RENDERED: DECEMBER 7, 2001; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002162-MR

OLD REPUBLIC INSURANCE COMPANY — APPELLANT

v.

APPEAL FROM MARION CIRCUIT COURT
HONORABLE ALLAN RAY BERTRAM, JUDGE
ACTION NO. 00-CI-00005

ORVIS RIDNOUR — APPELLEE

OPINION
AFFIRMING
** ** ** ** **

BEFORE: KNOPF, SCHRODER, AND TACKETT, JUDGES.

KNOPF, JUDGE: On June 4, 1997, an administrative law judge awarded Orvis Ridnour, the appellee, workers' compensation disability benefits for an injury he had suffered in December 1994. The award provided for 520 weeks of benefits to be apportioned evenly between Ridnour's employer, the Hi View Construction Company, and the Special Fund. The employer was to pay benefits during the first 260 weeks, and the Special Fund thereafter. The award noted that when Ridnour turned sixty-five (in October 2000, shortly after the employer's liability was due to be satisfied) his benefits would become subject to the so called tier-down reductions then provided for in KRS 342.730(4).

In August 1998, the employer's insurer, Old Republic Insurance Company, informed Ridnour by letter that, in light of a recent opinion by our Supreme Court, Leeco, Inc. v. Crabtree[1], it had determined that it was entitled to share in the tier-down reduction of Ridnour's benefits and had recalculated its liability under Ridnour's award accordingly. It would pay a reduced benefit until October 1999, it said, at which point its payments would cease. Ridnour could seek the difference, the letter implied, from the Special Fund.

In January 2000, after Old Republic had indeed stopped making benefit payments to Ridnour, he brought suit in the Marion Circuit Court to enforce the June 1997 award. The court ordered Old Republic to pay the benefits the award originally contemplated and to pay as well Ridnour's costs in the enforcement action including his attorney fee. This is the order from which Old Republic has appealed. It contends that an enforcement action was not the proper forum to settle this dispute, that its actions were justified under Leeco, Inc. v. Crabtree, and that the trial court should not have ordered it to pay Ridnour's costs. Convinced by none of Old Republic's arguments, we affirm.

Ridnour's suit asked the trial court to enforce his worker's compensation award according to its terms. KRS 342.305 confers jurisdiction on that court to hear such suits. Old Republic contends, however, that the award was ambiguous with respect to the tier-down effect and that the Workers'

[1]Ky., 966 S.W.2d 951 (1998).

Compensation Board was the proper body to resolve the ambiguity. In fact, the award was not ambiguous. At the time of the award, the rule was that the tier down took effect upon the claimant's sixty-fifth birthday and benefitted whichever defendant happened then to be liable, in this case the Special Fund.[2] With Leeco, Inc. v. Crabtree, our Supreme Court changed that rule, but there is no indication in Leeco that, contrary to the general rule of *res judicata*, the change would affect awards, such as Ridnour's, that had already become final.[3] To argue for such an exceptional application of Leeco, Old Republic might well have been advised to petition the Workers' Compensation Board, pursuant to KRS 342.125, but Ridnour had no such duty.

Nor need he have added the Special Fund as a party. Although it is true that the Fund's liability could not have been increased in the manner Old Republic envisioned without its having been made a party in an appropriate proceeding,[4] it was Old Republic's duty as the proponent of the increase to initiate such a proceeding. There was no need for Ridnour to make the Fund a party to an action that did not seek, not even indirectly, to affect it.[5]

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[2]Southern v. R. B. Coal Company, Inc., Ky. App., 923 S.W.2d 902 (1996).

[3]Keefe v. OK Precision Tool & Die Company, Ky. App., 566 S.W.2d 804, 807 (1978) ("The award of the Board once final may only be reopened upon a showing that the Board misapplied the law as it was when the award was made. Subsequent interpretations of the law will not warrant the reopening of awards made final under the doctrine of res judicata.").

[4]Middlesboro Tanning Company, Inc. v. Eldridge, Ky. App., 925 S.W.2d 464 (1996).

[5]Whittaker v. Pollard, Ky., 25 S.W.3d 466 (2000).

Finally, Old Republic complains that it should not have been ordered to pay Ridnour's costs. KRS 342.310 provides that costs may be imposed on any party who brings, prosecutes, or defends a proceeding "without reasonable ground." We agree with the circuit court that such an award against Old Republic was appropriate. As noted, Old Republic's purported reliance upon Leeco Inc. v. Crabtree flies in the face of well established rules of finality. And even if Old Republic's reliance upon Leeco was not, by itself, completely unreasonable, its manner of asserting that reliance was. By simply ceasing to make its ordered payments, Old Republic in effect appointed itself judge in its own case. Its unilateral declaration that Ridnour's award would be modified comports with neither the letter[6] nor the spirit[7] of the Workers' Compensation Act. For the reasons stated, we affirm the May 2, 2000, order of the Marion Circuit Court.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Philip J. Reverman, Jr. Louisville, Kentucky	James L. Avritt, Sr. Lebanon, Kentucky

[6]KRS 342.125(4) ("No employer shall suspend benefits during pendency of any reopening procedure except upon order of the administrative law judge.").

[7]Uninsured Employers' Fund v. Turner, Ky., 981 S.W.2d 544, 545 (1998) ("When an award becomes final, relief from its terms may be obtained only if it is reopened pursuant to the provisions of KRS 342.125.").