

RENDERED: November 21, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-0327-WC

ISLAND CREEK COAL COMPANY

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-94-15311

CHARLES P. WRIGHT; SPECIAL FUND;
HON. MARK WEBSTER, Administrative
Law Judge; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: COMBS, EMBERTON, and MILLER, Judges.

MILLER, JUDGE. Island Creek Coal Company (Island Creek) asks us to review an opinion of the Workers' Compensation Board (board) rendered January 10, 1997. Ky. Rev. Stat. (KRS) 342.290. We affirm.

On April 21, 1992, appellee Charles P. Wright (Wright) suffered a work-related injury to his lower back and neck while in the employ of Island Creek. On April 13, 1994, Wright filed a claim for workers' compensation benefits. In an opinion dated January 26, 1996, the Administrative Law Judge (ALJ) found that Wright was totally disabled by his back and neck ailments. The ALJ found, however, that because Wright did not give notice of his neck

injury, the disability and treatment thereof were not compensable. KRS 342.185. The ALJ further found that the back injury was not of appreciable proportions and therefore was non-work related and non-compensable. Wright's entire claim was dismissed.

Wright appealed to the board from the ALJ's dismissal. The board rendered an opinion on May 17, 1996, affirming the ALJ's opinion in part as to Wright's neck injury and remanding in part for further consideration of Wright's back injury and any prior active disability.

On remand, the ALJ first determined that Wright suffered from no active impairment at the time of his work-related injury. Next, the ALJ concluded that Wright had an occupational disability of 100%, 60% based on his neck impairment, 40% based on his back problems. As a result of his back injury, Wright was awarded lifetime benefits for 40% occupational disability. See Teledyne-Wirz v. Willhite, Ky. App., 710 S.W.2d 858 (1986). Island Creek appealed to the board the issue of whether Wright was entitled to lifetime benefits. The board affirmed the ALJ's opinion. This appeal followed.

Island Creek cites to Thornsbury v. Aero Energy, Ky., 908 S.W.2d 109 (1995), to support its sole argument that this Court should retroactively apply the 1994 amendment to KRS 342.730(1)(a)¹

¹Ky. Rev. Stat. 342.730(1)(a), as amended by the legislature in 1994, reads in relevant part that "[n]onwork-related disability shall not be considered in determining whether the employee is totally disabled for purposes of this subsection."

because it is remedial in nature, and hence limit Wright's award to 425 weeks. It contends that this amendment mandates that an employee must be 100% occupationally disabled by reason of the compensable injury alone to receive lifetime benefits. Thus, it maintains, the ALJ should have considered only Wright's back injury in determining whether he was totally disabled. We disagree.

The Supreme Court specifically rejected this same argument in Spurlin v. Adkins, Ky., 940 S.W.2d 900 (1997). In Spurlin, the Court held that the 1994 amendment to KRS 342.730(1)(a) was substantive rather than remedial or procedural, and thus did not apply to a cause of action which arose before the effective date of the statute. In the instant case, Wright's cause of action arose on April 21, 1992, the date of his back injury. Since the amendment to KRS 342.730(1)(a) became effective on April 4, 1994, it shall not be applied retroactively to Wright.

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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