

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001623-WC

CHRISTOPHER BUSH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-01434

QUALITY CONTROL SERVICES; HON. ANDREW F.  
MANNO, ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

### OPINION AFFIRMING

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BEFORE: ACREE AND HOWARD, JUDGES; BUCKINGHAM,<sup>1</sup> SENIOR JUDGE.

ACREE, JUDGE: Christopher Bush appeals from an order of the Workers'

Compensation Board dismissing his case for failure to timely perfect his appeal pursuant

to the provisions of Kentucky Revised Statute (KRS) 342.285 and 803 Kentucky

Administrative Regulation (KAR) 25:010 Section 21(2)(c)2. We affirm.

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<sup>1</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Bush was employed by Quality Control Services, Inc. (QCS) when he was injured. QCS was a Kentucky corporation<sup>2</sup> that provided temporary employees to factories with personnel problems. Initially, QCS only provided its services to factories located in Kentucky, but eventually expanded to include an Ohio-based factory. QCS maintained workers' compensation coverage in both states, but, wisely or not, only when it was providing employees to work at locations in both states. If QCS did not have employees contracted to work in Ohio, it did not participate in Ohio's workers' compensation system.

Bush was hired by QCS to work at Lucas Sumitomo, a brake manufacturing company with a factory in Ohio. When Bush was employed, QCS had no contracts with any Kentucky factory. Therefore, QCS was not carrying Kentucky workers' compensation coverage at that time. QCS was participating only in the Ohio workers' compensation system.

On June 24, 1999, Bush and four co-workers were traveling home to Kentucky after working in Ohio when they were involved in an automobile accident. As a result of the accident, Bush suffered injuries to his head, cervical spine, left upper extremity and lumbar spine. On December 1, 2000, he filed an application for resolution of an injury claim with the Kentucky Department (now Office) of Workers' Claims. By affidavit and notice issued December 14, 2000, Commissioner Walter W. Turner certified that QCS did not have workers' compensation insurance in Kentucky on the alleged injury date. The ALJ ordered that the Kentucky Uninsured Employers' Fund (UEF) be

<sup>2</sup> QCS was administratively dissolved on November 1, 2000.

joined as a party defendant to Bush's cause of action. Neither QCS nor its Ohio insurance carrier entered an appearance during the course of litigation of Bush's claim. The sole defense of the claim was provided by UEF.

On January 10, 2006, the ALJ dismissed Bush's case for lack of standing because Kentucky did not have proper jurisdiction pursuant to KRS 342.670. The ALJ denied Bush's Petition for Reconsideration. On February 17, 2000, Bush appealed both orders to the Board. Bush styled his appeal as Christopher Bush v. Quality Control Services, Inc., and Hon. Andrew Manno, Administrative Law Judge. In the body of the notice, Bush stated “[t]his Appeal is taken against Quality Control Services, Inc., and Hon. Andrew Manno, Administrative Law Judge, Respondents.” Service of process was provided to QCS, Kentucky Employers Mutual Insurance, UEF, the Board and ALJ Manno.

On March 29, 2006, UEF filed a motion to dismiss, contending that Bush had failed to perfect his appeal. Specifically, UEF argued that it was an indispensable party but was not joined by Bush as a named defendant in his notice of appeal. Bush filed a response on April 10, 2006, arguing that he was not required to specifically list UEF as a party. Bush likened the UEF to the Special Fund or an insurance company, which generally does not have to be specifically named. Bush also pointed out that although UEF was not named in the style or the body of his notice of appeal, he did provide them with service of process.

On June 30, 2006, the Board dismissed Bush's case holding his failure to name UEF in either the caption or the body of his notice of appeal was a fatal error and as such they were without authority to rectify any error the ALJ may have committed. This appeal followed.

The statutory procedure for appealing the decision of an Administrative Law Judge is set out in KRS 342.285.

An award or order of the administrative law judge as provided in KRS 342.275, if petition for reconsideration is not filed as provided for in KRS 342.281, shall be conclusive and binding as to all questions of fact, but either party may in accordance with administrative regulations promulgated by the executive director appeal to the Workers' Compensation Board for the review of the order or award.

KRS 342.285(1).

Administrative regulations governing the procedure for appealing ALJ decisions to the Board are provided in 803 KAR 25:010 Section 21. Subsection (2) of that regulation specifically sets forth the requirement that the “notice of appeal shall . . . [d]enote all parties against whom the appeal is taken as respondents[.]” 803 KAR 25:010 Section 21(2)(c)2.

The question we must necessarily answer is whether the Board was correct in considering UEF an indispensable party to the Appellant's appeal. In settling this issue we must determine whether UEF's absence would prevent the Board from “granting complete relief among those already parties.” *Braden v. Republic-Vanguard Life Ins. Co.*, 657 S.W.2d 241, 243 (Ky. 1983). We believe it would.

The Board was required to determine whether the ALJ properly dismissed the case for lack of jurisdiction. To do so, the Board had to consider UEF's liability as it is the party responsible for responding to claims against the fund as provided by KRS 342.760(5). As the Board pointed out in its opinion:

The primary purpose of the UEF is to make payments to injured employees using public funds where there is a failure by an employer to privately secure payment of compensation as provided by KRS 342.340(1). . . . Consequently, the UEF is further charged with defending the fund against fictitious or fraudulent claims filed by dishonest claimants. The UEF is also vested with subrogation rights of the person receiving compensation from the fund. See KRS 342.760(4). As such, the UEF may prosecute employers that are in violation of KRS 342.340 through civil proceedings in order to recover damages on behalf of the fund. Hence, the UEF performs important functions of carrying out legislative policy and protecting public resources. . . . The UEF is, thus, not merely a nominal party.

If the Board had remanded the ALJ's decision and Appellant had been awarded damages, the liable party would have been UEF. QCS has been administratively dissolved. From the outset, the Commissioner determined that QCS did not have workers' compensation insurance in Kentucky on the date of Appellant's injury. UEF was specifically joined as a party to this case to defend the fund.

UEF's participation in this claim is not derived from QCS but is required by law. See KRS 342.780. The Board was asked to decide the issue of UEF's liability, not that of QCS. Without a regulatorily compliant notice of appeal, Appellant did not secure a proper transfer of jurisdiction, and the Board was unable to determine UEF's liability.

For the reasons stated herein, the judgment of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FOR APPELLEES

James D. Howes  
Louisville, Kentucky