

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000172-WC

JAMES HENRY FANNIN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
FILE NO. WC-96-08271

VALLEY DEVELOPMENT
CORPORATION; UNINSURED
EMPLOYERS' FUND; HONORABLE
ROGER D. RIGGS, ADMINISTRATIVE
LAW JUDGE; and WORKERS'
COMPENSATION BOARD

APELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, EMBERTON, and HUDDLESTON, Judges.

DYCHE, JUDGE. James Henry Fannin appeals from the Workers' Compensation Board's affirmance of the Administrative Law Judge's (ALJ) dismissal of his claim for Retraining Incentive Benefits. His claim was dismissed on limitations grounds, with the ALJ finding that Fannin had not carried his burden of establishing that he had filed his petition within five years of his last injurious exposure to the occupational hazard of pneumoconiosis.

We have read the record, and find that appellant's testimony is indefinite, at best. He was, as the ALJ noted, a

poor historian; this is not a criticism of him personally, but in the context of attempting to establish a legal claim to retraining benefits, a poor memory is extremely disadvantageous. As much as we might sympathize with this gentleman, the law makes it his burden to establish the elements of his claim. He has been unable to do this. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leonard J. Stayton
Inez, Kentucky

BRIEF FOR APPELLEE
UNINSURED EMPLOYERS' FUND:

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