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Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-000519-WC

RONNIE COOK

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-93-33721

UNICORN MINING, SPECIAL FUND,
HON. R. SCOTT BORDERS, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION AFFIRMING

** ** * * *

BEFORE: PAISLEY, AND TACKETT, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

TACKETT, JUDGE: Ronnie Cook (hereinafter Cook) appeals from the February 19, 2003 opinion of the Workers' Compensation Board (hereinafter the Board), which affirmed the decision of the Administrative Law Judge (hereinafter ALJ) to deny his motion to reopen. We affirm.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On June 16, 1995, Cook was awarded benefits representing a 20% occupational disability following a work related back injury in 1993. On March 26, 1998, Cook, with the assistance of an ombudsman, filed a motion to reopen, alleging a worsening of his condition. The Arbitrator later found that Cook's physical condition had not changed since the time of his original award.

Cook filed the present motion on July 19, 2002 alleging that, as a result of a worsened condition, he was totally disabled and unable to perform any type of employment. These allegations were supported by his affidavit and a medical report. The ALJ denied this motion, noting that it was barred by the four-year limitation upon reopening pursuant to Kentucky Revised Statute (KRS) 342.125(8) and the Board affirmed. This appeal followed.

Cook argues that the ALJ erred as a matter of law in denying his motion to reopen because the 1996 and 2000 amendments to the workers' compensation law violated his Constitutional rights. His arguments are based on his belief that he had a vested right to reopen his claim and that further the Appellee and the Department of Workers' Claims (hereinafter Department) had a duty to give him notice of the effect of the amended laws.

Cook's argument is not persuasive. In Nygaard v. Goodin Bros., Inc., Ky., -- S.W.3d --, -- (2003 WL 21355415 at *2)(2003), the Kentucky Supreme Court found that KRS 342.125(8) is

both a statute of limitation and repose because, by limiting the time for taking action, it may extinguish a cause of action before it arises. In enacting a statute of repose, the legislature may not abolish or diminish the legal remedies for common-law causes of action for personal injuries or death that existed prior to the adoption of the 1891 Kentucky Constitution. But no such constraint exists with regard to a statutory cause of action such as workers' compensation.

KRS 342.125(8) does not violate the Constitution by denying a vested property right because "the right to be compensated for a post-award increase in disability was inchoate until such time as the increase occurred." Id. at *1; McCool v. Martin Nursery & Landscaping, Ky., 43 S.W.3d 256, 258 (2001). Whenever the employee sustains a post-award increase in occupational disability, the right becomes vested at that point. McCool, 43 S.W.3d at 258. When, as in McCool, "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. Therefore, KRS 342.125(8) is constitutional. Nygaard, -- S.W.3d at -- (2003 WL 21355415 at *1). Cook's alleged increase in disability occurred after the amendment took

effect; thus, his right to reopen did not vest until that time. The amended provision did not affect a vested right.

We also find Cook's contention to be unfounded that Appellee and the Department were duty-bound to notify him of the statutory amendments. Cook fails to cite any statutory or case law supporting his position. That which he does cite is irrelevant to the issue of reopening. Likewise, we are unable to find any authority in support of his asserted duty to give notice. There is no statutory obligation to give notice of an alteration of the statute of limitations under KRS 342.125. It is Cook's personal duty to keep abreast of changes in the law. His constitutional rights have not been violated.

Cook concedes that "a party seeking to have a statute declared unconstitutional is faced with the burden of demonstrating that there is no conceivable basis to justify the legislation." Brief of Appellant, p. 8 (citing Buford v. Commonwealth, Ky. App., 942 S.W.2d 909 (1997)); see also Holbrook v. Lexmark International Group, Inc., Ky., 65 S.W.3d 908, 915 (2001). However, he utterly fails to meet this burden, inasmuch as he simply concludes that there is "no legitimate legislative purpose" for the workers' compensation amendments and that they are "not logical." This is insufficient. KRS 342.125(8) is constitutional and Cook has suffered no other violation of his constitutional rights.

Cook's final argument is that he, in fact, complied with the amended version of KRS 342.125. He argues that he filed his motion to reopen within four years of the date of the last decision on his claim in 1998. The plain language of KRS 342.125(3), however, only provides for a four-year limit following the date of the *original* award. The statute does not provide for a later decision to have any effect on this period. This argument is also without merit.

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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