

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001886-WC

GILBERTO DIAZ

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-09-74063

BECON CONSTRUCTION COMPANY;
HON. JOHN B. COLEMAN, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND VANMETER, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

DIXON, JUDGE: An Administrative Law Judge awarded Gilberto Diaz
permanent partial disability benefits for a back injury against his former employer,
Becon Construction Company. Diaz appealed to the Workers' Compensation

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

Board, arguing he was entitled to a double income benefit since he returned to his former employment but was subsequently laid-off. The Board affirmed the ALJ's award, concluding Diaz was not entitled to a double benefit under the holding of *Chrysalis House, Inc. v. Tackett*, 283 S.W.3d 671 (Ky. 2009). Diaz filed a petition for review, alleging that the Board erred by relying on *Chrysalis House*. We hold that Diaz's argument is without merit; accordingly, we affirm the Board.

KRS 342.730(1)(c)(2) provides:

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.

In *Chrysalis House*, the Kentucky Supreme Court interpreted the statute as follows:

KRS 342.730(1)(c)2 appears at first blush to provide clearly and unambiguously for a double benefit during a period of cessation of employment at the same or a greater wage 'for any reason, with or without cause.' It

is, however, a subsection of KRS 342.730(1), which authorizes income benefits to be awarded for ‘disability’ that results from a work-related injury. We conclude for that reason that, when read in context, KRS 342.730(1)(c)2 permits a double income benefit during any period that employment at the same or a greater wage ceases ‘for any reason, with or without cause,’ provided that the reason relates to the disabling injury.

Chrysalis House, 283 S.W.3d at 674.

Diaz disagrees with the statutory interpretation set forth by the Supreme Court, and he contends the “plain meaning” of the statute allows a double income benefit any time there is a cessation of employment.

Diaz’s argument is without merit. In *Hogston v. Bell South Telecommunications*, 325 S.W. 3d 314 (Ky. 2010), the Supreme Court reaffirmed its holding in *Chrysalis House*. The Court explained that the statute provided a double income benefit only when the claimant’s employment ceased for reasons related to the disabling work injury. *Id.* at 317.

Despite Diaz’s argument to the contrary, he was not entitled to a double income benefit. The relevant inquiry was whether the loss of employment was related to Diaz’s work injury. *See Id.* In his petition for review Diaz admitted “he was eventually laid off” from his job with Becon Construction. Further, as the Board noted in its opinion, “Diaz produced no evidence this layoff was for any purpose other than the job being completed, and in fact testified the layoff involved multiple employees.” Since Diaz’s employment ceased due to reasons unrelated to

his injury, he was not entitled to a double benefit. We conclude the Board properly affirmed the award rendered by the ALJ.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

T. Lawrence Hicks
Edgewood, Kentucky

BRIEF FOR APPELLEES:

Kamp T. Purdy
Tonya M. Clemons
Lexington, Kentucky