

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000620-WC

RICKY DIXON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-03-84588

DON AMBURGEY PLUMBING;
HON. JOHN B. COLEMAN, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

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

SCHRODER, JUDGE: Ricky Dixon petitions for a review of a decision of the Workers' Compensation Board which affirmed a decision of the Administrative Law Judge dismissing Dixon's claim for benefits for an industrial injury. The claim for benefits was denied after finding that Dixon was an independent contractor, not an employee. On appeal to this Court, Dixon

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.

contends the ALJ only reviewed four of the nine criteria set out in Ratliff v. Redmon, 396 S.W.2d 320 (Ky. 1965) for determining whether a claimant is an employee or independent contractor, and that with a review of the evidence, the ALJ erred in finding Dixon was an independent contractor. We disagree and affirm.

In his appeal before the Board, Dixon argued that the ALJ only considered four of the Ratliff criteria. The Board opined that Dixon failed to preserve the issue by failing to file a petition for reconsideration, which, under KRS 342.285(1), deems the facts found by the ALJ conclusive. The Board then reviewed the ALJ's findings and concluded the ALJ did discuss all the factors in Ratliff, and that the claimant was merely trying to have the Board re-weigh the evidence and reach a contrary conclusion. The Board reviewed the evidence and affirmed the ALJ.

Dixon's appeal to this Court contends the ALJ only considered four criteria of Ratliff and asks us to re-weigh the evidence. 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:

Edmond Collett
Monica Jo Rice Smith
Hyden, Kentucky

BRIEF FOR APPELLEE:

Wiley Gerald Vanover, Jr.
Lexington, Kentucky