

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October 26, 2018

CLAIM NO. 199771438

PORTER SLAUGHTER

PETITIONER

VS.

APPEAL FROM HON. DOUGLAS W. GOTT,  
CHIEF ADMINISTRATIVE LAW JUDGE

TUBE TURNS and  
HON. DOUGLAS W. GOTT,  
CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Porter Slaughter (“Slaughter”) appeals from the Order issued August 14, 2018 by Hon. Douglas W. Gott, Chief Administrative Law Judge (“CALJ”). The CALJ overruled Slaughter’s Motion to Reopen, which he filed on July 10, 2018.

On appeal, Slaughter argues the ALJ erred in denying his Motion to Reopen. He argues he is permitted to reopen the claim pursuant to the holding in

Hall v. Hospitality Resources, 276 S.W.3d 775 (Ky. 2008). We disagree, and affirm. Slaughter also notified the parties he is challenging the constitutionality of KRS 342.125 as amended on July 14, 2018. Because this Board lacks the jurisdiction to rule on constitutional issues, as noted in Commonwealth v. DLX, Inc., 42 S.W.3d 624 (Ky. 2001), on this issue, we must also affirm.

As noted by Hon. Christina Hajjar, Administrative Law Judge (“ALJ Hajjar”), in the Opinion, Order and Award issued on April 30, 2018, Slaughter filed a Form 101 on August 29, 1997 indicating he injured his right shoulder on March 27, 1996 requiring surgery. He also alleged that on April 8, 1997, a “bar struck his left shoulder, chest and neck,” however, he did not specifically allege any injuries to those body parts. He subsequently settled that claim. This is reflected in a Form 110 Settlement Agreement approved by Hon. Thomas Lewis, Arbitrator, on November 27, 1997. The agreement reflects only that the nature of the injury was to the right shoulder.

Slaughter filed an additional Form 101 on December 2, 1997, alleging a left shoulder injury. This claim was dismissed by Hon. J. Landon Overfield, Administrative Law Judge (Acting Arbitrator) (“ALJ Overfield”), who determined the filing was for a previously settled claim. Slaughter appealed the decision, and Hon. Donna H. Terry, Chief Administrative Law Judge, dismissed the claim in an order issued May 18, 1999, on the same grounds as outlined by ALJ Overfield.

On December 21, 2001, Slaughter filed a motion to reopen this claim, along with Claim No. 1996-80121. The claim was assigned to Hon. James L. Kerr, Administrative Law Judge (“ALJ Kerr”), who entered an order dismissing the

reopening on September 9, 2002. The claim was appealed to this Board, which affirmed ALJ Kerr's decision on January 22, 2003.

On November 2, 2016, Slaughter again filed a motion to reopen to assert a medical dispute. Attached to that motion was a copy of the 1997 Form 110 settlement agreement. On April 30, 2018, ALJ Hajjar issued an Opinion, Order and Award finding a September 30, 2016 left shoulder surgery compensable, and awarded temporary total disability ("TTD") benefits from November 2, 2016 through March 30, 2017. Tube Turns did not appeal from that decision.

Slaughter subsequently filed another motion to reopen on July 10, 2018, alleging he had sustained a "change of disability shown by objective medical evidence". On August 14, 2018, the CALJ entered an order denying the motion to reopen. The CALJ specifically found as follows:

Pending is a motion to reopen from Plaintiff Porter Slaughter, who alleges a change of disability following a recently approved left shoulder surgery.

In the original litigation of this case, Slaughter's claims for right shoulder (3/27/96) and left shoulder (4/18/97) injuries were consolidated. A Form 110 settlement agreement was approved on November 24, 1997, with income benefits being paid for the right shoulder. (The Form 110 specified the "right shoulder" injury but referenced the left shoulder injury date.)

Slaughter filed a motion to reopen the left shoulder injury claim in 1999, but an ALJ dismissed it on grounds that it was filed more than two years after the prior settlement agreement, in violation of the limitations period in KRS 342.125(3) at the time (1996 amendments).

Slaughter filed another motion to reopen in 2001, alleging an increase in occupational disability since the

date of settlement. An ALJ dismissed that reopening because it was filed more than four years after the prior settlement agreement, in violation of the limitations period in KRS 342.125(3) at the time (2000 amendments).

Slaughter filed another motion to reopen in 2016, this one a medical dispute over left shoulder surgery. An ALJ found the surgery compensable and awarded TTD in an Opinion issued April 30, 2018.

The pending motion to reopen seeks additional income benefits from increased impairment from the recently performed left shoulder surgery. The Defendant objects on grounds that the motion was filed more than four years after the original settlement agreement. KRS 342.125(3). That objection is contrary to Hall v. Hospitality Services, 276 S.W.3d 775 (Ky. 2008), which ruled that a subsequent order granting or denying benefits restarts the four-year limitations period; the 2018 Opinion is an order granting additional benefits.

Neither party references HB 2, which amended KRS 342.125(3) yet again (although there may have been intentionality to Slaughter's filing of the pending motion four days before the new law took effect on July 14, 2018). The new version of KRS 342.125(3) states that "no claim shall be reopened more than four (4) years following the date of the original award or original order granting or denying benefits... Orders granting or denying benefits that are entered subsequent to an original final award or order granting or denying benefits shall not be considered to be an original order granting or denying benefits..."

HB 2 further extinguishes a claim that existed at the time the statute was passed. Section 20(2) states the revision to the reopening statute is remedial, "and shall apply to all claims irrespective of the date of injury..." The remedial application of the change to the reopening statute must be addressed by the appellate courts. An administrative law judge has no authority to rule on a statute's constitutionality or otherwise set aside its express terms. Slaughter's motion to reopen is overruled because it was not filed within four years of the original

settlement agreement in 1997, as required by the recently adopted amendment to KRS 342.125(3).

We initially note the procedure for reopening a workers' compensation claim pursuant to KRS 342.125 is a two-step process. Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 216 (Ky. 2006). The first step is the *prima facie* motion, which requires the moving party to provide sufficient information to demonstrate a substantial possibility of success in the event evidence is permitted to be taken. Stambaugh v. Cedar Creek Mining, 488 S.W.2d 681 (Ky. 1972). “*Prima facie* evidence” is evidence which “if unrebutted or unexplained is sufficient to maintain the proposition, and warrant the conclusion [in] support [of] which it has been introduced ... but it does not shift the general burden ....” Prudential Ins. Co. v. Tuggle’s Adm’r., 254 Ky. 814, 72 S.W.2d 440, 443 (1934).

The burden during the initial step is on the moving party and requires establishment of grounds for which the reopening is sought. Jude v. Cabbage, 251 S.W.2d 584 (Ky. 1952); W.E. Caldwell Co. v. Borders, 301 Ky. 843, 193 S.W.2d 453 (Ky. 1946). It is only after the moving party prevails in making a *prima facie* showing as to all essential elements of the grounds alleged for reopening that the adverse party is put to the expense of further litigation. Big Elk Creek Coal Co. v. Miller, 47 S.W.3d 330 (Ky. 2001). When an ALJ determines the movant failed to present a *prima facie* case for reopening, the decision is reviewed for an abuse of discretion. Harold Turner v. Bluegrass Tire Co., 331 S.W.3d 605, 610 (Ky. 2010). An abuse of discretion occurs when the decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles. Id.; Commonwealth v. English, 993 S.W.2d 941, 945 (Ky. 1999).

In this instance, the CALJ determined Slaughter was precluded from reopening his claim to assert a worsening of his condition due to the changes in KRS 342.125(3), reflected in House Bill 2, signed by the Governor on March 30, 2018, and effective July 14, 2018. Those changes reflect, as noted by the CALJ above, with limited exceptions, as follows:

... no claim shall be reopened more than four (4) four years following the date of the original award or original order granting or denying benefits, when such an award or order becomes final and nonappealable, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party. Orders granting or denying benefits that are entered subsequent to an original final award or order granting or denying benefits shall not be considered to be an original order granting or denying benefits under this subsection and shall not extend the time to reopen a claim beyond four (4) years following the date of the final, nonappealable original award or original order.

Section 20(2) of House Bill 2, as noted by the CALJ, reflects that the changes in KRS 342.125(3):

... are remedial and shall apply to all claims irrespective of the date of injury or last exposure, provided that, as applied to any fully and finally adjudicated claim the amount of indemnity ordered or awarded shall not be reduced and the duration of medical benefits shall not be limited in any way.

We note this language is not specifically contained in the body of the statute. However, it is contained in the Legislative Research Commission Note in the official version of the statute.

Based upon the clear language contained in the changes to KRS 342.125(3), Slaughter is precluded from reopening his claim. Therefore, we find the CALJ did not abuse his discretion in overruling Slaughter's motion to reopen.

We also acknowledge Slaughter has challenged the constitutionality of the changes to KRS 342.125. However, as an administrative tribunal, this Board has no jurisdiction to determine the constitutionality of a statute enacted by the Kentucky General Assembly. Blue Diamond Coal Co. v. Cornett, 189 S.W.2d 963 (Ky. 1945). *See also* Vision Mining, Inc. v. Gardner, 364 S.W.3d 455 (Ky. 2011); Abel Verdon Const. v. Rivera, 348 S.W.3d 749, 752 (Ky. 2011). Because this Board has no authority or jurisdiction to reverse rulings of the Kentucky courts, we can render no determination on this issue, and therefore we are compelled to affirm.

Accordingly, the August 14, 2018 order issued by Hon. Douglas W. Gott, Chief Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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