

RENDERED: NOVEMBER 30, 2018; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000687-WC

UNIVERSITY OF LOUISVILLE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-15-82022

CELESTINE LANIER; HON. DOUGLAS W. GOTT,  
CHIEF ADMINISTRATIVE LAW JUDGE; AND THE  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING IN PART, REVERSING IN PART,  
AND REMANDING

\*\* \*\* \* \* \* \*\*

BEFORE: COMBS, D. LAMBERT AND SMALLWOOD, JUDGES.

SMALLWOOD, JUDGE: The University of Louisville appeals an award of the  
Workers' Compensation Board (hereinafter referred to as the Board) which  
awarded Celestine Lanier 425 weeks of permanent partial disability benefits.

Appellant argues that Lanier was only entitled to receive benefits for two years.

Appellant also claims the Board did not have jurisdiction to review the award at issue. We find that the Board had jurisdiction over the award, but that the Board erred when it awarded her benefits without consideration of the new version of KRS 342.730(4); therefore, we affirm in part, reverse in part, and remand for further proceedings.

The underlying facts of this case are not in dispute. Lanier was 67 years of age when she was injured during her employment with Appellant. The parties agreed that she was entitled to weekly disability benefits of \$8.35 per week, but disagreed as to how long these benefits would be paid. At the time of Appellant's injury, Kentucky Revised Statute (KRS) 342.730(4) stated:

All income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee qualifies for normal old-age Social Security retirement benefits under the United States Social Security Act, 42 U.S.C. secs. 301 to 1397f, or two (2) years after the employee's injury or last exposure, whichever last occurs.

Because Lanier had already reached Social Security retirement age on the date of injury, Appellant sought to discontinue her payments after two years. Lanier argued she should be entitled to the full 425 weeks of benefits pursuant to KRS 342.730(1)(d) because KRS 342.730(4) was unconstitutional.

The parties entered into a settlement agreement which stated that Lanier would be awarded disability benefits of \$8.35 per week until she reached

Social Security retirement age.<sup>1</sup> The agreement also stated that following the approval of the agreement, the administrative law judge would determine the constitutionality of KRS 342.730(4). The administrative law judge approved the agreement between the parties, but held that he had no authority to rule on the KRS 342.730(4) issue.

Lanier then appealed to the Board for a ruling on KRS 342.730(4). By that time, the Kentucky Supreme Court in *Parker v. Webster Cty. Coal, LLC (Dotiki Mine)*, 529 S.W.3d 759 (Ky. 2017), had held that KRS 342.730(4) was unconstitutional. The Board then awarded Lanier 425 weeks of benefits and this appeal followed.

Appellant's first argument on appeal is that the Board was without jurisdiction to hear Lanier's appeal. A settlement agreement becomes a final award once approved by the administrative law judge. In order to receive relief from a final award, the claim must be reopened pursuant to KRS 342.125. *See Beale v. Faultless Hardware*, 837 S.W.2d 893 (Ky. 1992). Appellant claims that Lanier did not reopen the claim; therefore, the Board did not have jurisdiction.

The Board, however, held that it did have jurisdiction because the settlement was not final and therefore did not require reopening. The Board found

---

<sup>1</sup> The settlement agreement does not say anything about the fact that Lanier had already reached Social Security retirement age at the time of her injury; however, it does mention KRS 342.730(4) and the parties are clearly relying on the "two (2) years after the employee's injury" language.

that the parties reserved the issue regarding the constitutionality of KRS 342.730(4) and the end date for Lanier's benefits had not been settled. We agree with the Board. The parties specifically contemplated that further action would be needed to determine the end date of Lanier's benefits. It would be unreasonable to find that the approved settlement agreement was final even though it stated multiple times that the constitutionality of KRS 342.730(4) was being reserved for adjudication. We affirm the Board as to this issue.

The next issue raised by Appellant is that the Board erred in awarding Lanier 425 weeks of benefits. Appellant argues that the agreement states that Lanier was only entitled to two years of benefits and the Board should have enforced it pursuant to its unambiguous terms. In the alternative, Appellant claims that the end date for Lanier's benefits should be determined pursuant to the newly enacted version of KRS 342.730(4).

As to Appellant's argument that the unambiguous terms of the agreement should control, we find this argument without merit. As previously stated, the intention of the parties to this agreement was to leave open the disability benefits end date for further adjudication.

We do find, however, that the new version of KRS 342.730(4) controls and that the administrative law judge should determine a proper end date using the revised version of the statute. A new version of KRS 342.730 became

effective on July 14, 2018. KRS 342.730(4) was revised and now provides in relevant part, that “[a]ll income benefits payable pursuant to this chapter shall terminate as of the date upon which the employee reaches the age of seventy (70), or four (4) years after the employee’s injury or last exposure, whichever last occurs.” The Legislative Research Commission’s note that accompanies the statute states that KRS 342.730(4)

shall apply prospectively and retroactively to all claims:  
(a) For which the date of injury or date of last exposure occurred on or after December 12, 1996; and (b) That have not been fully and finally adjudicated, or are in the appellate process, or for which time to file an appeal has not lapsed, as of the effective date of this Act.

The claim before us is still in the appellate process; therefore, the new version of KRS 342.730(4) applies.

Based on the foregoing, we affirm the Board’s finding as to jurisdiction, but reverse and remand as to the end date for Lanier’s benefits. On remand, the Board shall direct the administrative law judge to determine a proper end date for Lanier’s benefits pursuant to the new version of KRS 342.730(4).

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeremy D. McGraw  
Louisville, Kentucky

BRIEF FOR APPELLEE  
CELESTINE LANIER:

Wayne C. Daub  
Louisville, Kentucky