

RENDERED: FEBRUARY 17, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001327-WC

CHESTER RICKETT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-00607

TECO COAL CORPORATION;
HONORABLE GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI AND HENRY, JUDGES; POTTER, SENIOR JUDGE.¹

POTTER, SENIOR JUDGE: At issue in this appeal is the propriety of the dismissal of Chester Rickett's claim for permanent and total disability benefits stemming from alleged repetitive trauma injuries and a psychological overlay suffered as a result of the cumulative trauma injuries. The Administrative Law Judge

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

dismissed the claim on the basis of Mr. Rickett's failure to prove that his physical impairments were work-related or that the psychological component of his claim was a permanent condition. In a thorough and well-reasoned opinion, the Workers' Compensation Board upheld the decision of the ALJ. We affirm.

Mr. Rickett acknowledges in his brief that this appeal "turns upon the ALJ's assessment of the evidence before him and his proper application of the substantial evidence rule." He also cites the well-established rule in this Commonwealth that when the party bearing the burden of proof is unsuccessful before the ALJ, the issue on appeal is whether the evidence compelled a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky.App. 1984). The Supreme Court of Kentucky has interpreted that standard to mean that where evidence of substance supports the decision of the ALJ, it cannot be said that the evidence compelled a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

While Mr. Rickett contends that the evidence upon which the ALJ relied is not credible, he offers no support for that assertion. The ALJ fully and clearly explained the basis for his decision on the physical impairment claim:

Drs. Dubin and Muffly also testified by deposition that there can be other causes for chondromalacia and that it is prevalent

in the general population. Given that the objective testing showed only mild chondromalacia, that Drs. Dubin and Muffly were somewhat equivocal as to causation, and their combined failure to explain how they arrived at their impairment ratings, the Administrative Law Judge is more persuaded, in this instance, by Dr. Best's opinion that such arthritic changes were normal for plaintiff's age and not due to his work activities, and by Dr. Brooks' report that plaintiff's findings do not explain the symptoms of which he complained.

As to the dismissal of that portion of the claim related to an alleged psychological overlay, the ALJ stated:

Because plaintiff's underlying physical injuries have been dismissed above, it follows that plaintiff's alleged resulting psychological impairment is not compensable. Plaintiff's alleged psychological impairment does not flow from a traumatic event; rather he alleges it results from repetitive use and it has been determined that the repetitive activities of plaintiff's job did not result in a permanent, compensable injury. These facts distinguish the case at bar from Lexington-Fayette Urban County [Government] v. West, [52 S.W.3d 564 (Ky. 2001)] where the plaintiff's psychological claim was found compensable where it resulted from a significant physical trauma even though the physical even[t] produced no permanent, physical impairment.

Moreover, the Administrative Law Judge is also persuaded by the opinion of Dr. Cooke that plaintiff does not have a permanent psychological impairment. For these reasons, plaintiff's psychological claim must also be dismissed.

On this state of the evidence, we cannot conclude that the evidence compelled a different result.

Like the Board, we are convinced that because the ALJ's analysis is supported by evidence of substance and reasonable inferences therefrom, we are precluded from disturbing his decision. As explained by the Supreme Court in Francis, supra at 644:

We, or the Court of Appeals, may have found differently had the decision been ours, but the fact that we may have decided differently does not mean that the decision of the Board was completely unreasonable or that a different decision was compelled. The appellate courts cannot substitute their judgment for that of the Board as to the weight of the evidence on questions of fact.

The opinion of the Board clearly falls within its statutory duties described in KRS 342.285(2) and caselaw interpreting its appellate function.

Accordingly, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Susan Turner Landis
Harlan, Kentucky

BRIEF FOR APPELLEE:

W.M. Cox, Jr.
Williamsburg, Kentucky