

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-001919-MR

CHARLES A. KUBAJAK, JR.

APPELLANT

v. APPEAL FROM FAYETTE CIRCUIT COURT
HONORABLE LEWIS G. PAISLEY, JUDGE
ACTION NO. 01-CI-04506

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

APPELLEE

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Charles A. Kubajak, Jr. appeals from a summary judgment granted to the Lexington-Fayette Urban County Government dismissing his claim for damages for a work-related disability caused by post-traumatic stress disorder. The circuit court concluded that the claim, if any, was covered by the exclusivity remedy provided in KRS 342.690(1) of the Workers' Compensation Act. The appellant also filed a workers'

compensation claim (WC-02-00087), which he lost. Although the two appeals were not consolidated, the same panel of this Court was designated to hear that appeal also. In this appeal, we agree with the circuit court that all work-related injury claims are subject to the jurisdiction of the Workers' Compensation Act, and we add, even if the Act does not provide for compensation for all work-related injuries. Therefore, we affirm.

Kubajak was employed as a police officer for the appellee from 1986 to 2001, when he retired on a work-related injury diagnosed as "Post-Traumatic Stress Disorder". His psychiatric disability was presumably caused by his experiences at work. (For purposes of this appeal, we accept that it was.) Kubajak filed his complaint for damages in the Fayette Circuit Court and a claim for compensation with the Workers' Compensation Board. In the civil action, the circuit court ruled:

In this action, the Plaintiff seeks to recover for injuries alleged to have occurred during his employment with the Defendant. Plaintiff has filed a workers' compensation claim for these same injuries. His Complaint is barred by the affirmative defense of exclusivity of remedy provided in KRS 342.690(1) and this Court lacks subject matter jurisdiction to consider this matter. Shamrock Coal Company, Inc. v. Maricle, Ky., 5 S.W.3d 130 (1999). There is no genuine issue as to any material fact and the Defendant is entitled to judgment as a

matter of law. Steelvest, Inc. v. Scansteel Service Center, Ky. App. [sic], 807 S.W.2d 476 (1991).

On appeal to this Court, Kubajak contends there is a broader issue, whether he should be excluded from both the civil courts and the workers' compensation system because the two have different definitions for injury. That is, under the civil system, a person with a work-related injury (psychiatric or physical) has to seek workers' compensation benefits only. However, the workers' compensation system provides for compensation only if the psychiatric injury is a direct result of a physical work injury. It appears to be a catch-22. Kubajak contends that if the compensation system excludes his injury, the civil system should have jurisdiction to address his injury and damages.

The question in this appeal is not whether Kubajak is entitled to workers' compensation benefits, but whether the civil system even has jurisdiction for the claim. The first part of KRS 342.690(1) provides:

If an employer secures payment of compensation as required by this chapter, the liability of such employer under this chapter shall be exclusive and in place of all other liability of such employer to the employee, his legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death.

Shamrock Coal Company v. Maricle, Ky., 5 S.W.3d 130 (1999), answers the jurisdiction question. Therein, the Supreme Court stated that the effect of this exclusive remedy was to preclude a civil suit:

[T]he fact that a remedy for a work-related injury is unavailable under the Workers' Compensation Act does not authorize bringing a civil action for damages in circuit court. Therefore, as the Workers' Compensation Act confers exclusive liability to participating employers for all matters falling within its purview, no trial court has subject matter jurisdiction over such a matter. The proper venue for a matter falling within the purview of the Workers' Compensation Act lies solely with the Workers' Compensation Board.

Shamrock Coal, 5 S.W.3d at 134 (citation omitted). See also Turner v. Pendennis Club, Ky. App., 19 S.W.3d 117, 121 (2000).

A claim is not carved out of the Act simply because a work-related injury is not compensable under the Workers' Compensation Act. Regardless of whether or not the claim or injury is compensable, the employer's liability under the Workers' Compensation Act is exclusive and the civil courts have no jurisdiction. See Adkins v. R & S Body Company, Ky., 58 S.W.3d 428 (2001).

Kubajak briefly contends the exclusivity provisions of KRS 342.690(1) violate Section 14 of the Kentucky Constitution because it mandates a remedy for his injury. Again, we

disagree. Our Supreme Court stated in the recent case of McDowell v. Jackson Energy RECC, Ky., 84 S.W.3d 71 (2002), that an employee waived his rights under Section 14 of the Kentucky Constitution by accepting the provisions of the Workers' Compensation Act.

Statutory and case law are clear that work-related injuries come under the exclusive jurisdiction of the Workers' Compensation Act. Therefore, the circuit court did not err when it granted summary judgment dismissing the claim. Hence, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

David B. Allen
Lexington, Kentucky

BRIEF FOR APPELLEE:

Leslye M. Bowman
Andrea L. Weddle
Lexington, Kentucky