

**IMPORTANT NOTICE**  
**NOT TO BE PUBLISHED OPINION**

***THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.***

RENDERED: AUGUST 26, 2004  
NOT TO BE PUBLISHED

**Supreme Court of Kentucky** **FINAL**

2003-SC-0616-WC

DATE 9-16-04 E. J. A. G. GRANT, D.C.

RONNIE COOK

APPELLANT

V. APPEAL FROM COURT OF APPEALS  
2003-CA-00519  
WORKERS' COMPENSATION BOARD NO. 93-WC-33721

UNICORN MINING; WORKERS'  
COMPENSATION FUNDS (SUCCESSOR  
TO SPECIAL FUND); HON. R. SCOTT  
BORDERS, ADMINISTRATIVE LAW  
JUDGE; AND WORKERS'  
COMPENSATION BOARD

APPELLEES

**MEMORANDUM OPINION OF THE COURT**

AFFIRMING

This appeal is from a Court of Appeals' opinion affirming the decision of the Workers' Compensation Board that affirmed a decision of the Administrative Law Judge to deny the motion to reopen.

Cook raises four issues: (1) that KRS 342.125(8) denies injured workers' vested rights; (2) that the statute of limitations imposed by KRS 342.125(8) denies him Due Process and Equal Protection under the United States and Kentucky Constitutions; that the amended KRS 342.125(8) should be interpreted as imposing a four-year limitation from the date of settlement or award, or four years from the last motion to reopen, whichever is later; (3) the denial of his motion to reopen was clearly erroneous; and, (4)

that the Board had a duty to inform him that the December 12, 1996 amendments imposing the four year limitation on motion to reopen would affect his rights.

The original award, dated June 16, 1995, granted benefits for a 20% occupational disability due to a 5%-10% total body impairment caused by a 1993 back injury. In 1998, Cook, with the help of an ombudsman, filed a pro se motion to reopen that alleged a worsening in his condition. That motion resulted in a denial of a change in benefits for lack of a proven change in occupational disability since his original award.

On July 19, 2002, Cook filed the motion alleging that his condition from the original injury had worsened and he was now totally disabled and unable to perform any type of work. He submitted an affidavit and medical testimony, but the ALJ denied the motion as time barred by the four-year limitation imposed by KRS 342.125(8).

Cook appealed, but the Board affirmed the ALJ's application of KRS 342.125(8), which provides that a motion to reopen must be filed no later than four years from the date of the original settlement or award. The Court of Appeals affirmed on all issues. This appeal followed.

#### I. KRS 342.125(8)

Cook's first argument contends that the four-year time limitation barring his motion to reopen denies him state and federal due process and equal protection of the law because it denies him a vested right to reopen his claim. He argues that the 1996 amendment to KRS 342.125 would not apply to his right to reopen at any time. He states that prior to the amendment, there was no statute of limitation and that his motion to reopen must be decided on the law in effect at the time of his injury. His

argument is very similar to that advanced to this Court and rejected in Nygaard v. Goodin Bros., Inc., Ky., 107 S.W.3d 190 (2003).

In Nygaard, supra, we found the 1996 amendments to be constitutional. First, we determined that the December 12, 1996 amendment to KRS 342.125(8) “expressed a clear legislative intent to limit the reopening of a pre-December 12, 1996, award to within four years of December 12, 1996.” Id., at 192. Second, we reaffirmed earlier holdings of McCool v. Martin Nursery & Landscaping, Inc., Ky., 43 S.W.3d 256 (2001), that applying the limitations to pre-December 12, 1996 awards does not violate Article 1, Section 10 of the United States Constitution nor Sections 12, 19, and 242 of the Kentucky Constitution. Rather, the right to reopen remains inchoate until such time as the increased disability occurs. Id. Finally, we distinguished KRS 342.125(8) as a statute of limitation and repose for statutory causes of action rather than common law causes of action. Id., citing Wright v. Oberle-Jordre Co., Inc., Ky., 910 S.W.2d 241 (1995). Having already determined that the 1996 amendment to KRS 342.125(8) is constitutional, Cook’s argument fails to persuade us to reverse our precedent, so it should stand. See Buford v. Commonwealth, Ky. App., 942 S.W.2d 909 (1997); See also Harmelin v. Michigan, 501 U.S. 957, 965, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991).

Cook cites Maggard v. International Harvester Co., Ky., 508 S.W.2d 777 (1974) for the proposition that the law from the date of his injury controls his rights. This is correct with respect to the substantive law for deciding the merits of a claim that has been reopened. However, KRS 342.125 concerns the procedure for reopening and a procedural law can be changed. See Dingo Coal Co. v. Tolliver, Ky., 129 S.W.3d 367 (2004).

## II. Timeliness

Cook also complains that it was clearly erroneous for the ALJ not to reopen his award. However, because the motion was filed more than four years after December 12, 1996, his argument is without merit. Cook argues that the four-year limitation should apply to the date of his last decision, however, such an interpretation of the statute would run afoul of the plain language of KRS 342.125(8) which states, in pertinent part, “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”. Cook would like for the four year window to run from the date of the denial of the 1998 pro se motion to reopen. However, that motion was made under the provision of KRS 342.125(8) as well, and it was not the award or settlement referred to in the statute. Rather, the June 16, 1995 award is the date which matters thereby making Cook’s window four years from December 12, 1996, or December 12, 2000. Cook filed the motion to reopen underlying this appeal in 2002, that is, after his four years had expired.

Finally, Cook argues that the Board had a duty to inform him that the amendments to KRS 342.125(8) affected his vested rights. As the Court of Appeals noted, Cook fails to cite any legal authority for this argument and we found none to support it. However, we can state that even if there were such a duty, we distinguished post-award increases from vested rights in Nygaard, supra. Therefore, because no vested right was affected, even under Cook’s argument, there was no duty to inform him. The Court of Appeals stated it properly: “it is Cook’s personal duty to keep abreast of changes in the law.” We find no basis to deviate from its reasoning.

Because the statute of limitations and repose imposed by KRS 342.125(8) does not violate Cook's United States and Kentucky Constitutional rights and because he filed after the time to file had run, we affirm the Court of Appeals.

All concur.

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