

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002752-WC

JERICOL MINING, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-93-33242

DELMAS CORNETT; WELLMONT HOLSTON;
SPECIAL FUND; HON. SHEILA C. LOWTHER,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSTATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: EMBERTON, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is a petition for review from a judgment of the Workers' Compensation Board (the Board) refusing to allow the employer to reopen to contest untimely filed medical bills because the motion to reopen was not filed within 30 days as required by KRS 342.020(1), 803 KAR 25:012, Section 1(6)(a) and 803 KAR 25:096, Section 8. From our review of the record and the law, we deem that the Board correctly ruled that the employer waived its right to contest the medical bills when it did not move to reopen within 30 days. Thus, we affirm.

On March 28, 1994, Delmas Cornett was awarded by the Department of Workers Claims a 45% occupational disability, with appellant/employer, Jericol Mining, Inc. ("Jericol"), being responsible for 50% of the award. Jericol was also ordered to pay for the cure and relief of the injury, including such medical, surgical, and hospital treatment as may be reasonably necessary. On November 16, 1998, Willis Corroon Administrative Services (Willis Corroon), the payment obligor of Jericol, received from Wellmont Health System/Holston Valley Medical Center medical statements for charges and services rendered to Cornett on March 10, 1998. Willis Corroon completed a medical fee dispute affidavit on December 1, 1998, and a notice of fee dispute was served on January 8, 1999 in which Corroon alleged that the medical expenses were submitted in an untimely fashion in violation of KRS 342.020(1). On January 20, 1999, Jericol moved to reopen the claim to join the medical service provider as a party. On March 5, 1999, the Arbitrator overruled Jericol's motion to reopen to contest medical expenses on grounds that Jericol did not move to reopen within 30 days of receipt of the medical bill as required by 803 KAR 25:012, Section 1(6)(a). Jericol then requested a hearing before an Administrative Law Judge (ALJ) on April 2, 1999. On June 23, 1999, the ALJ sustained Jericol's motion and allowed Jericol to reopen, adjudging that if the employee's time requirement in KRS 342.020 is not subject to strict enforcement, then the employer's time requirement in that statute was likewise not subject to strict enforcement. Cornett then appealed to the Board which reversed

the ALJ on October 22, 1999, holding that Jericol's untimely filing of the motion to reopen precluded it from contesting the untimeliness of the submission of the medical expenses. From this judgment, Jericol now appeals.

KRS 342.020(1) provides in pertinent part:

The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for payment may be tolled. The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered.

803 KAR 25:096, Section 6, provides that "If the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable."

803 KAR 25:096, Section 8(1) states:

Following resolution of a claim by an opinion or order of an arbitrator or administrative law judge, including an order approving settlement of a disputed claim, the medical payment obligor shall tender payment or file a medical fee dispute with an appropriate motion to reopen the claim, within thirty (30) days following receipt of a completed statement for services.

Section 8(2) of 803 KAR 25:096 goes on to list those circumstances in which the 30-day period can be tolled. It is not disputed that the facts of the case herein do not fall under any of those circumstances which would allow for the tolling of

the 30-day period. Finally, 803 KAR 25:012, Section 1(6)(a), provides that "Unless utilization review has been initiated, the motion to reopen and Form 112 shall be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096."

Jericol maintains that the "shall" language in KRS 342.020(1) and 803 KAR 25:096, Section 6, render the requirement that the medical service provider submit its statement for services within 45 days mandatory. Since the provider did not submit its statement within the 45-day period, Jericol argues there exists no bill or statement. We view this argument as specious. A medical bill was submitted, albeit late under the statute. Under the employer's logic, the same argument could be made as to its untimely motion to reopen.

In Phillip Morris, Inc. v. Poynter, Ky. App., 786 S.W.2d 124 (1990), which did not involve an untimely submitted medical bill, we held that KRS 342.020(1) mandated that an employer file a motion to reopen within 30 days after the medical bill is received. Similarly, in Mitee Enterprises v. Yates, Ky., 865 S.W.2d 654 (1993), which likewise did not involve an untimely submitted medical statement, the employer moved to reopen to contest the reasonableness of certain medical bills more than 30 days after those bills were received by the employer. The Court held that, under KRS 342.020(1), the employer has the burden of proving that the contested medical bills were received no more than 30 days before the motion to reopen was filed. Id. at 656. Hence, the Court not only strictly enforced the 30-day limitation

period, it placed the burden of proving compliance with the statute on the employer.

The function of the Court of Appeals' review of a decision of the Workers' Compensation Board 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." Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992). The evidence is not in dispute in this case, and we believe the Board correctly interpreted KRS 342.020(1) and 803 KAR 25:012, Section 1(6)(a), as mandating that, regardless of the reason for contesting the medical bill (its untimely submission, reasonableness, or necessity), the employer must move to reopen the claim within 30 days of receipt of the bill. Since Jericol did not move to reopen within that 30 days, the Board correctly adjudged that Jericol waived its right to contest the bill.

For the reasons stated above, the judgment of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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CORNETT:

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