

RENDERED: FEBRUARY 23, 2007; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-001970-WC

ROAD FORK DEVELOPMENT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-01147

KENNETH G. BEVINS; HON. ANDREW F.
MANNO, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR AND WINE, JUDGES; PAISLEY,¹ SENIOR JUDGE.

WINE, JUDGE: Road Fork Development petitions for review of an August 11, 2006 opinion and order by the Workers' Compensation Board which affirmed the administrative law judge's (ALJ) award to Kenneth G. Bevins. Road Fork argues that Bevins was not entitled to future medical expenses because his hearing loss did not meet

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

the threshold for income benefits. We agree with the Board that an award of future medical expenses is not contingent upon an award of income benefits. Hence, we affirm.

Bevins began working for Road Fork as a heavy equipment operator in 2003. On July 27, 2005, he filed a claim alleging that he had suffered a work-related hearing loss with a last exposure date of June 7, 2005. Bevins' physician, Dr. Robert Manning, and the university evaluator, Dr. Ian M. Windmill, each assessed Bevins with a 10% functional impairment for the hearing loss. However, Dr. Windmill adjusted that rating for the conductive hearing loss, resulting in a 4% impairment for the noise exposure alone. Dr. Manning and Dr. Windmill both recommended that Bevins use hearing aids.

The ALJ accepted Dr. Windmill's report and found that Bevins has a 4% impairment due to work-related noise exposure. Since Bevins' impairment is less than 8%, the ALJ concluded that he is not entitled to income benefits. KRS 342.3705. But the ALJ also concluded that Bevins is entitled to payment of future medical expenses for his hearing loss, including hearing aids, pursuant to KRS 342.020(1). The Board affirmed and Road Fork now petitions for review to this Court.

As before the Board, Road Fork again argues that Bevins is not entitled to future medical expenses absent an award of income benefits. However, this Court recently held in *Combs v. Kentucky River District Health Dept.*, 194 S.W.3d 823, 827 (Ky.App. 2006), that KRS 342.020(1) does not expressly condition eligibility for medical expenses on eligibility for income benefits. Thus, a worker who has reached maximum

medical improvement without a permanent impairment may remain eligible for payment of future medical expenses. Id. at 827.²

In this case, unlike in Combs, it is undisputed that Bevins has a permanent impairment rating. The ALJ found that Bevins has a 4% permanent hearing impairment. KRS 342.020(1) requires an employer to pay “for the cure and relief from the effects of an injury or occupational disease . . . as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease.” Although KRS 342.3705 precludes an award of income benefits for a hearing loss of less than 8%, the statute places no similar restriction on the award of future medical expenses. Thus, Bevins’ 4% impairment rating is sufficient to support an award of future medical expenses. *Caldwell Tanks v. Roark*, 104 S.W.3d 753, 756 (Ky. 2003).

Accordingly, the August 11, 2006 opinion and order of the Workers’ Compensation Board is affirmed.

ALL CONCUR.

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² The Kentucky Supreme Court reached the same conclusion in United Parcel Service v. Montgomery, 2006 WL 2708532, No. 2005-SC-0791-WC (Ky. 2006). Although Montgomery is an unpublished opinion, we may properly cite it as persuasive authority under the recent amendment to CR 76.28(4)(c).