# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: January 29, 2021**

CLAIM NO. 201901053

MINNIE DONALD PETITIONER

VS. **APPEAL FROM HON. TONYA CLEMONS, ADMINISTRATIVE LAW JUDGE**

UNITED STATES ENRICHMENT CORP
CENTRUS ENERGY
and HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

* * * * * *

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

**STIVERS, Member.** Minnie Donald ("Donald") appeals, *pro se*, from the October 23, 2020, Opinion and Order of Hon. Tonya M. Clemons, Administrative Law Judge ("ALJ") dismissing her occupational disease claim for failing to file her claim within the applicable statute of limitations and statute of repose set forth in KRS 342.316(4)(a).

On appeal, Donald requests this Board to remand the claim to the ALJ for a correct finding regarding the date her occupational disease became manifest; resolution of the contested issues of jurisdiction, employment relationship, and exemption under KRS 342.650 and KRS 342.660; and declaratory and injunctive relief to remedy an alleged violation of her rights under the Constitution of the Commonwealth of Kentucky.

The Form 102 – OD ("Form 102), filed August 23, 2019, alleges Donald sustained work-related Chronic Beryllium Disease ("CBD") while in the employ of the United States Enrichment Corporation ("USEC"). The Form 102 indicates Donald's last date of exposure was December 14, 1994. Importantly, the Form 102 indicates the "date of diagnose" of Donald's CBD is February 26, 2004.

On February 25, 2020, USEC filed a Special Answer asserting Donald's claim is barred by the statute of limitations.

Donald testified at the August 27, 2020, hearing. She worked at USEC from July 7, 1991, to December 14, 1994. Concerning the cause of her separation from the company, she testified as follows:

> I created [sic] fibromyalgia, which is arthritis of the muscle, which I had no complaints before I started working there. And I got bronchitis and asthma and COPD and sinusitis, the whole nine yards. And I was having so many complications, that's why I went on short-term disability.

Regarding the progression of her beryllium disease, Donald testified:

> A: Well, I had a chest x-ray done and it shows interstitial markings on my lungs. And they said it came from, it's from beryllium exposure.

Q: When did you find out that you had beryllium exposure?

A: Well, I first had the test in 2010. And then they kept denying me, and so I had an arthritis representative in 2019. So she had me to take the test over. So I took the test over and it showed the same thing in 2019.

Q: So, ultimately, were you – Now when you say they denied you, who was it that denied you? You were denied benefits to begin with from the federal programs; is that correct?

A: Yes.

Q: Because if you have beryllium from the workplace, there is compensation available for that, correct?

A: Yes.

Q: And so you were denied that coverage when you first were what you thought were diagnosed with beryllium disease in 2010; is that what you're saying?

A: Yes. But I first applied for it in 2004, but I wasn't diagnosed then. I had all the respiratory problems, but I wasn't diagnosed with the CBD. But when they accepted in July 2019, they went all the way back to 2004, and they said they would pay all my medical bills.

Q: And so I guess in a nutshell, then you were suffering from the effects of what would be chronic beryllium disease, I think, but they had just not named it at that time?

A: Yes.

Q: But ultimately in 2019, after it determined you have chronic beryllium disease, then the federal compensation was paid to you for that; is that correct?

A: Correct.

As to when she may have been exposed to beryllium, she explained:

A: When I first started working there on January the 7th, 2001 – not 2001, '91 – I started out as a janitor. And I worked every building in the plant. I worked in all the process buildings. I was exposed to all the chemicals there. We had no covering, no protection, none whatsoever. And when we had to sweep the process building, the dust was so thick you couldn't even see across the room. But we were steadily inhaling that stuff, but we didn't know it was as dangerous as it was.

So after I left that department, I went to the stores department as a clerk, a material handler. I called myself getting away from the chemicals, but I found out that the building I worked in, that's where the chemicals were stored. So you can run, but you can't hide. So I was exposed to it the whole time I was there.

Q: And I was going to ask a question, but you sort of answered it. I don't guess the company ever told you what the chemicals that you were around, and the dust particles that you were around, what they were composed of, what type of elements did they?

A: No.

Q: Would it be a fair statement to say that only after people started becoming sick, then was it that you found out that these chemicals, including beryllium, were in the environment?

A: Right.

Donald's last day of work at the Paducah Gaseous Diffusion Plant was December 14, 1994. She first applied for federal benefits for CBD on February 26, 2004. Regarding her application for federal benefits, the following testimony ensued:

Q: A moment ago you answered a question about chronic beryllium disease. And I see from your federal claim that you first applied for federal benefits February 26 of 2004; is that correct?

A: Correct.

Q: Your application at that time was solely based on chronic beryllium disease, correct?

A: Correct.

Q: Was that an application for benefits under the EEOICPA, which is the Energy Employees Occupational Illness Compensation Program Act?

A: Yes.

Q: And is that what we've been referring to as the federal remedy for workers at facilities like the Paducah Gaseous Diffusion Plant?

A: Yes.

Donald was last employed with USEC. She testified as follows:

Q: When is the last time that you were actually able or that you actually were employed anywhere?

A: That's the last job that I've had after I left there, but I have done volunteer work for the senior center and things like that. And I belong to the Red Hat Society and we do community service.

Donald testified that she was unsuccessful with her application for EEOICPA benefits until July 18, 2019. She explained as follows:

Q: As I look at the notice of final decision dated July 18 of 2019, I see that you were in fact awarded medical benefits for chronic beryllium disease; is that correct?

A: Yes.

Q: And that award for your federal medical benefits for CBD dates back to February 26, 2004. Is that also correct?

A: Yes.

Q: Am I correct in understanding that the federal benefits that you receive under the EEOICPA are strictly for chronic beryllium disease?

A: Yes.

Q: And today, your claim for state workers' compensation benefits is strictly for chronic beryllium disease?

A: Yes.

The July 1, 2020, Benefit Review Conference ("BRC") Order and Memorandum lists the following contested issues: jurisdiction under the Act, employment relationship, work-related injury/causation, notice, statute of limitations, permanent income benefits per KRS 342.730, average weekly wage, TTD benefits, wages upon return to work, ability to return to work, and unpaid or contested medical expenses. Under "other contested issues" is the following: "1) whether Plaintiff is exempted from coverage under KRS Chapter 342 pursuant KRS 342.650(4) because of coverage under federal law."

By Order dated August 27, 2020, the ALJ amended the BRC Order to bifurcate the claim to first resolve the following issues:

> 1) Jurisdiction under the Act; 2) Employment Relationship; 3) Notice; 4) Statute of Limitations; and 5) whether Plaintiff is exempted from coverage under KRS Chapter 342 pursuant to KRS 342.650(4) because of coverage under federal law.

In the October 23, 2020, decision, the ALJ set forth the following Findings of Fact and Conclusions of Law, in relevant part:

> …
>
> **A. STATUTE OF LIMITATIONS OR REPOSE**
>
> Issues involving statutes of limitations and repose for occupational disease claims are controlled by the Kentucky Workers' Compensation Act (hereinafter "the Act"), which states, in relevant part:

> "The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee that he or she has contracted the disease, whichever shall last occur. . .but that notice of claim shall be deemed waived in case of disability or death where the employer, or its insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease, asbestos-related disease, or a type of cancer specified in KRS 61.315(11)(b), a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard."

KRS 342.316(4)(a).

Kentucky courts have addressed the statutes of limitations and repose with respect to occupational disease claims. Specifically, the Kentucky Supreme Court held that the three year statute of limitations contained in this provision applies to all occupational diseases while the five-year provision for injurious exposure is a statue of repose capable of cutting off a cause of action before it arises. William A. Pope Co. v. Howard, 851 S.W.2d 460 (Ky. 1993). Further, the Howard court noted that the twenty-year provision, comparable to the five-year repose provision, contains no discovery rule, but merely extends the repose provision in cases of specific types of disease, such as

asbestos-related or radiation-related disease. Id. 851 S.W.2d at 463 (internal citations omitted).

More recently, the Kentucky Supreme Court has commented on statutes of limitations and repose stating that "[a] statute of limitations limits the time in which one may bring suit after the cause of action accrues, while a statue of repose potentially bars a plaintiff's suit before the cause of action accrues." Consol of Ky., Inc. v. Goodgame, 479 S.W.3d 78, 82-83 (Ky. 2015)(internal citation omitted). The Goodgame court went on to explain, in relevant part, that:

> "[T]he language of KRS 342.316(4)(a) . . . requires a claimant to file an occupational disease claim within three years after the last injurious exposure to the hazards of the disease or within three years of the manifestation of the disease, whichever is later, acts as a statute of limitations, triggered by either of those two events. KRS 342.216(4)(a) also contains a repose provision, which states that no claim may be filed more than five years after the date of last exposure, other than for claims related to asbestos or radiation, which must be filed within 20 years of last exposure. Therefore, if a worker was last exposed to the hazards of coal dust in 2009 but did not file a coal workers' pneumoconiosis claim until 2015, his or her claim would be barred, regardless of when he or she first experienced a distinct manifestation of coal workers' pneumoconiosis."

Id. 479 S.W.3d at 83.

In the present case, Plaintiff argues that her claim is not barred by either the statute of limitations or repose as she did not have a definitive diagnosis of CBD until January 2019. Defendant conversely argues that Plaintiff's statute of limitations and repose expired before the filing of her application for state workers' compensation benefits barring her claim for any such benefits.

While a claimant has the burden of proof of all aspects of her claim, having asserted the issue of statute of limitations as a bar to this claim, the burden is on the employer to prove the elements of the defense. See Letcher County Board of Education v. Hall, 576 S.W.3d 123, 126 (Ky. 2019)(internal citation omitted). Based upon the evidence, this ALJ finds that Defendant has met its burden to establish that Plaintiff's claim was not filed within the appropriate and applicable statute of limitation and/or statute of repose for occupational disease under the Act, which act as a bar to her state workers' compensation claim.

With respect to the statute of limitations in occupational disease claims, the same is triggered by, and a claim for state workers' compensation benefits under the Act must be filed within, three years after the last injurious exposure or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee that she has contracted the disease, whichever occurs last.

While the Act does not define the term "symptom" as used in KRS 342.316(4)(a), the ALJ finds that Ms. Donald had distinct manifestation of symptoms reasonably sufficient to apprise her that she had symptoms of CBD as of February 26, 2004. This date is significant as it is identified in the July 2019 Notice of Final Decision from the U.S. Department of Labor Office of Workers' Compensation Programs as the date that Plaintiff filed an EE-1 claim for federal workers' compensation benefits for CBD under the EEOICPA—a fact corroborated by various forms of evidence in the record including, but not limited to, Ms. Donald's hearing testimony. In fact, Ms. Donald testified on cross-examination at the hearing that her application for benefits under EEOICPA was purely for CBD due to her work at the PGDP facility.

Consequently, the ALJ finds that Plaintiff had three years from the date of her February 26, 2004 EE-1 filing—up to and including February 26, 2007—in which to submit a claim for state workers' compensation for CBD in order to be timely under the appropriate and applicable statute of limitations at KRS 342.316(4)(a). Thus, her August 23, 2019 claim for CBD is barred by

the three-year statute of limitations for occupational disease claims.

In regard to the statute of repose, based upon the evidence, Plaintiff did not file her claim within either the applicable five or twenty-year statute of repose. The Act defines "injurious exposure" in KRS 342.0011(4) as "exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made." The ALJ finds that Plaintiff's last "injurious exposure" to beryllium—the occupational hazard— was December 14, 1994.

The Application for Resolution of a Claim-Occupational Disease filed by Plaintiff identifies December 14, 1994 as her date of last exposure. Further, Ms. Donald credibly testified on cross-examination that her last day of work at PGDP facility was December 14, 1994. She also testified that she has not worked since that date except in some volunteer positions. The Final Notice of Decision as well as several medical records and lay statements of record also establish that Plaintiff discontinued work at the PGDP facility in December 1994. There is no clear evidence that Plaintiff was, or could have been, exposed to beryllium after December 14, 1994—the date that she discontinued working at the PGDP facility.

Therefore, even presuming chronic beryllium disease is a case of radiation disease or an asbestos-related disease, Plaintiff had twenty years from the date of last exposure in which to file a claim for state workers' compensation benefits for occupational disease under the Act. Consequently, the Act's statute of repose for occupational disease claims would have barred a claim for benefits after December 14, 2014. It is undisputed that Plaintiff's claim for state workers' compensation benefits was not filed until August 23, 2019. As a result, the ALJ finds that Plaintiff's claim is barred by the applicable statute of repose under the Act.

Accordingly, the ALJ relies on the evidence in this matter including the US Department of Labor's Notice of Final Decision; the medical records, medical reports, and letters attached to the Application for Resolution of Claim-Occupational Disease and/or filed

> in support of the Application; handwritten and typewritten statements of Plaintiff submitted into evidence; and Plaintiff's formal hearing testimony in finding that Plaintiff's three-year statute of limitations was triggered as of February 26, 2004 that expired in 13 February 2007. Further, the ALJ finds that the statute of repose was triggered as of her last injurious exposure on December 14, 1994 that expired in December 2014. Plaintiff's claim for occupational disease was not filed until August 23, 2019.
>
> Consequently, Plaintiff's claim for state workers' compensation benefits for occupational disease in the form of chronic beryllium disease is dismissed for failure to file within the appropriate and applicable statute of limitations as well as failure to file within the appropriate and applicable statute of repose under KRS 342.316(4)(a) of the Kentucky Workers' Compensation Act.
>
> No Petition for Reconsideration was filed.

Donald filed her first appeal brief on November 30, 2020. However, a brief styled "Amendment Notice of Appeal of Claim No. 2019-01053 Occupational Disease" and filed November 28, 2020, appears to be the final iteration of Donald's appeal brief to this Board.

Donald first argues the Board should remand the claim to the ALJ for "a proper finding" regarding the date her occupational disease became manifest.

As the party asserting a statute of limitations defense, USEC had the burden of proof. Kentucky Container Service, Inc. v. Ashbrook, 265 S.W.3d 793 (Ky. 2008). Since USEC was successful, the sole issue on appeal is whether the ALJ's decision is supported by substantial evidence. Wolf Creek Colleries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Substantial evidence" is defined as evidence of relevant

consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

This Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

Significantly, Donald did not file a petition for reconsideration. In the absence of a Petition for Reconsideration, on questions of fact, the Board is strictly

limited to a determination of whether substantial evidence in the record supports the ALJ's conclusion. Stated otherwise, where no Petition for Reconsideration was filed prior to the Board's review, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decision. We conclude it does.

The statutory provision pertinent to the first issue on appeal is KRS 342.316(4)(a) which reads, in full, as follows:

> (4) (a) The right to compensation under this chapter resulting from an occupational disease shall be forever barred unless a claim is filed with the commissioner within three (3) years after the last injurious exposure to the occupational hazard or after the employee first experiences a distinct manifestation of an occupational disease in the form of symptoms reasonably sufficient to apprise the employee that he or she has contracted the disease, whichever shall last occur; and if death results from the occupational disease within that period, unless a claim therefor be filed with the commissioner within three (3) years after the death; but that notice of claim shall be deemed waived in case of disability or death where the employer, or its insurance carrier, voluntarily makes payment therefor, or if the incurrence of the disease or the death of the employee and its cause was known to the employer. However, the right to compensation for any occupational disease shall be forever barred, unless a claim is filed with the commissioner within five (5) years from the last injurious exposure to the occupational hazard, except that, in cases of radiation disease, asbestos-related disease, or a type of cancer specified in KRS 61.315(11)(b), a claim must be filed within twenty (20) years from the last injurious exposure to the occupational hazard.

Thus, pursuant to KRS 342.316(4)(a), Donald was required to file her Form 102 within three years of her last injurious exposure to beryllium or three years after she first experienced symptoms reasonably sufficient to apprise her that she had contracted CBD, whichever is the later date.

We begin by looking at Donald's last injurious exposure to beryllium. KRS 342.0011(4) defines "injurious exposure" as "that exposure to occupational hazard which would, independently of any other cause whatsoever, produce or cause the disease for which the claim is made."

In Miller v. Tema Isenmann, Inc., 542 S.W.3d 265, 271 (Ky. 2018), regarding injurious exposure, the Supreme Court of Kentucky held as follows:

> We have held the statute requires only that exposure could independently cause the disease—not that it did in fact cause the disease. "All that is required ... is that the exposure be such as *could* cause the disease independently of any other cause." *Childers v. Hackney's Coal Co.,* 337 S.W.2d 680, 683 (Ky. 1960).

There is no dispute Donald's last day of employment with USEC was December 14, 1994. As noted by the ALJ, the July 2019 Notice of Final Decision cites December 14, 1994, as Donald's last day of employment. Further, Donald testified at the hearing that this was her final day of employment. Donald also testified that she did not return to any form of employment after December 14, 1994. Therefore, and as the ALJ concluded, there is no evidence indicating Donald was exposed to beryllium after December 14, 1994. Consequently, Donald's "last injurious exposure" to beryllium was December 14, 1994.

The next inquiry is when Donald experienced a distinct manifestation of CBD in the form of symptoms reasonably sufficient to inform her that she had

contracted the disease. KRS Chapter 342 does not define "symptom." However, Stedman's Medical Dictionary, 28th Edition at page 1884, defines a symptom as "any morbid phenomenon or departure from the normal structure, function, or sensation, experienced by the patient and indicative of disease."

Here, the ALJ was persuaded by the fact that Donald filed for EEOICPA benefits for CBD in February 26, 2004, as evidence that she was experiencing symptoms reasonably sufficient to inform her that she had contracted CBD. As noted by the ALJ in her decision, this date was clearly identified in the final decision. A review of the decision, filed in the record by USEC, states in relevant part as follows: "On February 26, 2004, you filed a Form EE-1, (Claim for Benefits under the EEOICPA), seeking compensation based on CBD."

The ALJ could reasonably infer from the fact Donald filed for benefits due to CBD on February 26, 2004, that she was experiencing symptoms reasonably sufficient to inform her that she had CBD. As pointed out by the ALJ, Donald confirmed at the hearing that her application for federal benefits was exclusively for CBD. Several medical reports further bolster the ALJ's conclusion Donald was experiencing symptoms reasonably sufficient to inform her that she had contracted CBD at the time she filed for federal benefits. The pertinent portions of the medical records as follows:

- Dr. James Roush, November 18, 2011, attached to Form 102: "Based on my review of the medical records, Ms. Minnie Donald's chronic bronchitis (COPD) diagnosed on September 24, 1992 by William Culberston, MD is characteristic/consistent with Chronic Beryllium Disease (CBD) which was at least as likely as not caused, contributed, or aggravated by her

exposures to radiation and toxic chemicals that included beryllium.

- Respiratory Disease Clinic, September 24, 1992, attached to Form 102: "This is a patient who has had problems with recurrent rhinitis symptoms with conjunctivitis and cough with congestions."

- Dr. W.G. Burrow, September 11, 1992, attached to Form 102: "Mrs. Donald has been a patient of mine for several years. She was seen in my office today September 10, 1992. She suffers from generalized osteoarthritis and chronic bronchitis and is disabled for an indefinite period of time."

The above-cited medical records firmly demonstrate Donald was experiencing respiratory symptoms in 1992, two years before filing for federal benefits for CBD. As Donald acknowledged at the hearing, when she applied for federal benefits in 2004, she "had all the respiratory problems." While we acknowledge Donald's application for federal benefits was denied twice before she was finally awarded benefits on July 18, 2019, this has no bearing on the inquiry as to whether and/or when Donald first experienced symptoms. Logic dictates that Donald was experiencing respiratory symptoms at the time she filed for federal benefits for her respiratory disease. The ALJ determined Donald was experiencing symptoms of CBD on February 26, 2004, the date she filed for federal benefits for CBD, and this determination is supported by substantial evidence.

As noted above, the statute of limitations for occupational diseases, as set forth in KRS 342.316(4)(a), require that a claim be filed within three years of the last injurious exposure to the occupational hazard or three years after the employee first experiences symptoms of the occupational disease reasonably sufficient to inform her that she has contracted the disease, whichever date is later. Three years

from Donald's last injurious exposure to beryllium is December 14, 1997. Three years from the date Donald was experiencing symptoms reasonably sufficient to inform her that she had contracted CBD is February 26, 2007. The later of the two dates is February 26, 2007; therefore, Donald had until February 26, 2007, to file her Form 102. As Donald filed her Form 102 on August 23, 2019, more than twelve years after February 26, 2007, we affirm the ALJ's determination Donald's claim is barred by the statute of limitations.

Regarding application of the statute of repose, pursuant to KRS 342.316(4)(a), Donald had five years after the last injurious exposure to beryllium in which to file her Form 102. Donald's last injurious exposure to beryllium was December 14, 1994. Since Donald is not suffering from radiation disease, asbestos-related disease, or a type of cancer specified in KRS 61.315(11)(b), pursuant to the statue of repose in KRS 342.316(4)(a), Donald had five years from the last injurious exposure to beryllium on December 14, 1994, to file her Form 102. Therefore, Donald had until December 14, 1999, to file her claim, otherwise her claim is forever barred. We affirm the ALJ's determination Donald's claim is barred by the applicable statute of repose. Even if we were to consider the twenty-year statute of limitations contained in KRS 342.316(4)(a) is applicable to Donald's claim, it would still be barred. As noted by the ALJ, Donald's last injurious exposure occurred on December 14, 1994. Since Donald did not file her claim until August 2019, the applicable statute of limitations had long since expired.

Because Donald's claim was properly dismissed for a failure to file it within the applicable statute of limitations and statute of repose, a resolution of the

contested issues of jurisdiction, employment relationship, and exemption under KRS 342.650 and KRS 342.660 has been rendered moot. Further, regarding Donald's request for declaratory and injunctive relief to remedy an alleged violation of her rights under the Constitution of the Commonwealth of Kentucky, this Board, as an administrative tribunal, has no jurisdiction to rule on any constitutional challenges. Blue Diamond Coal Company v. Cornett, 300 Ky. 647, 189 S.W.2d 963 (1945). Consequently, we are without authority to explore Donald's request for injunctive relief based upon such a challenge.

Accordingly, the ALJ's dismissal of Donald's claim in the October 23, 2020, Opinion and Order is **AFFIRMED**.

ALL CONCUR.

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