OPINION ENTERED: April 5, 2013

CLAIM NO. 199115712 & 199018664

RANDY DEAL PETITIONER

VS. **APPEAL FROM HON. J. LANDON OVERFIELD, CHIEF ADMINISTRATIVE LAW JUDGE**

GUNTHER NASH MINING CONSTRUCTION COMPANY
SPECIAL FUND
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and SMITH, Members.

STIVERS, Member. Randy Deal ("Deal") appeals from the November 27, 2012, order overruling his October 19, 2012, motion to reopen by Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ"), which reads as follows:

> This matter comes before the undersigned Chief Administrative Law Judge (CALJ) on the Frankfort Motion Docket upon Plaintiff's motion to

> reopen the above styled claim on the grounds of a worsening of his physical condition and an increase in occupational disability.
>
> The record reflects that the award or last order granting/denying benefits in this claim was rendered December 29, 1993. Pursuant to KRS 342.125(3), no claim shall be reopened more than four (4) years following the date of the last award or order. Since plaintiff's award was rendered December 29, 1993, plaintiff had four years from and after December 12, 1996 to file a motion to reopen. Plaintiff has filed this motion to reopen more than 4 years after December 12, 1996.

Deal filed a "Motion for ALJ to Reconsider, Alter, Amend or Vacate 11/27/12 Order" in which he argued the "law in 1996 did not exist" at the time of the 1993 award and is not binding on him. Additionally, Deal asserted as follows:

> His receiving a RIB [retraining incentive benefits] award does not prevent him from filing an additional claim which results in his being additionally injured by his continued exposure over a significant number of years from breathing and inhaling the dust associated with the coal mining industry.

In the alternative, Deal argues "[i]f the ALJ should find he is not entitled to reopen his claim, then the ALJ should find that he is entitled to have his claim considered as a new claim." He argues as follows:

> It was never the intent of the legislative body to preclude a coal miner who took a RIB claim in the early 90s to be precluded from filing either a reopening and/or new claim whichever the ALJ should so consider for an additional injury that he received from continuing to work in the coal mines, breathing and inhaling coal dust and rock dust and other dust associated with the coal mining industry on a regular basis.

In the January 8, 2013, order overruling the petition for reconsideration, the CALJ stated as follows:

> This matter comes before the Chief Administrative Law Judge (CALJ) upon the Frankfort Motion Docket for consideration of Plaintiff's petition for reconsideration of the CALJ's order of November 27, 2012. The CALJ's order overruled Plaintiff's motion to reopen for an increase in occupational disability due to the worsening of his coal workers pneumoconiosis.
>
> Review pursuant to a petition for reconsideration is limited by KRS 342.281 and 803 KAR 25:010 §19 to the correction of errors patently appearing on the face of an award, order or decision, and does not allow reconsideration of the merits of a claim or defense. Plaintiff does not set forth in his petition any errors appearing on the face of the CALJ's order. Plaintiff actually argues that the CALJ has improperly applied the statutory provisions of KRS 342.125 and/or 342.316.
>
> Plaintiff was awarded retraining incentive benefits in an Opinion and Award rendered on December 29, 1993. On October 19, 2012, Plaintiff moved to

> reopen his award for an increase in occupational disability. The Special Fund objected citing the four year limitation set forth in KRS 342.125(8). The CALJ, relying on that statutory four year limitation, overruled Plaintiff's motion to reopen. Plaintiff now petitions for a reconsideration of that order arguing that the statutory limitation does not apply to an award rendered prior to December 12, 1996.
>
> The statue in question, KRS 342.125(8), reads in part as follows:
>
>> The time limitation prescribed in this section shall apply to all claims irrespective of when they were incurred, or when the award was entered, or the settlement approved. However, *claims decided prior to December 12, 1996*, may be reopened within four (4) years of the award or order or *within (4) years of December 12, 1996*, whichever is later...
>
> A review of the above order indicates no error patently appearing on the face thereof. The CALJ remains convinced that Plaintiff's reopening of his December 29, 1993 award for retraining incentive benefits is barred by the provisions of KRS 342.125(8).

On appeal, Deal makes the same arguments made in his petition for reconsideration.

The December 29, 1993, opinion, award, and order rendered by Hon. Thomas A. Dockter, Administrative Law

Judge ("ALJ Dockter") in this claim dealt with "three separate injuries and an occupational disease claim." For the injuries, ALJ Dockter awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical expenses. For the occupational disease claim, ALJ Dockter awarded retraining incentive benefits ("RIB") benefits in the amount of "$132.47 per week payable semi-monthly commencing with the date of this Award and for a period not exceeding 208 weeks" and medical expenses.

On October 19, 2012, Deal filed a motion to reopen asserting his condition "has worsened to the extent that he is now totally occupationally disabled based upon the change of condition since December 29, 1993."

The CALJ's November 27, 2012, order overruling his October 19, 2012, motion to reopen and the January 8, 2013, order overruling Deal's petition for reconsideration set forth the correct and applicable law.

The applicable statutory provision is KRS 342.125(8) which states as follows:

> ....claims decided prior to December 12, 1996, may be reopened within four (4) years of the award or order or within four (4) years of December 12, 1996, whichever is later, provided that the exceptions to reopening established in subsections (1) and (3) of this

> section shall apply to these claims as well.

The pertinent award was rendered by ALJ Dockter on December 29, 1993. Therefore, as correctly determined by the CALJ, Deal had until four years after December 12, 1996, or until December 12, 2000, to file a motion to reopen, as this was the later of the two dates upon which Deal could seek to reopen his claim. Deal filed his motion to reopen on October 19, 2012, which exceeds this date by twelve years. Therefore, Deal’s motion to reopen was not filed within the statutory period and is barred. The fact Deal's occupational disease claim resulted in an award of RIB benefits is irrelevant as December 29, 1993, is the date of the original award. Additionally, there is no support in the law for Deal's alternative argument that he should be able to file a new claim based on his alleged worsening of an occupational disability.

Accordingly, the November 27, 2012, order overruling Deal’s October 19, 2012, motion to reopen and the January 8, 2013, order overruling Deal's petition for reconsideration rendered by the CALJ are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

SMITH, MEMBER, NOT SITTING.

COUNSEL FOR PETITIONER:

HON JOHNNIE L TURNER
P O BOX 351
HARLAN KY 40831

COUNSEL FOR RESPONDENT:

HON ROBERT L WHITTAKER
1037 US HWY 127 SOUTH STE 4
FRANKFORT KY 40601

CHIEF ADMINISTRATIVE LAW JUDGE:

HON J LANDON OVERFIELD
657 CHAMBERLIN AVE
FRANKFORT KY 40601