

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-002443-WC

GARY MCCLANAHAN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-01232

MOUNTAIN EDGE MINING COMPANY;
HONORABLE JAMES L. KERR,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

DYCHE, JUDGE. At issue herein is the definition of "consensus" as used in KRS 342.316, dealing with the procedure used to decide occupational disability claims, specifically pneumoconiosis. That statute, as amended effective July 15, 2002, provides that the Administrative Law Judge to whom the claim is assigned shall first attempt to decide the claim by determining if a "consensus" exists between the opinion of the employee's examining physician and the employer's examining

physician, concerning the existence and extent of coal workers' pneumoconiosis. If no consensus is reached at that point, three randomly selected "B" readers are assigned to examine the X-rays of the claimant's chest; if a 2/3 consensus is reached at that point,

the commissioner shall forward copies of the report to all parties as well as notice of the consensus reading which shall be considered as evidence. If consensus is not reached, the administrative law judge shall decide the claim on the evidence submitted.

The statute further provides,

"Consensus" is reached between two (2) chest X-ray interpreters when their classifications meet one (1) of the following criteria: each finds either category A, B, or C progressive massive fibrosis; or findings with regard to simple pneumoconiosis are both in the same major category and within one (1) minor category (ILO category twelve (12) point scale) of each other.

In the present case, the employer's physician and Gary McClanahan's physician did not agree on the existence of the disease, so the two films were forwarded to a panel of "B-readers" for their interpretation. One member of the panel interpreted the X-ray as completely negative for the disease. One physician found category 0/1 in the lower right and left lung zones. The third reader found 0/1, in the upper right and left lung zones, and in the mid-right zone. Based upon these

readings, a consensus was declared by the Department of Workers' Claims.

The ALJ dismissed the claim, finding that McClanahan had failed to overcome the consensus. The Board affirmed, and this petition for review followed. McClanahan argues that no consensus exists, as the physicians found the disease in different parts of his lungs. He argues that this is tantamount to one physician finding a broken right leg and one finding a broken left leg, and this being called a consensus.

Mountain Edge Mining Company, the employer, argues that the statute does not require the precision urged by McClanahan, nor that the opacities be in the same lung zones, but that the overall readings be within one level of each other.

The ALJ and Board agreed with Mountain Edge, and so do we. The statute does not require that the opacities be in the same zones for a consensus to be present, but only that the overall readings be in the same major category and within one minor category of each other. That is what was found in this case; a consensus was reached. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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