

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000806-MR

BIG BOTTOM COAL COMPANY, INC.

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 90-33845 & 91-46439

WILLIAM B. BALL, JR;
ROBERT L. WHITAKER, DIRECTOR
OF SPECIAL FUND;
HON. DONNA H. TERRY,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, KNOPF, AND McANULTY, JUDGES.

KNOPF, JUDGE: Big Bottom Coal Company, Inc. (Big Bottom Coal), has petitioned for review of an opinion and order of the Workers' Compensation Board (Board). The Board affirmed an opinion and award on reopening by the Administrative Law Judge (ALJ) based upon a finding that the appellee, William B. Ball, Jr., has a total and permanent occupational disability. Big Bottom Coal argues that the ALJ's finding was not supported by substantial evidence, and that the 1996 amendment to KRS 342.730(4) required

that any benefits awarded should have terminated on the date Ball became eligible for Social Security retirement benefits. Finding no support for either contention, we affirm.

Ball's past work experience consists primarily of employment in underground coal mines and as an assembly line worker. In 1990, Ball suffered an injury to his low back while in the employ of Big Bottom Coal. He has not returned to work since this time. Following this incident, he filed an application for adjustment of injury claim, alleging injury to his low back and a secondary psychological overlay. At the same time, he filed an application seeking benefits due to his coal workers pneumoconiosis.

In 1992, Ball was awarded retraining incentive benefits (RIB) pursuant to KRS 342.732(1)(a). In addition, the ALJ in that proceeding further determined that Ball was suffering from an occupational disability of 40%. In making this ruling, the ALJ determined that Ball probably would be unable to return to work in underground coal mines. However, the ALJ concluded that there were some jobs in the local labor market which Ball could perform within his restrictions.

On February 14, 2000, Ball filed a motion to reopen his claim. After reviewing the testimony and medical evidence, the ALJ rendered an opinion and award in Ball's favor, finding that he was now totally occupationally disabled. On appeal, the Board concluded that this finding was supported by substantial evidence. Furthermore, both the ALJ and the Board found that Ball's award is governed by the law in effect on the date of the

injury. Consequently, the ALJ and the Board each concluded that Ball's award was not affected by the 1996 amendment to KRS 342.730(4). Big Bottom Coal now seeks review by this Court.

Because Ball bore the burden of proof on reopening and he prevailed on the claim before the ALJ, the determinative issue is whether there was substantial evidence to support the award¹. After thoroughly reviewing the evidence and applying the applicable law, the Board affirmed the ALJ on this issue. This court's function in workers' compensation cases is to intervene only if there has been a flagrant misconception of the evidence resulting in gross injustice.² Our review of the evidence does not indicate that the Board committed reversible error when it concluded that the ALJ had relied on evidence of substance in making her determination.

Big Bottom Coal next argues that the current version of KRS 342.730(4) precludes any further award of benefits to Ball. In 1996, the General Assembly amended KRS 342.730(4) to provide that "[a]ll income benefits payable . . . shall terminate as of the date upon which the employee qualifies for, normal old-age Social Security retirement benefits. . . ." Since Ball has become eligible for Social Security retirement benefits, Big Bottom Coal contends that he was not entitled to any additional award on reopening.³

¹ Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

² Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

³ Although Big Bottom Coal raised this issue before the ALJ and the Board, it has yet to
(continued...)

The general rule in workers compensation cases is that the law in effect on the date of the injury controls the rights of the parties with regard to the claim.⁴ As the Board noted, there is no evidence that the legislature intended for the 1996 amendment to KRS 342.730(4) to apply retroactively. Furthermore, our Supreme Court has held that the prior version of KRS 342.730(4), which provided for a tier-down of benefits when a claimant begins to receive social security retirement benefits, did not apply to claims arising from an injury which occurred before that statute's effective date.⁵ Therefore, the ALJ and the Board correctly concluded that the 1996 version of KRS 342.730(4) does not affect the amount of Ball's reopened award.

Accordingly, the opinion and order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE
WILLIAM B. BALL, JR:

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BRIEF FOR APPELLEE
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John Burrell
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³(...continued)
cite any authority supporting its position that KRS 342.730(4) was intended to apply retroactively.

⁴ Meade v. Reedy Coal Co., Ky., 13 S.W.3d 619, 620 (2000).

⁵ Leeco, Inc. v. Crabtree, Ky., 966 S.W.2d 951, 953 (1998); *See also* Spurlin v. Adkins, Ky., 940 S.W.2d 900, 902 (1997).

