

RENDERED: AUGUST 29, 2008; 2:00 P.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-002360-WC

KENTUCKY EMPLOYERS SAFETY ASSOCIATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-01234

LEXINGTON DIAGNOSTIC CENTER;
LEE KIRKLAND; HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; ACREE AND THOMPSON, JUDGES.

THOMPSON, JUDGE: This is a medical fee dispute in which Kentucky

Employers Safety Association (KESA) appeals from an opinion and order of the

Administrative Law Judge (ALJ), which held KESA responsible for medical fees

incurred by Lee Kirkland, an employee of Lexington Diagnostic Center. There is no dispute concerning the underlying facts.

On June 13, 2005, Kirkland was flushing an I.V. of a patient when blood from the patient splattered on his face and into his right eye. He immediately reported the injury to his employer and sought medical treatment from Dr. Uzma Aslam of the Urgent Treatment Center (UTC), who began the protocol for post exposure to communicable diseases. Kirkland was to be tested for Hepatitis B, HIV, liver function, and Hepatitis C upon his initial visit and, thereafter, six weeks post injury, twelve weeks post injury, six months post injury and twelve months post injury.

KESA paid for the initial six-week and three-month evaluations and the initial three-month office visit. However, it denied payment for UTC's bills for the six-week, the six-month and twelve-month evaluations. It also denied payment to the laboratory, Quest Diagnostics, for the same periods. KESA advised Lexington Diagnostic Center that the policy for needle sticks and other such exposures was that in the absence of any disease, only the initial testing and one follow-up visit would be paid.

The ALJ found that Kirkland sustained a work-related injury as defined under the Workers' Compensation Act and, pursuant to KRS 342.020(1), KESA was responsible for Kirkland's reasonable and necessary medical treatment, including the blood-borne pathogen protocol for ongoing assessment. The Board affirmed.

The amount disputed is relatively nominal, \$700.05, but the ramification of our holding is significant to workers in law enforcement, medical first responders and others who, in the course of their employment, are exposed to potentially hazardous body fluids. The precise question presented is whether contact with blood and other body fluids alone is sufficient to constitute a physical injury for the purposes of the Workers' Compensation Act. We conclude that it does and, consequently, the employer is liable for medical expenses incurred as a result of medical testing and laboratory work performed.

The term "injury" is defined in KRS 342.0011(1) as follows:

[A]ny work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

KRS 342.020(1) provides that the employer pay for the "cure and relief from the effects of any injury or occupational disease . . . as may reasonably be required at the time of the injury and thereafter during disability" Both statutes, like all encompassed within the Workers' Compensation Act, must be construed to effectuate their beneficent purpose. *Wilson v. SKW Alloys, Inc.*, 893 S.W.2d 800, 802 (Ky.App. 1995).

Since the Kentucky Supreme Court's decision in *FEI Installation, Inc. v. Williams*, 214 S.W.3d 313 (Ky. 2007), the debate concerning an employee's entitlement to medical benefits absent a permanent impairment rating has been resolved. KRS 342.020(1) does not require proof of a permanent impairment

rating, a permanent disability, or eligibility for permanent income benefits. *Id.* at 318-319. Thus, merely because Kirkland currently cannot offer proof of a permanent impairment as a result of his contact with the patient's blood, he is not precluded from an award of medical benefits.

The issue is whether the splattering of blood into Kirkland's eye constitutes a harmful change in the human organism. Although no Kentucky case appears directly on point, two cases are of particular import. In *Lexington-Fayette Urban Government v. West*, 52 S.W.3d 564 (Ky. 2001), a police officer alleged that she suffered post-traumatic stress disorder after she was assaulted by a knife-wielding suspect. The Court held that a "physical injury" is an event that involves physical trauma and proximately causes a harmful change in the human organism evidenced by objective medical findings. An event that involves physical trauma may be viewed as a "physical injury" without regard to whether the harmful change that directly and proximately results is physical, psychological, or stress-related. *Id.* at 566.

The Supreme Court again addressed the meaning of the term "physically traumatic event" in *Richard E. Jacobs Group, Inc. v. White*, 202 S.W.3d 24 (Ky. 2006). In that case, a police officer who shot a suspect and then administered CPR and first aid alleged that because he had contact with the suspect's blood and body fluids, he feared he might have contracted a communicable disease. As a result of his fear over the incident and of having contracted a disease, the officer alleged he suffered a psychological disability. The

Court concluded that the requirement that there be a physically traumatic event was met because of the physical exertion of performing CPR and first aid. *Id.* at 27. The Court specifically declined to consider whether physical contact with another's blood and body fluids, by itself, would constitute a traumatic event. However, as Justice Roach recognized in his dissent, recent jurisprudence in the area of workers' compensation would compel the result that "mere contact with blood and other bodily fluids alone is a physical injury for the purposes of the statute." *Id.* at 30, (Roach, J., dissenting).

In this case, we agree with the ALJ and the Board that Kirkland suffered a traumatic event. There is no dispute that blood splattered into Kirkland's eye causing a temporary change in the human organism and that, as a result, he sought and received medical treatment. There is an existing protocol for determining if there is any permanent change for which a screening process is recommended by the Occupational Safety and Health Administration (OSHA). To deny medical benefits incurred as a result of a process that would detect any disease contracted and possibly be life saving is contrary to the humanitarian and beneficent purposes of the Act. We agree with the Workers' Compensation Board's statement that "it would be absurd to rule that the protocol recognized by the parties that has been put in place to treat this type of exposure would not be compensable under the Act."

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory L. Little
Lexington, Kentucky

BRIEF FOR APPELLEE:

Kevin W. Weaver
Lexington, Kentucky