

IMPORTANT NOTICE
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Supreme Court of Kentucky

2018-SC-000004-WC

TONY COUCH

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
NO. 2016-CA-001280
WORKERS' COMPENSATION NO. 09-WC-00328

JAMES RIVER COAL SERVICE CO.,
HONORABLE GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE AND
WORKERS' COMPENSATION BOARD

APPELLEES

AND

2018-SC-000005-WC

LARRY HAMILTON

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
NO. 2016-CA-001281
WORKERS' COMPENSATION NO. 09-WC-00052

CONSOL OF KENTUCKY, INC.,
HONORABLE R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE AND
WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

A workers' compensation claimant seeking to reopen a previous award for benefits for coal worker's pneumoconiosis ("CWP") must make a preliminary showing under KRS¹ 342.125(5)(a) that includes a progression of pneumoconiosis, the development of respiratory impairment due to the disease, *and* two additional years of continuous exposure to the hazards of the disease in Kentucky. Larry Hamilton and Tony Couch ("the claimants") sought to reopen their respective CWP claims, which the Administrative Law Judge ("ALJ") dismissed following a hearing due to their failure to show development of their respiratory impairment and their undisputed lack of two additional years of continuous exposure to the hazards of CWP in Kentucky. The ALJ further held that it lacked authority and jurisdiction to rule on the claimants' constitutional challenge to KRS 342.125(5)(a). The Workers' Compensation Board ("Board") affirmed. As did the Court of Appeals, which declined to reach the constitutional issue, finding grounds to affirm without having to do so. *See Baker v. Fletcher*, 204 S.W.3d 589, 598 (Ky. 2006) ("we must not reach a constitutional issue if other grounds are sufficient to decide the case[]"). Because the claimants failed to make the requisite showing under KRS 342.125(5)(a), we affirm.

I. Background.

¹ Kentucky Revised Statutes.

In 2009, Tony Couch was awarded permanent partial disability benefits based upon a 25% disability rating resulting from a category 2/2 CWP claim without pulmonary impairment in accordance with KRS 342.732(1)(b)(1). In 2014, Couch filed a motion to reopen his claim seeking an increase in his award due to an alleged progression of his disease. Couch conceded to the ALJ that KRS 342.125(5)(a) barred reopening his claim as he had not had any additional occupational exposure to coal dust since his original award of benefits, but argued that the additional two-year exposure requirement violated principles of equal protection since the same requirement does not apply to the reopening of other injury claims by those who had contracted a disease from other occupational irritants, and further violated his right to due process of law. Following a hearing, the ALJ found that since Couch had not presented evidence that he had two-years' additional exposure, he had not met the requisite showing under KRS 342.125(5)(a) and accordingly dismissed his claim.

Likewise, Larry Hamilton filed a CWP claim in 2009, receiving retraining incentive benefits based upon a category 1 consensus reading of his x-rays. In 2013, Hamilton filed a motion to reopen his claim alleging his CWP had progressed and he now suffers from pulmonary impairment. Hamilton's former employer maintained he had not satisfied any of the requirements of KRS 342.125(5)(a). After a hearing on the matter, the ALJ determined that Hamilton had demonstrated a worsening condition of CWP, but had not submitted evidence to support a respiratory impairment, nor had he indicated

he was employed for an additional two years during which period he was continuously exposed to hazards of the disease.

II. Standard of Review.

An administrative agency lacks authority to decide the facial constitutional validity of a statute or regulation. *Commonwealth v. DLX, Inc.*, 42 S.W.3d 624, 626 (Ky. 2001). Further, “[t]he ALJ, as the finder of fact, and not the reviewing court, has the sole authority to determine the quality, character, and substance of the evidence.” *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993). On appellate review,

The [Board] is entitled to the same deference for its appellate decisions as we intend when we exercise discretionary review of Kentucky Court of Appeals decisions in cases that originate in circuit court. The function of further review of the [Board] in the Court of Appeals is to correct the Board only where the Court perceives 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. The function of further review in our Court is to address new or novel questions of statutory construction, or to reconsider precedent when such appears necessary, or to review a question of constitutional magnitude.

W. Baptist Hosp. v. Kelly, 827 S.W.2d 685, 687–88 (Ky. 1992).

III. Analysis.

With respect to reopening of CWP claims, KRS 342.125(5)(a) provides:

Upon the application of the affected employee, and a showing of progression of his previously-diagnosed occupational pneumoconiosis resulting from exposure to coal dust and development of respiratory impairment due to that pneumoconiosis **and** two (2) additional years of employment in the Commonwealth wherein the employee was continuously exposed to the hazards of the disease, the administrative law judge may review an award or order for benefits attributable to coal-related pneumoconiosis under KRS 342.732.

(emphasis added). Here, the claimants undisputedly lacked two additional years of employment in the Commonwealth wherein they were continuously exposed to the hazards of the disease. They argued below and on appeal that this requirement is unconstitutional. However, as the Court of Appeals noted, even if it were to address the claimants' constitutional claim with respect to the two-year additional exposure requirement, and decide that claim in the claimants' favor, they still would not be entitled to any relief under KRS 342.125(5)(a) since the record did not establish that they had developed any respiratory impairment. *See Preston v. Clements*, 313 Ky. 479, 483, 232 S.W.2d 85, 88 (1950) ("The prevailing rule seems to be that the courts will avoid the question of constitutionality unless necessary to a proper determination of the merits of the cause under consideration[']"). We agree that the claimants have not met the requisite showing for reopening under KRS 342.125(5)(a) and thus find no grounds for reversal.

IV. Conclusion.

For the foregoing reasons, we affirm the Court of Appeals' Opinion.

All sitting. All concur.

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