

IMPORTANT NOTICE **NOT TO BE PUBLISHED OPINION**

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Albert B. Riley was killed on January 11, 2001, while using a propane torch to attempt to thaw an ice-plugged polyethylene pipe through which crude oil was being pumped. The side of the pipe blew out, dousing Riley in oil, which the torch then ignited. Riley died of burns, smoke inhalation, and acute carbon dioxide poisoning from the explosion and fire that resulted.

On January 31, 2001, less than three weeks after Riley's death, his widow agreed to the terms of a settlement offered by his employer. The agreement provided for a lump-sum payment of "\$50,000 DUE PER STATUTE" and compensation of \$265.04 per week, payable biweekly until April 20, 2007 unless she remarried.

Three months later, on April 24, 2001 the Labor Cabinet notified the claimant that the employer had been cited for three "serious" KOSHA violations for which penalties totaling \$4,500.00 were proposed. The claimant moved to reopen the settlement in November 2002 to assert her entitlement to a 30% increase in benefits based on the employer's safety violations. An ALJ denied the motion on May 13, 2003.

The claimant filed the motion to reopen that is presently at issue on April 14, 2008. She sought correction of two alleged mistakes of law. First, the agreement provided for a lump sum of \$50,000.00; whereas, KRS 342.750 provided for a lump sum of \$52,066.50 in 2001. Second, the agreement terminated weekly benefits on April 20, 2007, when her husband would have reached 65 years of age; whereas, KRS 342.730(4) provided for her benefits to

cease on February 10, 2010, when she reached age 60 and would have qualified for Social Security benefits as her husband's spouse had he lived.¹

An ALJ granted the motion and awarded the claimant an additional \$2,066.50 in death benefits with 12% interest from the date of Riley's death; weekly survivors' benefits until the claimant reached age 60 on February 10, 2010; and 12% interest on any past-due survivors' benefits. The ALJ denied the employer's petition for reconsideration, after which the employer appealed. The Board noted that the settlement contained a mistake of law but determined that the motion to reopen in order to correct the mistake was untimely under KRS 342.125(3). We agree.

KRS 342.125(1)(c) permits a final award to be reopened in order to correct a mistake in applying the law as it existed when the award was rendered,² but KRS 342.125(3) limits the period for such a reopening to "four (4) years following the date of the original award or order granting or denying benefits." The claimant filed her motion outside the applicable four-year period. Thus, the circumstances do not require us to address whether an ALJ has authority reopen and modify an agreement wherein the parties agree to an amount "due per statute" that is erroneous under the applicable statute. Nor do they require us to consider whether the ALJ erred by relying on a decision that was rendered after the settlement as authority to correct the age for terminating benefits.

¹ *Morsey, Inc. v. Frazier*, 245 S.W.3d 757 (Ky. 2008).

² *Wheatley v. Bryant Auto Service*, 860 S.W.2d 767 (Ky. 1993).

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT,
LINDA RILEY, WIDOW OF
ALBERT B. RILEY, DECEASED:

McKinnley Morgan
Morgan, Madden, Brashear & Collins
921 South Main Street
London, KY 40741

COUNSEL FOR APPELLEE,
RENOVARED ENERGY RESOURCES, INC.:

Carl Martin Brashear
Hoskins Law Offices, PLLC
P.O. Box 24564
Lexington, KY 40524-4564