

RENDERED: JANUARY 12, 2007; 10:00 A.M.
TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001887-WC

ALLENE HALL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-95-35309

HOSPITALITY RESOURCES, INC.;
SPECIAL FUND; HON. RICHARD M.
JOINER, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI¹ AND JOHNSON,² JUDGES; HUDDLESTON,³ SENIOR
JUDGE.

JOHNSON, JUDGE: Allene Hall has petitioned this Court for
review of a decision of the Workers' Compensation Board entered

¹ Judge Daniel T. Guidugli concurred in this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Judge Rick A. Johnson completed this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

³ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

on August 12, 2005, which reversed a September 17, 2004, opinion and award of the Administrative Law Judge (ALJ) on the basis that Hall's motion to reopen was time-barred pursuant to the four-year limitation on reopening in KRS 342.125(3). Having concluded that the Board did not overlook or misconstrue controlling statutes or precedents,⁴ we affirm.

Hall was injured at work on April 9, 1995. Her workers' compensation claim was settled by agreement based upon a 60% occupational disability. The settlement agreement was approved by an ALJ on July 22, 1997.

On January 16, 2001, Hall filed a motion styled as a "Motion to Reinstate TTD Benefits." In her motion, Hall stated that she had undergone an anterior cervical discectomy at C5-C6 and C6-C7 on December 6, 2000, and that as a result of the surgery she was temporarily totally disabled. She requested that her TTD benefits be reinstated beginning on December 7, 2000, and continue until she reached maximum medical recovery. In support of her motion, Hall attached medical records from Dr. David L. Weinsweig in regard to the surgery as well as a copy of the July 22, 1997, settlement agreement showing her weekly TTD benefits in the amount of \$415.94.

Hospitality responded to Hall's motion on January 25, 2001, and on February 14, 2001, an order was entered by the

⁴ Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992).

Chief Administrative Law Judge(CALJ) reinstating Hall's TTD benefits as requested in the motion. Hall was also ordered to submit status reports on her condition every 30 days and to submit evidence of maximum medical recovery upon receipt of such information. On May 13, 2002, Hospitality filed a motion to discontinue TTD benefits on the basis that Hall had reached maximum medical recovery pursuant to a medical report from Dr. Christopher Stephens. Hall did not file a response to Hospitality's motion, and on June 7, 2002, the CALJ entered an order permitting Hospitality to discontinue TTD benefits.

No further action occurred on this claim until November 7, 2003, at which time Hall filed a "Motion to Reopen." In this motion, Hall stated that she had had the December 2000, surgery and had been paid TTD benefits through June 2002. She further alleged that her disability had increased and she was now totally disabled. Hall attached medical reports from Dr. Stephens⁵ as well as a medical report from Dr. Debra Hall in support of her increase in disability. Additionally, Hall attached an affidavit stating that "no previous motion to reopen has been filed" and attached an executed medical waiver and consent form.

Hospitality responded to Hall's motion to reopen on November 20, 2003, and asserted that the motion was barred by

⁵ This is the same medical report Hospitality submitted in support of its motion to discontinue TTD benefits.

the four-year statute of limitation contained in KRS 342.125(3) and (8). Hospitality argued that because the settlement agreement was approved on July 22, 1997, Hall had until July 22, 2001, in which to file a motion to reopen the claim. Hall filed a response to Hospitality's response on December 2, 2003, which merely stated that Hall had been paid TTD benefits through June 7, 2002, and asked that Hospitality's request for dismissal of the motion to reopen be denied.

On December 30, 2003, the CALJ entered an order denying Hall's motion to reopen on the basis that it was untimely filed. Thereafter, Hall filed a petition for reconsideration asserting that the November 7, 2003, motion to reopen had been erroneously styled, and that Hall had actually sought a reopening of the claim through the motion to reinstate TTD benefits which had been filed on January 16, 2001. As such, Hall contended that the claim had actually been reopened for all purposes permitted by KRS 342.125 by the CALJ's February 14, 2001, order reinstating TTD benefits. Hospitality filed an objection to Hall's petition for reconsideration on January 28, 2004, claiming that the CALJ's December 30, 2003, order denying Hall's motion to reopen was correct and that the motion was time-barred.

In an order entered on February 20, 2004, the CALJ ruled that Hall's November 7, 2003, motion to reopen and the

order entered on December 30, 2003, denying the motion were moot, and that the claim was reopened as of February 14, 2001. Proof time was then set and the claim was assigned to the ALJ for a decision on the merits.

On September 17, 2004, the ALJ entered an opinion and award. The ALJ determined that the CALJ had appropriately decided that the claim was reopened on February 14, 2001, within the four-year period permitted by KRS 342.125(3) and (8). The ALJ then found Hall had experienced a change in her medical condition and that Hall was now permanently totally disabled. Hospitality filed a petition for reconsideration, again raising the issue of whether the motion to reopen was timely filed. In denying the petition, the ALJ stated "[t]he record in this case clearly shows that the [CALJ] has ruled that the claim was reopened on February 14, 2001. This was made well before the [o]pinion and [a]ward entered on September 17, 2004[,] and, if error, is contained in a prior order."

Hospitality then filed an appeal of the ALJ's opinion and award with the Board asserting that it was error to find that Hall's motion to reopen had been timely filed. In a unanimous opinion entered on August 12, 2005, the Board reversed the decision of the ALJ that Hall had timely filed her motion to reopen the claim and remanded the matter for entry of an order

of dismissal. Hall now petitions this Court to reverse the opinion of the Board and to reinstate the award of the ALJ.

Hall argues that when TTD benefits have been ordered paid pending the claimant's reaching maximum medical recovery, and the benefits continue to be paid past the four-year limitation period for reopening a claim under KRS 342.125(3), the claim must be viewed as reopened for all other relief including an increase in the award of disability. We disagree.

KRS 342.125(3) provides 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, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party [emphases added].

Thus, based upon the plain language of the statute, a motion to reopen for the purposes of seeking TTD benefits during the period of the award is excepted from the four-year statute of limitation on reopening for the purposes of seeking an increase in the award of disability. As such, the fact that a claimant has been awarded TTD benefits by an ALJ has no impact on a claim

for an increase in the award of disability. In fact, pursuant to the statute, a claimant may seek TTD benefits more than four years after the original order granting or denying benefits even though a claim for an increase in the award is time-barred.

We also disagree with Hall's assertion that she could not have filed a motion to reopen for an increase in the award of permanent disability prior to the expiration of the four-year period. Nothing in the statute prohibits a claimant from filing such a motion even though maximum medical recovery has not been achieved. To the contrary, such a motion could be filed and held in abeyance pending the claimant's reaching maximum medical recovery, at which time proof could be taken regarding any increase in the permanent disability award.

In Kendrick v. Toyota,⁶ the claimant asserted that the post-award, voluntary payment of TTD benefits extended the four-year limitation period in KRS 342.125(3), and that during the period of payment of TTD benefits a motion to reopen could not be filed because there would be nothing to adjudicate. This Court held that the limitation period contained in KRS 342.125(3) was a specific statute of limitation with the intended purpose of cutting off all reopenings after four years subject to the enumerated exceptions contained in the statute, such as seeking

⁶ 145 S.W.3d 422 (Ky.App. 2004).

TTD benefits during the period of the award.⁷ Thus, the four-year limitation period barred the filing of the motion to reopen for an increase in disability, even though TTD benefits had been paid beyond the four-year period. Accordingly, because Hall did not file her motion to reopen for an increase in the permanent disability award until November 7, 2003, more than four years after the settlement of her claim was approved, it was untimely.

We also agree with the Board that Hall's November 2003, motion to reopen was procedurally independent from her January 2001, motion to reinstate TTD benefits. The January 2001, motion was granted by the CALJ's order entered on February 14, 2001, and the TTD issue was resolved completely by the CALJ's subsequent order entered on June 7, 2002, discontinuing TTD benefits. A written order which adjudicates all the rights of all the parties to an action is a final order and is appealable.⁸ Because the June 7, 2002, order was final and appealable, it terminated the TTD proceeding and the November 2003, motion to reopen was an independent motion which was untimely because it was filed more than four years after the date of the original award.

Based upon the foregoing, the opinion of the Workers' Compensation Board reversing and remanding the opinion and award by the ALJ is affirmed.

⁷ Kendrick, 145 S.W.3d at 424-25.

⁸ Kentucky Rules of Civil Procedure (CR) 54.01; 803 Kentucky Administrative Regulations (KAR) 25:010 § 21(2)(a) and (b).

ALL CONCUR.

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