RENDERED: December 24, 1997; 2:00 p.m.
TO BE PUBLISHED

NO. 97-CA-584-WC

COLONIAL COAL COMPANY APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-95-49893

CLAIR BREEDING; RICHARD H. CAMPBELL, Administrative Law Judge; and WORKERS' COMPENSATION BOARD APPELLEES

OPINION REVERSING AND REMANDING

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BEFORE: GUDGEL, Chief Judge; GUIDUGLI and SCHRODER, Judges.

GUDGEL, CHIEF JUDGE: This matter is before us on a petition for review of an opinion of the Workers' Compensation Board (board), which reversed an opinion and award of an Administrative Law Judge (ALJ) denying appellee Clair Breeding's claim for retraining incentive benefits (RIB). On appeal, appellant employer Colonial Coal Company (Colonial) contends that the board erred by reversing the ALJ's award. We agree. Hence, we reverse and remand.

Breeding retired from coal mining on December 28, 1991, due to a heart attack. Since he was already sixty-five years of

age, he immediately began collecting social security retirement benefits.

On December 18, 1995, Breeding filed a claim for RIB based on evidence that he suffered from Category I pneumoconiosis. However, the ALJ denied Breeding's claim because he left the mining industry prior to filing his claim. See Arch of Kentucky, Inc. v. Halcomb, Ky., 925 S.W.2d 460 (1996). On appeal, the board found that Halcomb prohibits the payment of RIB benefits only to those persons who are permanently and totally disabled when they seek such benefits. Since Breeding voluntarily retired rather than retiring because of total disability arising out of his heart condition, the board concluded that Halcomb did not disqualify Breeding from receiving RIB. This appeal followed.

In Thornsbury v. Aero Energy, Ky., 908 S.W.2d 109 (1995), the supreme court held that the amended version of KRS 342.732(1)(a), which provides for the award of RIB only to persons who no longer work in the mining industry, was remedial legislation designed to encourage coal workers who suffer from Category I pneumoconiosis, but who do not yet suffer from significant respiratory impairment, to seek employment outside the mining industry by denying such employees the right to receive RIB unless they are actually enrolled and participating in retraining or educational programs. Because the amended statute was remedial, the court held that it applies to all claims pending on or after its effective date.

During the 1996 First Extraordinary Session, the legislature further amended KRS 342.732(1)(a) while otherwise comprehensively revising the Workers' Compensation Act. This most recent version of the statute further restricted the payment of RIB by providing that RIB shall be payable only while the affected employee is actively and successfully participating as a full-time student, taking twenty-four (24) or more instructional hours per week, in a bona fide training or educational program. However, in no event are benefits payable if the employee is still employed in the mining industry in the severance and processing of coal. Clearly, under the present version of the statute, Breeding is not entitled to an award of RIB because he has not been, and is not now, enrolled as a full-time student in a bona fide training or educational program.

Since the 1994 amendment to KRS 342.732(1)(a) was found to be remedial legislation, it follows that the 1996 amendment, which further restricts eligibility for RIB, is also remedial in nature. The 1996 amended version of the statute therefore applies to all claims pending on or after its effective date, including Breeding's claim. See Thornsbury, supra. Because Breeding is clearly not entitled to receive RIB pursuant to the 1996 version of the applicable statute, it follows that the board erred by reversing the ALJ's opinion denying him benefits.

For the reasons stated, the board's decision is reversed and remanded for further proceedings consistent with our views.

ALL CONCUR.

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