

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

Supreme Court of Kentucky

FINAL

2007-SC-000454-WC

DATE 10-23-08 ELAGrow.H.D.C.

GEORGE HUMFLEET MOBILE HOMES

APPELLANT

ON APPEAL FROM COURT OF APPEALS

2006-CA-001153-WC

V.

WORKERS' COMPENSATION BOARD NO. 00-96269

DENNIS CHRISTMAN;  
HONORABLE LAWRENCE F. SMITH,  
ADMINISTRATIVE LAW JUDGE;  
AND  
WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

KRS 342.125(1)(d) permits a workers' compensation award to be reopened based on a change of disability as shown by objective medical evidence of a worsening of impairment "since the date of the award."

An Administrative Law Judge (ALJ) found that the claimant showed increased disability at reopening, relying on medical evidence from the period between the date the initial award was rendered and the date of the claimant's motion. The Workers' Compensation Board rejected an argument that KRS 342.125(1)(d) refers to the date that the award becomes final and affirmed. The Court of Appeals affirmed, and we affirm. KRS 342.125(1)(d) is clear and unambiguous. It refers to the date of the award.

The claimant injured his cervical and lumbar spine in a work-related fall on January 26, 2000. On January 28, 2002, an ALJ determined that he was partially disabled but relied on permanent impairment ratings that a physician assigned using the Fourth Edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment (Guides). The court determined in George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004), that KRS 342.730(1) requires impairment to be determined using the "latest edition available" and remanded for the entry of an award based upon the Fifth Edition of the Guides. The ALJ relied on permanent impairment ratings assigned under the Fifth Edition and determined on April 19, 2004, that the cervical condition warranted a 25% permanent impairment rating and that the lumbar condition warranted a 5% rating, for a combined values rating of 30%. On May 25, 2004, the ALJ granted the claimant's petition for reconsideration and modified the award to provide benefits for 520 rather than 425 weeks. No party appealed.

On October 30, 2004, the claimant filed a motion to reopen in which he alleged a worsening of disability. The matter was assigned for further adjudication, and an ALJ determined ultimately that the claimant was permanently and totally disabled based on his own testimony and evidence from Dr. Gilbert. Dr. Gilbert indicated that the claimant's physical condition had worsened since his first visit on April 1, 2002; that he underwent surgery at three levels of the cervical spine in April 2004; and that his pain and restrictions had increased. In January 2005 Dr. Gilbert assigned a 28% permanent impairment rating to the cervical spine and an 8% rating to the lumbar spine.

The employer does not dispute that Dr. Gilbert's records from 2002 through 2004 support the finding of permanent total disability. It argues that KRS 342.125(1)(d) requires the claimant to show a change of disability that occurred after May 25, 2004, when his initial award became final. It relies on Hodges v. Sager Corp., 182 S.W.3d 497 (Ky. 2005), for the principle that KRS 342.125(1)(d) requires the impairment to be compared at two points in time. The employer reasons that no meaningful reopening could occur until a final award established the claimant's permanent impairment rating for the underlying claim, which overlooks the fact that the claimant did not file the motion to reopen until after his award became final. The employer concludes that the increased award was improper because no medical evidence obtained after May 25, 2004, showed a change of disability. It asserts that the proper method to address any additional impairment that occurred between the date that the award was rendered and the date when it became final would have been for the claimant to file a motion to reopen proof. We disagree.

The ALJ rendered the initial award based on the proof that was of record at that time. Although George Humfleet Mobile Homes v. Christman, *supra*, remanded the claim and directed the ALJ to choose a permanent impairment rating that was determined under the Fifth Edition of the Guides, it did not permit the ALJ to reopen the proof. Likewise, no statute or regulation permitted the proof to be reopened after the initial award was rendered except in the context of a reopening proceeding.

Griffin v. City of Bowling Green, 458 S.W.2d 456, 457 (Ky. 1970), and Fryman v. Electric Steam Radiator Corp., 277 S.W.2d 25 (Ky. 1955), note the well-settled principle that a clear and unambiguous statute leaves no room for construction and must be

accepted as written. KRS 342.125(1)(d) is clear and unambiguous. It bases reopening on a change of disability "since the date of the award." The ALJ applied the statute correctly when relying upon medical evidence obtained between January 28, 2002, and the date of the claimant's motion as a basis to award additional benefits at reopening.

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

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