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## Statutory Interpretation--Cornwell v. Commonwealth, et al.

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STATUTORY INTERPRETATION—CORNWELL v  
COMMONWEALTH, ET AL.

In discussing the case of *Cornwell v Commonwealth*,<sup>1</sup> the writer is motivated primarily by a desire to bring this case to the attention of employers who have elected to accept the provisions of the Kentucky Workmen's Compensation Act. That it can react adversely and, in many cases, unjustly, to the interests of employers will become apparent to those who familiarize themselves with the practical application of the decision.

Secondly, the writer wishes to explain that his position is that the case is wrong in principle and contrary to the provisions of the Workmen's Compensation Act.

On August 16, 1943, the appellant, Millard Cornwell, was injured in the course of his employment with appellee, Department of Highways. Under the provisions of the Workmen's Compensation Act, Chapter 342 Kentucky Revised Statutes, it was agreed that appellant was to be paid the sum of \$15.00 per week, based on an average weekly wage of \$25.00 per week, and that such compensation should be payable from and including the 16th day of August, 1943, until terminated, in accordance with the provisions of the Workmen's Compensation Law of the State of Kentucky. The agreement was executed on a standard form and on the line where length of disability computed in weeks was to be filled in the words "length of disability undetermined" were filled in.

This agreement was filed with the Board on August 22, 1944 and received its stamp of approval on August 23, 1944. Compensation was paid thereunder until January 20, 1945, at which time the payments were suspended. On October 12, 1946, the appellant, pursuant to the provisions of Kentucky Revised Statutes 342.305, filed a petition in the Montgomery Circuit Court asking for judgment in accordance with terms of the agreement.

The Department of Highways contended that as it had ceased voluntary payments, the appellant's recourse was to

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<sup>1</sup> 304 Ky 182, 200 S.W. (2) 286 (1947)

apply to the Board for a hearing, as provided by Kentucky Revised Statutes 342.270, and as such had not been done within a period of one year as set out in Kentucky Revised Statutes 342.185, the claim was barred. The circuit court ruled for the Highway Department and, upon appeal, the decision was reversed. The effect of the decision was that *any* agreement for compensation when filed with and approved by the Board became an award.

The Court said that the determination of the question depended upon the construction given Kentucky Revised Statutes 342.270 and Kentucky Revised Statutes 342.305. Kentucky Revised Statutes 342.270 (1) provides

“(1) If the parties fail to reach an agreement in regard to compensation under this chapter, or if they have previously filed such an agreement with the Board and compensation has been paid or is due in accordance therewith and the parties thereafter disagree, either party may make written application to the Board for a hearing in regard to the matter at issue and for a ruling thereon. Such application for a hearing must be filed as soon as is practicable after disagreement or after the cessation of voluntary payments, if any, have been made.”

Kentucky Revised Statutes 342.305 permits any party in interest to file, in the circuit court of the county in which the injury occurred, a certified copy of an agreement approved by the Board. When this is done, the court shall render judgment in accordance therewith.

The Court said that a careful examination of Kentucky Revised Statutes 342.270 leads to the conclusion that this section applied to two situations.

First, where the parties have failed to reach an agreement in regard to compensation, and

Second, where the parties have filed an agreement with the Board and thereafter disagreed before the agreement has been approved by the Board. The court was of the opinion that, when the agreement had been approved by the Board, Kentucky Revised Statutes 342.305 applied and proceedings to enforce it might be had in circuit court, but, if for any reason, the agreement has not been approved, Kentucky Revised Statutes 342.270 is applicable and a party must first make application to the Board for a hearing.

This case is one of first impression in this jurisdiction. In stating that approval of an agreement gives it the force and effect of an award, the Court cited *Black Mountain Corporation v Middleton*<sup>2</sup> and *Standard Accident Insurance Company v Hinson*.<sup>3</sup> This proposition does, as a matter of fact, appear in the cited cases and is applicable to the facts therein which, it is submitted, are not the same as the *Cornwell* case, which presents an entirely different problem.

In both the *Henson* case and the *Middleton* case voluntary payments had been made for a period and, when they were discontinued, agreements were entered into for stated compensation for stated periods and approved by the Board, after application to the Board for a hearing. Clearly, these cases come within Kentucky Revised Statutes 342.305.

Before attacking the decision that there was an "award" in this case, it may be an aid in discussion to consider certain facts that do not appear in the record. *Cornwell* was placed on compensation for full disability immediately after the injury. An open and indefinite agreement as to duration of disability was filed with the Board and, one day after filing, it received the clerical stamp of approval. This was routine and that it received no consideration from the Board is evident from the dates.

Subsequently *Cornwell* indicated his desire for a settlement of his claim and, upon examination, his doctor gave him a rating of 25% permanent partial disability. A contract on this basis was submitted to *Cornwell*, who declined to sign it. Compensation payments were discontinued and approximately 21 months later the action was brought in circuit court.

The Department expected *Cornwell* to file for adjustment of his claim. When it was not done within a year as provided by Kentucky Revised Statutes 342.185 it was felt that the claim was barred.

This decision means that though *Cornwell* actually has 25% disability or none he will draw 100% disability compensation from the date payments were discontinued until such time as a motion to reopen is heard and his disability fixed. The De-

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<sup>2</sup> 243 Ky. 527, 49 S.W. (2) 318 (1932).

<sup>3</sup> 251 Ky. 287, 64 S.W. (2) 574 (1933)

partment has other such cases where payments were discontinued, cases even older than the *Cornwell* case. The writer has talked with other employers who have filed these open agreements as required by the Board. Doubtless the effects of the *Cornwell* decision will be felt for some time to come.

On the question of award, let us determine just what an award is. Bouvier<sup>4</sup> defines an award as. "The decision of arbitrators or referees of a case submitted for arbitration under agreement of the parties or rule of Court. It must be *final* and *certain*." American Jurisprudence,<sup>5</sup> has this to say of an award. "An award is the final and binding decree or judgment of arbitrators rendered in their exercise of quasi-judicial functions to determine the disputed matters referred to them by the parties in the agreement of submission." It continues, on page 939 "At common law an award may even be by parol but in general it is necessary that it be *final*, *certain* and consistent. Webster's New International Dictionary defines the word as, "To *assign* or *apportion* after careful consideration of the case."

There was nothing definite or certain in the instant agreement, and approval could not make it so. The payments herein were undeniably voluntary as provided by Kentucky Revised Statutes 342.270. This section, as before stated, provides that if the parties fail to reach an agreement or if they have *previously filed such agreement* with the Board and compensation has been paid and the parties thereafter disagree either party may make application to the Board for a hearing. Further, application for hearing must be filed as soon after disagreement or cessation of voluntary payments as practicable.

This language seems clear and unequivocal to the writer that the remedy where voluntary payments have ceased is by application for hearing and not by action in the circuit court. The language of the statute makes this so though the agreement has been filed with the Board and payments made. The payments under such open agreement are rendered none the less voluntary by the Board's approval of such action. Is it not natural to assume that payments would not be made if the agreement had the disapproval of the Board? The Court has read

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<sup>4</sup> BOUVIER, LAW DICTIONARY 302.

<sup>5</sup> 5 AM. JUR. 938.

something into the act not apparent when it says this section applies to agreements filed and disagreement arising before the Board approves same. This is a weak part of the decision and puts a premium on fast rubber stamping by the clerk of the Board. In the *Cornwell* case, the parties had less than 24 hours to fill out and file a motion to reopen.

The Court says an award is in the nature of a judgment and it would be unfair to compel the injured party to have the case reopened and prove his right. Under the Court's decision just what was awarded—compensation for an indefinite period. This decision vitiates voluntary payments and puts the burden on an employer to show right to cease that which he voluntarily assumed.

The court continues that its decision will not prejudice the rights of any party, since an aggrieved party may petition to reopen under Kentucky Revised Statutes 342.125, whereby compensation previously awarded may be ended, diminished or increased. This view is fallacious, as the reopening cannot affect compensation paid or to be paid prior thereto.

The Board has always had exclusive jurisdiction as to fact finding and this decision creates an award without the Board having considered the facts. It is not a court and has no means to enforce its actions. It is the contention of the writer that Kentucky Revised Statutes 342.305 provides a means whereby the Board's fact findings and awards thereunder may be enforced by the courts.

This section provides that the court's judgment shall have the same effect as though the claim had been duly heard and determined by that court. This provision, it seems, presupposes that the facts had been heard by some body, in this instance the Board.

Kentucky Revised Statutes 342.185 provides that no proceedings for compensation under this chapter shall be had unless claim for compensation shall have been made within one year from the date of the injury. It continues, "If payments of compensation as such have been made voluntarily, the *making of a claim* within such period shall not be required but shall become requisite following the suspension of such voluntary payments.

The Court in its decision says that to apply Kentucky Revised Statutes 342.270 in such a situation as we have here would render meaningless the provisions of Kentucky Revised Statutes 342.305. This is not conceded, but the court has not considered that for all practical purposes its decision renders meaningless the provision of Kentucky Revised Statutes 342.185, and means that employers will either cease voluntary payments or not file preliminary agreements as required by the Board, which has the right under Kentucky Revised Statutes 342.260 to make rules and regulations to carry out its purposes.

One of the most important provisions of the act is that for voluntary payments. Since the inception of the Workmen's Compensation Act in Kentucky, there has been a practice of the employers and insurance companies to agree or stipulate with the employees as to all material facts involved when an employee is injured. The humane purposes of the Workmen's Compensation Act requires that payments under the said act be expedited and that payments be made as quickly as possible. The average employee does not save money and it is therefore necessary when he becomes disabled to start receiving the benefits of the act at once. The employer then attempts to give relief within the spirit of the Act by providing instant payments in case of disabling injuries by way of temporary open agreements. To give such an agreement the status of an award is contrary to the spirit of the act and puts hobbles on one of its most important provisions.

Just what does this temporary agreement mean and what effect is given it by the approval of the Board? Such official sanction means that the Board has determined that the parties have accepted the provisions of the Act, that there was a compensable injury, that due and timely notice was given thereof, that the employee's average weekly earnings entitled him to the weekly compensation provided therein and that all facts were as stated in the agreement.

It is submitted that as no extent and duration are mentioned, it is a conditional agreement and would be left open for further consideration and determination. No other interpretation seems possible of such voluntary payments under an indefinite agreement. No doctor could definitely determine the extent

of a person's disability and the duration upon examination immediately after the injury. Consider the hardship on the employee if the employer waited to enter into an agreement until the disability was determined. Then and only then is the time for an "agreement" as to compensation and an award pursuant to such an agreement.

The reader may or may not agree with the writer's contentions herein. However, it cannot be successfully contended that the argument against the case is not right in principle and follows the spirit of the act. That it is correct as a legal tenet is strongly urged.

In conclusion, it is reiterated that Kentucky Revised Statutes 342.305 is for the sole purpose of enforcing the awards of the Board where an award in the true sense of the word and within the meaning of the act has been made. This is true and necessary for the Board itself has no means of giving force and effect to its decisions.

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