

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2002-CA-001435-WC

EMORY GLENN DAVIS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-92803

GIBSON GREETING CARDS, INC.;
ROBERT L. WHITAKER, DIRECTOR,
WORKERS' COMPENSATION FUNDS;
AND SHELIA C. LOWTHER,
CHIEF ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

BARBER, JUDGE: The Appellant, Emory Glenn Davis ("Davis"), seeks review of an Opinion of the Workers' Compensation Board affirming the dismissal of his claim on reopening. Finding no error, we affirm.

On June 2, 1997, Davis, an electrician, filed an application for adjustment of injury claim alleging that he injured his back on January 30, 1996. On October 2, 1997, an arbitrator approved a settlement for 50% occupational

disability. On June 5, 2001, Davis filed a motion to reopen, alleging an increase in occupational disability, noting that he had not worked since his case was settled in 1997.

On January 28, 2002, the Chief Administrative Law Judge rendered an Opinion and Order. The Administrative Law Judge (ALJ) explained that she was "reluctantly compelled" to dismiss the motion to reopen. Despite the fact that Davis was a sympathetic witness, with a significant occupational disability, the Chief Administrative Law Judge was not persuaded that Davis had experienced a worsening of his occupational disability.

Davis appealed to the Board. On June 5, 2002, the Board affirmed in a unanimous and detailed Opinion. On appeal to this Court, Davis asserts that: (1) he has been penalized by a policy which encourages settlement; (2) the 1997 medical evidence, taken as a whole, does not reasonably support a belief that he was totally disabled in 1997; and (3) he was clearly employable in 1997 and evidence of a precipitous decline in his condition is uncontroverted.

The standard of review where, as here, the ALJ finds against the party with the burden of proof is whether the evidence compelled a contrary finding.¹ Davis testified at hearing in the reopening on November 28, 2001. His testimony reflects that he was not working at the time of the settlement,

¹ *Wolf Creek Collieries v. Crum*, Ky. App., 673 S.W.2d 735 (1984).

because he was not able to work. He has not worked anywhere since the 1997 settlement, at which time he was either drawing or had applied for Social Security benefits. Our review of the record also includes the July 22, 1997 Form 107 report of Dr. John Gilbert, neurosurgeon, stating that Davis was unable to perform any type of gainful employment.

We too sympathize with Mr. Davis, but must agree with the Board that the evidence does not compel a finding in his favor. We affirm the Board's June 5, 2002 Opinion, affirming.

ALL CONCUR.

BRIEF FOR APPELLANT:

Neil E. Duncliffe
Georgetown, Kentucky

BRIEF FOR APPELLEE, GIBSON
GREETING CARDS, INC.:

James R. Carpenter
Lexington, Kentucky

BRIEF FOR APPELLEE, WORKERS'
COMPENSATION FUNDS:

David W. Barr
Frankfort, Kentucky