RENDERED: September 19, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2003-CA-000079-WC

HAROLD BAKER — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-95-15819

CITY OF LOUISVILLE; SPECIAL FUND; R. SCOTT BORDERS, ADMINISTRATIVE LAW JUDGE; WORKERS' COMPENSATION BOARD; ALBERT B. CHANDLER III, ATTORNEY GENERAL OF KENTUCKY — APPELLEES

OPINION

AFFIRMING

** ** ** ** ** ** ** **

BEFORE: PAISLEY AND TACKETT, JUDGES; AND HUDDLESTON, SENIOR JUDGE[1]

PAISLEY, JUDGE. This is a petition for review from an opinion of the Workers' Compensation Board (board) affirming an opinion and order of the Administrative Law Judge (ALJ) dismissing appellant Harold Baker's motion to reopen his workers' compensation claim. Because Baker's motion to reopen is barred

[1] Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by the four-year limitations period set out in KRS 342.125(8), we affirm.

On April 4, 1995, while employed by the City of Louisville (city) in the Division of Solid Waste Management, Baker suffered a work-related injury to his lumbar spine as a result of lifting garbage cans. Baker initially received total temporary disability (TTD) benefits from April 4, 1995, through August 7, 1995. On January 11, 1996, Baker filed an application for adjustment of claim with the Department of Workers' Claims. The Special Fund was named as a party because of the existence of a preexisting condition. On June 11, 1996, the ALJ entered an order approving the parties' settlement of the claim, whereby Baker received a 13% permanent partial disability award in the form of a lump sum of $12,042.58.

Although Baker thereafter returned to employment as a mechanic for Hauseman Jeep, as of August 2000 his back condition had worsened to the point that he underwent back surgery at the hands of Dr. David Petruska. The city not only paid Baker's medical expenses, but it also paid him voluntary TTD benefits between August 29, 2000, and March 24, 2001.

On October 5, 2001, Baker filed a motion to reopen his settled workers' compensation claim based on a worsening of his physical condition and an increase in his occupational loss. The city and the Special Fund each asserted in response that

Baker's motion to reopen was barred by the four-year statute of limitations set out in KRS 342.125(8). However, this defense was initially rejected and the reopening was permitted to proceed. Medical proof was filed, Baker's deposition was taken, and a final hearing was conducted on April 22, 2002. On June 19, the ALJ entered an opinion and order dismissing Baker's reopening based upon the four-year limitations period set out in KRS 342.125(8). On December 11, 2002, the board entered an opinion affirming the dismissal. This petition for review followed.

KRS 342.125 provides in pertinent part as follows:

> (3) 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 total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.
>
> . . . .
>
> (8) The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12,

> 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this section shall apply to these claims as well. (Emphasis added.)

Since the original settlement in this case was entered prior to December 12, 1996, KRS 342.125(8) permitted Baker to bring a reopening within four years of December 12, 1996. As Baker brought his motion more than four years later on October 5, 2001, his filing on its face did not satisfy the limitations period prescribed by KRS 342.125(8). Nevertheless, Baker raises various arguments in his attempt to avoid KRS 342.125(8).

First, Baker contends that under the circumstances of this case, the abeyance provisions of KRS 342.265(5) and KRS 342.185(1) should be applied so as to extend the statute of limitations. KRS 342.265(5) provides as follows:

> An application for resolution of claim shall be held in abeyance during any period voluntary payments of income benefits are being made under any benefit sections of this chapter to the maximum which the employee's wages shall entitle unless it shall be shown that the prosecution of the employee's claim would be prejudiced by delay. (Emphasis added).

KRS 342.185(1) in turn provides in relevant part that:

> If payments of income benefits have been made, the filing of an application for adjustment of claim with the department within the period shall not be required, but shall become requisite within two (2) years following the suspension of payments or within two (2) years of the date of the

> accident, whichever is later. (Emphasis added.)

Baker asserts that since he was receiving TTD benefits on December 12, 2000, as a result of his August 2000 surgery, the abeyance provisions of KRS 342.265(5) and KRS 342.185(1) apply so as to toll the limitations period set out in KRS 342.125(8). We disagree.

KRS 342.265(5) applies to "an application for resolution of claim," while KRS 342.185(1) refers to "an application for adjustment of claim." Based upon their plain language, we construe these statutes as being applicable to initial claims for workers' compensation benefits, rather than to motions to reopen workers' compensation claims. Moreover, although KRS 342.265(5) and KRS 342.185(1) are general statutes of limitations, the four-year limitations period set out in KRS 342.125(8) deals specifically with the reopening of a claim. It is well established that when two statutory provisions deal with a similar subject matter, the specific statute controls over the general statute. Boyd v. C & H Transportation, Ky., 902 S.W.2d 823, 824 (1995); Land v. Newsome, Ky., 614 S.W.2d 948 (1981). As KRS 342.125(8) specifically and unambiguously addresses the filing deadline for the reopening of a claim, it clearly applied in the situation before us on appeal.

Baker next argues that the ALJ should have applied KRS 342.730, concerning among other things the determination of disability income benefits, so as to extend the statute of limitations. Baker relies upon the portion of KRS 342.730(1)(b) which provides:

> Any temporary total disability period within the maximum period for permanent, partial disability benefits shall extend the maximum period but shall not make payable a weekly benefit exceeding that determined in subsection (1)(a) of this section.

Contrary to Baker's contention, we construe this provision as applying only to the duration of permanent partial disability benefits, and not to the establishment or extension of the limitations period which is applicable to either an initial filing or a reopening. Simply put, this statute has no relevance to the limitations period set out in KRS 342.125(8).

Next, Baker contends that the city is estopped from asserting a statute of limitations defense because of its postsurgery payment of TTD benefits to him between August 29, 2000, and March 24, 2001. Baker in effect argues that the city's voluntary payment of benefits precluded him from bringing an action within the proper limitations period, that the payments lulled him into a period of complacency, and that the city failed to advise him that the limitations period would end on December 12, 2000. According to Baker, these factors are

sufficient to estop the city from invoking the protections of KRS 342.125(8).

Although Baker does not identify a specific estoppel theory, we construe his argument as relying upon the doctrine of equitable estoppel. The essential elements of that doctrine are:

> (1) conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) the intention, or at least the expectation, that such conduct shall be acted upon by, or influence, the other party or other persons; and (3) knowledge, actual or constructive, of the real facts. And, broadly speaking, as related to the party claiming the estoppel, the essential elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance, in good faith, upon the conduct or statements of the party to be estopped; and (3) action or inaction based thereon of such a character as to change the position or status of the party claiming the estoppel, to his injury, detriment, or prejudice.

Weiand v. Board of Trustees of Kentucky Retirement Systems, Ky., 25 S.W.3d 88, 91 (2000)(quoting Electric and Water Plant Board of City of Frankfort v. Suburban Acres Development, Inc., Ky., 513 S.W.2d 489, 491 (1974)).

Clearly, the facts herein do not satisfy the requirements for equitable estoppel. The city's payment of

voluntary TTD benefits, consistent with its obligation under KRS Chapter 342, was not conduct which amounted to a false representation of a material fact. Further, it cannot be said that Baker lacked the means to acquire knowledge regarding the limitations period set out in KRS 342.125(8). Hence, no basis exists for applying the doctrine of equitable estoppel so as to deprive the city of its limitations defense.

Next, Baker contends that his motion to reopen should be controlled by the statute of limitations in effect on the date of his injury, with the result that his reopening could be made "at any time" upon proof that one of the permissible grounds for reopening existed. However, this issue was specifically addressed in Meade v. Reedy Coal Co., Ky., 13 S.W.3d 619, 622 (2000), which held that "[t]he four year limitation contained in KRS 342.125(8) governs the reopening of claims decided prior to December 12, 1996." As the parties settled this case on June 11, 1996, the four-year limitations period set out in KRS 342.125(8) is clearly applicable.

Finally, Baker contends that KRS 342.125(8) violates Section 54 of the Kentucky Constitution, which provides that "the General Assembly shall have no power to limit the amount to be recovered for injuries resulting in death, or for injuries to person or property." We disagree.

KRS 342.395(1) provides in relevant part that:

> Where an employer is subject to this chapter, then every employee of that employer, as a part of his contract of hiring or who may be employed at the time of the acceptance of the provisions of this chapter by the employer, shall be deemed to have accepted all the provisions of this chapter and shall be bound thereby unless he shall have filed, prior to the injury or incurrence of occupational disease, written notice to the contrary with the employer; and the acceptance shall include all of the provisions of this chapter with respect to traumatic personal injury, silicosis, and any other occupational disease.

Greene v. Caldwell, 170 Ky. 571, 186 S.W. 648 (1916), established that the rights guaranteed by Section 54 of the Constitution could be waived by an employee who made a voluntary, affirmative election to accept the benefits of the Workmen's Compensation Act. Subsequently, in Wells v. Jefferson County, Ky., 255 S.W.2d 462 (1953), the Supreme Court upheld the constitutionality of KRS 342.395 and concluded that a waiver of Section 54 could be activated by an employee's implied acceptance of the Workers' Compensation Act as provided by KRS 342.395.

Here, there is no allegation that Baker ever filed a rejection of workers' compensation coverage, and his decision not to follow such a course of action is dispositively shown by his prior acceptance of coverage and his current motion to reopen. Hence, pursuant to KRS 342.395, Baker is deemed to have

voluntarily accepted all provisions of Chapter 342 including KRS 342.125(8). It follows, therefore, that Section 54 is not violated by the application of the limitations provisions of KRS 342.125(8) to Baker's motion to reopen. As stated in Green, 186 S.W. at 652,

> in this legislation the General Assembly did not arbitrarily or at all undertake to limit the amount of recovery. It merely proposed a statute to a certain class of people for their individual acceptance or rejection. It did not assume to deprive these classes or individuals without their consent of any constitutional rights to which they were entitled. The General Assembly merely afforded by this legislation a means by and through which individuals composing classes might legally consent to limit the amount to which the individual would be entitled if injured or killed in the course of his employment.

See also Brooks v. University of Louisville Hospital, Ky., 33 S.W.3d 526 (2000); Edwards v. Louisville Ladder, Ky. App., 957 S.W.2d 290 (1997).

For the foregoing reasons, the board's opinion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CITY OF LOUISVILLE:

Peter J. Glauber
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BRIEF FOR APPELLEE WORKERS' COMPENSATION FUNDS:

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