

RENDERED: October 31, 2003; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2002-CA-002293-WC

CHARLES A. KUBAJAK, JR.

APPELLANT

v.

PETITION FOR REVIEW  
OF A DECISION OF  
THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-02-00087

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT;  
HONORABLE ROGER D. RIGGS,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

### OPINION

### AFFIRMING

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BEFORE: BUCKINGHAM, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Charles A. Kubajak, Jr. (Kubajak) petitions for a review of a decision of the Workers' Compensation Board which affirmed a decision of the Administrative Law Judge (ALJ) to deny Kubajak benefits for a work-related psychiatric

condition. Since the 1994 amendment to the definition of injury under KRS 342.0011(1), psychiatric injuries that are not directly caused by a physical work injury or physically traumatic events are not compensable. Therefore, we affirm.

Kubajak worked as a police officer for the Lexington-Fayette Urban County Government from 1986 until January of 2001, when he retired due to a work-related disability of "Post-Traumatic Stress Disorder." The parties agree the condition prevents Kubajak from performing his work as a police officer and that the disability was caused by his employment as a police officer. The issue in this case is whether the injury was caused by a physically traumatic event or was the result of a physical injury. In his application for benefits, Kubajak did not allege a physical injury or specific traumatic events which led to his psychiatric condition. However, at the hearing, Kubajak referred to some specific altercations which he argued were physically traumatic events.

The ALJ dismissed Kubajak's claim concluding that the psychiatric condition, although work-related, was not the result of a physical injury, and therefore, not compensable as an injury under KRS 342.0011(1). Kubajak appealed to the Board contending the use of Lexington-Fayette Urban County Government v. West, Ky., 52 S.W.3d 564 (2001), mandates a conclusion of a work-related injury. The appellee, Lexington-Fayette Urban

County Government countered that the ALJ's finding is factual and supported by reasonable inferences. The Board was impressed with the ALJ's findings of fact and adopted them as its own. We will only recap the Board's findings from the medical evidence. Dr. Arnold M. Ludwig, a psychiatrist, diagnosed major depressive disorder and post-traumatic stress disorder. As to causation, Dr. Ludwig says the cause of his psychological problem was the witnessing of numerous crime scenes of violence and death. Dr. Christopher Allen, a clinical psychologist who treated Kubajak in the past, diagnosed post traumatic stress disorder also. As to causation, Dr. Allen opined that the disorder arose from the numerous crime scenes which he investigated, an accumulation of the totality of his experiences over a period of years. Kubajak did mention a specific incident to Dr. Allen where Kubajak was confronted by a knife-wielding husband during a domestic disturbance. Dr. Allen concluded that this could well be part of Kubajak's causation but that the disorder was caused by an accumulation or totality of experiences. Dr. Robert P. Granacher diagnosed a classic case of post-traumatic stress disorder. Dr. Granacher placed causation on the cumulative stress of the job. Dr. Granacher said Kubajak never reported a specific physical injury or incident to him but only spoke in general about working crime scenes. Dr. Douglas D. Ruth, a psychiatrist, determined Kubajak was totally and permanently

disabled from his job with the police department and also attributed causation to repeated visualized signs of violence among crime scene evidence. The Board then reviewed West, 52 S.W.3d 564, and affirmed the ALJ, concluding:

In West the Supreme Court was faced with a situation in which the beginning of West's problems was unquestionably a physical event in which she sustained injury. Unlike the instant action, in West virtually the entirety of the evidence clearly identified this "physical injury" as the beginning of her problems with subsequent events worsening the condition. Unfortunately for Kubajak, the evidence herein is strongly supportive of establishing precisely what the ALJ concluded, that it was the witnessing of horrendous crime scenes that began the onset of the post-traumatic stress disorder. It was seeing the after affects [sic] of two fellow police officers having been shot that developed into a strong "fear" of physical harm being sustained by Kubajak.

and,

The evidence presented to the ALJ falls far short of compelling a belief that the development of the post-traumatic stress disorder was as a "direct" result of physical injury.

In denying the claim, the Board did recognize the hardship this interpretation creates.

What, of course, makes this claim so difficult is, as we previously stated, there is no question but that Kubajak's problems relate to his work. There is no question but that he is occupationally impacted by this condition. There is no question but that he has had a work-related harmful

change in the human organism. There is no question that prior to the alteration of the definition of injury to exclude "mental/mental" injuries by the Legislature in 1994 that Kubajak would have been entitled to workers' compensation benefits under the Kentucky Workers' Compensation Act. There is little question but that every individual viewing this case would conclude that the original intent of the Kentucky Workers' Compensation Act as it was developed in the early 1900s by placing the responsibility for work-related disability upon the employment in which that work-related disability developed would best be served by awarding benefits to Kubajak. That having been said, however, it is the Legislature, not appellate bodies, that by defining "injury" establishes what is a compensable work-related event and what is not. Since April 14, 1994, even an uncontradicted work-related harmful change in the human organism if as a result of "mental stress" is not compensable. The ALJ's conclusion is supported by the evidence of record and his conclusion is supported by the definition of injury as contained in KRS 342.0011(1). His decision follows the interpretation of the Supreme Court's definition of injury in West and a contrary result is not mandated.

We agree with the Board, and under Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992), we must affirm the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

David B. Allen  
Lexington, Kentucky

BRIEF FOR APPELLEE. LEXINGTON-  
FAYETTE URBAN COUNTY  
GOVERNMENT:

Sherri P. Brown  
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