

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-001066-WC

LARRY COCKRUM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-75771

NATIONAL TOBACCO CO., L.P.;
LLOYD R. EDENS, Administrative Law
Judge; and WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, JOHNSON, and MINTON, Judges.

COMBS, JUDGE. Larry Cockrum petitions for review of an opinion of the Workers' Compensation Board which affirmed an opinion, order, and award of the Administrative Law Judge. In challenging the Board's opinion, Cockrum contends that the evidence compelled a finding that he is totally disabled as a result of a work-related injury.

Cockrum's former employer, National Tobacco Co., argues that the appeal is frivolous and has moved for the imposition of sanctions against the appellant. Although we have

determined that the Board did not err in its assessment of the evidence, we cannot agree that Cockrum acted in bad faith by seeking further review. Thus, we affirm the Board's decision and deny the requests for sanctions.

On March 3, 1999, Cockrum sustained a serious injury to his wrist when he fell at work. As a result, he is essentially unable to use his left hand in any work-related capacity. Following the accident, Cockrum underwent three surgeries to his wrist; he has not returned to work. His pain has been persistent. Because of his physical restrictions, he has been unable to obtain any position with National Tobacco, for whom he had worked for more than thirty years. He has been awarded Social Security disability benefits.

The ALJ rejected Cockrum's claim of total occupational disability, holding instead that Cockrum sustained a permanent partial disability as follows:

In this instance, [Cockrum] has a high school education, two years of electronics training and is in the process of completing a program in computer science. In view of [Cockrum's] age, 54, his education, and work experience in electronics, I am not persuaded that he is permanently and totally disabled as defined by the aforementioned statute [KRS¹ 342.0011(11)(c)]. I am, however, persuaded that the 5% functional impairment rating assigned by Dr. Schecker best represents his degree of functional

¹ Kentucky Revised Statutes.

impairment. (Opinion, Order, and Award of ALJ, October 23, 2002, p.3, finding #4.)

In its review, the Board agreed that the evidence supported the conclusions reached by the ALJ. The Board held:

While the record may contain some evidence sufficient to have supported a 100% income disability award, the proof on this issue, in our opinion, is reasonably conflicting. Although Cockrum continues to complain of significant pain in his left wrist and arm; has significant medical restrictions with regard to that extremity; and, underwent extensive medical treatment, including three surgeries, as pointed out by the ALJ, he is only 54 years of age, has a high school education and two years of training in electronics, and is engaged in completing a computer science program. The translation of such evidence into an award of either permanent partial or permanent total disability firmly rests within the discretion of the ALJ as fact-finder. Based upon this evidence, the ALJ simply was not persuaded that Cockrum was rendered completely and permanently unable to provide some services to another in return for remuneration on a regular and sustained basis in Kentucky's economy. See KRS 342.0011(11)(c) and (34). Such reasonable inferences rest with the ALJ, not this Board. Jackson v. General Refractories Co., Ky., 581 S.W.2d 10 (1979). Hence, we may not disturb that finding on appeal. (Opinion and Order of the Board of April 23, 2003, at pp. 7-8).

Cockrum argues that the Board erred in affirming the ALJ's determination that he is not permanently disabled. He emphasizes the fact that his employer is unwilling to accommodate his disability while at the same time contending

that he has not lost all ability to work. After our review of the record, we cannot conclude that the Board erred in holding that the evidence did not compel a finding of total occupational disability. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986); Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). As the ALJ found, Cockrum is not capable of returning to his former work; but he is an articulate, intelligent, motivated, and resourceful individual who acknowledges that he retains the ability to perform and compete at other types of endeavors. Thus, we are compelled to affirm the decision of the Board upholding the award of permanent partial disability benefits pursuant to the standard set forth at Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

We shall last address the sanctions sought by the employer. In light of Cockrum's long period of employment with National Tobacco, the serious nature of his injury, and the fact that his entire work history has involved the use of both of his hands, it is wholly credible for him to believe his case to be worthy of another examination of the evidence. He is clearly entitled by law to nothing less. We find no merit whatsoever in National Tobacco's request for sanctions.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE NATIONAL
TOBACCO CO., L.P.:

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