



Kentucky Supreme Court: Terminated Employee Entitled to Three-Multiplier Enhancement

Jun 24, 2022

Categories:

[Publications](#)

Authors:

[Rita Beard Robertson](#)

[Joanne Wissman Glass](#)

In *Tractor Supply Company v. Wells*, 2021-CA-0296-WC, 2021 WL 2614063 (Ky. App. June 25, 2021), the Kentucky Supreme Court recently affirmed the decision of the Kentucky Court of Appeals, declining to extend the holding in *Livingood v. Transfreight, LLC*, 467 S.W.3d 249 (Ky. 2015), to Ky. Rev. Stat. 342.730(1)(c)1, otherwise known as the three-multiplier.

The three-multiplier provision is a benefit for permanent partial disability, multiplied by three, that is awarded in Kentucky worker's compensation claims "[i]f, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury..." KRS 342.730(1)(c)1.

In *Tractor Supply Co.*, the administrative law judge (ALJ) found that the injured employee sustained a compensable right shoulder and cervical injury on August 16, 2018, which resulted in a combined 15% permanent impairment rating. Following treatment for the injuries and assignment of light-duty restrictions from her treating physician, the injured employee returned to work for the employer in a light-duty position, earning less than her pre-injury wages. Subsequently, on January 24, 2019, the injured employee was terminated by the employer for allegedly filing false information on a company report. The injured employee claimed that she was entitled to the three-multiplier.

The employer argued that the injured employee should not be entitled to the three-multiplier because she was terminated for misconduct or wrongdoing, applying the holding in *Livingood*. In *Livingood*, the Supreme Court of Kentucky held that it was the legislative intent that an employee should not benefit from her own wrongdoing as applied in KRS 342.730(1)(c)2. In *Tractor Supply Co.*, defendant-employer argued that this holding and legislative intent should also apply to KRS 342.730(1)(c)1.

The holding in *Livingood* addressed a claimant's entitlement to the two-multiplier when the claimant ceased earning the same or greater wages when the reason for the cessation of work at the same or greater wage was not related to the disabling injury under KRS 342.730(1)(c)2.

KRS 342.730(1)(c)2 provides that, "If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. *During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.*" (*emphasis added*).

The Supreme Court in *Tractor Supply Co.* did not extend the *Livingood* holding to the three-multiplier statute nor did the court accept defendant's contention that the legislative intent was to extend this public policy to cases where the three-multiplier is sought to prevent a worker from benefiting for their own wrongdoing. In making this determination, the court in *Tractor Supply Co.* cited that KRS 342.730(1)(c)2, governing application of the two-multiplier, does not include the language, "if due to an injury" as is contained in KRS 342.730(1)(c)1. With respect to the omission of the language "if due to an injury" in section (c)2, the *Livingood* court held that, "[W]here the legislation includes particular language in one section of a statute, but omits it in another section of the same Act, it is generally presumed that the legislature acted intentionally and purposefully in the disparate inclusion or exclusion." *Turner v. Nelson*, 342 S.W.3d 866, 873 (Ky.2011) (*citing Palmer v. Commonwealth*, 3 S.W.3d 763 (Ky.App.1999)). See *Livingood*, at 257. Moreover, the court noted that the three-multiplier benefit is concerned with a finding of a disability, not tied to any condition of employment. Finally, the court found that to deny the three-multiplier benefit to an injured employee would be an "unjust profit" which cannot occur with regard to an injury as applied in KRS 342.730(1)(c)1.

The *Tractor Supply Co.* court also cited to *Toy v. Coca Cola Enterprises*, 274 S.W.3d 433, 434–35 (Ky.2008), to find that the “purpose of KRS 342.730(1)(c)2 is to keep partially disabled workers in the habit of working and earning as much as they are able. It creates an incentive for them to return to work at which they will earn the same or a greater average weekly wage by permitting them to receive a basic benefit in addition to their wage but assuring them of a double benefit if the attempt proves to be unsuccessful.” *Tractor Supply Co.* at *3. By contrast, KRS 342.730(1)(c)(1) deals with an employee’s physical abilities following a compensable injury. If, following a compensable injury, the employee is unable to return to her pre-injury type of work based on her physical capacity, the employee is entitled to a permanent partial disability benefit that will be multiplied three times pursuant to KRS 342.730(1)(c)1. Based on this, the court determined that whether the injured employee continued her employment is irrelevant for purposes of the application of the three-multiplier as the benefit is not tied to continued employment.

Thus, the court in *Tractor Supply Co.* held that the legislative intent regarding an employee’s wrongdoing with a double benefit as applied in *Livingood* should not be extended to the three-multiplier statute where a claimant has been terminated for misconduct. Since the employee retained a permanent impairment due to a work injury, the court in *Tractor Supply Co.* justified an application of the three-multiplier under KRS 342.730(1)(c)1 and unanimously affirmed the lower court’s findings.

What does this ruling mean for employers in Kentucky?

Employers should carefully examine an injured worker’s physical restrictions and return to work capabilities. Attempts to return the employee to their pre-injury position should largely be considered by the employer. Additionally, employers should ensure adequate documentation regarding an injured employee’s discipline and the basis for the disciplinary action. With respect to any termination from employment, employers should document that the basis for the employee’s separation from employment is not related to the employee’s worker’s compensation injury, but also understand that,

under this holding, the employee might also be entitled to a three-multiplier enhancement regardless of their return-to-work status.

Based on this opinion, certain employees may now be entitled to the three-multiplier purely based on their limited physical capacity to return to work or where the employee has been terminated for their own wrongdoing. We will be monitoring to see how the Kentucky legislature responds to the Supreme Court ruling and if they consider potential amendments to KRS 342.730(1)(c)1 that may clarify and limit an injured employee's benefits with respect to the three-multiplier.

For more information, please reach out to FBT's [Labor & Employment](#) practice group.

© 2026 FBT Gibbons LLP. May be considered attorney advertising in some jurisdictions.