Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 29, 2014

CLAIM NO. 201301967

TOM BALL PETITIONER

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

LEXINGTON COAL CO., LLC
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Tom Ball appeals from the February 6, 2014 Order and the March 6, 2014 Order on Reconsideration of Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") dismissing his claim. The CALJ determined Ball's claim was not timely joined to a prior injury claim, as

required by KRS 342.270(1). For the reasons set forth herein, we affirm.

Ball filed a Form 101 injury claim on October 4, 2012 alleging injuries to his low back and neck occurring on February 8, 2012. That injury claim was settled and approved by an ALJ on June 24, 2013. On September 27, 2012, Ball filed a claim for federal black lung benefits, which was denied. On December 18, 2013, Ball filed a Form 102 application for resolution of coal workers' pneumoconiosis ("CWP"). This CWP claim, which is the basis of the present appeal, also alleged a date of injury of February 8, 2012. Attached to the CWP claim was a chest x-ray performed by Dr. Matthew Vuskovich on May 4, 2013, and a pulmonary function test performed by Dr. Glen Baker dated November 16, 2012.

Lexington Coal Co. filed a motion to dismiss for lack of joinder as required by KRS 342.270(1). Ball testified by deposition, acknowledging he had filed a prior federal black lung claim which was denied. He had been evaluated by Dr. Baker for the federal black lung claim. Ball further explained he was represented by different counsel for his federal black lung claim, and was unaware he had a state claim for CWP until he obtained his current counsel in November, 2013.

The CALJ dismissed the claim based on failure to meet the joinder requirements of KRS 342.270(1). He explained Ball had failed to join the current CWP claim prior to approval of the settlement agreement in the injury claim. In a subsequent Order denying Ball's petition for reconsideration, the CALJ further explained:

> In his petition, [Ball] argues that he 'represented and continues to represent to the [CALJ] that he thought he had already filed his 'black lung' claim with his filing for his Federal Black Lung on September 27, 2012. In the next sentence, [Ball] argues that '[he] has testified in his sworn deposition that he had no idea that he had a claim for state black lung benefits until he met with [his attorney's] office on November 7, 2013'. These arguments by [Ball] contradict each other. More importantly, the arguments do not provide evidence of any error patently appearing on the face of the Order sought to be reconsidered.

Ball now appeals, and argues the CALJ dismissed his claim without determining whether the elements of KRS 342.270(1) were met. KRS 342.270(1) requires a claimant to "join all causes of action against the named employer which have accrued and which are known, or should reasonably be known, to him or her." He testified he was unaware he had a claim under Chapter 342 at the time he filed his injury claim and, without having been so informed by counsel, he could not "reasonably" have known a claim existed.

The CALJ properly dismissed the claim. A claim accrues for purposes of Chapter 342 when a claimant has suffered an injury as defined by the Act, and knows or should have known the injury is work-related. Ramsey v. Sayre Christian Village Nursing Home, 239 S.W.3d 56 (Ky. 2007). A report from Dr. Baker, dated December 5, 2012, diagnosed Ball with CWP. By virtue of the fact he filed a claim for federal benefits, Ball was obviously aware the condition was related to his work in a coal mine. Thus, within the meaning of KRS 342.270(1), Ball's claim should "reasonably" have been known prior to settlement of his injury claim on June 24, 2013. Therefore, KRS 342.270(1) obligated Ball to join his CWP claim with his injury claim. As he failed to do so, the claim was properly dismissed. Though unfortunate, the fact Ball's prior counsel did not inform him of a potential state claim does not alter this conclusion, as the provisions of KRS 342.270(1) are mandatory.

The February 6, 2014 Order and the March 6, 2014 Order on Reconsideration of Hon. J. Landon Overfield, Chief Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

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