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**NOT TO BE PUBLISHED OPINION**

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# Supreme Court of Kentucky

2020-SC-0468-WC

STEPHEN FLYNN

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS  
NO. 2020-CA-0201  
WORKERS' COMPENSATION BOARD  
NO. WC-18-98128

BUYERS PARADISE FURNITURE, INC.;  
COMMONWEALTH OF KENTUCKY, EX  
REL. DANIEL CAMERON, ATTORNEY  
GENERAL; HONORABLE STEPHANIE  
KINNEY, ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

#### I. BACKGROUND

Stephen Flynn worked for Paradise Furniture, Inc., as a warehouse supervisor. On December 29, 2017, Flynn was operating a “picker” to retrieve a piece of furniture from a warehouse shelf. The picker is a forklift-like piece of equipment with a caged outside platform on which an individual may stand to be elevated to the shelves above. As Flynn stood inside the picker’s cage and elevated himself to the appropriate shelf, he placed his left hand on top of the cage, with his fingers outside. Flynn was looking in a different direction when

his left hand was caught between a ceiling beam and the cage. Flynn's work injury required surgery, and his first two fingers were each partially amputated.

On August 12, 2017, the Workers' Compensation Administrative Law Judge (ALJ), Stephanie L. Kinney, determined Flynn is permanently partially disabled as a result of his work injury and awarded him weekly benefits which would terminate at the age of seventy pursuant to KRS 342.730(4). Flynn filed a motion for reconsideration, which the ALJ denied. He then appealed to the Workers' Compensation Board, arguing the amendment of KRS 342.730(4) was not retroactive. The Board affirmed the ALJ's decision pursuant to *Holcim v. Swinford*, 581 S.W.3d 37 (Ky. 2019), which held the 2018 amendment to KRS 342.730(4) applied retroactively. Flynn also argued the subsection was unconstitutional for various reasons. The Board acknowledged it lacked jurisdiction to determine the statute's constitutionality.

Flynn appealed the Board's decision to the Court of Appeals, which affirmed his award and held KRS 342.730(4) and its retroactive application were constitutional. Flynn now appeals to this Court, arguing: (1) KRS 342.730(4) violates the equal protection clauses of the United States and Kentucky Constitutions, as written and as retroactively applied; (2) retroactive application of KRS 342.730(4) violates the contracts clauses of the United States and Kentucky Constitutions; and (3) KRS 342.730(4) violates Kentucky's constitutional provisions regarding special legislation. The Attorney General filed a motion to intervene to defend the constitutionality of the statute, which

we granted. For the following reasons, we hold that KRS 342.730(4) is constitutional and affirm the Court of Appeals.

## II. ANALYSIS

KRS 342.730(4) concerns the termination of workers' compensation benefits. In *Parker v. Webster Cnty. Coal, LLC (Dotiki Mine)*, 529 S.W.3d 759 (Ky. 2017), this Court found the then-current 1996 version of KRS 342.730(4) unconstitutional on equal protection grounds. The 1996 version of the statute tied the termination of workers' compensation benefits to the time at which the employee qualified for old-age Social Security benefits. This Court held this was an arbitrary distinction with no rational relation to a legitimate state interest.

In *Holcim*, 581 S.W.3d at 41, this Court considered whether a 2018 version of KRS 342.730(4) could be applied retroactively. Quoting a Legislative Research Commission comment beneath the statute, we held in *Holcim* that the amendment "applies to those cases which 'have not been fully and finally adjudicated, or are in the appellate process, or for which time to file an appeal [h]as not lapsed, as of the effective date of this Act.'" *Id.* at 44.

Whereas the pre-*Parker* version of KRS 342.730(4) linked workers' compensation benefit termination to the time at which the worker qualified for old-age Social Security benefits (and thereby violated an individual's right to equal protection under the law by arbitrarily treating similarly-situated individuals differently), the 2018 version of the statutory subsection links the termination of benefits to the injured employee attaining a particular age.

Under the amendment, a claimant's benefits terminate on his or her seventieth birthday or four years after his or her work injury or last injurious exposure, whichever occurs later. Flynn argues this statute is constitutionally infirm on multiple grounds.

### **A. Equal Protection**

Flynn argues the amendment to KRS 342.730(4) violates his rights to equal protection under the law, as guaranteed by the United States and Kentucky Constitutions. The basis for his argument is that the amendment treats older injured workers and younger injured workers differently.

The 14th Amendment of the United States Constitution and Sections 1, 2, and 3 of the Kentucky Constitution contain the respective federal and state equal protection clauses. Their "goal . . . is to 'keep[ ] governmental decision makers from treating differently persons who are in all relevant respects alike.'" *Vision Mining, Inc. v. Gardner*, 364 S.W.3d 455, 465 (Ky. 2011) (quoting *Nordlinger v. Hahn*, 505 U.S. 1, 10 (1992)). Because "[w]orkers' compensation statutes concern matters of social and economic policy," if a rational basis or substantial and justifiable reason supports the classifications they create, we must uphold it. *Id.* at 466 (citing *Cain v. Lodestar Energy, Inc.*, 302 S.W.3d 39, 42 (Ky. 2009)). "In sum, we will uphold the age limitation here so long as it rationally relates to a legitimate state objective." *Cates v. Kroger*, 627 S.W.3d 864, 871 (Ky. 2021).

As this Court has stated, "acts of the legislature carry a strong presumption of constitutionality." *Wynn v. Ibold, Inc.*, 969 S.W.2d 695, 696

(Ky. 1998). “Doubts regarding constitutionality must be resolved in favor of upholding the law.” *Cates*, 627 S.W.3d at 870. Furthermore, “the principle of reducing workers’ compensation benefits at an age when workers typically become eligible for alternative forms of income replacement is not new to Kentucky.” *Wynn*, 969 S.W.2d at 696.

We took up the constitutionality of the 2018 amendment to KRS 342.730(4) in *Cates*, 627 S.W.3d at 871, holding, “the current version of KRS 342.730(4) is not violative of the Equal Protection Clause because the age classification is rationally related to a legitimate state purpose.” We do not depart from that recent holding today.

As this Court held in *Parker*, “[t]he rational bases for treating younger and older workers differently [are]: (1) it prevents duplication of benefits; and (2) it results in savings for the workers’ compensation system.” 529 S.W.3d at 768. Four years later, we stated, “we remain convinced that preventing a duplication of wage-loss protection programs and promoting the solvency of the workers’ compensation system are legitimate state interests.” *Cates*, 627 S.W.3d at 870. We are unpersuaded to deviate from this position by Flynn’s arguments that KRS 342.730(4) does not prevent duplicative income replacement benefits, avoid duplicative governmental benefits, or provide a savings for the workers’ compensation system; nor are we convinced that savings to the workers’ compensation system is not a valid basis to uphold a statute in the face of an equal protection argument. Again, today, we hold the

statute passes the rational basis test as it “treats alike all those who receive workers’ compensation benefits.” *Id.* at 871.

Flynn argues that even if the statutory amendment were constitutional on equal protection grounds (as we have held), it is unconstitutional to apply the statute retroactively to his claim, as his injury occurred before the effective date of the amendment. However, “[t]he legislature ‘may amend the law and make the change applicable to pending cases, even when the amendment is outcome determinative.’” *Id.* (quoting *Bank Markazi v. Peterson*, 578 U.S. 212 (2016)). Here, this Court declared one version of the statutory subsection unconstitutional and the legislature passed a new subsection, providing for retroactive effect—and the legislature was within constitutional bounds in so doing.

**B. Special Legislation**

Flynn next argues KRS 342.730(4) violates Kentucky’s constitutional provisions regarding special legislation. Specifically, he points to the prohibitions in Section 59 of the Kentucky Constitution, which state, in pertinent part:

The General Assembly shall not pass local or special acts concerning any of the following subjects, or for any of the following purposes, namely:

. . . .

Fifth: To regulate the limitation of civil or criminal causes.

. . . .

Twenty-fourth: To regulate labor, trade, mining or manufacturing.

Flynn links this argument to his equal protection argument—essentially arguing the legislation discriminates against older workers and favors business owners in an attempt to save employers money on workers’ compensation insurance premiums. He also argues older workers are discriminated against because, if they receive permanent partial disability benefits, they will not receive the entirety of their awards, unlike younger injured workers. This is another attempt at making the same argument under a different veil. We reject it, too, as *all* injured workers’ benefits terminate at age seventy under the amendment.

This Court addressed a similar special legislation argument in *Cates*, 627 S.W.3d at 872, holding the amended statutory subsection was not special legislation as it did not apply “to a particular individual, object or locale.” (Citing *Calloway Cnty. Sheriff’s Dep’t. v. Woodall*, 607 S.W.3d 557, 573 (Ky. 2020)). In *Cates*, we stated “[t]he argument that the statute differentiates between older and younger workers is a *classification* argument, which is properly considered under sections 1, 2, and 3 of the Kentucky Constitution.” *Id.* And, just as in *Cates*, we reiterate: “KRS 342.730(4) is simply not special legislation.” *Id.*

### **C. Due Process**

Flynn also argues the retroactive application of KRS 342.730(4) stripped him of his property right to workers’ compensation benefits in violation of due process rights, as he did not receive prior notice or a hearing. We addressed this issue in *Cates*, holding the claimants had no vested right in the duration



and amount of their benefits “until they have received a final judgment in their favor.” *Cates*, 627 S.W.3d at 873. The same is true here. Because Flynn had no vested right in the duration of his benefits, a statute terminating them at a specific age did not deny him due process.

#### **D. Contracts Clause**

Finally, Flynn argues the retroactive application of KRS 342.730(4) denies his rights under the contracts clauses of the federal and state constitutions. Both the Constitution of the United States and the Kentucky Constitution protect citizens of our Commonwealth from the state’s infringement on their right to contract. Article 1, Section 10, Clause 2 of the United States Constitution reads, in pertinent part, “[n]o State shall . . . pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts . . . .” Likewise, Section 19 of the Kentucky Constitution provides, “[n]o ex post facto law, nor any law impairing the obligation of contracts, shall be enacted.” Flynn argues KRS 342.730(4) violates these contracts clauses

In *Dowell v. Matthews Contracting*, 627 S.W.3d 890, 895 (Ky. 2021), this Court stated if “the fundamental premise of a Contracts Clause analysis—the existence of a contract—is absent . . . our analysis ends.” See *Gen. Motors Corp. v. Romein*, 503 U.S. 181, 190 (1992) (holding Contracts Clause inapplicable because the employer and employee did not assent to specific statutory terms). Therefore, we must first determine whether a contract exists in this case.

Flynn “point[s] to no contract or place within the statutory scheme where [he is] guaranteed certain benefits that were mutually assented to and bargained for.” *Dowell*, 627 S.W.3d at 895. This Court has held “the Workers’ Compensation Act (WCA) does not constitute a contract between Kentucky workers and their employers or the state.” *Id.* at 894. Rather than providing contractual rights, we explained, “the WCA is a statutory scheme that may be amended as the General Assembly chooses, provided it fits within our constitutional framework.” *Id.* at 894–95. “The workers’ compensation system is controlled by the state and is governed by legislative enactments. It is not a contract . . . between employers and their employees. Changes to the relevant statutes, therefore, do not create a Contracts Clause issue.” *Id.* at 896.

Since the Workers’ Compensation Act does not constitute a contract, “a complete Contracts Clause analysis is unnecessary.” *Id.* at 894. The protections of the clauses simply do not apply. “Because the WCA does not form a contract, there are no contractual rights that the amendment to KRS 342.730(4) could infringe.” *Id.* at 895. Just as in *Dowell*, we hold there was no contracts clause violation.

### **III. CONCLUSION**

For the foregoing reasons, we affirm the Court of Appeals.

All sitting. All concur.

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