

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Homer Allison, Deceased,	:	
Petitioner	:	
	:	
v.	:	
	:	
Workers' Compensation Appeal	:	
Board (General Refractories Co.),	:	No. 1829 C.D. 2010
Respondent	:	Submitted: January 14, 2011

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE P. KEVIN BROBSON, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY JUDGE McGINLEY

FILED: February 18, 2011

Betty Allison (Claimant) challenges the order of the Workers' Compensation Appeal Board (Board) which affirmed the decision of the Workers' Compensation Judge's (WCJ) denial of Claimant's fatal basic occupational disease claim petition.

Homer Allison (Decedent) worked for General Refractories Company (Employer). Decedent petitioned for benefits and alleged he was disabled as a result of work-related silicosis as of February 20, 1976. In a decision circulated November 16, 1981, the referee¹ dismissed the petition.

On May 22, 1984, Decedent filed an occupational disease claim petition and alleged total disability as of February 20, 1976, from the occupational

¹ At the time workers' compensation judges were known as referees.

disease of silicosis pursuant to Section 301(i) of the Pennsylvania Occupational Disease Act (Act), 77 P.S. §1401.² The referee granted the petition and awarded Decedent \$125.00 per month during his lifetime.

Decedent died on May 19, 2007. Claimant filed a fatal claim petition seeking compensation for dependents for a death covered by the Act on August 18, 2008. The petition alleged that the death was the result of silicosis. The WCJ dismissed the petition because Section 301(i) of the Act does not cover death claims and because a fatal claim under Section 301(c) of the Act was barred where the decedent died more than four years from his last date of exposure.

Claimant appealed to the Board which affirmed.

Claimant contends that she is not barred from receiving death benefits under Section 301 of the Act where there is a separate and independent cause of action for the right of a widow to compensation under the Act.

Initially, Employer asserts that this Court lacks jurisdiction. Section 427 of the Act, 77 P.S. §1527, provides in pertinent part:

Any party may appeal from any action of the board on matters of law to the court of common pleas of the county in which the employe was last employed prior to his disability or death or of the county in which the adverse party resides or has a permanent place of business or, by agreement of the parties, to the court of

² Act of June 21, 1939, P.L. 566, *as amended*.

common pleas of any other county of this Commonwealth.

Section 933(a)(1)(iv) of the Judicial Code, 42 Pa.C.S. §933(a)(1)(iv), provides:

General rule. – Except as otherwise prescribed by any general rule adopted pursuant to section 503 (relating to reassignment of matters), each court of common pleas shall have jurisdiction of appeals from final orders of government agencies in the following cases:

(1) Appeals from Commonwealth agencies in the following cases:

.....

(iv) Determinations of the Workers' Compensation Appeal Board appealable under the act of June 21, 1939 (P.L. 566, No. 284), known as The Pennsylvania Occupational Disease Act. Except as otherwise prescribed by general rules, the venue of such matters shall be as provided in section 427 of the act.

In Department of Labor and Industry, Bureau of Workers' Compensation v. Workers' Compensation Appeal Board (Surg-est), 742 A.2d 221, 222-223 (Pa. Cmwlth. 1999), this Court concluded that it lacked jurisdiction over an appeal from the Board under Section 301 of the Act:

Indeed, this Court has held that it lacks jurisdiction to adjudicate such an appeal and that the proper Court is the Court of Common Pleas. . . .

Although we conclude that we lack jurisdiction to adjudicate the instant appeal, we are not obligated to dismiss the action; rather the appropriate action is to transfer the matter to the Court which does have jurisdiction to adjudicate the appeal.

Clearly, this Court lacks jurisdiction under either statutes or case law. It appears that Employer operated a facility in Blair County during the time of Decedent's employment. Claimant's lawyer is based in Blair County. Claimant resides in Bedford County. This Court will transfer this matter to the Court of Common Pleas of Blair County. The Court of Common Pleas of Blair County does not possess exclusive jurisdiction, and the parties may agree to move to another county.

BERNARD L. MCGINLEY, Judge

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ORDER

AND NOW, this 18th day of February, 2011, the appeal in the above-captioned matter is hereby transferred, pursuant to Pennsylvania Rule of Appellate Procedure 751(a) and Section 5103 of the Judicial Code, to the Court of Common Pleas of Blair County unless the parties to this action shall notify the Court, within 30 days of the entry of this order, that they have agreed to transfer the appeal to a different court, in which case it shall be transferred to the agreed-upon court. The Chief Clerk shall certify to the Prothonotary of the court to which this action is transferred a photocopy of the docket entries of the above appeal and transmit to him forthwith the record on appeal.

Jurisdiction relinquished.

BERNARD L. MCGINLEY, Judge