

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2002-CA-002621-WC

LOUISVILLE REMODELING AND PAINTING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 00-WC-54037

DALE MULLER;
HON. J. KEVIN KING,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: COMBS, GUIDUGLI, AND SCHRODER, JUDGES.

SCHRODER, JUDGE. Louisville Remodeling and Painting petitions for review of a decision of the Workers' Compensation Board which affirmed an award of total disability by the Administrative Law Judge (ALJ) for a work-related back injury. We agree with the Board's interpretation of KRS 342.730(1)(c)(3) and hence affirm.

The parties stipulated Dale Muller received a work-related injury on January 23, 2001; with a date of birth of February 10, 1964, when he would have been 36 years of age; and that he had an eighth grade education. In assessing Muller's

permanent disability rating, the ALJ used Ira A. Watson Department Store v. Hamilton, Ky., 34 S.W.3d 48, 51 (2000), for his authority to consider not only the medical impairment according to the AMA guidelines, but other factors, such as "the claimant's post-injury physical, emotional, intellectual, and vocational status as well as the likelihood that the claimant will be able to find work under normal employment conditions." The ALJ then used a two-step process. First, he determined the medical impairment rating (13%), which he converted into a 13% permanent disability rating. Next, the ALJ considered the "other factors" as authorized by Watson, and concluded that Muller was permanently and totally disabled.

On appeal to the Workers' Compensation Board, Louisville Remodeling and Painting contended KRS 342.730(1)(c)(3) was added in 2000 by the General Assembly to build in the age and education factors as adjustments to the medical impairment rating so as to statutorily modify the Watson adjustments to the disability rating by the ALJ. The Board disagreed and affirmed the award, adopting the language of its opinion in Barlow Homes v. Boyd Collins, WC #01-98397, entered November 6, 2002, which concluded that "the legislature clearly intended the statutory provision in question to be limited to permanent partial disability claims."

On appeal to this Court, appellant argues that the Board erred because the amendment to KRS 342.730, which added KRS 342.730(1)(c)(3), came after the Supreme Court decision in Ira A. Watson Department Store v. Hamilton, Ky., 34 S.W.3d 48 (2000), and that the amendment effectively modified Watson so that age and education can only be considered by the ALJ as enhancements to the 13% AMA Guidelines' impairment rating, and not as part of a second step to consider "other factors." We disagree with the appellant and agree with the Board that this new section recognizes the age and education factors in adding a multiplier to the impairment rating of the AMA Guidelines, but does not eliminate their consideration as "other factors" in assessing the worker's disability. The Board's reasoning is sound and we see no need to expand upon it.

The function of the Court of Appeals in reviewing a decision of the Workers' Compensation Board is to correct the Board only where the Court perceives the Board has overlooked or misconstrued statutes, precedent or has flagrantly erred in assessing the evidence so as to cause a gross injustice. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). We find no such errors and therefore affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, DALE
MULLER:

Kenneth Burgess
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