

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000778-WC

JEFF LEAR TRUCKING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-67137

DOUGLAS LYNN SIGERS;
HON. J. KEVIN KING,
ADMINISTRATIVE LAW JUDGE;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, McANULTY, AND MINTON, JUDGES.

BARBER, JUDGE: Appellant, Jeff Lear Trucking (Lear Trucking), petitions for review of a decision of the Workers' Compensation Board (WCB) that affirmed a determination by the Administrative Law Judge (ALJ) that Douglas Lynn Sigers (Sigers) was totally and permanently disabled. Since substantial evidence supports the finding of the ALJ, we affirm.

Sigers was injured on August 31, 2000, while in the employ of Lear Trucking when he fell from a platform after a step pulled loose. The injury was to his back and he eventually underwent surgery having a two-level decompression performed at L3-4 and L4-5 by Dr. Timothy Schoettle.

Dr. Schoettle assigned an 18% impairment rating to Sigers and restricted his activities. The evidence submitted in the case shows that Dr. Schoettle believed Sigers would be limited to performing sedentary work - essentially desk work - and not lift more than about 10 pounds.

Sigers also suffered work-related depression from his injury and sought treatment. Howard B. Roback, Ph.D. treated Sigers and assigned a 60% impairment rating for his mental condition.

The ALJ did not believe that Sigers' mental impairment rose to this level, however, and determined that, considering both his physical and mental difficulties, Sigers suffers from a 38% impairment to the whole person.

Lear Trucking has not challenged the ALJ's finding regarding Sigers' impairment rating. Rather, Lear Trucking contends that Sigers has not satisfied his burden of showing that he cannot perform any type of work. It points to evidence from Dr. Schoettle and from Luca Conte, Ph.D., a vocational expert, that Sigers could still perform sedentary work. Sigers

testified that he did not believe he could do the type of work he did previous to the accident or any other type of work.

KRS 342.0011(11)(c) defines permanent total disability to be a person who has a permanent disability rating and "a complete and permanent inability to perform any type of work as a result of an injury." "Work" is further defined by KRS 342.0011(34) as meaning the ability of a person to perform services for another for pay on a "regular and sustained basis in a competitive economy."

The Kentucky Supreme Court has considered the definition of total permanent disability and has determined that whether a worker suffers from a total or partial disability requires a weighing of evidence and the consideration of numerous factors. Ira A. Watson Dept. Store v. Hamilton, Ky., 34 S.W.3d 48, 51 (2000). Those factors include:

[T]he worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities.

Id.

The Court also reiterated that the ALJ remains the fact-finder in workers' compensation cases. Id. at 52. Thus, whether Lear Trucking is entitled to have the ALJ's determination that Sigers is totally and permanently disabled set-aside depends on whether substantial evidence in the record supported the ALJ's decision. Id.; Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986). Further, our review of the WCB's decision affirming the ALJ's decision in this case is limited to correcting the WCB where it has overlooked or misconstrued controlling law or committed an error such that gross injustice has resulted. Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687-688 (1992).

It is clear that the ALJ in this case considered all of the available medical and vocational evidence. It is also plain that he considered Sigers' testimony that he was unable to perform any type of work as well as evidence that Sigers had limited education, skills, and work background. Taking all of this into consideration, the ALJ made a determination that Sigers is totally and permanently disabled. Substantial evidence supports this finding; accordingly, we decline to alter the WCB's decision upholding the ALJ's decision.

Sigers has also argued in his response to the petition for review, as he did before the WCB, that an assessment of costs under KRS 342.310(1) should be made against Lear Trucking

for taking this appeal. The WCB did not assess those costs although it said the case presented a close call. KRS 342.310(1) allows this Court to assess the "whole cost of the proceedings" against a party who has "brought, prosecuted, or defended" a case without reasonable grounds. We similarly do not believe that Sigers is entitled to the "whole cost of the proceedings." Sanctions, which KRS 342.310 must be viewed as imposing, should be utilized sparingly in the most extreme cases. Here, there is contradictory evidence in the record regarding whether Sigers is totally and permanently disabled. We do not believe there is nearly enough evidence to say that the finding of the ALJ is not supported by substantial evidence; however, this is not a case where all of the evidence points to total permanent impairment. Therefore, the whole costs shall not be assessed.

The decision of the WCB is affirmed.

ALL CONCUR.

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