

RENDERED: DECEMBER 6, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2018-CA-001667-WC

PORTER SLAUGHTER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-71438

TUBE TURNS; HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE;
ANDY BESHEAR, KENTUCKY ATTORNEY
GENERAL; AND THE WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** **

BEFORE: TAYLOR, K. THOMPSON AND L. THOMPSON, JUDGES.

THOMPSON, K., JUDGE: The issue in this case concerns the retroactivity of the 2018 amendment to Kentucky Revised Statutes (KRS) 342.125(3) of the Kentucky Workers' Compensation Act. The Administrative Law Judge (ALJ) denied Porter

Slaughter's claims as untimely and the Workers' Compensation Board affirmed.

We conclude that the amendment to the statute is retroactive and affirm.

On April 8, 1997, Slaughter incurred a work-related injury while working for Tube Turns to his left shoulder, chest, and neck when a bar struck his left shoulder. He eventually had surgery. That claim was consolidated with a claim for an injury to his right shoulder incurred on March 27, 1996. A Form 110 settlement agreement was approved on November 27, 1997, with income benefits being paid for the right shoulder, but the agreement did not mention Slaughter's left shoulder injury. However, Slaughter did not waive medical expenses for his left shoulder and remained entitled to medical treatment for his shoulder injuries.

In 1999, Slaughter filed a motion to reopen the left shoulder claim, but that motion was dismissed on the grounds that it was filed outside the limitations period under KRS 342.125(3), as it existed after the 1996 amendment. He also filed a motion to reopen in 2001, but that motion was also dismissed because it was filed more than four years after the settlement agreement and, therefore, outside the limitations period under KRS 342.125(3), as it existed after the 2000 amendment.

Slaughter filed a motion to reopen on November 2, 2016, after undergoing left shoulder surgery. The ALJ determined that Slaughter was entitled to medical expenses for the surgery and temporary total disability (TTD) benefits

from November 2, 2016, to March 30, 2017, in an opinion issued on April 30, 2018.

On July 10, 2018, Slaughter filed another motion to reopen, claiming he was entitled to income benefits for an increased impairment from recent surgery on his left shoulder. Tube Turns responded arguing that the motion was outside the limitations period of the newly amended KRS 342.125(3) because it was filed more than four years after the original settlement agreement. The ALJ agreed with Tube Turns and denied the motion to reopen. The Board subsequently affirmed the ALJ's decision. This appeal followed.

The version of KRS 342.125(3) in effect prior to July 14, 2018, stated in pertinent part that “no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits[.]” In *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775 (Ky. 2008), the Kentucky Supreme Court interpreted the language “order granting or denying benefits” in KRS 342.125(3) “to encompass an order granting benefits *different* than an original award or settlement” and found that such language “must necessarily refer not only to the original award, but to any *subsequent* order granting or denying benefits.” *Id.* at 785. Therefore, if *Hall* remains controlling law, Slaughter's motion to reopen would be timely because it was filed within four years of the ALJ's April 30, 2018 order awarding him TTD benefits. Unfortunately for

Slaughter, *Hall* has been superseded by the 2018 amendment to KRS 342.125(3) and the statute is retroactive.

The 2018 amended version of KRS 342.125(3) states the following (additional language not included in the prior version is underlined):

no claim shall be reopened more than four (4) years following the date of the original award or original order granting or denying benefits, when such an award or order becomes final and nonappealable Orders granting or denying benefits that are entered subsequent to an original final award or order granting or denying benefits shall not be considered to be an original order granting or denying benefits under this subsection and shall not extend the time to reopen a claim beyond four (4) years following the date of the final, nonappealable original award or original order.

The underlined language in the amended version of KRS 342.125(3) supersedes our Supreme Court’s decision in *Hall*. Under the current version of KRS 342.125(3), a motion to reopen must be filed within four years of the original order granting or denying benefits and *not* within four years of any subsequent orders or awards. The only question is whether the 2018 amendment to KRS 342.125(3) is retroactive.

KRS 446.080(3) provides that “[n]o statute shall be construed to be retroactive, unless expressly so declared.” As to KRS 342.125(3), the General Assembly has expressly declared that it is retroactive:

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.

KRS 342.125(8).¹

Slaughter argued before the Board that the amendment to KRS 342.125(3) is unconstitutional. The Board declined to address that issue because, as an administrative tribunal, it was without jurisdiction to determine the constitutionality of a statute enacted by the General Assembly. *See Abel Verdon Const. v. Rivera*, 348 S.W.3d 749, 752 (Ky. 2011). In his petition for review, Slaughter does not make any constitutional challenge, so no such issue is before this Court.

¹ The ALJ and the Board also cite to the Legislative Research Commission note to KRS 342.125, which states:

This statute was amended in Section 4 of 2018 Ky. Acts ch. 40. Subsection (2) of Section 20 of that Act reads, “Sections 2, 4, and 5 and subsection (7) of Section 13 of this Act are remedial and shall apply to all claims irrespective of the date of injury or last exposure, provided that, as applied to any fully and finally adjudicated claim, the amount of indemnity ordered or awarded shall not be reduced and the duration of medical benefits shall not be limited in any way.”

Such reference was unnecessary because the time limitation in KRS 342.125(3) is expressly made retroactive in the codified version of the statute by KRS 342.125(8).

For the reasons stated, the Board's opinion affirming the ALJ's order denying Slaughter's motion to reopen is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Wayne C. Daub
Louisville, Kentucky

BRIEF FOR APPELLEE TUBE
TURNS:

Gregory L. Little
Lexington, Kentucky