

RENDERED: NOVEMBER 22, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001120-WC

WOODFORD COUNTY BOARD OF EDUCATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-77455

GARY D. COFFEY, DECEASED; DENA COFFEY,
WIDOW AND SURVIVING SPOUSE OF GARY D.
COFFEY; DENA COFFEY, ADMINISTRATOR OF
THE ESTATE OF GARY D. COFFEY; HON.
DOUGLAS GOTT, CHIEF ADMINISTRATIVE LAW
JUDGE; AND WORKERS' COMPENSATION BOARD

APPELLEES

AND

NO. 2018-CA-001252-WC

DENA COFFEY, WIDOW AND SURVIVING SPOUSE
OF GARY D. COFFEY, AND DENA COFFEY,
ADMINISTRATOR OF THE ESTATE OF
GARY D. COFFEY

CROSS-APPELLANTS

v. CROSS-PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-77455

WOODFORD COUNTY BOARD OF EDUCATION;
HON. DOUGLAS GOTT, CHIEF ADMINISTRATIVE

OPINION
REVERSING AND REMANDING

** **

BEFORE: JONES, NICKELL AND TAYLOR, JUDGES.

NICKELL, JUDGE: Woodford County Board of Education (“Woodford”) petitions and Dena Coffey (“Dena”) cross-petitions for review of a Workers’ Compensation Board (“Board”) opinion affirming the order on reconsideration entered by Chief Administrative Law Judge (“CALJ”) Douglas W. Gott awarding Dena a continuation of benefits previously awarded to her deceased husband Gary D. Coffey (“Gary”) for injuries he sustained while working for Woodford pursuant to KRS¹ 342.730(3)(a). The CALJ found, and the Board affirmed, the continuation of benefits subject to the “tier-down” provisions of the 1994 version of KRS 342.730(4). After careful review, and considering the Supreme Court of Kentucky’s recent decision in *Holcim v. Swinford*, 581 S.W.3d 37 (Ky. 2019), regarding the 2018 amendment to KRS 342.730(4), we reverse and remand the CALJ’s application of the 1994 version of KRS 342.730(4).

¹ Kentucky Revised Statutes.

Gary was born on October 24, 1954. On August 17, 2011, Gary fell from a ladder while working for Woodford. On May 4, 2013, Gary filed an Application for Resolution of Injury Claim (Form 101) under the Workers' Compensation Act ("Act")² alleging he injured his left shoulder, left wrist, left hand, neck, low back, and left hip when the ladder he was working on folded, causing him to fall. Gary's claim was assigned to Administrative Law Judge ("ALJ") Robert L. Swisher, who found he was entitled to permanent partial disability benefits. Gary died on April 13, 2017, due to unrelated cardiac arrest.

On November 9, 2017, Dena filed a Request to Substitute Party and Continue Benefits (Form 11). On January 10, 2018, the CALJ issued an order finding Dena entitled to a continuation of benefits. Dena petitioned for reconsideration requesting the CALJ amend the award without limiting it by the "tier-down" provisions in the 1996 version of KRS 342.730(4) held unconstitutional in *Parker v. Webster Cty. Coal, LLC (Dotiki Mine)*, 529 S.W.3d 759, 763 (Ky. 2017). On reconsideration, the CALJ applied the "tier-down" provisions of the 1994 version of KRS 342.730(4) to Dena's award by order dated February 13, 2018. The Board affirmed the CALJ's order in an opinion entered June 29, 2018. This petition and cross-petition for review followed.

² KRS Chapter 342.

Approximately two weeks after the Board rendered its opinion, KRS 342.730(4) was amended. Pursuant to the recent amendment, “all income benefits payable pursuant to this chapter to spouses and dependents shall terminate as of the date upon which the employee would have reached age seventy (70) or four (4) years after the employee’s date of injury or date of last exposure, whichever last occurs.” KRS 342.730(4).

It is well-settled, “[n]o statute shall be construed to be retroactive, unless expressly so declared.” KRS 446.080(3). Retroactive application of statutes will be approved only where we can be certain the General Assembly intended the statute to operate retroactively. *See Commonwealth Dept. of Agriculture v. Vinson*, 30 S.W.3d 162, 168 (Ky. 2000). No specific language or “magic words” are necessary to make a statute retroactive. “What is required is that the enactment make it apparent that retroactivity was the intended result.” *Baker v. Fletcher*, 204 S.W.3d 589, 597 (Ky. 2006) (footnote omitted). In *Holcim*, our Supreme Court undertook a detailed analysis of whether the provisions of the 2018 amendment to KRS 342.730(4) should be applied retroactively. It answered that question in the affirmative.

The amendment at issue is contained in Section 13, subsection 4 of Kentucky House Bill 2 (Kentucky 2018 Regular Session). House Bill 2 was signed by the Speaker of the House, President of the Senate, and Governor for

approval. It was then filed with the Kentucky Secretary of State on March 30, 2018, and became effective July 14, 2018. In addition to its many codified sections, House Bill 2 contains two non-codified provisions, Sections 19 and 20, which the Supreme Court concluded contained a declaration by the legislature concerning retroactivity. *Holcim*, 581 S.W.3d at 44. Section 20, subsection 3 of House Bill 2 provides:

Subsection (4) of Section 13 of this Act 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.

In the instant case, Gary's date of injury or date of last exposure occurred after December 12, 1996, and this claim was in the appellate process as of the effective date of the amendment. Gary's claim, pursued by Dena, falls within the period of retroactivity expressly designated by the General Assembly. As such, the amended version of KRS 342.730(4) applies to this claim. The award in this case should order Dena's benefits to "terminate as of the date upon which [Gary] would have reached age seventy (70) or four (4) years after [Gary's] date of injury or date of last exposure, whichever last occurs." KRS 342.730(4). Accordingly, we must reverse. On remand, a new award conforming to the amended version of KRS 342.730(4) now in effect shall be ordered.

For the foregoing reasons, the opinion of the Workers' Compensation Board is REVERSED and REMANDED with instructions to enter an opinion and order consistent with this Opinion.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-
APPELLEE:

W. Barry Lewis
Hazard, Kentucky

BRIEF FOR APPELLEES/
CROSS-APPELLANTS:

Jackson W. Watts
Versailles, Kentucky