

# Commonwealth Of Kentucky

## Court Of Appeals

No. 1998-CA-000660-WC

WILLIAM GEORGE WHITT

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-91-004560

WOLF CREEK COLLIERIES;  
SPECIAL FUND;  
HONORABLE LLOYD R. EDENS,  
Administrative Law Judge; and  
WORKER'S COMPENSATION BOARD

APPELLEES

### OPINION

### AFFIRMING

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BEFORE: GUDGEL, CHIEF JUDGE; GARDNER and MILLER, Judges.

MILLER, JUDGE. William George Whitt (Whitt) asks us to review an opinion of the Workers' Compensation Board (board) rendered February 20, 1998. Ky. Rev. Stat. (KRS) 342.290. We affirm.

While employed by co-appellee Wolf Creek Collieries (Wolf Creek), Whitt was diagnosed with category I coal workers' pneumoconiosis. He filed for retraining incentive benefits (RIB) under the Workers' Compensation Act. KRS 342.000 et seq. The claim was settled for a lump sum of \$15,320.00 by an agreement

approved by the administrative law judge (ALJ) on December 20, 1993. Thereafter, Whitt continued to work as a coal miner for Wolf Creek. On December 9, 1996, claiming a progression of the disease, Whitt filed a motion to reopen his previous claim pursuant to KRS 342.125(2)(a). On July 30, 1997, the ALJ dismissed the claim based upon Whitt's failure to demonstrate pulmonary impairment. This appeal followed.

The sole issue on appeal involves the constitutionality of KRS 342.125(2)(a). Whitt argues that said statutory provision violates the constitutional guarantee of equal protection by requiring him to present evidence of respiratory impairment when same is not required of workers who allege category II pneumoconiosis in an initial claim. KRS 342.732(1)(d).

A statutory classification such as that alleged in this case does not violate the concept of equal protection if it has a reasonable basis or rational justification. Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). A statutory classification concerning a matter of social welfare is not unconstitutionally arbitrary if it is rationally related to a legitimate governmental objective. Richardson v. Belcher, 404 U.S. 78, 92 S. Ct. 254, 30 L. Ed. 2d 231 (1971); and Kentucky Association of Chiropractors, Inc. v. Jefferson County Medical Society, Ky., 549 S.W.2d 817 (1977). It is only if the classification rests upon grounds wholly unrelated to a reasonable state objective that the rights to due process and equal protection are violated. Id.

KRS 342.732(1)(a) authorizes the award of RIB upon a finding that an applicant suffers from category 1 coal workers' pneumoconiosis. It requires no evidence of respiratory impairment or occupational disability. The purpose of this section is to encourage category 1 pneumoconiosis workers, who have not sustained an occupational disability, to leave the mining industry before they sustain additional coal dust exposure and become occupationally disabled.

If a worker who has been awarded RIB continues to work in the coal mining industry until he becomes occupationally disabled by contracting category II pneumoconiosis, he must proceed under KRS 342.125(2)(a) for additional benefits. KRS 342.125(2)(a) requires evidence of both a progression of the disease and a development of respiratory impairment before additional benefits are authorized.

A coal miner suffering category II pneumoconiosis, who has never been awarded RIB, must file a workers' compensation benefits claim under KRS 342.732(1)(d), which does not require evidence of respiratory impairment.

It is our opinion that requiring additional evidence from a claimant who was awarded RIB, but who continued to work in the coal mining industry until he was occupationally disabled, furthers the purpose of KRS 342.732(1)(a). Moreover, it is rationally related to the legitimate state objective set forth in Kentucky Harlan Coal Company v. Holmes, Ky., 872 S.W.2d 446 (1994):

[To afford] protection to all of Kentucky industry, (and hence, the employment/jobs of

Kentucky workers) from an economic drain caused by Special Fund assessments for compensation claims directly related to the coal industry, and particularly those due to high incidence of coal workers' pneumoconiosis.

Id. at 455.

In sum, we believe that KRS 342.125(2)(a) is not arbitrary. Requiring additional evidence of a recipient of RIB has a rational justification. Hence, it does not violate the constitutional guarantee of equal protection.

We deem Whitt's remaining argument to be without merit.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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