

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000888-WC

REEDY COAL COMPANY, as insured
by OLD REPUBLIC INSURANCE COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-97-001155, WC-94-26462,
WC-94-07134, AND WC-92-21450

DANNIE MEADE; REEDY COAL COMPANY,
as insured through LIBERTY MUTUAL
INSURANCE COMPANY; ROBERT L.
WHITTAKER, DIRECTOR OF SPECIAL FUND,
DONALD G. SMITH, ADMINISTRATIVE LAW JUDGE,
and WORKERS' COMPENSATION BOARD

APPELLEES

AND NO. 1998-CA-000970-WC

REEDY COAL COMPANY, as insured
by Liberty Mutual Insurance Company

CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-97-001155, WC-94-26462,
WC-94-07134, AND WC-92-21450

DANNIE MEADE; REEDY COAL COMPANY,
as insured by Old Republic Insurance;
ROBERT L. WHITTAKER, DIRECTOR OF SPECIAL FUND,
DONALD G. SMITH, ADMINISTRATIVE LAW JUDGE,
and WORKERS' COMPENSATION BOARD

CROSS-APPELLEES

OPINION
REVERSING

** ** * * * * *

BEFORE: BUCKINGHAM, MCANULTY AND MILLER, JUDGES.

MCANULTY, JUDGE: In this appeal we are asked to decide whether
the 1996 amendments to KRS 342.125, prohibiting the reopening of
settlements and awards until two years after entry, apply to the

settlements made and awards rendered before the effective date of the statute. The Workers' Compensation Board ("Board") answered this question in the negative. We disagree and therefore reverse the Board's decision reversing the order of the Administrative Law Judge ("ALJ").

Appellee Dannie Meade ("Meade") was an employee of Reedy Coal Company ("Reedy Coal"), as insured by Old Republic Insurance Company ("Old Republic"), when he sustained an injury to his left knee in February of 1992. Still employed by Reedy Coal, which was then insured by Liberty Mutual Insurance Company ("Liberty Mutual"), Meade injured his right knee in February of 1994. Meade filed a worker's compensation claim and was found to be 50 percent occupationally disabled by an opinion and award entered December 21, 1995.

Meade filed a motion to reopen in January of 1997. The matter was assigned to an arbitrator who eventually ruled that the reopening was prohibited by the December 1996 amendments to KRS 342.125. Meade appealed to an Administrative Law Judge who agreed that the time limitations in KRS 342.125 barred the reopening. Meade then appealed to the Workers' Compensation Board who reversed the decision of the ALJ.

Reedy Coal, as insured by Old Republic has filed a petition for review of the Board's decision and Reedy Coal, as insured by Liberty Mutual has filed a cross-petition for review.

KRS 342.125(3) and (8), as amended effective December 12, 1996, state:

(3) Except for reopening solely for determination of the compensability of

medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, or within two (2) years of such award or order, and no party may file a motion to reopen within two (2) years of any previous motion to reopen by the same party.

(8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well.

In finding that the 1996 amendments should not apply retroactively, the Board relied on the particular language of the statute. Initially, the Board noted the use of the singular "time limitation" rather than "time limitations." It concluded that it must presume that the legislature intended to make this distinction, citing Grieb v. National Bond and Insurance Co., 264 Ky. 289, 94 S.W.2d 612 (1936). Next, the Board observed that subsection (8) subsequently refers to claims which were decided prior to the December 1996 amendments and then discusses only the four year limitation period. From this statutory construction, the Board surmised that the singular time limitation referred to the four year limitation period and not the two year period. Moreover, the Board opined that its interpretation of the statute

addressed practical considerations of parties who settled claims prior to December 12, 1996.

We disagree with the Board's analysis of the statutory language. Whereas the Board found that KRS 342.125(3) establishes two separate time limitations on filing reopenings, we read this section as creating a specific window of opportunity to file a motion to reopen. First, the legislature states that claims may not be reopened four years after the award or order is entered. Next, the legislature provides that a claim may not be reopened within two years of the award or order. In essence, the legislature has declared that a claim may be reopened anytime from two years after the date of the award until four years after the date of the award. In referring to only one time limitation, in subsection (8) the legislature is referring to this window of opportunity it has created and not only, as the Board concluded, to the four year limitation.

Our decision is further strengthened by KRS 342.0015 in which the General Assembly specifically identified KRS 342.125(8) as being remedial. While it is true that KRS 446.080(3) mandates that "no statute shall be construed to be retroactive, unless expressly declared", the Supreme Court has held that remedial statutes are to be applied retroactively. Peabody Coal Co. v. Gossett, Ky., 819 S.W.2d 33 (1991); Thornsbury v. Aero Energy, Ky., 908 S.W.2d 109 (1995).

For the foregoing reasons we conclude that the Board erred in determining that the 1996 amendments to KRS 342.125

should not be applied retroactively and we therefore reverse the decision to that effect.

ALL CONCUR.

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