

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2011-CA-000455-WC

STEVEN KEY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-09-00220

LOUISVILLE METRO GOVERNMENT;  
LINCOLN ELECTRIC COMPANY;  
UNITED STATES DEPARTMENT OF LABOR;  
HONORABLE J. LANDON OVERFIELD,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, MOORE, AND THOMPSON, JUDGES.

DIXON, JUDGE: Steven Key, *pro se*, seeks review of a Workers' Compensation Board decision affirming an Administrative Law Judge's (ALJ) order dismissing his claim for benefits. We affirm.

In February 2009, Key filed an application for workers' compensation benefits for an occupational disease claim against Jefferson Community and Technical College alleging he was exposed to toxic fumes while welding in October 1981. Key asserted the fumes caused him to develop a disabling neurological disorder. In September 2009, the ALJ rendered an opinion and order dismissing Key's claim due to several evidentiary and procedural deficiencies. The ALJ specifically noted Key's claim was time-barred pursuant to Kentucky Revised Statutes (KRS) 342.316(4)(a), since it was filed twenty-seven years after the last alleged exposure. The ALJ's order was affirmed by the Board in March 2010.

In August 2010, Key filed a new application for resolution of an injury claim against Louisville Metro Government, Lincoln Electric Company, and the United States Department of Labor, alleging he sustained a hand/brain injury on September 14, 1981, while participating in a welding program administered by the City of Louisville through the Comprehensive Employment Training Act. The ALJ dismissed Key's claim as procedurally deficient, and the Board affirmed.

Key now seeks review of the Board's decision; however, his appellate brief is disorganized and fails to set forth a coherent statement regarding the alleged errors committed by the Board. Kentucky Rules of Civil Procedure (CR) 76.25(4)(c). We infer from Key's brief that he believes the Board overlooked evidence establishing a prima facie claim for benefits and that the Board erred by concluding his claim was time-barred.

The role of this Court in reviewing a workers' compensation decision is well settled. Our function is to correct the Board only where we believe "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 Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

We have carefully reviewed the record in this case, and we find no error. In a well-reasoned opinion, the Board stated, in relevant part:

803 KAR [Kentucky Administrative Regulations] 25:010 (5)(1)(d)(1) and (2) provides as follows:

(1) To apply for resolution of an injury claim, the applicant shall file Form 101 with the following completed documents:

. . .

(d) One (1) medical report, which may consist of legible, hand-written notes of the treating physician, and which shall include the following:

1. A description of the injury which is the basis of the claim;
2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim. . .

Key has done neither. He has not described the injury which forms the basis of the claim either in his Form 101 where he indicated he could not remember how the injury occurred, nor has he attached a medical report describing the injury which forms the basis of his claim. In addition, he has failed to attach a medical opinion establishing a causal relationship between the work-related event or the medical condition which is the

subject of the claim. Therefore, it is clear the ALJ did not err in dismissing the application as being deficient on these grounds.

Even assuming arguendo Key had introduced a medical report describing the injury and a medical opinion establishing a causal relationship between the work event and a medical condition, it is clear Key's application is time-barred. It must be remembered in his most recent application for benefits, Key tendered for filing a Form 101 alleging an injury. As such, the statute of limitations as contained in KRS 342.185 governs which provides as follows:

. . . 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.

. . .

In this case, Key alleges an injury on September 14, 1981. There has been no demonstration, however, that any income benefits have been paid. Key did not file his new application for benefits until August 13, 2010, approximately 29 years after his date of injury. It is clear therefore his claim for occupational disability benefits arising out of this alleged injury is now time-barred inasmuch as it was not filed within two years of the date of the injury.

After careful review, we agree with the Board's reasoning, and we conclude the Board properly affirmed the ALJ's order dismissing Key's claim.

For the reasons stated herein, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

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