

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-003031-WC

MARTIN COUNTY COAL CORPORATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-00785

JAMES L. CHARLES; HON. RICHARD L. CAMPBELL,
ADMINISTRATIVE LAW JUDGE; SPECIAL FUND;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: BARBER, DYCHE AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Martin County Coal Corporation has filed a petition for review of an opinion of the Workers' Compensation Board rendered on November 19, 1999, which affirmed an Administrative Law Judge's award of retraining incentive benefits (RIB) to James L. Charles pursuant to KRS¹ 342.732(1)(a) as it existed from April 4, 1994, through December 12, 1996. Having

¹Kentucky Revised Statutes.

concluded that this Court's decision in Whitaker Coal Co. v. Melton,² is dispositive of the issue on appeal, we affirm.

The Board's opinion summarized Charles' work history and his exposure to coal dust as follows:

Charles was born on October 12, 1942[,] and is a resident of Inez, Martin County, Kentucky. He has an eighth grade education and no specialized or vocational training. Relevant work experience consists primarily of mechanical repair and maintenance. He entered the coal mining industry in 1970 with Island Creek Coal Company. It was stipulated between the parties that Charles was exposed to respirable industrial coal and rock dust for approximately 26 years in the mining industry. As a coal miner, he worked primarily as a mechanic in surface coal mining operations. He worked for the petitioner, Martin County[,] from September 1974 until October 1996. His last injurious exposure occurred in October 1996 while in Martin County's employ, prior to the enactment of the statutory changes to KRS Chapter 342, which became effective December 12, 1996.

Charles filed his application for resolution of an occupational disease claim with the Department of Workers' Claims on April 21, 1998.

In the award entered on February 22, 1999, the ALJ stated:

Although petitioner's claim was filed subsequent to December 12, 1996, the date of his last injurious exposure to coal dust was sometime in October [] 1996; therefore, this claim, at least substantively, must be governed by the version of KRS 342.732, particularly subparagraph (1)(a) thereof, in effect from April 4, 1994, through December 11, 1996. The argument to the contrary was rejected by the Workers' Compensation Board through its November 6, 1998, opinion rendered in Whitaker Coal Company v. George

²Ky.App., 18 S.W.3d 361 (2000).

S. Melton et al., Claim Nos. 97-01456 and 97-00371[.]

In affirming the ALJ, the Board stated:

In Melton, supra, as in the instant claim, the claimant filed his RIB claim after the 1996 amendment was effective. However, his last injurious exposure was prior to December 12, 1996. We framed the issue as "whether the 1996 amendment can be applied retroactively to a claim that arose prior to the effective date of the amendment, noting that KRS 446.080(3) states, "No statute shall be construed to be retroactive, unless expressly so declared."

We ultimately decided in Melton, supra:

In our opinion, the 1996 amendment to KRS 342.732(1)(a), unlike the 1994 amendment, affects vested rights of claimants and cannot therefore be applied retrospectively without a specific expression by the Legislature of its intent for the provisions to be so applied.

Melton, as of the date of his last exposure, had a vested right to a RIB award of 208 weeks duration if it were found that he had a radiographic classification of Category 1/0, 1/1, or 1/2 pneumoconiosis without evidence of breathing impairment, so long as he either left the mining industry or undertook an approved training program while still working in the mining industry, either of which would have fulfilled the purpose of the RIB statute. Applying the 1996 version of the statute to his claim would have resulted in no award in that (1) he did not have evidence of the requisite radiographic classification nor degree of breathing impairment and (2) he was not actively enrolled in an approved training program notwithstanding the fact that he had left the mining industry, thereby fulfilling one of the purposes of the RIB statute. Therefore, in our opinion, the ALJ

did not err in declining to apply the 1996 version of KRS 342.732(1)(a) to Melton's claim in that it would have impaired his vested rights to the benefits to which he was entitled on the date of his last exposure.

We believe the 1996 amendments to KRS 342.732(1)(a) does more than limit the payment of benefits to claimants only while they are actively enrolled in and participating in an approved training program. It reduces the payment period of benefits from 208 to 104 weeks and restricts the award of such benefits to claimants having radiographic classifications of Category 1/1 or 1/2 and respiratory impairment as evidenced by spirometric test values of between 55 and 80 percent of predicted normal values. In light of our earlier decision in Melton, supra, and given the fact that in our opinion, the 1996 amendments affect Charles' vested rights to the benefits to which he was entitled by law on his last date of exposure, we find no other alternative but to affirm Charles' award and dismiss Martin County's appeal.

This Court in Melton not only affirmed the Board, but it adopted a significant part of the Board's opinion. In its petition for review, Martin County Coal concedes that Melton is dispositive of its issue on appeal. Accordingly, pursuant to our holding in Melton that "the 1996 amendment to KRS 342.732(1)(a), unlike the 1994 amendment, affects vested rights of claimants and cannot therefore be applied retrospectively without a specific expression by the Legislature of its intent for the provisions to be so applied",³ the opinion of the Board is affirmed.

ALL CONCUR.

³Id. at 364.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, JAMES
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