

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000142-WC

EDWARD BOWEN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
FILE NO. WC-93-13069

SPECIAL FUND; HONORABLE ROGER
D. RIGGS, ADMINISTRATIVE LAW
JUDGE; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, DYCHE, and GARDNER, Judges.

DYCHE, JUDGE. Edward Bowen challenges Kentucky Revised Statute (KRS) 342.125(2)(a) as being an unconstitutional violation of his right to equal protection of the laws under the Fourteenth Amendment to the United States Constitution. Finding no constitutional infirmity in the statute, we affirm the opinion of the Workers' Compensation Board.

Bowen is a "career coal miner." Following his diagnosis with category I coal workers' pneumoconiosis, he filed an application for retraining incentive benefits (KRS

342.732[1][a]); that claim was settled with his employer for a lump sum of \$15,000.

He subsequently left the mining industry and filed the within action seeking to reopen his claim, and establish his entitlement to income benefits under other subsections of KRS 342.732. Following the taking of proof and briefing by the parties, the Administrative Law Judge found that appellant had not suffered a progression of the disease, as required by the reopening statute, and dismissed the claim. This appeal followed an affirmance by the Workers' Compensation Board.

"The constitutionality of a statute will be upheld if its classification is not arbitrary, or if it is founded upon any substantial distinction suggesting the necessity or propriety of such legislation." Kentucky Harlan Coal Company v. Holmes, Ky., 872 S.W.2d 446, 455 (1994). In this particular case, appellant challenges the part of the statute which requires those who have already received some sort of award (in this case, retraining incentive benefits, which were apparently not sufficient incentive for appellant to retrain with the award for that purpose) to meet a slightly higher standard of proof to receive an award of income benefits than those who are seeking an initial award of income benefits.

This provision is actually a benefit to such claimants, by relieving them of the bar of *res judicata*. Without this section, workers such as appellant might be forever barred from relitigating any portion of the award. This being said, we

recognize that the increased burden of proof might be viewed by some as unfair to the claimant as well as unconstitutional.

The provisions apply to all workers. The purpose of the section, encouraging workers afflicted with early-stage pneumoconiosis to leave the industry and retrain for other jobs, is certainly a legitimate goal for the General Assembly to seek. The goal is to prevent those workers from continuing in the mining industry until they develop more severe manifestations of the disease, and require more substantial awards for disability, some of which comes from the state treasury.

We find the purposes of the statute to be legitimate ends for the legislature to seek. The means are not discriminatory, and are rationally related to the ends sought. The statute passes constitutional muster. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Jeffery Hinkle
Inez, Kentucky

BRIEF FOR APPELLEE
SPECIAL FUND:

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