

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2002-CA-001558-WC

CYNTHIA NAPIER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-60129

MIDDLESBORO APPALACHIAN REGIONAL HOSPITAL;
DONALD G. SMITH, ADMINISTRATIVE
LAW JUDGE; AND THE
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND TACKETT, JUDGES.

BARBER, JUDGE. The Appellant, Cynthia Napier, seeks review of an Opinion of the Workers' Compensation Board, affirming the Administrative Law Judge's dismissal of her claim for permanent partial disability, and determining that the 2000 amendment to KRS 342.730 did not apply retroactively to her claim. Finding no error, we affirm.

On August 20, 2001, Napier filed an Application for Resolution of Injury Claim against her employer, Middlesboro ARH, alleging that she had injured her right shoulder and back while assisting a patient on October 22, 1999. The claim was litigated. Napier submitted a report from Dr. David Muffly, an orthopedic surgeon, who assigned a 10% impairment rating "to the whole body," but failed to indicate whether or not the rating was based upon the AMA Guides. The employer submitted the report of Dr. Timothy Wagner, an orthopedic surgeon, who felt Napier had zero percent permanent impairment based upon the AMA Guides.

On March 11, 2002, the ALJ rendered an Opinion and Award. Noting that the evidence on causation was in conflict, the Administrative Law Judge (ALJ) found that the "Plaintiff's current condition is in fact related to the injury on October 22, 1999." The ALJ rejected Napier's argument that the 2000 amendments to KRS 342.730 should apply retroactively to her claim. The ALJ awarded temporary total disability benefits and medical expenses, but dismissed the claim for permanent partial disability benefits, there being no indication Dr. Muffly's 10% rating was based upon the AMA Guides.

Napier appealed to the Board which affirmed in a unanimous decision rendered July 3, 2002. Napier makes the same arguments on appeal to this Court that she raised before the Board

- that the ALJ erred in failing to accept Dr. Muffly's 10% impairment rating and that the 2000 amendments should have been applied retroactively to her claim. We have carefully reviewed the parties' arguments and the evidence, and find no error in the Board's decision.¹ Moreover, we note that Napier had the burden of proof and failed to persuade the ALJ in her favor. Thus, the standard of review on appeal is whether the evidence compels a finding in her favor.² Clearly, it does not. Dr. Wagoner opined that Napier had zero impairment based upon the AMA Guidelines.

We affirm the Board's July 3, 2002 Opinion.

ALL CONCUR.

BRIEF FOR APPELLANT:
Johnnie L. Turner
Harlan, Kentucky

BRIEF FOR APPELLEE:
Mark E. Hammond
Louisville, Kentucky

¹ *Western Baptist Hospital v. Kelly*, Ky, 827 S.W.2d 685 (1992).

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