

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002123-WC

UNITED PARCEL SERVICE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 00-WC-78179

JEANETTE GOUGH;
HON. RONALD E. JOHNSON, ADMINISTRATIVE
LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING
** **

BEFORE: BAKER, GUIDUGLI, AND SCHRODER, JUDGES.

BAKER, JUDGE. United Parcel Service (UPS) asks us to review an opinion of the Workers=Compensation Board entered September 11, 2002. We affirm.

Jeanette Gough, appellee, was an employee of UPS when she suffered a work related injury on May 30, 2000. Gough subsequently filed an Application for Resolution of Injury Claim with the Kentucky Department of Workers=Claims. Upon hearing

the evidence, the Administrative Law Judge (ALJ) entered an opinion and award finding Gough permanently and totally disabled. UPS sought review of the ALJ's opinion and award by the Workers=Compensation Board. Kentucky Revised Statute (KRS) 342.285. On September 11, 2002 the Board entered an opinion affirming the ALJ. UPS now asks us to review the opinion of the Board. KRS 342.290.

UPS contends that ~~A~~the Workers=Compensation Board exceeded the scope of appellate review by making a finding of fact, which is the sole province of the Administrative Law Judge.[@] Appellant's Brief p. 9. Appellant takes issue with the following ~~A~~finding[@] of the Board:

Here, the ALJ was presented with evidence that Gough has less than a high school education; has medical restrictions of only occasional lifting in excess of twenty pounds with no repetitive work above shoulder level and absolutely no bending, twisting or stooping; and, a ***past relevant work history consisting primarily of manual labor activities exceeding those restrictions.*** (Emphasis added.)

Board's Opinion p. 12.

Appellant claims that ~~A~~the Board exceeded the scope of appellate review in that it made a finding of fact, which was that Appellee Gough's prior jobs exceeded her present physical restrictions.[@] Appellant's Brief p. 10. UPS argues that the ALJ

may only make findings of fact, and that the Board exceeded its authority of review. We must disagree.

In his opinion and award, the ALJ found:

The plaintiff is limited to lifting 20 pounds with no overhead reaching and limited upper right extremity activity. She should also limit up and down gazing which would prohibit her from returning to the type of work she was doing at the time of her injury. She is able to do light duty work pursuant to all of the medical proof.

. . . .

The plaintiff suffers from a cervical injury that causes the plaintiff to be disabled from doing anything but light work if she had any experience or education that would allow her to do such work. She does not have such experience or education and she does not have a GED.

ALJ's Opinion p. 6 & 7.

The ALJ specifically found that Gough was unable to return to the type of work that she was doing prior to her injury because of her restrictions, and the Board simply stated that Gough's prior work history was that of manual labor which exceeded her restrictions. We are of the opinion that the Board merely recited a finding of fact previously made by the ALJ. We do not think that the Board improperly made a finding of fact independent of the ALJ. As such, we attach no merit to UPS's contention that the Board acted outside of its scope of review.

For the foregoing reasons, the opinion of the Workers=

Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, JEANETTE
GOUGH:

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