

RENDERED: May 6, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2004-CA-002122-WC

LAYMON WRAY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-91-02640

ALLIED SYSTEMS; SPECIAL  
FUND; HON. LAWRENCE SMITH,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

SCHRODER, JUDGE: Laymon Wray seeks a review of a decision of the Workers' Compensation Board which affirmed a decision of the Administrative Law Judge which denied a motion to reopen on the grounds that the motion was filed more than four years after the

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<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

original award. Wray contends the statute of limitations runs from the date of the original award or the date of the last award which would make his motion timely. We agree with the Board that the statute of limitations in KRS 342.125(3) runs from the date of the original award only, hence we affirm.

Laymon Wray filed a claim for injuries of June 11, 1990, and January 16, 1991. The case was heard and decided on March 31, 1995. In this original award, Laymon Wray was found to be permanently and totally disabled, apportioned 75 percent against the employer and 25 percent against the Special Fund. On April 15, 1998, the employer, Allied Systems, filed a Motion to Reopen the original award dated March 31, 1995, on the grounds that Laymon Wray's condition had improved and he was no longer totally disabled. This case was heard and after extensive proof, the Administrative Law Judge rendered an opinion and order on September 16, 1999, reducing Laymon Wray's benefits to 70 percent disability.

On January 20, 2003, more than four years after the March 31, 1995, award, but less the four years from the September 16, 1999, order reducing the original award, Laymon Wray filed a Motion to Reopen contending a change of condition which would merit an award of total and permanent disability. The ALJ decided the reopening was barred by the statute of

limitations provision of KRS 342.125(3) and (8). On appeal to the Board, the Board affirmed the ALJ.

On appeal to this Court, Laymon Wray contends the construction placed on KRS 342.125(3) by the Board renders the statute ambiguous, that in a case such as Wray's, where an award is later reopened, the four-year statute of limitations period should apply to the subsequent award on reopening and not refer back to the original award. The function of the Court of Appeals in reviewing a decision of the Workers' Compensation Board is to correct the Board only where the Court perceives the Board has overlooked or misconstrued statutes, precedent, or has flagrantly erred in assessing the evidence so as to cause a gross injustice. Western Baptist Hospital v. Kelly, 827 S.W.2d 685 (Ky. 1992).

We believe the Board and the ALJ were correct in concluding that KRS 342.125(3), the statute of limitations, runs from the date of the original award, March 31, 1995, (as extended by KRS 342.125(8) to December 12, 1996) and not from the order issued on September 16, 1999, reopening and decreasing the original award. The plain language of KRS 342.125(3) only provides for a four-year limit following the date of the original award. The statute does not provide for a subsequent order or award to have any effect on the four-year period.

The most commonly stated rule in statutory interpretation is that the "plain meaning" of the statute controls. This Court has steadfastly adhered to the plain-meaning rule "unless to do so would constitute an absurd result." The plain-meaning rule is consistent with directions provided by the legislature on how to interpret the statutes enacted by it.

Wheeler & Clevenger Oil Co., Inc. v. Washburn, 127 S.W.3d 609, 614 (Ky. 2004). (citations omitted).

The General Assembly could have provided a statute of limitations which imposed a four-year limitation from the date of the original award or four years from the last order on a motion to reopen - whichever is later, but it did not. Cosby v. Commonwealth, 147 S.W.3d 56, 61 (Ky. 2004). Therefore, we are bound by the plain-meaning of the statute and cannot expand the period of limitations as Laymon Wray asks.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Robert M. Lindsay  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Allan Weiss  
Louisville, Kentucky

BRIEF FOR SPECIAL FUND:

Robert T. Whittaker  
Frankfort, Kentucky