

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2002-CA-001151-WC

DANIEL HUNT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NOS. WC-96-07810 AND WC-96-08049

CLEAN ENERGY MINING COMPANY;  
WORKERS' COMPENSATION FUNDS,  
SUCCESSOR TO SPECIAL FUND; AND  
RICHARD M. JOINER, ADMINISTRATIVE  
LAW JUDGE

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BARBER, BUCKINGHAM AND HUDDLESTON, JUDGES.

BARBER, JUDGE: The Appellant, Daniel Hunt ("Hunt") seeks review of an Opinion of the Workers' Compensation Board affirming the Administrative Law Judge's denial of his motion to reopen. We affirm.

On November 18, 1996, Hunt filed a Form 101, alleging injuries to his head, back, elbow, and right leg, as well as the development of a generalized anxiety disorder and major

depression, when struck by a rock on February 7, 1996. On September 25, 1997, the Administrative Law Judge (ALJ) rendered a decision in the original proceeding, awarding Hunt benefits for 75% permanent partial occupational disability for 520 weeks.<sup>1</sup>

On December 12, 2002, Hunt filed a motion to reopen, alleging that his physical condition had grown progressively worse. Hunt submitted a report from Dr. O.M. Patrick in support of the motion. By order entered February 1, 2001, the motion was granted to the extent that the claim was assigned to an ALJ for further adjudication, and the taking of proof.

On December 21, 2001, the ALJ rendered an Opinion and Order in the reopening, concluding that the evidence was "overwhelming that there has been no significant change of [physical or psychiatric] condition since the [original] opinion and award was entered on September 25, 1997." Moreover, KRS 342.125 "as it existed at the time of injury" required a change of occupational disability. Hunt had not worked or sought work since the date of the original award, and was "[i]n his own opinion, . . . totally disabled every day since the subject injury."

---

<sup>1</sup> The ALJ concluded that Hunt had failed in his burden of proving that he suffered an elbow injury in the rock fall, Hunt having been treated a few days before for recurrent symptoms.

Hunt appealed to the Board which affirmed in a unanimous opinion rendered May 1, 2002. The Board concluded that the evidence did not compel a finding in Hunt's favor,<sup>2</sup> noting Dr. Primm's and Dr. Graulich's opinions that Hunt's condition had not worsened.

On appeal, Hunt again relies heavily upon Dr. Patrick's opinion, in an attempt to persuade us that he is now totally disabled. Our review is confined to determining whether the evidence compels a contrary finding than made by the ALJ. The evidence includes the report of Dr. Kenneth Graulich, who had examined Hunt on February 25, 1997, and again in 2001. Dr. Graulich found no evidence of a worsened condition, and would impose no new restrictions. Dr. Primm examined Hunt on February 21, 1997, and again in 2001. In his report, Dr. Primm stated that he could not find any objective signs that Hunt's physical condition had worsened. Hunt's hearing testimony in the reopening established that he had not looked for work, or tried to work, since February 7, 1996. Clearly, the evidence does not require a finding in Hunt's favor. We affirm the May 1, 2002 Opinion of the Workers' Compensation Board.

ALL CONCUR.

---

<sup>2</sup> Hunt had the burden of proof and was unsuccessful before the ALJ; the standard of review is whether the evidence compels a finding in his favor. *Wolf Creek Collieries v. Crum*, Ky. App., 673 S.W.2d 735 (1984).

BRIEF FOR APPELLANT:

Tommy Chamberlin  
Pikeville, Kentucky

BRIEF FOR APPELLEE CLEAN  
ENERGY MINING:

A. Stuart Bennett  
Lexington, Kentucky

BRIEF FOR APPELLEE  
WORKERS' COMPENSATION FUNDS  
(SUCCESSOR TO THE SPECIAL  
FUND):

Joel D. Zakem  
Frankfort, Kentucky