

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000368-WC

BARBARA EDWARDS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-02795

HARLAN ARH; SPECIAL FUND;
HON. SHEILA C. LOWTHER, CHIEF
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: EMBERTON, CHIEF JUDGE; BAKER AND JOHNSON, JUDGES.

BAKER, JUDGE. Barbara Edwards petitions this Court to review a January 22, 2003, opinion of the Workers' Compensation Board ("the Board"). The Board affirmed the Administrative Law Judge's (ALJ) denial of Edwards' Motion to Reopen. We affirm.

The facts are these: In late 1995, Edwards suffered two separate work-related back injuries. On April 19, 1996, an ALJ, approving a settlement agreement, awarded Edwards a twenty-

five percent permanent occupational disability. On August 2, 2002, Edwards filed a Motion to Reopen, along with an affidavit alleging she was now totally occupationally disabled. The ALJ denied her motion, holding that her claim was barred by the limitations period in Kentucky Revised Statute (KRS) 342.125. The Board affirmed the ALJ's denial. This review follows.

Edwards argues that KRS 342.125(8) operates unconstitutionally when it bars her from reopening her claim because it impairs a vested right. We are of the opinion that the reasoning in McCool v. Martin Nursery & Landscaping, Inc., Ky., 43 S.W.3d 256 (2001), is dispositive of this issue. In McCool, the claimant challenged the constitutionality of KRS 342.125(3)'s prohibition on reopening an original award within two years of its entry. The claimant argued that applying the amended provision to a claim that arose before its effective date impaired a vested property right. As grounds for this assertion the claimant relied on the principles that the legislature cannot impair the obligations of contract or take property without just compensation. The McCool court, using the following reasoning, held that the claimant was not denied a vested right:

[R]eopening is a remedy for an increase in disability that occurs after an award is entered. Any right that a worker has to be compensated for a post-award increase in disability is inchoate until such time as he

sustains a post-award change of occupational disability, at which point the right becomes vested. . . . Because the alleged increase in disability occurred after the effective date of the amendment, applying the amendment and dismissing the motion to reopen did not affect a right that vested before the amendment's effective date.

Id. at 258.

Though Edwards' argument concerns the four-year statute of limitations period in 1996 and 2000 amended versions of KRS 342.125(8), her reasoning is the same as the claimant in McCool. She argues that because the award was entered before the effective date of the amendment, applying the four-year limitation period to her is a denial of a right that vested when the ALJ approved the award. However, McCool states that "[a]ny right that a worker has to be compensated for a post-award increase in disability is inchoate until such time as he sustains a post-award change of occupational disability, at which point the right becomes vested." Id. at 258. Edwards' alleged increase in disability occurred in August 2002. Thus, her right to reopen did not vest until over six years after the effective date of the amendment. The ALJ's denial of the Motion to Reopen did not affect a vested right.

Edwards also asserts that the statute of limitations in KRS 342.125(8), which bars the reopening of her claim, is unconstitutional by denying her due process and equal protection

required by the Kentucky Constitution and United States Constitution. Edwards states that under KRS 342.040(1) when an employee has stopped receiving workers' compensation benefits due to her, the commissioner of the Department of Workers' Claims must advise the employee of her right to prosecute a claim. Edwards argues that notification to these workers but not to workers in her position violates equal protection.

The Equal Protection Clause of the Fourteenth Amendment directs that all persons similarly situated should be treated alike. Weiland v. Bd. Of Trustees of Kentucky Retirement Systems, Ky., 25 S.W.3d 88, 92 (2000). We are of the opinion that Edwards is not similarly situated with those workers implicated under 342.040(1). One glaring difference is that workers under that statute have not reached maximum medical improvement. These workers have not had the opportunity to pursue an initial workers' compensation claim. This is not true for Edwards, who had already been awarded disability benefits.

Furthermore, no due process claim exists. Due process requires notice and hearing only in quasi-judicial or adjudicatory settings and not in the adoption of general legislation. 16B Am. Jur. 2d Constitutional Law § 907 (1998).

Thus, application of the statute to bar Edwards' claim does not violate either equal protection or due process.¹

For the foregoing reasons, we affirm the Board's opinion that the ALJ correctly denied Edwards' motion.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald C. Cox
ATKINS LAW OFFICE
Harlan, Kentucky

BRIEF FOR APPELLEE, HARLAN
ARH:

Kamp T. Purdy
FERRERI & FOGLE
Lexington, Kentucky

¹ Edwards also argues that there is no "legitimate legislative purpose" to justify the limitations periods in KRS 342.125. However, she directs this Court to no constitutional infirmity. Since we have demonstrated that no claim lies for violation of due process or equal protection and since Edwards provides no rationale for her blank assertion, we decline to pursue this issue.