, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Nathan Ham asks us to review an opinion of the Workers' Compensation Board (Board) rendered February 27, 2002. Kentucky Revised Statutes (KRS) 342.290. We affirm.

On March 29, 2000, while in the employ of Gibson Plumbing and Piping, Nathan Ham suffered a work-related injury. On February 13, 2001, Ham filed a claim for workers' compensation benefits. On October 3, 2001, the Administrative Law Judge (ALJ) awarded temporary total disability (TTD) benefits while rejecting Ham's claim for permanent partial disability (PPD) benefits. At

issue was whether Ham was entitled to sanctions under KRS 342.310. That section authorizes an award of costs and attorney's fee to an opposing party when a claim is prosecuted or defended "without reasonable ground." It appears that the ALJ denied sanctions because the award was for TTD rather than PPD. Under these circumstances, the ALJ reasoned that the question of sanctions was moot.

Ham appealed to the Board. The Board affirmed the ALJ, but upon different grounds. The Board reasoned that KRS 342.310 was not applicable since Ham buttressed his claim for sanctions upon the failure of Gibson Plumbing and Piping to make prompt payment of TTD benefits. The Board reasoned that the applicable statute was KRS 342.040, which provides for certain sanctions when payments are denied or delayed "without reasonable foundation."

The question before us is whether Gibson Plumbing and Piping was unreasonable in failing to timely make TTD benefit payments to Ham. We do not believe the evidence compels such a finding, and therefore agree with the decision of the Board. As such, we affirm the decision of the Board under the authority of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Rodger W. Lofton  
Paducah, Kentucky

BRIEF FOR APPELLEES, GIBSON  
PLUMBING & PIPING, AND  
LADEGAST & HEFFNER:

J. David Boswell  
Paducah, Kentucky