

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

A.S.,

Appellant-Plaintiff,

v.

State of Indiana,

Appellee-Defendant.

August 17, 2022

Court of Appeals Case No.
22A-EX-679

Appeal from the Workers
Compensation Board

The Honorable Kyle Samons,
Administrative Law Judge

Administrative Agency Case No.
C252603

Pyle, Judge.

Statement of the Case

[1] A.S. (“A.S.”), pro se, appeals the Indiana Worker’s Compensation Board’s (“the Board”) dismissal of his 2021 claim for worker’s compensation benefits for injuries he sustained from a car accident in 2001 and for mental distress he suffered in 2002. The Board concluded that A.S. was excluded from receiving worker’s compensation benefits under the Worker’s Compensation Act (“the Act”) because the time for filing his claim had passed. A.S. argues that the Board erred when it dismissed his worker’s compensation claim because the time for filing his claim had not yet passed because A.S. had been mentally incompetent. Concluding that the time for A.S. to file his claim has passed, we affirm the Board’s dismissal.

[2] We affirm.

Issue

Whether the Board erred when it dismissed A.S.’s claim because the time for filing his claim had passed.

Facts

[3] In February 2001, A.S., while commuting to Indianapolis where he worked for the state of Indiana (“A.S.’s Employer”), was seriously injured in a car accident. Consequently, A.S.’s wife filed a claim on A.S.’s behalf for short-term disability benefits. Additionally, A.S. hired counsel and settled a claim against the tortfeasor for \$100,000. A.S.’s Employer fired A.S. in July 2002. Around the same time, A.S. became a licensed attorney in the state of Indiana.

A.S.'s license was suspended in 2017, but he maintained a law license in Virginia until 2021.

- [4] In April 2021, A.S. filed an application for an adjustment of claim with the Board. In his application, A.S. argued that the injuries he sustained from the 2001 car accident should be covered under worker's compensation. Later that month, A.S.'s Employer filed a motion to dismiss. A.S.'s Employer argued that the 2001 car accident was beyond the two-year statute of limitations pursuant to INDIANA CODE § 22-3-3-3. Additionally, A.S.'s Employer argued that the 2001 car accident had not occurred during the course of A.S.'s employment.
- [5] In September 2021, on the day before A.S.'s hearing before a single member of the Board, A.S. filed an additional adjustment of claim. In this second claim, A.S. argued that in May 2002, A.S.'s Employer exacerbated A.S.'s pre-existing mental illness. Specifically, A.S. argued that the requirement that A.S. disclose his mental illness to the Board of Law Examiners and the treatment A.S. received from his employer exacerbated his pre-existing mental illness.
- [6] In November 2021, a single member of the Board determined that A.S.'s claims against A.S.'s Employer should be combined. Additionally, the single member of the Board dismissed A.S.'s claims with prejudice, finding that A.S. had filed his adjustment of claim outside of the two-year statute of limitations and that there was "no evidence that [A.S.] [wa]s legally incompetent." (App. Vol. 2 at A9). The single member of the Board did not address A.S.'s Employer's claims that A.S.'s 2001 accident was not in the course of A.S.'s employment.

[7] A.S. requested that a full panel of the Board review his case. A.S. again argued that the time to file his claim had not yet passed because he was mentally incompetent. Specifically, A.S. argued, among other reasons, that he was mentally incompetent because: (1) he has been diagnosed with bipolar disorder; (2) a September 2004 order from a New Zealand court had adjudicated A.S. as an individual who needed in-patient mental health care; (3) he has been receiving Social Security Disability Income (“SSDI”) since 2008; and (4) “[he] [has been] perceived as being incompetent to the greatest degree because others [have] viewed [him] that way as a person with bipolar disorder.” (App. Vol. 2 at A11). In March 2022, the full panel of the Board affirmed the single member’s decision.

[8] A.S. now appeals.

Decision

[9] At the outset, we note that A.S. has chosen to represent himself pro se. A pro se litigant is held to the same standard as trained counsel and is required to follow procedural rules. *Evans v. State*, 809 N.E.2d 338, 344 (Ind. Ct. App. 2004), *trans. denied*.

[10] A.S. argues that the Board erred when it dismissed his worker’s compensation claim because the statute of limitations had expired. Specifically, A.S. argues that the time to file his claim had not yet passed because he was mentally incompetent since 2002.

[11] Preliminarily, we note that the Board reviewed A.S.'s claim based on a paper record. Our standard of review of an administrative decision that is based on a paper record is as follows:

In reviewing a worker's compensation decision, an appellate court is bound by the factual determinations of the Board and may not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion. We examine the record only to determine whether there is substantial evidence and reasonable inferences that can be drawn therefrom to support the Worker's Compensation Board's findings and conclusion. We will not reweigh the evidence or reassess witness credibility. As to the Board's interpretation of the law, an appellate court employs a deferential standard of review of the interpretation of a statute by an administrative agency charged with its enforcement in light of its expertise in the given area. The Board will only be reversed if it incorrectly interpreted the Act.

Ward v. Univ. Notre Dame, 25 N.E.3d 172, 178 (Ind. Ct. App. 2015) (internal quotation marks omitted), *reh'g denied*, *trans. denied*.

[12] The Board's dismissal of A.S.'s worker's compensation claim was based on its determination that he had filed his claim outside of the two-year statute of limitations under INDIANA CODE § 22-3-3-3. INDIANA CODE § 22-3-3-3 provides that "[t]he right to compensation under [the Act] shall be forever barred unless within two (2) years after the occurrence of the accident . . . a claim for compensation thereunder shall be filed with the worker's compensation board."

[13] A.S.'s claim was related to injuries from February 2001 and May 2002. Thus, in order to comply with the statute of limitations, A.S. needed to file his claim by February 2003 and May 2004, respectively. However, A.S. filed his claim with the Board in April 2021, nearly two decades after the statute of limitations had expired.

[14] A.S., who filed his claim roughly eighteen years beyond the statutorily permitted period, attempts to prevent the barring of his claim by arguing that he was mentally incompetent since 2002. INDIANA CODE § 22-3-3-30 provides that “[n]o limitation of time provided in [the Act] shall run against any person who is mentally incompetent[.]” “Mental incompetence” is defined in INDIANA CODE § 1-1-4-5(12) as “of unsound mind.” However, “of unsound mind” is not currently defined in the Indiana Code. *Whitlock v. Steel Dynamics, Inc.*, 35 N.E.3d 265, 270 (Ind. Ct. App. 2015) (citing *Fager v. Hundt*, 610 N.E.2d 246, 250 n.2 (Ind. 1993)), *trans. denied*. In *Collins v. Dunifon*, 323 N.E.2d 264, 269 (Ind. Ct. App. 1975), our court considered proof of unsound mind as “whether the person claiming the benefit of the extension statute is incapable of either understanding the rights that he would otherwise be bound to know, or of managing his affairs, with respect to the institution and maintenance of a claim for relief.”

[15] Here, our review of the record reveals that there was substantial evidence and inferences drawn therefrom to support the Board's dismissal. First, immediately after his 2001 car accident, A.S. hired counsel and pursued a claim against the tortfeasor who had caused the accident. Further, during the period

from 2002 to 2021, A.S. had maintained a license to practice law in at least one state. Thus, A.S. was certainly capable of understanding his rights as they related to complying with the statute of limitations for his claim. *See Ind. Dept. of Highways v. Hughes*, 575 N.E.2d 676, 678-79 (Ind. Ct. App. 1991) (holding that a plaintiff who was able to pay bills, sign consent forms, discuss the accident, and contemplate legal action was not mentally incompetent), *trans. denied*.

[16] Despite these facts, A.S. argues that he was mentally incompetent because: (1) he has been diagnosed with bipolar disorder; (2) a September 2004 order from a New Zealand court had adjudicated A.S. as an individual who needed in-patient mental health care; (3) he has been receiving SSDI since 2008; and (4) “[he] [has been] perceived as being incompetent to the greatest degree because others [have] viewed [him] that way as a person with bipolar disorder.” (App. Vol. 2 at A11). However, A.S. provides no cogent argument pointing to any cases or authorities that support this claim. Thus, he has waived the argument on appeal. *See Ind. Appellate Rule 46(A)(8)*.

[17] A.S. has not shown that he was mentally incompetent from 2002 until the time of his 2021 claim. Thus, his claim filed with the Board is well beyond the statute of limitations. Accordingly, we affirm the Board’s dismissal.

[18] Affirmed.

Robb, J., and Weissmann, J., concur.