

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000158-WC

MICHAEL BRUCE NEIGHBORS

APPELLANT

PETITION FOR REVIEW OF A DECISION
v. OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-55925

RIVER CITY INTERIORS; AND
MARCEL SMITH, ADMINISTRATIVE LAW
JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BARBER, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Michael Bruce Neighbors petitions for a review of a decision of the Workers' Compensation Board which affirmed the Administrative Law Judge's order of June 14, 2004, requiring Neighbors to participate in vocational rehabilitation services. As the requirement was reasonable, we affirm.

Neighbors suffered a work-related injury on January 8, 2001. He was awarded 100% occupational disability in an opinion and award dated August 6, 2002, which also required Neighbors to

undergo a vocational rehabilitation evaluation pursuant to KRS 342.710. Neighbors only partially completed the evaluation, because he was of the opinion that he could not do the rehabilitation training due to his physical condition. Neighbors was asked to complete the evaluation. Neighbors reiterated that retraining was not possible because of his continuing medical problems, and he did not participate further in the process.

River City Interiors filed a motion to reopen the original claim, seeking a reduction in Neighbors' compensation payments because Neighbors was not participating in the vocational rehabilitation process as ordered. In an opinion and order dated June 14, 2004, the ALJ found:

From review of the record, it is apparent that a referral for vocational evaluation was made [] in the [August 6, 2004] Opinion and Award at plaintiff's request. After the Award was entered, plaintiff did undergo evaluation for vocational rehabilitation services on October 25, 2002 at Elizabethtown Technical College. Thereafter, plaintiff did consult with someone at the Department of Workers' Claims regarding potential vocational rehabilitation. Possible retraining benefits were discussed with plaintiff. The file was set to be closed because plaintiff said that he did not consider himself able to participate further due to his physical condition.

One of the primary purposes of Chapter 342 is to restore an injured employee to gainful employment. . . . [I]t does not appear that there is anything that prevents

further participation by plaintiff in rehabilitation. Although there is no written report other than the letters in evidence, it is apparent from those letters that a retraining program would be practical and is likely, with willing participation by plaintiff to return him to suitable gainful employment. Plaintiff is unable to perform work for which he has previous training or experience. . . . Although reduction in income benefits is not ordered at this time, it is important to note that plaintiff has not shown any reason why he cannot or should not participate in vocational rehabilitation. I find that plaintiff's condition does not prevent him from participating. He is expected to willingly participate in this vocational rehabilitation.

In an opinion entered on December 21, 2004, the Board affirmed, finding:

In light of the procedural history of this claim, we believe any error, if any, in the ALJ's June 14, 2004 order is harmless. Neighbors is getting the benefit of the vocational rehabilitation process he requested and was awarded in the original opinion and award, and River City is not contesting liability for the resultant expense. We note that 803 KAR 25:101, Section 4(6) specifically provides:

Upon receipt of the vocational evaluation report, the employee and the employer or insurance carrier shall cooperate in the implementation of services designed to restore the employee to suitable employment.

Nothing in the ALJ's order precludes completion of the vocational evaluation process and report by Workers' Claims if, as it appears, a formal report was never

finalized. If it is discovered, as the evaluation and rehabilitation process proceed, that grounds exist for reopening pursuant to KRS 342.125, then an appropriate motion may be filed at that time.

The ALJ, as fact finder, has the sole authority to determine the weight, credibility, substance and inferences to be drawn from the evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Where evidence is conflicting (the ALJ decided from the evidence that Neighbors should and can participate in the evaluation, whereas Neighbors had only his opinion that he cannot participate in vocational rehabilitation training due to his physical condition), the ALJ may choose whom and what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). The ALJ may choose to believe parts of the evidence and disbelieve other parts, even when it comes from the same witness or the same party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

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). In order for the ALJ to make an informed decision on vocational rehabilitation training, it is reasonable to require Neighbors

to undergo the evaluation, therefore, the decision of the
Workers' Compensation Board is affirmed.

ALL CONCUR.

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