

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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

2010-SC-000390-WC

RICHARD CROTZER

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
CASE NO. 2009-CA-000616-WC
WORKERS' COMPENSATION BOARD NO. 06-79836

CWI;
HONORABLE R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

An Administrative Law Judge (ALJ) awarded the claimant a double income benefit under KRS 342.730(1)(c)2. The Workers' Compensation Board affirmed, but the Court of Appeals reversed based on the decision in *Chrysalis House, Inc. v. Tackett*¹ and remanded for the ALJ to determine whether the cessation of employment at the same or a greater wage was related to the claimant's injury. Appealing, the claimant asserts that the rules of statutory interpretation require *Chrysalis House* to be overruled or limited to its facts. We disagree and affirm.

¹ 283 S.W.3d 671 (Ky. 2009).

The claimant was born in 1944 and had an eighth-grade education with no specialized or vocational training. He worked for the defendant-employer as a mechanic and injured his right middle finger on May 2, 2006, while changing brakes on a truck. After undergoing a surgical procedure and period of temporary total disability, he returned to work at the same or a greater wage than he earned at the time of the injury. He testified that he had intended to work to age 65 but accepted a voluntary lay-off several months later in order to spare the job of a younger co-worker who had a family to support. He then retired and began to draw Social Security retirement benefits.

The contested issues included the extent and duration of disability, particularly the claimant's entitlement to double income benefits under KRS 342.730(1)(c)2. Arguments raised in the employer's brief also included a challenge to the constitutionality of the statute as applied to a cessation of employment that is unrelated to the injury being compensated. Deferring judgment on the constitutional question to the courts, the ALJ determined that the statute entitled the claimant to double benefits and awarded them.

The employer appealed, continuing to assert that KRS 342.730(1)(c)2 violated the Fifth and Fourteenth Amendments to the United States Constitution and Sections 2 and 3 of the Kentucky Constitution because it was arbitrary and violated the guarantees of due process and equal protection. The employer argued that the statute was overbroad when interpreted literally and that its application must be limited to a cessation of employment that results

from the work-related injury. The Board affirmed, noting that it lacked jurisdiction to address the matter.²

The employer abandoned its constitutional argument before the Court of Appeals and relied on *Chrysalis House*, which was rendered shortly after the Board's decision and rendered the argument moot. The claimant appeals a decision by the Court of Appeals to reverse and remand to the ALJ to determine whether the cessation of employment was related to his disabling injury. His arguments lack merit.

We determined in *Chrysalis House*³ that subsection (c)2 of KRS 342.730(1) is unambiguous but must be considered in the context of the entire provision, which authorizes benefits for "disability" that results from a work-related injury. Having considered the subsection in context, we concluded that it permits double benefits during a cessation of employment at the same or a greater wage "for any reason with or without cause" that relates to the disabling injury.⁴ We complied with the rules of statutory construction when doing so.⁵

In *Hogston v. Bell South Telecommunications*⁶ we considered and rejected an invitation to overrule or limit *Chrysalis House* to its facts. The result in

² *Blue Diamond Coal Co. v. Cornett*, 300 Ky. 647, 189 S.W.2d 963 (1945).

³ 283 S.W.3d at 674.

⁴ *Id.*

⁵ *Combs v. Hubb Coal Corp.*, 934 S.W.2d 250, 252-53 (Ky. 1996); *Manies v. Croan*, 977 S.W.2d 22, 23 (Ky. App. 1998) (Courts "construe statutes within their context and strive to give consistent meaning to related statutory provisions").

⁶ 325 S.W.3d 314 (Ky. 2010).

Hogston disproves the claimant's argument that our construction of KRS 342.730(1)(c)2 "in effect eliminates the 2 multiplier from ever applying" as does *Chrysalis House* itself.⁷

Contrary to what the claimant asserts, a worker who returns to work at the same or a greater wage but ceases to do so for reasons related to his injury will not always be entitled to reopen and obtain triple benefits under KRS 342.730(1)(c)1. We explained in *Chrysalis House*⁸ that a purpose of subsection (1)(c)2 was to discourage an employer from continuing to employ an injured worker in order to secure a partial rather than total disability award or a double rather than triple benefit and then terminating the worker, at which point the worker would be required to show a worsening of impairment in order to reopen. The worker would also be subject to KRS 342.125's time limitations on reopening.

We acknowledge that the claimant appears to have committed a good deed and regret that he suffers for doing so. The fact remains, however, that Chapter 342 and KRS 342.730(1) compensate workers for disability resulting from work-related injuries. KRS 342.730(1)(c)2 entitles him to a double benefit if his present cessation of employment is related to his disabling injury. If the ALJ determines that it is not related to his injury, it is not compensable.

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

⁷ We remanded in *Chrysalis House* for the ALJ to determine whether employment at the same or a greater wage ceased for reasons related to the disabling injury.

⁸ 283 S.W.3d at 674-75.

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