

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Supreme Court of Kentucky

2010-SC-000296-WC

JAMES RISTER

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
CASE NO. 2009-CA-001552-WC
WORKERS' COMPENSATION BOARD NO. 08-00805

SCRUBET, INC.;
HONORABLE JAMES L. KERR,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

An Administrative Law Judge (ALJ) dismissed this coal workers' pneumoconiosis claim on the ground that the claimant failed to comply with KRS 342.270(1) by joining it to his pending occupational hearing loss claim. The Workers' Compensation Board affirmed the decision and a divided Court of Appeals affirmed the Board. Appealing, the claimant continues to assert that he complied with the statute by filing his pneumoconiosis claim during the pendency of the hearing loss claim; that dismissal was too harsh a sanction; that the employer should be estopped from raising the issue of joinder in the pneumoconiosis claim; and that KRS 342.270(1) violates Sections 1 and 14 of

the Kentucky Constitution and the 14th Amendment to the United States Constitution.

We affirm. KRS 342.270(1) requires a worker to join all known causes of action that have accrued against the employer to a pending workers' compensation claim and treats a failure to do so as a waiver. The ALJ did not err because the claimant filed a pneumoconiosis claim during the pendency of his hearing loss claim but failed to join it and because the employer did nothing to warrant an estoppel. Application of the statute to these facts did not violate the constitutional guarantee of due process or equal protection.

The claimant sustained 35 years of occupational exposure to noise and coal dust in multiple employments. His last exposure to both conditions occurred on December 27, 2006, while working for the defendant. His family physician informed him that he suffered from coal workers' pneumoconiosis in March 2007. The claimant notified his employer in a letter dated October 8, 2007 that he suffered from moderate to severe interstitial lung disease, probably due to coal workers' pneumoconiosis, and intended to file a workers' compensation claim.

On January 24, 2008 the claimant filed an occupational hearing loss claim. The claim was assigned to ALJ Overfield. Proof was taken and the hearing was scheduled for June 26, 2008. The hearing was held as scheduled, immediately after which the claim was submitted for a decision.

The claimant filed his pneumoconiosis claim on June 25, 2008, the day before the hearing in the pending hearing loss claim. He failed to inform ALJ

Overfield of the newly-filed claim or move to join it to the pending hearing loss claim. On June 30, 2008 the Department of Workers' Claims assigned the pneumoconiosis claim to ALJ Terry and directed the employer to have the claimant examined as provided by KRS 342.316(3)(b)(4)(d). In a special answer filed on July 14, 2008, the employer raised a lack of timely notice and the statute of limitations as special defenses to the pneumoconiosis claim.

ALJ Overfield dismissed the hearing loss claim on August 13, 2008 for reasons unknown to this court. The pneumoconiosis claim was reassigned to ALJ Kerr sometime thereafter. In an amended special answer filed on October 1, 2008, the employer denied liability for the claim on the ground that it was barred by KRS 342.270(1). ALJ Kerr agreed and dismissed the claim after a hearing. The claimant asserts that ALJ Kerr erred and must be reversed.

KRS 342.270(1) states as follows:

If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. When the application is filed by the employee or during the pendency of that claim, he shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him. Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee.

I. FILING AS COMPLIANCE WITH KRS 342.270(1).

The claimant argues that ALJ Kerr should not have dismissed his pneumoconiosis claim because he complied with KRS 342.270(1) by filing it during the pendency of his hearing loss claim. We disagree.

KRS 342.270(1)'s joinder requirement was enacted in 1996 as a legislative response to cases such as *Woodbridge INOAC, Inc. v. Downs*¹ and *Jeep Trucking, Inc. v. Howard*² in which the courts confronted problems created by the piecemeal litigation of workers' compensation claims. Contrary to the claimant's argument, KRS 342.270(1) creates no exception based on the different procedures for resolving injury and pneumoconiosis claims. In fact *Jeep Trucking* concerned legal difficulties that resulted from the separate litigation of overlapping injury and pneumoconiosis claims. The statute is "clear, unequivocal, and mandatory" with respect to a worker's obligation to join³ all known causes of action against the employer during the pendency of a workers' compensation claim and with respect to the consequences of failing to do so.⁴ The statute's purposes include not only judicial economy, minimizing

¹ 864 S.W.2d 306 (Ky. App. 1993) (nothing required multiple claims arising from the same accident to be joined).

² 891 S.W.2d 78 (Ky. 1995) (separate litigation of overlapping injury and occupational disease claims resulted in awards that exceeded the statutory maximum for total disability and failed to provide a required credit against the occupational disease award).

³ See BLACK'S LAW DICTIONARY 841 (7th ed. 1999).

⁴ *Ridge v. VMV Enterprises, Inc.*, 114 S.W.3d 845, 847 (Ky. 2003).

litigation costs, and streamlining the administrative process but also ensuring the correct resolution of legal issues.⁵

The claimant complains that dismissal was too harsh a sanction, but KRS 342.270(1) does not include exceptions or give an ALJ discretion concerning the consequences of a failure to comply. KRS 342.270(1) gave ALJ Kerr no discretion to do anything but dismiss the claimant's pneumoconiosis claim because it compelled a finding that he waived the claim by failing to request the Department of Workers' Claims to join it to his pending hearing loss claim, *i.e.*, to request the Department to assign it to ALJ Overfield to be considered with his hearing loss claim.

II. ESTOPPEL.

The claimant argues next that the employer should be estopped from raising a defense under KRS 342.270(1), noting that he filed the pneumoconiosis claim during the pendency of the hearing loss claim and that the employer suffered no prejudice by the lack of joinder. He reasons that the employer's failure to raise the defect in the hearing loss claim, when it could have been corrected, should bar the employer from raising it subsequently in the pneumoconiosis claim. We disagree.

KRS 342.270(1) places the obligation to comply with the joinder requirement on the claimant. Compliance is mandatory and without regard to employer prejudice. Estoppel is an equitable remedy that an ALJ may use to prevent an employer from benefiting from its own misconduct. The ALJ did not

⁵ *Id.*

err in this case by failing to estop the employer from raising a defense under KRS 342.270(1) because nothing indicates that the employer misled the claimant into thinking that he was not required to comply with the statute or that it engaged in conduct calculated to cause him to fail to do so.

III. CONSTITUTIONALITY OF KRS 342.270(1).

The claimant bases his constitutional argument on the discrepancy in the limitations periods for occupational disease and injury claims. KRS 342.316(4)(a) provides a three-year period for filing an occupational disease claim, but KRS 342.270(1) requires an injury claim to be filed within a two-year period. He argues on that basis that KRS 342.270(1) operates to shorten the limitations period for workers such as himself, who suffer from both an occupational disease and an injury. He concludes that KRS 342.270(1) denies such workers a remedy, which violates Section 14 of the Kentucky Constitution, and violates the due process and equal protection clauses of the United States Constitution. The present facts belie his argument.

The claimant fails to explain how the discrepancy in the statutes of limitation for injury and occupational disease denied him a remedy or violated his right to due process or equal protection. The record indicates that it did not. His pneumoconiosis claim was dismissed based on his failure to join it to his hearing loss claim, not because it was untimely. Mindful that courts address constitutional questions only when required by the parties' controversy, we decline his invitation to address the matter further.⁶

⁶ *Stein v. Kentucky State Tax Commission*, 266 Ky. 469, 99 S.W.2d 443, 445 (1936).

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

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