

Commonwealth Of Kentucky

Court Of Appeals

NO. 2005-CA-000419-WC

JAMES ANDERSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-01270

HOMELESS AND HOUSING COA;
HON. MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: BARBER, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: James Anderson appeals from a January 28, 2005 opinion and order by the Workers' Compensation Board (Board) which affirmed the Administrative Law Judge's (ALJ) order dismissing his claim for benefits. Anderson contends that the ALJ misconstrued the medical evidence in concluding that he had failed to prove causation. Finding no error, we affirm.

Anderson, who was sixty years old at the time of the incident, previously worked in coal mining, construction, and as

the proprietor of a hardware store. He underwent left-knee-replacement surgery in 1997, but stated that his knee did not cause him any problems after the surgery. Later in 1997, Anderson began working for Homeless and Housing as a supervisor, overseeing volunteers building homes.

On October 26, 1998, Anderson was working on the roof when he fell through a vent hole. He testified that he fell approximately six feet and caught himself, landing with his right leg down and his left leg up in the trusses. That evening, he went to Pikeville Methodist Hospital. The emergency room records indicate that he complained of injury to his right knee. However, Anderson testified that he struck both knees. Anderson eventually underwent surgery to rebuild the previously-replaced knee.

In the initial review, the ALJ dismissed Anderson's claim, finding that Anderson was not covered by the Workers' Compensation Act. Ultimately, the Kentucky Supreme Court reversed.¹ On remand, Anderson relied on a medical report from Dr. James Templin. After performing an evaluation, Dr. Templin diagnosed (1) chronic left knee pain, (2) S/P total left knee replacement, and (3) S/P arthrotomy of the left knee with exchange of tibial poly component. He opined that within

¹ Anderson v. Homeless and Housing COA, 135 S.W.3d 405 (Ky. 2004).

reasonable medical probability, Anderson's October 1998, injury caused his complaints. Dr. Templin further assessed a 5% impairment to the body as a whole due to the work-related injury. He explained that Anderson had a 15% impairment based on his prior 1997 surgery, and Dr. Templin gave an additional 5% impairment for complaints of increased discomfort or pain.

At a later deposition, however, Dr. Templin was presented with the emergency room records from Pikeville Methodist Hospital. The records indicated complaints of right knee pain following the work-related incident. Given that Anderson's left knee complaints appeared to have begun, at the earliest, three weeks after the work injury, Dr. Templin testified that he could not relate any increase in impairment to the work injury. Dr. Templin was also asked whether there was anything in the surgery which indicated a new acute injury as opposed to a continuation of longstanding degeneration. Dr. Templin testified that it was his understanding that there was no fracture noted, but there was evidence of scuffing with some granulation tissue noted within the synovium. He stated it could be from either or both an acute trauma or repetitive mini-traumas, but there was no way to tell.

Without summarizing the evidence, the ALJ concluded that Anderson had failed to prove that his complaints of knee pain were caused by the October 1998, incident. In particular,

the ALJ relied on Dr. Templin's deposition testimony that he could not causally relate any impairment rating to the alleged work injury. On appeal, the Board affirmed, finding this conclusion to be supported by substantial evidence of record. This appeal followed.

As an initial matter, Homeless and Housing notes that Anderson failed to preserve any objection to the adequacy of the ALJ's findings. We agree. In Eaton Axle v. Nally,² the Kentucky Supreme Court held that a party is required to file a petition for reconsideration with the finder of fact before seeking appellate relief.³ In 1994, the General Assembly effectively abrogated this rule when it amended KRS 342.281, to provide that "[t]he failure to file a petition for reconsideration shall not preclude an appeal on any issue." However, this language was deleted from the statute in 1996. The deletion of this language revived the holding of Eaton Axle, meaning that Anderson waived this issue by not including it in its petition for reconsideration.⁴

Thus, the only issue properly raised in this appeal concerns the sufficiency of the evidence supporting the ALJ's

² 688 S.W.2d 334, 338 (Ky. 1985).

³ Id. at 338.

⁴ Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327, 330 (Ky.App. 2000).

conclusion that Anderson failed to meet his burden of proving a work-related injury. As the Board correctly noted, Anderson had the burden of proving that his injury was work-related.⁵ Since Anderson was unsuccessful before the ALJ, the issue on appeal is whether the evidence compels a different result.⁶ However, if the ALJ's opinion was supported by substantial evidence of record, it must be upheld.⁷ Furthermore, as finder of fact, the ALJ had the sole authority to judge the weight, credibility, substance, and inferences to be drawn from the evidence.⁸

Anderson agrees that the ALJ had the discretion to believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof.⁹ Nevertheless, Anderson urges that the ALJ took Dr. Templin's deposition testimony out of context. Anderson points out that there was other evidence showing that he had complained of bilateral knee pain immediately after the

⁵ Baylis v. Lourdes Hospital, Inc., 805 S.W.2d 122, 124 (Ky. 1991).

⁶ Wolf Creek Collieries v. Crum, 673 S.W.2d 735, 736 (Ky.App. 1984).

⁷ Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

⁸ Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985).

⁹ Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977).

accident. He also questions the ALJ's conclusion that Anderson's failure to report pain in his left knee would preclude a finding of causation.

It seems apparent that Anderson suffered some sort of injury to his knees on October 26, 1998. However, after reviewing the emergency room records, Dr. Templin testified that he could not causally relate any of Anderson's disability to that incident as opposed to his pre-existing condition. In light of this testimony, we agree with the Board that the ALJ's assessment of the evidence was not manifestly erroneous.¹⁰

Accordingly, the January 28, 2005, opinion and order of the Workers Compensation Board is affirmed.

ALL CONCUR.

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¹⁰ Western Baptist Hospital v. Kelly, 827 S.W.2d 655, 688 (Ky. 1992).