

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001013-WC

BOBBY R. ROBINSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-98-00149, WC-98-00277
and WC-98-00279

ISLAND CREEK COAL COMPANY;
SPECIAL FUND; RONALD W. MAY,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: HUDDLESTON, JOHNSON and SCHRODER, Judges.

HUDDLESTON, Judge: The Workers' Compensation Board affirmed an administrative law judge's order dismissing Bobby Robinson's disability benefit claims against Island Creek Coal Company and the Special Fund. Robinson alleged impairment resulting from repetitive trauma, hearing loss and pneumoconiosis. The ALJ determined that Kentucky Revised Statute 342.316(3)(a)¹ barred, as

¹ KRS 342.316(3)(a), now KRS 342.316(4)(a), states:

(continued...)

untimely, the hearing loss² and pneumoconiosis claims.³ The ALJ further decided that Robinson's employment was not principally localized in Kentucky and, thus, dismissed his repetitive trauma claim⁴ as Kentucky does not provide Robinson with extraterritorial workers' compensation coverage. The appropriateness of the Board's decision affirming this dismissal is the single issue presented for our consideration inasmuch as Robinson has not appealed the dismissal of his hearing loss and pneumoconiosis claims.

In Western Baptist Hospital v. Kelly⁵ the Supreme Court delineated the applicable standard of review this Court must apply to decisions of the Workers' Compensation Board:

¹(...continued)

The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to appraise him that he has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or his insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease or asbestos-related disease, a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

² No. WC-98-00277.

³ No. WC-98-00279.

⁴ No. WC-98-00149.

⁵ Ky., 827 S.W.2d 685 (1992).

The function of further review of the WCB in the Court of Appeals is to correct the Board only where the . . . Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.⁶

Robinson was employed by Island Creek for approximately 23 years. He worked for some 17 to 18 years in Kentucky until transferring to West Virginia and then, in 1992, to Virginia. Robinson left Island Creek's employment in August 1996. Robinson remained domiciled in Kentucky during his entire employment with Island Creek. Robinson alleges that he suffered work-related repetitive trauma to his back, shoulders, knees and ankles, and he argues these injuries occurred while his employment was principally localized in Kentucky.

KRS 342.670 provides the framework for determining whether an employee who is injured outside of Kentucky is entitled to Kentucky workers' compensation benefits. KRS 342.670 (1) states in part:

If an employee, while working outside the territorial limits of this state, suffers an injury on account of which he, or in the event of his death, his dependents, would have been entitled to the benefits provided by this chapter had that injury occurred within this state, that employee, or in the event of his death resulting from

⁶ Id. at 687.

that injury, his dependents, shall be entitled to the benefits provided by this chapter [Workers' Compensation Act], if at the time of the injury: (a) His employment is principally localized in this state

According to KRS 342.670(5)(d):

A person's employment is principally localized in this or another state when: 1. His employer has a place of business in this or the other state and he regularly works at or from that place of business, or 2. If subparagraph 1. foregoing is not applicable, he is domiciled and spends a substantial part of his working time in the service of his employer in this or the other state

In Amax Coal Co. v. Smith,⁷ this Court applied KRS 342.670 to facts analogous to this case and noted that "[f]or Kentucky's extraterritorial coverage law to apply to an injury, the injury must occur outside of Kentucky to a Kentucky resident who principally works in Kentucky at the time of the 'injury'". We observed that "[a claimant's] employment is principally localized where he spends a substantial part of his working time in the service of his employer in this state."⁸

Robinson argues that because he spent a substantial majority of his time working for Island Creek in Kentucky, his employment was principally localized in Kentucky. This Court

⁷ Ky. App., 748 S.W.2d 158 (1988).

⁸ Id. at 160 (emphasis original).

rejected this argument in Amax, finding such "reasoning to be faulty."⁹ We noted that "the language of the statutes is expressed in the present tense."¹⁰ Because the language is in the present tense, we stated that "[w]e are concerned with where he [the claimant] was at the time of the injury."¹¹ We also observed that while the exposure to coal dust may have caused the claimant's pneumoconiosis and "he sustained many 'injuries' while breathing Kentucky coal dust, and coal dust in other states," his last "injurious exposures" occurred in Indiana.¹² Like the claimant in Amax, Robinson spent "his last working years"¹³ outside of Kentucky and, thus, his last injurious exposures to repetitive trauma occurred outside of this state. Our decision in Amax is controlling and, thus, Robinson is not entitled to Kentucky workers' compensation benefits as his employment was not principally localized in this state. We decline Robinson's invitation to overrule Amax.

Robinson believes that his claim for repetitive trauma is distinguishable from a pneumoconiosis claim in that the former "takes place over a long period of time and cannot be said to have occurred on a specific day." Even if we postulate, as Robinson inferentially suggests, that pneumoconiosis does not occur over a long period of time, nothing in the record suggests he suffered his

⁹ Id.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id.

last injurious exposures to repetitive trauma in Kentucky. Additionally, if Robinson's last injurious exposures occurred in Kentucky, then KRS 342.670 is not applicable because the statute applies to injuries that occur outside the state.

We affirm the Board's decision upholding the ALJ's dismissal of Robinson's workers' compensation repetitive trauma claim as the Board has not overlooked or misconstrued KRS 342.670 and Amax, nor committed an error in assessing the evidence.

ALL CONCUR.

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