

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-001603-WC

DOTTIE RAMEY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-09-82990

DR. LARRY LYNN; HON. JOSEPH JUSTICE,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CAPERTON, CLAYTON, AND VANMETER, JUDGES.

VANMETER, JUDGE: Dottie Ramey petitions for review of an opinion of the Workers' Compensation (Board), which affirmed in part, vacated in part, and remanded the award of the Administrative Law Judge (ALJ). She argues that the

findings of the ALJ were sufficient to sustain her award and that no further findings are necessary. We affirm.

Ramey was employed by Dr. Larry W. Lynn as a receptionist in his medical office. She was injured during a slip and fall on January 13, 2009. No dispute exists that the injury was work-related, or that Ramey continued to work after the accident at equal or greater wages until July 17, 2009. Ramey has not worked since that date. On February 11, 2011, the ALJ awarded Ramey permanent partial disability (PPD) benefits and medical benefits based upon a 16.5% impairment rating as well as periods of temporary total disability benefits. The ALJ also found that Ramey was entitled to the three times multiplier provided for in KRS 342.730(1)(c)(1). Dr. Lynn filed a motion to reconsider arguing that the ALJ failed to apply the analysis required by *Fawbush v. Gwinn*, 103 S.W.3d 5 (Ky. 2003). The ALJ made additional findings, but did not apply the *Fawbush* analysis. Dr. Lynn appealed to the Board. The sole issue on appeal to the Board was the *Fawbush* issue. The Board agreed with Dr. Lynn and affirmed in part, vacated in part, and remanded the case for the ALJ to apply the *Fawbush* analysis and to make appropriate findings. This appeal followed.

Ramey argues that the factual findings of the ALJ were sufficient to support the award, and therefore the Board erred by vacating the award, in part, and remanding the matter for the ALJ to make additional findings. We disagree.

KRS 342.730(1)(c) states, in part:

1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or

2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.

When the claimant has lost the physical capacity to return to the type of work performed at the time of the injury, but the claimant has returned to work at equal or greater wages following the injury, only one of the enhancement multipliers contained in KRS 342.730(1)(c) can be applied to the award of PPD benefits.

*Fawbush v. Gwinn*, 103 S.W.3d 5, 12 (Ky. 2003). “[A]n ALJ is authorized to determine which provision [(c)1 or (c)2] is more appropriate on the facts. If the evidence indicates that a worker is unlikely to be able to continue earning a wage that equals or exceeds the wage at the time of injury for the indefinite future, the application of paragraph (c)1 is appropriate.” *Id.*

The ALJ found that Ramey was not permanently disabled, but also found that Ramey did not retain the physical capacity to return to her former duties and awarded the three times multiplier. Ramey undisputedly returned to work at equal or greater wages for more than six months following the injury. The ALJ did not make the determination of whether Ramey was likely to continue earning a wage that equals or exceeds the wage at the time of his injuries for the indefinite future. This determination is required by *Fawbush*. See *Adkins v. Pike Co. Bd. of Educ.*, 141 S.W.3d 387, 390 (Ky.App. 2004). We conclude that the Board properly applied the controlling law in remanding the case to the ALJ for further analysis under *Fawbush*.

Therefore, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Earl Hunt  
Stanville, Kentucky

BRIEF FOR APPELLEE:

James G. Fogle  
Louisville, Kentucky