RENDERED: FEBRUARY 7, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001087-WC

LYNWOOD RILEY APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 94-44541-WC

PERRY COUNTY FISCAL COURT;
SPECIAL FUND; AND HONORABLE
ROGER RIGGS, ADMINISTRATIVE
LAW JUDGE APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

DYCHE, JUDGE: Lynwood Riley appeals from an opinion of the Workers= Compensation Board affirming an order of the Administrative Law Judge finding that Riley Afailed to carry his burden of proving he suffered a worsening of condition or increase in occupational disability since his prior award.@

We review this case to determine if the Board Ahas overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to

cause gross injustice.@ Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-8 (1992). Under those standards, we must also examine the evidence to see if it compels a result in Riley=s favor, since he bore the burden of proof below, and was unsuccessful. Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). Compelling evidence is evidence so overwhelming that no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985).

We have reviewed the record herein and cannot find that the evidence compels a finding in Riley=s favor. Doctors Goodman and Travis found that Riley suffered no increase in occupational disability subsequent to the original award; Doctors Gilbert and Muckenhausen testified that he had suffered such an increase. There was therefore evidence in the record to support a finding of the ALJ either way, but certainly **not** evidence compelling a finding in Riley=s favor.

The opinion of the Workers= Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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COMPENSATION FUND:

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