RENDERED: SEPTEMBER 5, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-000786-WC

WANDA WILSON — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-61594

THE ANTHEM COMPANIES, INC.;
HON. LLOYD R. EDENS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: BUCKINGHAM, GUIDUGLI AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. Wanda Wilson ("Wilson") petitions this Court for review of an opinion of the Workers' Compensation Board ("the Board") which affirmed an opinion and order of the Administrative Law Judge ("ALJ") dismissing her claim against The Anthem Companies, Inc ("Anthem") for failure to provide timely notice to Anthem of an alleged work-related injury. We affirm the opinion of the Board.

In February, 1990, Wilson began her employment with Anthem as a sales representative. On August 20, 1999, during the course of her employment she simultaneously attempted to open a desk drawer and answer the telephone, and in so doing experienced pain in her back, hip, and leg. She would later testify that she continued to work after the injury and believed that the pain would diminish over time. In January or February of 2000, Wilson informed her supervisor, Paul Anderson ("Anderson") of her condition.

In March, 2000, Wilson's condition had not improved and she was examined by her family physician, who referred her to an oncologist who had previously treated her for cervical cancer. Wilson was also referred to other physicians, including a neurosurgeon. Wilson first contacted Anthem's human resources department in March, 2000, to inform them of her injury.

After seeking further medical examination, Wilson received several diagnoses centering on a soft tissue injury to the lower back, and inflammatory and/or degenerative arthritis of the right hip aggravated by the work injury. After determining that she was no longer able to continue her employment, Wilson quit her job on May 7, 2001.

Wilson's workers' compensation claim went before the ALJ, who rendered a decision on February 15, 2002. At issue was

whether Wilson had failed to comply with the statutory requirement of timely notice of the injury to Anthem[1] or, as Wilson contended, the delay between the August, 1999 and notice in early 2000 was excusable. The ALJ ruled in favor of Wilson, finding that she was unaware of the notice requirement because Anthem had failed in its statutory requirement to post a public notice setting forth the employees' obligation to give notice of accidents.

Anthem appealed the ALJ's decision to the Board, arguing that the ALJ erred in finding Wilson's failure to give notice of her work-related condition as soon as practicable was excusable pursuant to KRS 342.200. On July 17, 2002, the Board rendered its opinion reversing and remanding the matter to the ALJ for further fact-finding concerning whether the record contained any other evidence of substance sufficient to justify Wilson's failure to give timely notice to Anthem.

On remand, the ALJ rendered an opinion dismissing Wilson's claim. As a basis for the opinion, the ALJ accepted the Board's determination that Wilson's ignorance of the notice requirement did not constitute excusable neglect as provided for under KRS 342.200.

[1] KRS 342.610(6) requires an employer to post a notice at the workplace informing employees setting forth the employees' obligation to give notice of injuries.

Wilson then appealed to the Board, which rendered an opinion on March 19, 2003. It opined that since it previously rendered a final decision on the question of whether Anthem's failure to post a public notice excused Wilson's timely notice, that decision became the law of the case. It also disagreed with Wilson's contention that the ALJ's ruling on remand was not in conformity with the Board's directives reversing and remanding for further fact-finding. It noted that the ALJ specifically addressed her testimony from the time of the injury forward, determined that she suspected from the outset that her injury was work-related, and found that she provided notice to Anderson in either January or February of 2000. It concluded that these facts constituted ample evidence supporting the ALJ's dismissal on remand. This appeal followed.

Wilson now argues that the Board erred in improperly applying the law of the case doctrine, and erred in holding that it precluded further review of the issue of whether Anthem's failure to post the required workers' compensation notice excused Wilson from her delay in notifying Anthem of her injury. She also argues that the Board erred in its interpretation of KRS 342.610(6), to wit, that Anthem's failure to post a public notice was nothing more than an unfair claims settlement practice. She maintains that Anthem's failure to post the notice was intentional, which should preclude it from arguing

that Wilson's delay was not excusable. She seeks an order reversing the Board's opinion and remanding it for entry of an appropriate award.

We have closely examined the record, the law, and the written arguments, and find no error in the Board's opinion. Rather than parrot the well-written opinion of the Board, and as we cannot improve upon it, we adopt it in relevant part as the opinion of this Court. In addressing the issues which Wilson now raises, the Board stated as follows:

> On review, Wilson begins by arguing that this Board, in its opinion of July 17, 2002, erred in its initial interpretation of KRS 342.610(6) as nothing more than "an added layer of protection for employees assisting them in the understanding of their rights and protections under KRS Chapter 342." Wilson counters that Anthem's "intentional violation of the law resulting in a loss of a legitimate claim by an injured worker" is inexcusable, and insists that our original decision contradicts the obvious intent of the General Assembly underlying the express purposes behind KRS 342.610(6). Reasoning that the Legislature was aware of the existing state of the law governing reasonable and timely notice when it enacted KRS 342.610(6), Wilson further charges that Anthem's alleged failure at her work location to conspicuously post the requirement that due and timely notice of workplace accidents be provided, mandates a finding that her delay in providing notice was reasonably excusable. In further support of this position, Wilson asserts that pursuant to KRS 446.080 and Firestone Textile Co. v. Meadows, Ky., 666 S.W.2d 730 (1983), her interpretation of KRS 342.610(6) as a basis for delay in providing

conspicuous notice, conforms to the overall requirement that all provisions of KRS Chapter 342 be liberally construed in her favor.

Although we continue to stand by our original judgment in this action that a violation of KRS 342.610(6) constitutes no more than an unfair claims settlement practice, as a matter of law, we are constrained to reject further review of this question based on the "law of the case" doctrine.

As noted above, following our original ruling addressing this issue in our decision rendered July 17, 2002, neither party sought review by the court of appeals. Consequently, our determination on this issue is now final and the law of the case.

Under the "law of the case" doctrine, if an appellate body passes on a legal question and then remands the cause to the fact-finder below for further proceedings, all legal questions thus determined by the appellate body cannot be determined differently during a subsequent appeal in the same case as a matter of law. Inman v. Inman, Ky., 684 S.W.2d 847, 849 (1982). Rather, all prior rulings by that appellate body become law for the limited purposes of that particular case. Hence, Wilson's failure to appeal from our prior decision now gives rise to the "law of the case" doctrine and precludes her from now further opposition to Anthem's alleged violation of KRS 342.610(6).

Instructive on the "law of the case" doctrine is the following excerpt from the supreme court's recent decision in Whittaker v. Morgan, Ky., 52 S.W.3d 567, (2001):

> The question presented by this appeal is more accurately analyzed in terms of whether, if the

> Special Fund had failed to appeal the Board's decision with regard to the legal question concerning the manner in which the credit should be calculated, it would have been precluded by the 'law of the case' doctrine from raising the issue again after the ALJ's decision on remand. In Williamson v. Com., Ky., 767 S.W.2d 323, 325 (1989), we explained that a party who is aggrieved by an adverse appellate determination must appeal at the time the decision is rendered because an objection on remand is futile, and an appeal from the implementation of the appellate decision on remand amounts to an attempt to relitigate a previously-decided issue. See also, Inman v. Inman, Ky., 648 S.W.2d 847, 849 (1982). In view of the fact that the Board decided the legal question that was raised by the Special Fund and rejected its argument, the questions subject to appeal following the remand would have been limited to whether the ALJ properly construed and applied the order of remand. Had the Special Fund failed to appeal the adverse determination by the Board, that determination would have become the law of the case.

Id. at 569-70.

A key factor in determining the "law of the case" doctrine applies to a particular set of circumstances during a second appeal is whether the appellate body has previously entered a final decision on a question, rather than merely commenting on an issue. Our opinion entered July 17, 2002, reversing and remanding this claim and rejecting the ALJ's original reliance on KRS 342.610(6) as

a reasonable basis for Wilson's delay in providing notice allowed for no discretion on the part of the ALJ with regard to this question. Moreover, our original ruling was a final and appealable order. See, Davis v. Island Creek Coal Co., Ky., 969 S.W.2d 712, 714 (1998). Hence, Wilson's failure to appeal our earlier decision must now result in the application of the "law of the case" doctrine and requires dismissal of this issue in this second appeal. E. F. Prichard Co. v. Heidelberg Brewing Co., 314 Ky. 100, 234 S.W.2d 486 (1950); Stewart v. Sizemore, Ky., 332 S.W.2d 281 (1960).

Wilson also argues in the alternative that the ALJ's ruling on remand is not in conformity with this Board's directives reversing and remanding for further fact-finding. Again, we disagree. Although Wilson is correct that we noted the fact that in 1994 she was diagnosed and treated for cancer of the cervix with surgery, and that initially she sought conformation prior to providing notice to her employer that her condition was not cancer-related, this information was adequately documented and analyzed by the ALJ in his original decision rendered February 5, 2002. Although a mistake in diagnosis may constitute a reasonable cause for delay of notice, in this instance, that excuse was clearly considered and rejected by the ALJ, both at the time of his original determination and his ruling on remand.

We remind Wilson that on remand, the ALJ (1) specifically noted her testimony from the time of her injury forward, (2) resolved she suspected from the outset that her injury was due to the work incident that occurred on August 20, 1999, and (3) determined that within two months following that event, she informed a co-worker of the fact, she then subsequently provided notice to her "boss," Paul Anderson, sometime in either January or February 2000, on the

> chance she was unable to come to the office. She did not seek medical treatment, however, until March 2000, at which time she provided a history of the August 1999 work-related event. She further admitted to seeing a physician in March 2000, simply to rule out cancer.
>
> These facts, in our view, constitute more than ample evidence supporting the ALJ's dismissal on remand, and do not compel an opposite result. Whittaker v. Rowland, Ky., 998 S.W.2d 479 (1999); Miller v. East Kentucky Beverage/Pepsico, Inc., Ky., 951 S.W.2d 329 (1997); Square D Co. v. Tipton, Ky., 862 S.W.2d 308 (1993); Paramount Foods Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985); REO Mechanical v. Barnes, Ky.App., 691 S.W.2d 224 (1985). Moreover, we believe they clearly conform to the directives set out in our July 17, 2002 appellate decision. In that the ALJ's decision on remand is supported by sufficient evidence of substantial probative value, we, as a reviewing tribunal, are without authority to hold otherwise. See KRS 342.285(2); Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

We would only add that we have found nothing in the record to support Wilson's assertion that Anthem's failure to comply with KRS 342.610(6) was intentional. Nor does KRS 342.610(6) contain any language supportive of the argument that a failure to comply with its provisions, intentional or otherwise, operates as a waiver of an employee's duty to give notice of a work-related injury in a timely fashion. Having concluded that the Board properly disposed of the issues presented, we find no basis for tampering with the opinion on

appeal. For the foregoing reasons, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Michael Fleet Johnson Pikeville, KY	Ronald J. Pohl Lexington, KY