

RENDERED: FEBRUARY 7, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2002-CA-001605-WC

NATIONAL SOUTHWIRE ALUMINUM, A
DIVISION OF SOUTHWIRE ROD & CABLE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-93-03019

STEPHEN VEACH; SPECIAL FUND;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

TACKETT, JUDGE. National Southwire Aluminum (Southwire) petitions for review of an opinion of the Workers' Compensation Board, which reversed and remanded the decision of the Administrative Law Judge (ALJ) denying Stephen Veach's motion to reopen with respect to his request for temporary total disability benefits based on the four-year limitations period imposed by Kentucky Revised Statute (KRS) 342.125(3). After considering the law and the arguments of counsel, we affirm.

Veach has been employed by Southwire as a furnace equipment operator since 1974. On April 13, 1992, he sustained a torn rotator cuff injury to his right shoulder while using a pry bar to clean metal off the lip of a furnace. On November 4, 1992, Veach underwent surgery to repair the torn rotator cuff. Following surgery, Veach returned to work at his previous job for Southwire. On January 28, 1993, Veach filed a workers' compensation claim seeking payment of medical expenses and disability income. The parties reached a settlement of his claim that was approved by an ALJ in an order dated August 19, 1994, based on a permanent partial disability of 12%. Under the settlement, Veach was to receive \$34.20 per week for a period of 425 weeks beginning January 13, 1993, with Southwire paying the initial 297.5 weeks and the Special Fund paying the remaining 127.5 weeks, and "future medical, hospital, etc., expenses shall be paid per statute."

During the ensuing years, Veach experienced problems with his right shoulder. In August 2001, Veach was seen by Dr. William Martin, an orthopedic surgeon, who recommended immediate surgery to repair a partial tear of Veach's right rotator cuff as revealed in a MRI. Dr. Martin opined that Veach's condition was related to his April 1992 injury.

On November 8, 2001, Veach filed a motion to reopen his claim based on Dr. Martin's report and asked for

interlocutory relief requiring Southwire to pay medical benefits and temporary total disability benefits associated with any surgical treatment and recovery. Veach stated in an affidavit that Dr. Martin advised him that any delay in the surgery could result in additional permanent damage to his shoulder and that he was unable to afford taking time off from work without receipt of temporary disability benefits. On December 13, 2001, the Chief Administrative Law Judge ordered the claim reopened and passed it for assignment to another ALJ. On January 22, 2002, Southwire, in a response to Veach's motion for ruling on his request for interlocutory relief, asserted that KRS 342.125 barred Veach's request for temporary total disability as untimely.

On February 1, 2002, ALJ Kevin King issued an order granting Veach's motion for interlocutory relief with respect to medical benefits, but denied temporary total disability benefits. Applying the July 14, 2000, version of KRS 342.125(3), the ALJ held that Veach's claim for temporary total disability benefits was barred because his motion to reopen was not filed during the 425-week period of the permanent partial disability benefits or within four years after the date of the original award of benefits, which began in January 1993. The ALJ rejected Veach's argument that temporary total disability benefits were available as long as medical expenses were

recoverable under the original workers' compensation claim. On February 15, 2002, Veach filed a petition for reconsideration involving the ALJ's denial of temporary total disability benefits. Following a response by Southwire, the ALJ denied the petition for reconsideration.

On June 26, 2002, the Workers' Compensation Board entered an opinion reversing and remanding the ALJ's decision. The Board acknowledged that the ALJ's interpretation of the statute was reasonable but believed Veach's interpretation was equally reasonable. The Board opted for Veach's interpretation and construed the word "award" in KRS 342.125(3) as correlating with "compensation" received under the workers' compensation statutes. It held that Veach is entitled to temporary total disability benefits during the period of his temporary disability and recuperation from surgery for repair of his rotator cuff. This appeal followed.

Southwire contends the Board erred in interpreting KRS 342.125. It argues that KRS 342.125(3) and (8) impose a four-year period of limitations on motions to reopen, subject to the exceptions stated in KRS 342.125(1) and (3). It further asserts that while Veach's request for medical expenses falls within the exceptions, his claim for temporary total disability benefits does not because his request was filed more than four years

after the 1994 order approving benefits under the settlement, and therefore, is barred.

KRS 342.125(3) states:

Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c) 2, or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.¹ (Emphasis added.)

KRS 342.125(8) states:

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.

Veach asserts, and the Board agreed, that his request for temporary total disability benefits as part of his motion to

¹ The quotations are from the version of KRS 342.125 that became effective on July 14, 2000. The 2000 version of Subsection 3 differs from the previous 1996 version with the addition of the underlined phrase and modification of the original two-year waiting period in the last provision to a one-year period. See 2000 Ky. Acts ch. 514, § 7.

reopen fell within the exception in KRS 342.125(3) for motions to reopen "seeking temporary total disability benefits during the period of an award." Since the term "award" is not explicitly defined in KRS Chapter 342, Veach maintains that it should be construed to correlate with the concept of "compensation," which is defined in KRS 342.0011(14) as "all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits." He states an "award" includes both medical expenses and income benefits and the settlement agreement in his case included both medical expenses and income benefits. Because the ALJ ordered ongoing medical expenses, Veach postulates that the "award" is ongoing during the time he is receiving medical treatment and since the award is ongoing, he is entitled to temporary total disability benefits "during the period of the award."

As an initial matter, we note that this case involves solely the interpretation of KRS 342.125. While judicial review of an ALJ's decision on factual issues is limited, statutory interpretation is a question of law subject to de novo review and the courts are not bound by the Board's interpretation of a statute. See Hall's Hardwood Floor Co. v. Stapleton, Ky. App., 16 S.W.3d 327, 330 (2000); Wilson v. SKW Alloys, Inc., Ky. App., 893 S.W.2d 800, 801-02 (1995). The cardinal rule of statutory interpretation is to ascertain and give effect to the

legislature's intent. Hale v. Combs, Ky., 30 S.W.3d 146, 151 (2000); Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88, 94 (2000). In determining legislative intent, a court must refer to the language of the statute and is not free to add or subtract from the statute or interpret it at variance from the language. Hale, 30 S.W.3d at 151 (quoting Beckham v. Board of Educ. of Jefferson County, Ky., 873 S.W.2d 575, 577 (1994)). Statutes should not be interpreted so as to bring about absurd or unreasonable results. Kentucky Industrial Utility Customers, Inc., v. Kentucky Utilities Co., Ky., 983 S.W.2d 493, 500 (1998); Estes v. Commonwealth, Ky., 952 S.W.2d 701, 703 (1997); or in such a way as to render any part of it meaningless or ineffectual, Stevenson v. Anthem Cas. Ins. Group, Ky., 15 S.W.3d 720, 724 (1999); Bob Hook Chevrolet Isuzi v. Transportation Cabinet, Ky., 983 S.W.2d 488, 492 (1998). "[A]ll statutes should be interpreted to give them meaning, with each section construed to be in accord with the statute as a whole." Aubrey v. Office of the Attorney General, Ky. App., 994 S.W.2d 516, 520 (1999)(quoting Transportation Cabinet v. Tartar, Ky. App., 802 S.W.2d 944, 946 (1990)). The policy and purpose of a statute should be considered in determining the meaning of the words used. Kentucky Industrial Utility Customers, supra at 500; Democratic Party of Kentucky v. Graham, Ky., 976 S.W.2d 423, 429 (1998).

Interestingly, both parties cite the case of Meade v. Reedy Coal Co., Ky., 13 S.W.3d 619 (2000), in support of their positions. In Meade, the employee was awarded permanent partial disability benefits based on a 50% disability in December 1995. In January 1997, he moved to reopen his award, which the employer opposed based on the two-year waiting period in the 1996 amendments to KRS 342.125. While the main focus in this case involved the two-year waiting period, the court did discuss the interplay between the various sections of KRS 342.125, especially subsections (3) and (8). After carefully analyzing the statutory language, the court held that the two-year waiting periods and the four-year limitation contained in KRS 342.125(3) govern the reopening of claims in which the award was entered on or after December 12, 1996; whereas, the four-year limitation contained in KRS 342.125(8) governs the reopening of claims decided prior to December 12, 1996. Id. at 622. It also held, however, that because KRS 342.125(8) explicitly referred to the "exceptions" in subsections (1) and (3), the legislature intended those exceptions, as opposed to the portion of those subsections involving the two time periods, to apply to the reopening of all claims, including those decided prior to or after December 12, 1996. Id. at 621-22.

The parties' reliance on Meade is misplaced. First, the court in Meade did not attempt to construe the "exceptions"

in KRS 342.125(3), it merely held that those exceptions apply to all claims. Second, the Meade decision dealt with the 1996 version of KRS 342.125 and the exception dealing with temporary total disability benefits in KRS 342.125(3) was not added until passage of the 2000 version of the statute. Nevertheless, Meade is relevant to the extent that it establishes the applicability of the four-year limitations of KRS 342.125(8)² to Veach's motion to reopen, unless it is exempt under KRS 342.125(3).

The determinative issue in the current appeal concerns the legislature's intent in adding the temporary total disability exception in KRS 342.125(3), and more specifically, the meaning of the phrase "during the period of an award." We believe that this phrase should be interpreted to mean the period that either income benefits or medical expenses are payable. As the Board noted, an "award" consists of providing compensation, which typically includes both income and medical benefits. The addition of the exception from the time limitation for temporary total disability benefits in the 2000 version of KRS 342.125(3) evidences legislative intent to expand recovery of temporary total disability benefits beyond the four-year limitations period. In addition, if the legislature had intended to restrict recovery of temporary total disability

² We note that KRS 342.125(8) was not amended in the 2000 version of the statute, so the Meade court's interpretation of that subsection applies to our situation.

benefits to a period commensurate with the period associated solely with the payment of income benefits, it could have done so with more explicit language. We agree with the Board's view that medical benefits constitute "compensation," and therefore, are part of an "award" for purposes of entitlement to temporary total disability benefits "during the period of an award" under the exception in KRS 342.125(3).

In the current case, the settlement of the initial claim included future medical expenses as part of the award. Consequently, we believe Veach's claim for temporary total disability benefits falls within the period of the award and is not barred by the limitations period.

For the foregoing reasons, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE STEPHEN
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