

RENDERED: SEPTEMBER 2, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000324-WC

DONALD MORRISON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-70313

THE HOME DEPOT; SEDGWICK CLAIMS
MANAGEMENT SERVICES;
WORKERS' COMPENSATION BOARD;
HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
AFFIRMING

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BEFORE: TACKETT AND TAYLOR, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

TACKETT, JUDGE: Donald Morrison petitions this Court for review of the decision of the Workers' Compensation Board, arguing that the report of Dr. Martyn Goldman should be stricken, as Goldman

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

is not a "university evaluator" within the meaning of the Kentucky Revised Statute (KRS) 342.315. The Board held that the statute did not explicitly require university evaluators to be doctors employed at the university medical schools, and denied Morrison's request. We affirm.

Morrison was injured on the job while working at Home Depot. He fell from a truck while positioning a load of roof shingles, injuring his right shoulder and back. Morrison was evaluated by three doctors performing independent medical evaluations (IME) at the request of the employer, but none of them opined that he was yet at maximum medical improvement, so the employer's obligation to continue paying temporary total disability benefits continued. When the employer requested a fourth IME, Morrison objected and the matter was referred to a university evaluator by the ALJ. The evaluator selected by the University of Louisville Medical School was Dr. Martyn Goldman, who is not an employee of the medical school but works exclusively as an evaluator from his Louisville office. Dr. Goldman, after ordering further tests on Morrison's shoulder, concluded from an MRI that there was no rotator cuff tear as he had previously suspected, and that Morrison was therefore at maximum medical improvement with a permanent disability rating of 11%. To that point, only Morrison's chiropractor, Dr. Skinner, had opined that he had reached maximum medical

improvement, and concluded that he had a 34% permanent impairment rating, which the employer disputed. The ALJ issued an opinion and award utilizing the 11% rating assessed by Goldman, and Morrison appealed to the Board, which affirmed. This petition for review followed.

The only real issue to be considered on appeal is whether Goldman was a university evaluator within the meaning of KRS 342.315. We note that there is little guiding authority on this point beyond the statute itself. The Board concluded, and we agree, that there is nothing in the statute that requires that the physician selected as the university evaluator be employed by the university medical school. The statute instead provides that the department commissioner shall contract with the University of Kentucky and University of Louisville medical schools to evaluate workers, and that the "physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings" in a particular form. In the absence of specific language to the contrary, the universities would seem to have latitude in selecting the physicians used for evaluations, and so we affirm the decision of the Board. We are not permitted to speculate as to what may have been intended but was not expressed. Commonwealth v. Allen, 980 S.W.2d 278 (Ky. 1998). If the legislature had intended to mandate that the evaluators chosen

by the universities be employed by the universities, it could easily have done so, but it did not. Therefore, it was not error for the ALJ to admit Goldman's report into evidence.

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES, THE HOME
DEPOT AND SEDGWICK CLAIMS
MANAGEMENT SERVICES:

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