

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2003-CA-000521-WC

HOWARD HALL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-01-00639

LODESTAR ENERGY;  
J. LANDON OVERFIELD,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION

AFFIRMING

\*\* \*\* \* \* \*

BEFORE: BUCKINGHAM, GUIDUGLI AND TACKETT, JUDGES.

GUIDUGLI, JUDGE. Howard Hall (hereinafter "Hall") has petitioned this Court for review of the Workers' Compensation Board's (hereinafter "the Board") February 12, 2003, opinion affirming the August 21, 2002, Opinion and Order of the Administrative Law Judge (hereinafter "ALJ") dismissing his claim for benefits. Hall claimed to be totally occupationally disabled due to an alleged low back injury he sustained while

working for Lodestar Energy (hereinafter "Lodestar"). We affirm.

On May 11, 2001, Hall filed an Application for Resolution of Injury Claim, alleging a November 24, 2000, injury to his low back. Following his regular night shift, he returned home and went to bed. When he awoke, his back began hurting and became worse the more he moved around. Hall admitted that he was uncertain as to the cause of his back pain. Although he reported for work the next day, he was unable to work due to his back pain and has not worked since that time. He later amended his claim to allege a cumulative trauma injury, and also sought benefits for depression. Following extensive proof, the ALJ entered an Opinion and Order, in which he extensively detailed the medical records and testimony as well as the lay witness testimony. Thereafter, the ALJ dismissed Hall's claim for benefits, finding that Hall failed to sustain his burden of proving that he had sustained a work-related injury or that he had provided Lodestar with due and timely notice of a work-related injury. Hall's Petition for Reconsideration was denied, and he subsequently filed a Notice of Appeal to the Board. Interestingly, although Hall was appealing both of the ALJ's holdings, his brief to the Board addressed almost solely the notice issue. Nevertheless, the Board thoroughly addressed both the notice issue as well as the work-relatedness issue, and

affirmed the ALJ's dismissal of Hall's claim. This Petition for Review followed.

On appeal, Hall continues to argue that the ALJ erred in determining that he failed to give due and timely notice and that he failed to establish that he had sustained a work-related injury. In response, Lodestar argues the substantial evidence supports the ALJ's decision and that the Board's opinion should therefore be affirmed.

In Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992), the Supreme Court addressed its role and that of the Court of Appeals in reviewing decisions in workers' compensation actions. "The function of further review of the WCB in the Court of Appeals is to correct the Board only where the [ ] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." Id., at 687-88. With this standard in mind, we shall review the decisions below.

"The claimant in a workman's compensation case has the burden of proof and the risk of persuading the board in his favor." Snawder v. Stice, Ky.App., 576 S.W.2d 276, 279 (1979). "If the [ALJ] finds against a claimant who had the burden of proof and the risk of persuasion, the court upon review is confined to determining whether or not the total evidence was so

strong as to compel a finding in claimant's favor." Id. at 280. "[The claimant] must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled 'clearly erroneous' if it reasonably could have been made. . . . A finding which is unreasonable under the evidence presented is 'clearly erroneous' and, perforce, would 'compel' a different finding." Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986).

We have thoroughly reviewed the record, and have determined that the Board, in affirming the ALJ's Opinion and Order, did not misconstrue controlling precedent or commit any flagrant error in assessing the evidence. The ALJ's determinations regarding lack of notice and lack of a work-related injury were not clearly erroneous because both findings were reasonable based upon the evidence of record. Dr. Russell Travis testified that Hall's soft herniated disc was not the result of a repetitive or cumulative trauma, and that Hall failed to relate to any of his treating physicians that his injury was related to his work. Likewise, the ALJ's finding that Hall did not provide due and timely notice of a work injury was reasonable based upon the testimony of Lodestar employees to the effect that Hall did not relate his back pain to a possible work injury.

For the foregoing reasons, the opinion of the Workers' Compensation Board affirming the ALJ's Opinion and Order dismissing Hall's claim for benefits is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Kristie Goff  
Pikeville, KY

BRIEF FOR APPELLEE:

Stanley S. Dawson  
Louisville, KY