

SUPREME COURT OF KENTUCKY

George Humfleet Mobile Homes v. Christman

125 S.W.3d 288 (Ky. 2004) · No. 2003-SC-0047-WC · Decided January 22, 2004

SUMMARY

The Supreme Court of Kentucky held that a workers' compensation benefit must be based on an impairment rating assigned under the latest edition of the AMA Guides certified as generally available when proof time closes. Because the administrative law judge relied on a Fourth Edition rating after the Fifth Edition had become generally available, the court affirmed a remand for reconsideration using Fifth Edition impairment ratings. The court also held that reliance on an outdated edition could be reviewed sua sponte and that the administrative law judge must choose among the Fifth Edition impairments in evidence.

CASE DETAILS

COURT	Supreme Court of Kentucky
WRITING FOR THE COURT	All members of the court concurred
JURISDICTION	Kentucky
DECIDED	January 22, 2004
DOCKET	2003-SC-0047-WC
DISPOSITION	affirmed
PROCEDURAL POSTURE	Employer appealed a decision of the Kentucky Court of Appeals affirming the Workers' Compensation Board's remand directing the Administrative Law Judge to calculate the claimant's partial-disability benefit using an impairment rating assigned under the Fifth Edition of the AMA Guides.
STANDARD OF REVIEW	Statutory interpretation is reviewed independently; factual findings and the weighing of conflicting medical evidence remain within the Administrative Law Judge's authority and are reviewed under the applicable workers' compensation standards. The ALJ may choose among competent impairment ratings but may not interpret the AMA Guides.
PRECEDENTIAL VALUE	published Kentucky Supreme Court opinion

PARTIES

George Humfleet Mobile Homes v. Dennis Christman, Donna H. Terry, Administrative Law Judge, Workers' Compensation Board

TOPICS

workers compensation

statutory interpretation

administrative law

standard of review

appellate procedure

PRACTICE AREAS

workers compensation

administrative law

statutory interpretation

QUESTIONS PRESENTED

1. Which edition of the AMA Guides constitutes the "latest edition available" under KRS 342.730(1)(b) for calculating a permanent partial disability benefit?
2. Whether an Administrative Law Judge may rely on an impairment rating assigned under an earlier edition of the AMA Guides when a later edition was certified as generally available before proof time closed.
3. Whether the claimant's failure to object to the physician's use of the Fourth Edition preserved the issue for review.
4. Whether remand was required for the ALJ to reconsider the conflicting medical evidence under the Fifth Edition of the AMA Guides.

HOLDINGS

1. The phrase "latest edition available" in KRS 342.730(1)(b) refers to the latest edition of the AMA Guides certified as generally available as of the date proof time closes.
2. An ALJ may not rely on an impairment rating assigned under an earlier edition of the AMA Guides when calculating an income benefit under KRS 342.730(1)(b), unless the parties stipulate to use the earlier edition.
3. The absence of a contemporaneous objection did not prevent review because an impairment rating assigned under an inapplicable edition is not a proper basis for calculating an income benefit and the resulting statutory nonconformity may be reviewed sua sponte.
4. On remand, the ALJ must reconsider the evidence and choose among Fifth-Edition impairment ratings in evidence, but may not interpret the AMA Guides or be compelled to reach a particular impairment percentage.

KEY QUOTATIONS

"We conclude, therefore, that the phrase "latest edition available" refers to the latest edition that has been certified as being generally available as of the date that proof time closes." (at 294)

"An ALJ is not free to rely upon an impairment that was assigned under an earlier edition." (at 294)

“No particular result is compelled except that the claimant's award must be based on an impairment that was assigned under the Fifth Edition of the Guides.” (at 295)

FACTUAL BACKGROUND

Dennis Christman injured his lower back and neck in a January 26, 2000 ladder fall and later underwent cervical discectomy and fusion. His medical experts assigned differing impairment ratings under the Fourth and Fifth Editions of the AMA Guides, with ratings ranging from 15% to 34% and disputes concerning preexisting conditions and symptom magnification. The ALJ calculated benefits using a 20% impairment, including a cervical rating assigned under the Fourth Edition, even though the Fifth Edition had been certified as generally available before Christman filed his claim.

PROCEDURAL HISTORY

The Administrative Law Judge awarded benefits based on a 20% impairment, relying in part on a physician's cervical impairment rating assigned under the Fourth Edition of the AMA Guides. The Workers' Compensation Board remanded for reconsideration under the Fifth Edition, which had been certified as generally available before the claim was filed; the Court of Appeals affirmed. The Supreme Court of Kentucky affirmed the Court of Appeals, although it adopted a different rationale concerning when the applicable edition must be determined.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The ALJ must reconsider the evidence concerning Christman's impairment under the Fifth Edition of the AMA Guides, choose among the Fifth-Edition impairments in evidence, and base the award on an impairment assigned under that edition. No particular impairment percentage is required.

CASES CITED

- Osborne v. Johnson, 432 S.W.2d 800 (Ky. 1968)
- Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000)
- Stovall v. Great Flame Coal Co., 684 S.W.2d 3 (Ky. App. 1984)
- Whittaker v. Reeder, 30 S.W.3d 138 (Ky. 2000)