

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-001020-WC

ROY JENKINS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-00705

AK STEEL CORPORATION; R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE; AND WORKER'S
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, AND TACKETT, JUDGES.

TACKETT, JUDGE: Roy Jenkins petitions this Court for a review of the decision of the Workers Compensation Board, which reversed the decision of the Administrative Law Judge (ALJ) awarding him benefits for cumulative, work-related hearing loss in the course of his employment with AK Steel Corporation. Jenkins argues on appeal that the Board's finding that the statute of limitations barred his claim was erroneous and that the original award must be reinstated. We disagree, and affirm.

Jenkins worked for AK Steel for a period of over thirty years. He described his working environment as "very noisy." Jenkins ceased employment at AK Steel in 1998. In 2002, he was diagnosed with hearing loss and assessed an 8% whole body impairment as a result. The ALJ found that Jenkins was entitled to benefits and issued an opinion and award on December 20, 2002. At a petition for rehearing, AK Steel presented evidence that Jenkins was aware of his hearing loss when he stopped working in 1998, but the petition was denied by the ALJ. The Workers' Compensation Board reversed, holding that Jenkins' claim was time-barred, since his claim was filed more than four years after he ceased employment with AK Steel. The Board held that "an individual can not have an injury date, even in cumulative trauma cases, that is more than two years after ceasing work," and further expanded on this holding by stating that "an individual may have a manifestation that triggers the statute of limitations prior to the date of the last trauma, but in a case such as this where there is no payment of income benefits, we believe the cessation of exposure to the trauma establishes the last date for the clocking of the two years statute of limitations period in Kentucky Revised Statute (KRS) 342.185 and KRS 342.270." Jenkins argues on appeal that this holding is unsupported by either the language of the statute or

the applicable case law, citing Alcan Foil Products v. Huff, Ky., 2 S.W.3d 93 (1999). We disagree.

Jenkins cites KRS 342.7305 for the proposition that an occupational hearing loss does not become a compensable injury until the impairment reaches 8% to the whole body, as determined by the AMA Guides. We acknowledge that the statute does limit compensation for occupational hearing loss for impairment ratings of less than 8%, but do not perceive a legislative intent to alter the statute of limitations by the enactment of that statute.

AK Steel argued before the Board that if the statutes of limitation found in KRS 342.185 and KRS 342.270 were to have any effect, the date of last exposure must have some significance in determining the date on or from which the statute begins to run. Alcan and Randall Co. v. Pendland, Ky. App., 770 S.W.2d 687 (1989), also cited by Jenkins in this appeal, do not deal with the question of a claim filed longer than two years after employment ceased. On that basis, the Board distinguished those cases and held that the cessation of exposure to the trauma establishes the latest date for the clocking of the two year statute of limitations period.

We do not agree with petitioner that the Board's holding has no basis in law. In other cases, the Board has held that one cannot have an injury date that is more than two years

after ceasing work. We believe that such a rule is logical and consistent with the intent of the workers' compensation statutes in this state. The alternative is to allow endless tolling of the statute until the worker discovers the injury, a result we find to be contrary to the intent of the legislature.

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

ALL CONCUR.

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