

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001502-WC

MICHAEL CHAD ROBERTS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-62705

GEORGE W. HILL & COMPANY; AIK COMP,
A/K/A AIK SELECTIVE SELF INSURANCE FUND;
HON. J. LANDON OVERFIELD, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, CHIEF JUDGE; SCHRODER, AND TACKETT, JUDGES.

TACKETT, JUDGE: Michael Chad Roberts appeals from a decision of the Workers' Compensation Board (Board) upholding the Administrative Law Judge's (ALJ) dismissal of his claim for benefits due to the statute of limitations. We affirm.

On October 9, 1997, Roberts was a fifteen year-old, who worked after school for George W. Hill & Company. Allegedly, he suffered a severe injury while operating an auger-driven seed mixer and his hand was crushed. Two months after the injury, he executed a notice of rejection of the Workers' Compensation Act and filed a civil tort action against his employer through his

parents as next friends. Hill & Company responded that Roberts' claim was barred by the exclusivity provisions of the Workers' Compensation Act, and the Boone Circuit Court dismissed the action for failure to state a claim upon which relief could be granted. The Kentucky Supreme Court affirmed the case in a published decision, Roberts v. George W. & Company, Ky., 23 S.W.3d 635 (2000).

Roberts filed a claim for workers' compensation benefits on November 5, 2001, within two years of his eighteenth birthday. Hill & Company filed a motion to dismiss the claim stating that it was outside the two year statute of limitations for such actions. The ALJ dismissed Roberts' claim and the Board upheld the ALJ's decision. This appeal followed.

Roberts argues that Kentucky Revised Statute (KRS) 342.210, which operates to toll the statute of limitations for minor dependents, is inapplicable to his claim. The statute provides as follows:

No limitation of time provided in this chapter shall run against any person who is mentally incompetent or who is a minor dependent **so long as he has no committee, guardian, next friend,** or other person authorized to claim compensation for him under KRS 342.160.

(Emphasis added.) Roberts claims that, because the statute clearly refers to minor dependants, it has no application to a minor employee seeking benefits for his own injury. However, in its previous decision regarding the civil action filed by Roberts through his parents, the Kentucky Supreme Court stated as follows:

[W]e believe the purpose of [KRS 342.210], to ensure the rights of minor and incompetent beneficiaries of workers' compensation scheme are adequately protected, should apply to dependants of employees and minor employees alike.

Roberts at 637. Clearly, Roberts was not without next friends since his parents attempted to reject the Workers' Compensation Act on his behalf after he was injured and filed a civil tort action against his employer. Consequently, the provisions of KRS 342.210 are applicable to him and his attempt to claim benefits in 2001 fell outside the two-year statute of limitations for initiating a claim. Unfortunately, despite the severity of his injury, Roberts neglected to make a timely claim for workers' compensation benefits.

For the forgoing reasons, the judgment of the Boone Circuit Court upholding the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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