

RENDERED: May 6, 2005; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-002347-WC

CRANDELL L. SLONE

APPELLANT

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
NO. WC-00-81563

KENTUCKY STATE POLICE;
RICHARD M. JOINER, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: HENRY AND SCHRODER, JUDGES; EMBERTON, SENIOR JUDGE.¹

SCHRODER, JUDGE: Crandell L. Slone petitions for a review of a decision of the Workers' Compensation Board which affirmed a decision of the Administrative Law Judge who decided Slone was

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

not a traveling employee at the time of his injury, and therefore denied benefits because the injury did not arise out of and in the course of his employment.

Slone was a civilian tester for driver's license applicants with a permanent work station at Bowman Field in Jefferson County. One day a week, Tuesdays, Slone was permanently assigned to Taylorsville, in Spencer County. He received mileage for Tuesdays from home to Taylorsville and back. On the day of his injury, Tuesday, May 23, 2000, Slone went to Taylorsville and worked the morning. Slone went home for lunch and on the way back to work, was involved in the accident which caused extensive injuries. The issue before the ALJ was whether the injury arose out of and occurred in the course of his employment. The ALJ held the "coming and going" rule excluded this injury, because he was not paid mileage for going home for lunch, although he was paid mileage for going to the Spencer County Courthouse in the morning and paid mileage for his return trip home at the end of his work day. The Board affirmed, concluding that Slone was not a "traveling employee" at the time of the accident, but an employee with two work stations.

On appeal to this Court, Slone contends the Board erred in not applying the "traveling employee" exception to the "going and coming" rule, as recognized in Black v. Tichenor, 396

S.W.2d 794 (Ky. 1965). The function of the Court of Appeals in reviewing a decision of the Workers' Compensation Board is to correct the Board only where the Court perceives the Board has overlooked or misconstrued statutes, precedent, or has flagrantly erred in assessing the evidence so as to cause a gross injustice. Western Baptist Hospital v. Kelly, 827 S.W.2d 685 (Ky. 1992). We find no such errors and therefore affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

Christopher P. Evensen
Louisville, Kentucky

BRIEF FOR APPELLEE:

K. Lance Lucas
Sutton, Hicks, Lucas
Grayson & Braden
Edgewood, Kentucky