

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000141-WC

CHARLES COPELAND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 96-004462-WC

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

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: GUIDUGLI, JOHNSON, and KNOPF, Judges.

KNOPF, JUDGE: The appellant, Charles Copeland, appeals a decision by the Workers' Compensation Board (Board) affirming an opinion and order by the Administrative Law Judge (ALJ), denying his motion to reopen a claim for retraining incentive benefits (RIB). Copeland administratively preserved his challenge to the constitutionality of KRS 342.125(2)(a) in the proceedings below. This Court finds that the statute was constitutionally applied to Copeland, and hence, affirm the Board.

Copeland is a fifty-one (51) year old coal miner who worked in the coal industry for seventeen (17) years. He last

worked for Wolf Creek Collieries on September 30, 1995. He filed a claim and received an award of RIB in 1991. Following additional exposure, he filed a motion to reopen in 1996. The reopening was only against the Special Fund because Wolf Creek had settled its liability prior to the filing of the motion.

Copeland presented three (3) issues to the ALJ: (1) whether KRS 342.125 is constitutional; (2) whether there has been a progression of the disease on reopening; and (3) whether Copeland would be entitled to any benefits under KRS 342.732(1). The ALJ properly declined to address the constitutionality of the statute, citing lack of jurisdiction to consider the issue. Blue Diamond Coal Co. v. Cornett, Ky., 189 S.W.2d 983 (1945).

Regarding the progression of the disease, the ALJ first found that Copeland failed to show a progression of his previously diagnosed occupational disease. The ALJ further held that Copeland failed to prove the development of respiratory impairment due to pneumoconiosis. The Board affirmed the ALJ's factual findings, and likewise declined to address the constitutional issue. Copeland now appeals, raising only the constitutional issue.

Copeland argues that KRS 342.125(2)(a)¹ violates the equal protection clauses of the United States Constitution and the Kentucky Constitution because the statute requires a higher

¹ Copeland is challenging the constitutionality of the 1994 version of KRS 342.125(2)(a). The substantive provisions of the subsection have been modified and are now located at KRS 342.125(5)(a).

level of proof upon reopening than is required on an initial claim for benefits. First, we note the ALJ's finding that Copeland would not be entitled to any benefits under KRS 324.732(1). Copeland has not challenged this finding on appeal. As a result, he has not established that the statutory scheme subjected him to an arbitrary distinction.

Furthermore, we find Copeland's constitutional argument to be without merit. The General Assembly may properly classify in its legislation, provided the "objective is legitimate and the classification is rationally related to that objective." Kentucky Harlan Coal Co. v. Holmes, Ky., 872 S.W.2d 446 (1994). KRS 342.125(2)(a) requires a prima facie showing of both a progression of the disease and either the development or the progression of a respiratory impairment in order for a worker to prevail on a motion to reopen a RIB award. Campbell v. Universal Mines, Ky., 963 S.W.2d 623, 625 (1998). There is nothing arbitrary in a statutory scheme which requires workers who have previously received an award to prove that their pulmonary impairment has increased.

The legislature's purpose for providing RIB is to encourage coal workers who have contracted pneumoconiosis to leave the mining industry before they become disabled. Kem Coal Co. v. Baker, Ky. App., 918 S.W.2d 236, 238 (1996). By contrast, when a claimant seeks an increase in compensation because of a change in occupational disability in a reopening proceeding, he must prove that a significant change in occupational disability

has occurred, and that the disability is the result of the injury or disease which was the subject of the original award. Peabody Coal Co. v. Gossett, Ky., 819 S.W.2d 33, 36 (1991). To eliminate the distinction between an initial claim and a reopening would destroy finality of prior awards. Therefore, this Court concludes that the statutory scheme set out in KRS 342.125(2)(a) is rationally related to a legitimate state interest.

Accordingly, the opinion and order by the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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