

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-001551-WC

RON BURROUGHS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-01208

MARTCO; HON. RICHARD M. JOINER,
ADMINISTRATIVE LAW JUDGE;
HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, NICKELL AND THOMPSON, JUDGES.

NICKELL, JUDGE: Ron Burroughs appeals from a decision of the Workers' Compensation Board affirming the denial of his motion to reopen his award to correct a mistake of law concerning the duration of permanent total disability (PTD) benefits. Burroughs argues: (1) the Board erred in determining the motion

to reopen was time-barred; and (2) the provisions of CR¹ 60.02 entitle him to reopen the award. After reviewing the record and briefs, we affirm.

Burroughs entered the employ of Martco in March 2000. He filed a workers' compensation claim against Martco for cumulative trauma to his neck, which manifested on January 4, 2001. On March 28, 2002, Burroughs received an award of permanent partial disability (PPD) benefits based upon a five percent whole person impairment rating for a period of 425 weeks commencing from the date of the injury.

Burroughs underwent cervical surgical procedures in August 2002 and November 2002. He filed a motion to reopen his claim against Martco on September 9, 2002. On July 19, 2004, the Administrative Law Judge (ALJ) determined Burroughs had a twenty-eight percent whole person impairment and declared him to be "100% occupationally disabled." The ALJ found Burroughs was entitled to receive \$350.10 each week from the time the motion to reopen was filed for the remaining period of his earlier award. No petition for reconsideration or appeal was taken from the July 19, 2004, award.

On September 14, 2006, Martco filed a motion to reopen and a Form 112 medical dispute contesting Burroughs's treatment. The parties voluntarily resolved the dispute and Martco's motion to reopen was denied as moot.

On February 6, 2009, pursuant to the express language of the July 19, 2004, order and award, Martco terminated payment of Burroughs's income

¹ Kentucky Rules of Civil Procedure.

benefits. In response, Burroughs filed a motion to reopen and a motion for relief pursuant to CR 60.01 and 60.02 asserting the language of the July 19, 2004, award contained a mistake of law pertaining to the duration of his PTD award. The ALJ denied the motion as time-barred. The Board affirmed and this petition for review followed.

Burroughs first argues the Board erred by determining his motion to reopen was time-barred. KRS² 342.125(3) states:

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*, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.

(Emphasis added).

Where disability benefits were awarded subsequent to the original award, the Supreme Court of Kentucky has interpreted the time limitation contained in KRS 342.125(3) to begin running from the date of the later award rather than from the date of the original award. *Hall v. Hospitality Resources, Inc.*, 276 S.W.3d 775, 777 (Ky. 2008). The Court has also held medical fee disputes do not encompass benefits, and, regardless of their outcome, do not extend the four-year statute of limitations under KRS 342.125 (3). *Id.* at 785-86.

² Kentucky Revised Statutes.

Martco asserts the ALJ's July 19, 2004, award based on a finding of 100% occupational disability was unclear. However, it is undisputed that, pursuant to KRS 342.730, the ALJ erred by limiting the duration of Burroughs's benefits in the July 19, 2004, award if her finding of 100% occupational disability equated to a determination that he was permanently and totally occupationally disabled. In such event, Burroughs would have been entitled under KRS 342.730 to receive benefits until he qualified for normal Social Security benefits, rather than merely for the remaining period of his earlier award.³

Nevertheless, the original award was entered on March 28, 2002, and following a motion to reopen, Burroughs received an award of increased benefits on July 19, 2004. While Burroughs notes Martco filed a motion to reopen in 2006, that fact has no bearing on his motion to reopen for two reasons: (1) Martco's motion to reopen did not result in an award or order granting or denying PTD benefits; and (2) the 2006 motion to reopen concerned a medical fee dispute, which does not relate to PTD benefits. As relates to the four-year statute of limitations, Burroughs received an award of benefits on July 19, 2004, at the latest. His motion to reopen to correct a mistake of law was not filed until March 3, 2009, nearly five years after the award of benefits. Therefore, the motion to reopen was time-barred pursuant to KRS 342.125(3).

³ Burroughs will be eligible for Social Security benefits on July 10, 2010, his sixty-sixth birthday.

Burroughs next argues he was entitled to reopen the award under the provision of CR 60.02. We disagree.

CR 1(2) states in relevant part:

These Rules govern procedure and practice in all actions of a civil nature in the Court of Justice except for special statutory proceedings, in which the procedural requirements of the statute shall prevail over any inconsistent procedures set forth in the Rules.

The Workers' Compensation Board is an administrative agency. KRS 342.215; *Vessels by Vessels v. Brown-Forman Distillers Corp.*, 793 S.W.2d 795, 798 (Ky. 1990). It is not part of the Court of Justice. KRS 342.125, not CR 60.02, grants an ALJ the authority to reopen an award. *Wheatley v. Bryant Auto Services*, 860 S.W.2d 767, 769 (Ky. 1993).

Accordingly, the decision of the Workers' Compensation Board is affirmed.

DIXON, JUDGE, CONCURS.

THOMPSON, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, MARTCO:

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