

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001808-WC

ALBERT BLACKMON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-01169

HALL CONTRACTING; SHEILA LOWTHER, Chief
Administrative Law Judge; RONALD JOHNSON,
Arbitrator; SPECIAL FUND; ALBERT
CHANDLER III, Attorney General; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: EMBERTON, JOHNSON AND TACKETT, JUDGES.

EMBERTON, JUDGE: Two issues are presented in this appeal from the denial of appellant's motion to reopen his workers' compensation claim: (1) whether the December 12, 1996, amendments to Kentucky Revised Statutes (KRS) 342.125, prohibiting the reopening of an award within two years of its entry, apply to awards entered after the effective date of the amendments for injuries which were incurred prior to that date; and (2) whether the December 12, 1996, amendments to KRS 342.125 are unconstitutional. In

Meade v. Reedy Coal Company,¹ the Kentucky Supreme Court resolved the first of appellant's contentions, concluding that the two-year waiting period contained in KRS 342.125(3), governs the reopening of claims entered on or after that date. Although the opinion does not directly address the question of the constitutionality of the amendments, the court's analysis of the application of the amendments is helpful in resolving that issue as well. Accordingly, we affirm the decision of the Workers' Compensation Board.

Appellant Blackmon sustained a work-related back injury on October 14, 1996, resulting in a February 23, 1998, award of permanent partial disability benefits. He subsequently attempted to reopen his claim by filing the motion which is the subject of this appeal on October 3, 1998. In denying his motion, the Chief Administrative Law Judge concluded that the amendment was remedial in nature and that the two-year waiting period did not impair any vested right as it relates solely to the timing of reopening. The Board agreed and affirmed the denial of appellant's motion to reopen his claim.

In this appeal, as he did before the Board, appellant argues that because his injury predated the amendments to the reopening statute, the law in effect at the time of injury controls, thus giving him a vested right in the ability to reopen his claim at any time. A reading of the analysis offered by the Supreme Court in Meade, however, clearly dispels that contention:

¹ Ky., 13 S.W.3d 619 (rendered March 23, 2000, and not yet final).

Under the law in effect on the date of injury and on the date of claimant's award, a reopening was permitted "at any time" upon proof of one of the permissible grounds. As noted by the Board, parties who settled claims prior to December 12, 1996, the ALJ's who decided claims before that date, had no opportunity to anticipate that a two-year waiting period might be imposed on the ability to reopen the resulting award and to provide accordingly. Keeping in mind that even remedial statutes should be given retroactive effect only to the extent that the intent of the legislature in that regard is clear, we are convinced that only the four-year limitation which is explicitly stated in KRS 342.125(8) [setting a four-year cap on reopening] should be applied retroactively to claims which arose and were decided prior to December 12, 1996.

We conclude, therefore, that the exceptions to reopening established in KRS 342.125(1) and (3) permit the reopening of any claim, at any time, upon proof of the requisite facts. The two-year waiting periods and the four-year limitation contained in KRS 342.125(e) govern the reopening of claims in which an award is entered on or after December 12, 1996.² (Emphasis added).

Thus, in order to escape application of the two-year waiting period, the award must have been entered prior to the effective date of the statute. Since appellant's award was entered after that date, the Board correctly denied his claim as violative of the two-year waiting period set out in KRS 342.125(3).

Turning our attention to appellant's second argument, we find no constitutional impediment created by the amendments. As a preliminary matter, appellees contend that the question of the constitutionality of KRS 342.125 has not been preserved for

² 13 S.W.3d at 620-21.

our review because it was not presented to the Board for consideration. Although we are cognizant of the general rule requiring exhaustion of administrative remedies, we are nevertheless of the opinion that because the Board has no authority to declare statutes unconstitutional, appellant's failure to afford that body an opportunity to pass on the question cannot be considered fatal to review in the court system.³ Furthermore, the court in Swatzell v. Commonwealth, Natural Resources and Environmental Protection Cabinet,⁴ recognized that there are limited exceptions to rules requiring exhaustion of administrative remedies prior to invoking judicial relief. We are convinced that this is one of the exceptions to that rule, because requesting a ruling by the Board as to the constitutionality of a statute would have been a futile gesture.

However, we find no merit in appellant's contentions that the amendments somehow impair a claimant's right to opt out of coverage under the Workers' Compensation Act or that they constitute special legislation by treating employers and employees differently for purposes of reopening. First, by merely prescribing a time frame for reopening, the amendments to the statutes do not deprive appellant of any vested right because, as noted in Meade, he had an opportunity to anticipate the two-year waiting period and provide accordingly as his claim was resolved after the amendment became effective.

³ See Blue Diamond Coal Company v. Cornett, 300 Ky. 647. 189 S.W.2d 963 (1945).

⁴ Ky., 962 S.W.2d 666 (1988).

Second, there is no evidence that disparate treatment of employers and claimants in terms of reopening constitutes special legislation or poses an equal protection problem. In Earthgrains v. Cranz,⁵ the court rejected an equal protection challenge to KRS 342.320(2)(c) which imposes attorney's fees upon an employer who does not prevail on appeal. The Cranz court noted that in the area of workers' compensation, "the General Assembly may properly classify in its legislation, provided the 'objective is legitimate and the classification is rationally related to that objective.'"⁶

KRS 342.125(3) provides:

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 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 any previous motion to reopen by the same party. (Emphasis added).

We find absolutely nothing in this enactment that could be labeled special legislation. The statutory exceptions to the waiting period and cap on filing motions for reopening are carefully limited in scope and are rationally related to the remedial purpose of the legislation.⁷ The statute appears to recognize the difference in the situation of a claimant who must wait two years before seeking increased benefits because his

⁵ Ky. App., 999 S.W.2d 218 (1999).

⁶ 999 S.W.2d at 222.

⁷ See KRS 342.0015.

condition has worsened and an employer having to wait two years to reopen when an employee returns to work. The two situations are significantly different in terms of proof required and the demands each would have upon the system. These differences alone would justify disparate treatment in terms of the timing on the motion. Thus, we perceive no constitutional impediment because a legitimate objective and a rational basis justifies the legislation.

The decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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