RENDERED: MARCH 18, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-001527-WC

BELVE CALLAHAN — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
NO. WC-02-02250

HUBB COAL CORPORATION;
BONNIE C. KITTINGER,
ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD;
WORKERS' COMPENSATION FUNDS (SUCCESSOR
TO SPECIAL FUND) — APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: JOHNSON and McANULTY, Judges; HUDDLESTON, Senior Judge.[1]

HUDDLESTON, Senior Judge: In 1991, Belve Callahan was diagnosed with coal workers' pneumoconiosis (CWP). Although Callahan knew this, he chose not to file an occupational disease claim with the Department of Workers' Claims at that time. Later, in April of 1995, Callahan began working for Hubb Coal Corporation in one

[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.

of its underground mines. Four years later, while still working for Hubb, Callahan injured his back. He filed an injury claim against Hubb and, in June of 2001, received an award that resolved the claim.

On January 23, 2003, approximately twelve years after being diagnosed, Callahan filed a CWP occupational disease claim against Hubb. The coal company moved to dismiss Callahan's latest claim arguing that it was barred since Callahan had failed to join it with his prior back injury claim as required by Kentucky Revised Statutes (KRS) 342.270(1). An administrative law judge (ALJ) granted Hubb's motion and dismissed Callahan's occupational disease claim. Callahan appealed to the Workers' Compensation Board which affirmed the ALJ's decision. This petition for review followed.

In this Court, as he did below, Callahan argues that he filed his occupational disease claim pursuant to KRS 342.792. According to Callahan, the legislature implemented KRS 342.792 in order to extend the statute of limitations for CWP claims for miners who had been exposed to coal dust between December 12, 1996, and July 15, 2002. Since Callahan was last exposed to coal dust on May 24, 2000, he reasons that KRS 342.270(1) could not have barred his CWP claim because KRS 342.792 did not require him to join it with his prior injury claim.

Furthermore, Callahan argues, KRS 342.270(1)[2] does not apply to occupational disease claims. He contends that the statute applies only to injury claims since it refers multiple times to the two-year statute of limitations for such claims. Finally, he argues that had he joined his CWP claim with his back injury claim, it would have been futile since he had no chance of succeeding under the Workers' Compensation Act as it then existed.

When reviewing the Board's decisions, we only reverse if the Board has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence as to cause gross injustice.[3]

In resolving Callahan's petition, we rely on the Supreme Court's reasoning in Jeep Trucking, Inc. v. Howard.[4] In Jeep Trucking, the claimant injured his back on December 12, 1989, and quit working. His employer paid income benefits until December 26, 1990. In 1991, the claimant filed a CWP occupational disease claim against his employer alleging that

---

[2] If the parties fail to reach an agreement in regard to compensation under this chapter, either party may make written application for resolution of claim. The application must be filed within two (2) years after the accident, or, in case of death, within two (2) years after the death, or within two (2) years after the cessation of voluntary payments, if any have been made. **When the application is filed by the employee or during the pendency of that claim, he shall join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him.** Failure to join all accrued causes of action will result in such claims being barred under this chapter as waived by the employee. (Emphasis supplied.)

[3] Daniel v. Armco Steel Company, 913 S.W.2d 797, 798 (Ky. App. 1995).

[4] 891 S.W.2d 78 (Ky. 1995).

his last date of exposure was December 12, 1989. In 1992, the claimant filed an injury claim seeking compensation for the 1989 back injury.[5] The ALJ dismissed the injury claim and stated that an employee had a duty to prosecute all known claims against his employer in a single action.

On appeal, the Board noted that piecemeal litigation is neither favored nor in the interest of judicial economy. But since the Workers' Compensation Act did not then require consolidation of injury and occupational disease claims, the Board reversed. Board Member Turner concurred but agreed with the ALJ that no good reason existed for an employee to maintain multiple claims when one consolidated action would achieve the same goal. This Court affirmed, and the Supreme Court granted discretionary review.[6] In its opinion, the Court said:

> We believe that the result reached by the Board and the Court of Appeals was correct, given the circumstances present and the ALJ's rationale for dismissing the injury claim. However, we also agree with Board Member Turner that the piecemeal litigation of workers' compensation claims is counterproductive. Particularly under the present circumstances where both claims arose on the same day, workers should consolidate the claims so that they may be considered

[5] Id. at 78.
[6] Id. at 79.

> together. Therefore, we would urge the legislature to consider enacting a provision which addresses the problems caused by the piecemeal litigation of workers' compensation claims.[7]

In response, the General Assembly amended KRS 342.270(1) to require an employee to "join all causes of action against [a] named employer which have accrued and which are known, or should reasonably be known to him." Subsequently, the Supreme Court observed that KRS 342.270(1) was "clear, unequivocal, and mandatory, both with respect to a worker's obligation to join 'all causes of action' against the employer during the pendency of a claim and with respect to the penalty for failing to do so."[8]

Since the language of KRS 342.270(1) is explicit, we have need not resort to rules of statutory construction, and we must apply the commonly understood meaning to each word contained in the statute.[9] Given the Supreme Court's reasoning in Jeep Trucking, we conclude that the words "all causes of action" found in KRS 342.270(1) mean **all,** including both injury claims and occupational diseases claims. Thus, when Callahan filed his injury claim, he was required to join his occupational disease claim of which he was then aware.

---

[7] Id. at 80.
[8] Ridge v. VMV Enterprises, Inc., 114 S.W.3d 845, 847 (Ky. 2003).
[9] Stewart v. Estate of Cooper, 102 S.W.3d 913, 915 (Ky. 2003).

Because the Board did not misconstrue controlling law, we affirm its decision.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
Phyllis L. Robinson Manchester, Kentucky	No Brief Filed