

RENDERED: May 27, 2005; 10:00 a.m.
TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002357-WC

ROBERT ADKINS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
CLAIM NO. WC-97-02284

ELKHORN CITY AREA AMBULANCE;
WORKERS' COMPENSATION BOARD;
SPECIAL FUND; and
SHEILA C. LOWTHER,
CHIEF ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE¹.

HUDDLESTON, SENIOR JUDGE: While volunteering for the Elkhorn City Area Ambulance Service (Elkhorn), Robert Adkins suffered a low back injury. Adkins filed a workers' compensation claim against Elkhorn and the Special Fund seeking an award of permanent total disability benefits. In an opinion and award

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.

rendered on April 13, 2000, Administrative Law Judge J. Landon Overfield (ALJ) determined that Adkins was 65% permanently partially disabled and awarded him benefits suitable to his disability.

Over four years later, on April 23, 2004, Adkins filed with Chief Administrative Law Judge Shelia C. Lowther (CALJ) a motion to reopen his claim alleging that his condition had worsened. In support of his motion, Adkins attached a report from Dr. Harry Lockstadt who recommended that Adkins undergo additional surgery to relieve his low back pain. Citing Kentucky Revised Statutes (KRS) 342.125(3), which sets forth the four-year statute of limitations for reopening workers' compensation claims, the CALJ denied Adkins' motion. Adkins appealed to the Workers' Compensation Board, but the Board affirmed the CALJ's decision. Adkins then filed a petition for review with this Court.

In his petition, Adkins argues that the Board misconstrued KRS 342.125(3), insisting that the statute is vague. He argues that an ALJ's decision does not become final until the 30-day time limit for filing an appeal has passed. He interprets KRS 342.125(3) to mean that a claimant has four years from the date that the award becomes final, not the date it is entered, in which to file a motion to reopen. Adkins argues that his award, which was entered on April 13, 2000, did not

become final until thirty days had passed, the time in which an appeal to the Board could have been taken, so he reasons that he had four years from May 13, 2000, in which to file his motion to reopen. Hence, he argues, his April 23, 2004, motion to reopen was timely.

When reviewing the Board's decisions, we reverse only when the Board has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence that its decision has resulted in a gross injustice.²

The statute in question, KRS 342.125(3), provides that:

Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits[.]

When we interpret a statute, we attempt to ascertain and effectuate the intent of the General Assembly.³ If the words

² Daniel v. Armco Steel Co., 913 S.W.2d 797, 798 (Ky.App. 1995).

³ KRS 446.080(1); Commonwealth v. Reynolds, 136 S.W.3d 442, 445 (Ky. 2004).

of the statute are clear, unambiguous and express the General Assembly's intent, then we are prohibited from interpreting it and must apply the statute as written.⁴ The pertinent part of KRS 342.125(3) reads as follows: "no claim shall be reopened more than four (4) years following **the date** of the original award or order[.]"⁵ As can be seen, the statute's words are neither vague nor ambiguous. And they clearly express the legislative intent for the statute of limitations to commence on the date that an award is entered, not thirty days later. Given the statute's clarity, the Board was, and we are, prohibited from interpreting it.

In the alternative, Adkins argues that a motion to reopen for additional Total Temporary Disability (TTD) benefits may be filed after the four-year statutory limitation period has run. Since he included a copy of Dr. Lockstadt's report which recommended additional surgery, Adkins insists that he implicitly requested additional TTD benefits in his motion to reopen. Since he raised TTD benefits in his motion, he claims that the statute of limitations did not bar his motion.

This argument lacks merit. In his motion, Atkins failed to argue that he was entitled to additional TTD benefits; in fact, Adkins neither mentioned nor alluded to TTD benefits in

⁴ Turner v. Turner, 908 S.W.2d 124, 125 (Ky.App. 1995); Terhune v. Commonwealth, 907 S.W.2d 779, 782 (Ky.App. 1995).

⁵ Emphasis supplied.

the motion. Thus, the Board did not err when it determined that Adkins had failed to raise this issue before the CALJ, thereby failing to preserve it for appeal.

When the Board reviewed the CALJ's decision, it neither misconstrued controlling law nor erred in evaluating the evidence. Therefore, its opinion is affirmed.

ALL CONCUR.

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