

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2003-CA-001436-WC

LEASEWAY MOTOR COMPANY TRANSPORT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-56666

DONALD STUMP; HON. LAWRENCE SMITH,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

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

BEFORE: EMBERTON, CHIEF JUDGE; BARBER AND BUCKINGHAM, JUDGES.

EMBERTON, CHIEF JUDGE. Leaseway Motor Company Transport appeals an opinion and order of the Workers' Compensation Board finding Donald Stump to be totally disabled. Leaseway also asserts that the Board erred when it found that the Administrative Law Judge erroneously determined the degree of Stump's pre-existing active disability.

Stump alleges to have suffered the work-related injury giving rise to this claim on December 26, 2000; he has, however, a significant history of prior injuries. In 1980 he suffered an injury to his right leg and received a three percent disability award, and in 1988, sustained a work-related injury to his neck and received a disability award based on a twenty percent disability. In 1992, Stump was again injured when he fell off the step of a truck and received benefits based on a three percent disability. In 1995, while putting a chain on a car, Stump again injured his cervical area and underwent a cervical discectomy and received an additional twenty percent disability. In an accident unrelated to work in 1999 Stump, unable to recall the details, injured his elbow after leaving a bar.

The present injury occurred on December 26, 2000, when he reinjured his neck while pulling a chain used to tie down cars on trailers. He has not worked since and testified that he has constant neck pain. He is an admitted alcoholic and testified that he is depressed. He had psychiatric treatment prior to the 2000 injury.

Leaseway maintains that there was insufficient evidence that Stump incurred a work-related injury in 2000. Stump has the burden of proof before the Administrative Law Judge and since he prevailed, the issue on appeal is whether the ALJ's decision is supported by substantial evidence in the

record.<sup>1</sup> It is the role of the ALJ as fact finder to determine the weight, credibility, substance, and inferences to be drawn from the evidence.<sup>2</sup>

Leaseway contends that the report of Dr. Rapier, relied upon by the ALJ, is insufficient to constitute substantial evidence of causation. It maintains that contrary to the ALJ's findings, Dr. Rapier did not state that the nineteen percent impairment rating related to the alleged 2000 injury but to one occurring in the 1980's and another in the 1990's. While Dr. Rapier's report may not have explicitly stated the apportionment of the disability rating to Stump's various injuries, including that in 2000, we agree with the Board that it was within the function of the ALJ to draw the reasonable inference from the totality of the report that a portion of Stump's impairment was caused by the 2000 injury. We find no error.

Stump has had several prior work-related injuries resulting in disability awards. The ALJ applied a 1.35 multiplier to the assessment of Dr. Falco, who examined Stump in December 1998, and assigned him an impairment rating of thirty percent. The ALJ stated that "[t]he thirty percent functional impairment rating immediately prior to the subject injury in

---

<sup>1</sup> Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984).

<sup>2</sup> Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985).

December of 2000 would equate to a 40.5% permanent partial disability, (30% x 1.35 = 40.5%; KRS<sup>3</sup> 342.730(1)(b) as it read subsequent to July 14, 2000)." The Board held that the ALJ improperly imposed an impairment standard rather than a disability standard in determining Stump's pre-existing active disability and that KRS 342.370 does not provide for the use of a multiplier when determining active disability. In total disability claims, pre-existing impairment does not, as a matter of law, translate into pre-existing occupational disability.<sup>4</sup> Although the multiplier is now used to calculate the amount of benefits, disability is still determined by the factors set forth in KRS 342.0011(11). The Board properly held that the ALJ must translate any pre-existing functional impairment into occupational disability to determine the degree of pre-existing occupational disability.

The opinion and order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald J. Pohl  
PICKLESIMER, POHL & KISER, PSC  
Lexington, Kentucky

BRIEF FOR APPELLEE DAVID  
STUMP:

Miller Kent Carter  
Pikeville, Kentucky

---

<sup>3</sup> Kentucky Revised Statutes.

<sup>4</sup> Wells v. Bunch, Ky., 692 S.W.2d 806 (1985).