

RENDERED: AUGUST 24, 2018; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001116-WC

JAMES D. HOWES

APPELLANT

PETITION FOR REVIEW OF A DECISION
OF WORKERS' COMPENSATION BOARD
ACTION NO. WC-15-65255

APOLLO OIL;
ROSCOE LOHR;
TANYA PULLIN, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, COMBS, AND MAZE, JUDGES.

MAZE, JUDGE: James D. Howes petitions this Court for review a June 7, 2017, opinion of the Workers Compensation Board (Board) affirming an order of the Administrative Law Judge (ALJ) that denied Howes's motion for costs. Finding

no error, we affirm.

BACKGROUND

In October 2015, Howes, an attorney, and Roscoe Lohr executed a legal services agreement in which Howes agreed to represent Lohr in the pursuit of workers' compensation benefits against Apollo Oil. Pursuant to the fee agreement, Lohr was to pay Howes twenty percent of any award or settlement he received.

The legal services agreement also contained a costs provision that stated as follows:

IT IS FURTHER AGREED that any costs incurred, to include postage, transportation, deposition costs, witness fees, and charges for medical report and records, will be advanced by Attorney but that such costs shall be reimbursed by Client in the event of and only to the extent of a settlement or award in Client's favor.

Lohr and Apollo Oil eventually agreed to settle Lohr's workers' compensation claim for the lump sum of \$17,500. Howes then moved for an attorney fee of \$3,500. Before this motion could be granted, Apollo Oil's carrier paid \$14,000 of the \$17,500 settlement proceeds to the Kentucky Child Support Enforcement Division as a result of a child support lien against Lohr. Howes then moved for an additional \$1,870.70 for litigation costs he allegedly advanced Lohr. The ALJ entered an order approving the \$3,500 attorney fee but denying the request for litigation costs. The ALJ reasoned that its authority was limited to approving attorney fees and it did not have jurisdiction to award costs.

Howes then appealed to the Board, which affirmed the ALJ. The

Board agreed with the ALJ that there were no statutory provisions permitting an ALJ to award costs expended while representing a claimant in a worker's compensation claim. The Board also found that an order requiring litigation cost to be reimbursed out of funds paid pursuant to a valid child support lien would violate KRS¹ 342.180. This section provides that any compensation awarded under the workers' compensation act, other than child support, is exempt from the claims of creditors. Our review follows.

STANDARD OF REVIEW

“As a reviewing court, we are bound neither by an ALJ's decisions on questions of law or an ALJ's interpretation and application of the law to the facts. In either case, our standard of review is *de novo*.” *Bowerman v. Black Equipment Co.*, 297 S.W.3d 858, 866 (Ky. App. 2009).

ANALYSIS

KRS 342.320 addresses how an attorney is to be compensated for pursuing a workers' compensation claim. This statute sets out the method in which attorney fees are to be calculated and subjects all attorney fees to approval by the ALJ. KRS 342.320 contains no provision permitting the ALJ to award reimbursement of litigation costs. The only section of the workers' compensation statutes which addresses costs is KRS 342.310(1), which gives an ALJ discretion to impose costs as a sanction on a party that prosecutes or defends a workers' compensation claim “without reasonable ground.” Such a provision would be

¹ Kentucky Revised Statutes.

unnecessary if the ALJ had authority to award costs in an ordinary claim.

“All parts of the statute must be given equal effect so that no part of the statute will become meaningless or ineffectual.” *Lewis v. Jackson Energy Co-op. Corp.*, 189 S.W.3d 87, 92 (Ky. 2005). Moreover, “[w]orkers’ compensation is a creature of statute, and the remedies and procedures described therein are exclusive.” *Williams v. Eastern Coal Corp.*, 952 S.W.2d 696, 698 (Ky. 1997). Thus, the absence of any provision providing for an award of costs supports the Board’s conclusion the ALJ lacked authority to reimburse Howes the litigation costs he advanced for Lohr.

Nonetheless, Howes contends KRS 342.325 provides an ALJ with the authority to reimburse an attorney for costs expended pursuing a workers’ compensation. KRS 342.325 provides that “[a]ll questions arising under this chapter, if not settled by agreement of the parties interested therein, with the approval of the administrative law judge, shall be determined by the administrative law judge except as otherwise provided in this chapter.” The Kentucky Supreme Court has held that this statute grants an ALJ the authority to decide insurance coverage issues that affect the benefits received by the claimant. *Custard Ins. Adjusters, Inc. v. Aldridge*, 57 S.W.3d 284, 287 (Ky. 2001). For example, the ALJ has the authority to decide whether an employer’s workers’ compensation carrier covered the employer at the time of the employee’s injury. *Id.* However, the statute does not grant the ALJ authority to decide issues that have “no effect whatsoever on the relationship or the obligations that exist between either the

employer or its carrier and the injured worker whose claim is the subject of the administrative proceeding.” *Id.* Jurisdiction to resolve such issues lies with the circuit court. *Id.*

Howes’s request for litigation costs stems from a provision in his legal services agreement with Lohr. This is not an issue that has any effect on the obligations that exist between Apollo Oil and Lohr. It is merely a post-judgment contractual dispute between an attorney and his client. Thus, KRS 342.325 provides no support for Howes’s argument that the ALJ had the authority to order he be reimbursed for the litigation costs he expended.

Howes also argues that we should hold an ALJ has the authority to award costs on public policy and equity grounds. He argues that an attorney will not have an incentive to represent a client in pursuit of workers’ compensation benefits unless he is guaranteed to be reimbursed litigation costs advanced on a client’s behalf. Even if equitable considerations could be considered when interpreting workers compensation statutes, we are not persuaded by Howes’s arguments. In most circumstances, costs can be reimbursed from the proceeds of an award or settlement because any compensation paid under the workers’ compensation act, other than child support, is exempt from the claims of creditors. *See* KRS 342.180. In the instances where a client cannot reimburse the attorney for costs out of his award or settlement because of a child support lien, then the attorney may bring an action against the client and seek repayment out of the client’s other assets. Conversely, ordering an attorney to be reimbursed for

litigation costs out of the proceeds of a settlement agreement paid pursuant to a valid child support lien would act to the detriment of the children to whom the child support is intended to benefit. Thus, we discern no grounds in equity or public policy that compel this Court to grant an ALJ the authority to award costs when that power is not provided in the workers' compensation statutes.

CONCLUSION

Based on the foregoing, the Board's opinion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

James Howes, *pro se*
Louisville, Kentucky

BRIEF FOR APPELLEES:

No Brief Filed