

1 AN ACT relating to occupational disease claims.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 342.125 is amended to read as follows:

- 4 (1) Upon motion by any party or upon an administrative law judge's own motion, an  
5 administrative law judge may reopen and review any award or order on any of the  
6 following grounds:
- 7 (a) Fraud;
  - 8 (b) Newly-discovered evidence which could not have been discovered with the  
9 exercise of due diligence;
  - 10 (c) Mistake; and
  - 11 (d) Change of disability as shown by objective medical evidence of worsening or  
12 improvement of impairment due to a condition caused by the injury since the  
13 date of the award or order.
- 14 (2) No claim which has been previously dismissed or denied on the merits shall be  
15 reopened except upon the grounds set forth in this section.
- 16 (3) Except for reopening solely for determination of the compensability of medical  
17 expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or  
18 for reducing a permanent total disability award when an employee returns to work,  
19 or seeking temporary total disability benefits during the period of an award, no  
20 claim shall be reopened more than four (4) years following the date of the original  
21 award or original order granting or denying benefits, when such an award or order  
22 becomes final and nonappealable, and no party may file a motion to reopen within  
23 one (1) year of any previous motion to reopen by the same party. Orders granting or  
24 denying benefits that are entered subsequent to an original final award or order  
25 granting or denying benefits shall not be considered to be an original order granting  
26 or denying benefits under this subsection and shall not extend the time to reopen a  
27 claim beyond four (4) years following the date of the final, nonappealable original

1 award or original order.

2 (4) Reopening and review under this section shall be had upon notice to the parties and  
3 in the same manner as provided for an initial proceeding under this chapter. Upon  
4 reopening, the administrative law judge may end, diminish, or increase  
5 compensation previously awarded, within the maximum and minimum provided in  
6 this chapter, or change or revoke a previous order. The administrative law judge  
7 shall immediately send all parties a copy of the subsequent order or award.  
8 Reopening shall not affect the previous order or award as to any sums already paid  
9 thereunder, and any change in the amount of compensation shall be ordered only  
10 from the date of filing the motion to reopen. No employer shall suspend benefits  
11 during pendency of any reopening procedures except upon order of the  
12 administrative law judge.

13 (5) (a) Upon the application of the affected employee, and a showing of progression  
14 of his or her previously-diagnosed occupational pneumoconiosis resulting  
15 from exposure to coal dust and development of respiratory impairment due to  
16 that pneumoconiosis~~[ and two (2) additional years of employment in the~~  
17 ~~Commonwealth wherein the employee was continuously exposed to the~~  
18 ~~hazards of the disease]~~, the administrative law judge may review an award or  
19 order for benefits attributable to coal-related pneumoconiosis under KRS  
20 342.732. An application for review under this subsection shall be made within  
21 one (1) year of the date the employee knew or reasonably should have known  
22 that a progression of his or her disease and development or progression of  
23 respiratory impairment have occurred. Review under this subsection shall  
24 include a review of all evidence admitted in all prior proceedings.

25 (b) Benefits awarded as a result of a review under this subsection shall be reduced  
26 by the amount of retraining incentive benefits or income benefits previously  
27 awarded under KRS 342.732. The amount to be deducted shall be subtracted

1 from the total amount awarded, and the remaining amount shall be divided by  
2 the number of weeks, for which the award was made, to arrive at the weekly  
3 benefit amount which shall be apportioned in accordance with the provisions  
4 of KRS 342.316.

5 (6) In a reopening or review proceeding where there has been additional permanent  
6 partial disability awarded, the increase shall not extend the original period, unless  
7 the combined prior disability and increased disability exceeds fifty percent (50%),  
8 but less than one hundred percent (100%), in which event the awarded period shall  
9 not exceed five hundred twenty (520) weeks, from commencement date of the  
10 original disability previously awarded. The law in effect on the date of the original  
11 injury controls the rights of the parties.

12 (7) Where an agreement has become an award by approval of the administrative law  
13 judge, and a reopening and review of that award is initiated, no statement contained  
14 in the agreement, whether as to jurisdiction, liability of the employer, nature and  
15 extent of disability, or as to any other matter, shall be considered by the  
16 administrative law judge as an admission against the interests of any party. The  
17 parties may raise any issue upon reopening and review of this type of award which  
18 could have been considered upon an original application for benefits.

19 (8) The time limitation prescribed in this section shall apply to all claims irrespective of  
20 when they were incurred, or when the award was entered, or the settlement  
21 approved. However, claims decided prior to December 12, 1996, may be reopened  
22 within four (4) years of the award or order or within four (4) years of December 12,  
23 1996, whichever is later, provided that the exceptions to reopening established in  
24 subsections (1) and (3) of this section shall apply to these claims as well.