

RENDERED: June 17, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002307-WC

UNINSURED EMPLOYERS' FUND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-02032

DALE POWELL; TRANSPORT INVESTMENT
GROUP, INC. d/b/a PROFESSIONAL TRUCK DRIVING
SCHOOL; CLARENDON NATIONAL INSURANCE
COMPANY; HON. RICHARD M. JOINER,
ADMINISTRATIVE LAW JUDGE; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

EMBERTON, SENIOR JUDGE: The single question in this appeal is whether the Workers' Compensation Board erred in concluding that an electronic submission to the Office of Workers' Claims which

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

contained an inaccurate termination of coverage date constituted sufficient compliance with the statutory requirements to relieve appellee Clarendon National Insurance Company from liability for payment of a compensation award to appellee Dale Powell. The Board rejected the contention of the Uninsured Employers' Fund that the error as to the termination date rendered the submission a nullity, concluding that the actual termination date was immaterial as the Commissioner was supplied with notice that the employer was no longer insured by the carrier. Finding no error in the Board's analysis, we affirm.

On September 20, 2002, appellant Dale Powell sustained a work-related injury while in the employ of Transport Investment Group, Inc., d/b/a Professional Truck Driving School. No issue has been raised as to the award of benefits stemming from that injury. The issues advanced in this case center solely upon the notice requirement set out in KRS 342.340(2) and whether Clarendon, through its third party administrator Midwestern Insurance Alliance, had sufficiently complied with that statute to relieve Clarendon from liability for payment of Powell's award.

The facts, though somewhat complex, are not disputed. On November 1, 2000, after Powell's employer Transport had notified its compensation carrier that its policy would not be renewed due to a change in ownership, Midwestern sent notice to

the insured and the agent, as well as to NCCI who at the time was the only agent approved by regulation for electronic transmission of data, that the policy would lapse as of January 14, 2001. On February 21, 2001, Midwestern transmitted information concerning the non-renewal of the policy to Workers Comp Link, an intermediary who, due to a series of problems with NCCI, had informally substituted for NCCI for transmission of such data to the Department. Although Midwestern properly communicated to Workers Comp Link that the policy effective January 14, 2000 was not being renewed, it appears that the transmission date of February 21, 2001 was erroneously inserted into the blank for policy termination date. The transmission concerning the coverage in this case was part of a group transmission on February 21, 2001, all of which erroneously inserted the transmission date instead of the termination date. A department employee noticed that a large number of notifications from Clarendon had the same termination date and determined that there had been an error in the transmission. The February 21, 2001 transmission which contained the errors was rejected with directions to the carrier to re-file utilizing the proper termination date. On May 24, 2002, several months after Powell's injury, the Department finally accepted a transmission which included accurate information about the non-

renewal of the Transport Group policy which lapsed on January 14, 2001.

In rejecting the Fund's contention that Midwestern's failure to timely transmit accurate information concerning the non-renewal of the Transport's policy rendered Clarendon liable for payment of Powell's compensation claim, the Administrative Law Judge set out the following rationale:

Under the regulations in effect at the time, the rejection of the transmission by the Department of Workers' Claims is of no consequence. Notice was complete upon transmission to the intermediary. In addition, the agent that was approved at the time, NCCI, was placed on notice of the non-renewal of the policy back in November of 2000. Sufficient information got through to the Department of Workers' Claims to constitute "receipt of the notification" of the non-renewal as contemplated in KRS 342.340(2). The regulations in effect at the time did not clearly require more. Therefore, the coverage lapsed by non-renewal.

The Fund's appeal of that determination to the Board produced an opinion and order which expanded upon the ALJ's reasoning:

We reject the UEF's contention that the notification was insufficient under the regulation because the termination date contained in the notification was incorrect. The carrier, via its third party administrator, complied in good faith with all applicable literal requirements of the regulation. Moreover, the incorrect date of termination supplied by the carrier, via its third party administrator, was immaterial. It did not cut short the carrier's contractual obligation to the employer and

it provided the commissioner with notice that the employer was no longer insured by the carrier. The carrier and the third party administrator complied with both the letter and the spirit of the regulation.

We agree with the Board's analysis.

KRS 342.340(2) contains the following language pertinent to our decision:

Termination of any policy of insurance issued under the provisions of this chapter shall take effect no greater than ten (10) days prior to the receipt of the notification by the commissioner unless the employer has obtained other insurance and the commissioner is notified of that fact by the insurer assuming the risk. Upon determination that any employer under this chapter has failed to comply with these provisions, the commissioner shall promptly notify interested government agencies of this failure

As noted by the Board, the Supreme Court of Kentucky explained in Travelers Insurance Company v. Duvall² that the clear purpose of the notification statute is to allow the Department to monitor an employer's compliance with mandatory workers' compensation insurance provisions so that appropriate action may be taken upon cessation of coverage. With that view of the statute in mind, application of the ten-day provision to these facts confirms the propriety of the Board's conclusion that the error as to the actual termination date is immaterial in this case. Although contractual coverage terminated by non-renewal

² 884 S.W.2d 665 (Ky. 1994).

on January 14, 2001, the earliest termination date for policies included in the February 21, 2001 transmission would have been February 11, 2001. Thus, the error as to the actual termination date caused no cutting short of contractual coverage or prejudice to any party.

We also agree with the Board that the rejection of the February 21, 2001 transmission actually had the effect of frustrating the purpose of the statutory notification requirement. Although it was clear from the transmission that Transport's policy had been terminated, no enforcement action was undertaken between the date of rejection and the date that the re-filed transmission was finally accepted. We simply find no reasonable basis for total rejection of the transmission. Direction to correct the Department's records to supply the actual date without rejecting the entire transmission would have preserved the notification purpose of the statute without offending the rights of the Department or any party.

The Fund's technical arguments notwithstanding, we are convinced that the carrier through its third-party administrator substantially complied with the statutory notification requirement by the transmission of February 21, 2001. Accordingly the Board did not err in concluding that the carrier was not liable for payment of this claim.

The opinion and order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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