

RENDERED: NOVEMBER 22, 2019; 10:00 A.M.
TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-000815-WC

CRITTENDEN COUNTY FISCAL COURT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-13-64261

SAM HODGE; HONORABLE JEFF V. LAYSON,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * ** ** *

BEFORE: COMBS, LAMBERT AND K. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: Crittenden County Fiscal Court appeals from the award of permanent total disability benefits to Sam Hodge for an unlimited duration by the Administrative Law Judge (ALJ) as affirmed by the Workers' Compensation Board. Given the Kentucky Supreme Court's decision in *Holcim v.*

Swinford, 581 S.W.3d 37, 44 (Ky. 2019), that the time limits set out in the 2018 amendment to Kentucky Revised Statutes (KRS) 342.730(4), which limits the duration of benefits to workers who were injured after they reached the age of seventy years or older to four years, are to be applied retroactively, we regretfully reverse and remand.

Hodge was working for Crittenden County Road Department on October 11, 2013, when his truck overturned, injuring his back. At the time of the accident, Hodge was within two months of being seventy-six years old.

Hodge's claim was not heard by the ALJ until 2018, and the opinion, award and order was not entered until February 26, 2018. The ALJ determined Hodge was entitled to permanent total disability benefits, finding "that the duration of the benefits awarded to [Hodge] shall be for so long as he is totally disabled[.]"

Crittenden County Fiscal Court filed a motion for reconsideration. The ALJ denied the motion for reconsideration and Crittenden County Fiscal Court appealed.

Meanwhile, House Bill 2 was approved on March 30, 2018, but would not become effective until July 14, 2018. 2018 Ky. Acts Ch. 40 (HB 2).

In Section 13(4), House Bill 2 amended KRS 342.730(4) to read in relevant part: "All 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.”

In Section 20(3), it provided:

Subsection (4) of Section 13 of this Act [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.

2018 Ky. Acts Ch. 40 (HB 2).

On appeal to the Board, Crittenden County Fiscal Court raised the issues contained in its motion for reconsideration¹ but also added the new argument that House Bill 2 would retroactively limit Hodge's benefits. The Board affirmed in an opinion entered on May 18, 2018, before the effective date of House Bill 2.

Crittenden County Fiscal Court appealed, predominantly arguing that the newly effective version of KRS 342.730(4) limited Hodge's benefits. Before this matter was heard by our Court, other panels considered and issued opinions on whether KRS 342.730(4) could properly be applied retroactively when the

¹ None of these other grounds of error is relevant to this current appeal.

provisions of House Bill 2 which made it retroactive were not codified. Appeals from these cases were accepted for direct appeal before the Kentucky Supreme Court.

On this Court's own motion, pending cases on appeal containing this issue were placed in abeyance while our Court awaited the Kentucky Supreme Court's guidance, which came in *Holcim*.

In *Holcim*, 581 S.W.3d at 44, the Kentucky Supreme Court held that "the newly-enacted amendment [in House Bill 2] applies retroactively [and] must be used to determine the duration of [the claimant's] benefits." After *Holcim* was decided, the cases our Court placed in abeyance were returned to the active docket.

By its terms, the new version of KRS 342.730(4) applies retroactively to Hodge's workers' compensation claim pursuant to 2018 Ky. Acts Ch. 40 (HB 2) Section 20(3)(a) and (b), because the date of Hodge's injury, October 11, 2013, was "on or after December 12, 1996" and his claim for workers' compensation benefits was "in the appellate process . . . as of the effective date of [House Bill 2]." The new version of KRS 342.730(4) limits Hodge's benefits after he was injured to four years of duration because he was over seventy years of age at the time of the accident. Therefore, it is error for his award of benefits to be of unlimited duration.

This is a harsh result for Hodge, especially in light of the fact that other older workers who were injured after him but whose cases were finalized prior to the effective date of House Bill 2 will continue to receive benefits after his are already gone. However, we are bound by the Kentucky Supreme Court's ruling in *Holcim*.

Accordingly, we reverse the Board's decision affirming the ALJ's decision that Hodge's benefits are of unlimited duration and remand this matter to the ALJ to apply the four-year time limit set out in the 2018 version of KRS 342.730(4).

ALL CONCUR.

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BRIEF FOR APPELLEE
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