

RENDERED: August 27, 1999; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002771-WC

ADENA FUELS, INC.

APPELLANT

v.

PETITION FOR REVIEW
OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
WC-93-09496

BAYLUS CAUDILL;
HON. VONNELL C. TINGLE,
Arbitrator;
HON. DONNA H. TERRY,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, HUDDLESTON, and KNOPF, Judges.

BUCKINGHAM, JUDGE. Adena Fuels (Adena) petitions for review of an opinion rendered by the Workers' Compensation Board (the Board) affirming a decision by an administrative law judge (ALJ) that denied Adena's motion to reopen a retraining incentive

benefits (RIB) claim made by Baylus Caudill (Caudill). We affirm.

In March 1993, Caudill filed an application for RIB. In February 1996, he was awarded RIB with the caveat that he could not directly receive any monetary payments until such time as he ceased employment in the coal mining industry through no fault of his own. In October 1996, an order was entered directing Adena to pay Caudill \$147.90 per week for a period of 208 weeks pursuant to a stipulation that Caudill had left the mining industry through no fault of his own.

In October 1997, Adena filed a motion to reopen Caudill's RIB claim. The basis of this motion was Adena's contention that Caudill was no longer entitled to receive RIB payments due to the fact that he had been found to be totally occupationally disabled due to a back injury in an order entered in April 1997 (and amended in May 1997).¹ Adena's motion to reopen was assigned to an arbitrator, who issued an order denying the motion on the grounds that Adena had not met the criteria for reopening pursuant to KRS 342.125(1) and that Adena was prohibited from filing a motion to reopen less than two years after the RIB award became final. Adena appealed to the Board, which affirmed the ALJ's decision on the ground that "Adena

¹ Adena was represented by different law firms and attorneys on Caudill's RIB claim and his injury claim. The two claims were never consolidated, and, as stated by the Board in its opinion, "[w]e cannot speculate why Adena did not communicate with the two law firms about Caudill's separate claims against the employer."

simply did not meet the criteria for reopening pursuant to KRS 342.125(1).” This petition for review by Adena followed.

Regardless of the other arguments advanced by Adena in its petition for review, we conclude that Adena’s motion to reopen the RIB claim was procedurally barred by the time limits set forth in KRS 342.125(3).² That subsection provides in its entirety as follows:

Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, or within two (2) years of such award or order, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party.

However, that subsection must be read in conjunction with KRS 342.125(8), which provides:

The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

² The parties agree that the case sub judice is governed by the 1996 version of that statute.

The last action taken on Caudill's RIB claim occurred in October 1996, and the motion to reopen was filed in October 1997. Thus, as Caudill's RIB claim was decided prior to December 12, 1996, and the motion to reopen was filed within four years of the award, the motion was timely filed provided it is not barred by KRS 342.125(3). However, that statute clearly provides that no claim may be reopened within two years of an award, "[e]xcept for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award" As Adena did not seek reopening for any of those purposes, its motion was procedurally barred due to its being filed within two years of the RIB award.

As it is unnecessary to address the remaining arguments raised in the briefs, we affirm the Board for the foregoing reason.

ALL CONCUR.

BRIEF FOR APPELLANT:

Philip J. Reverman, Jr.
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BRIEF FOR APPELLEE:

James D. Holliday
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