

RENDERED: NOVEMBER 4, 2005; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001373-WC

KEN AMERICAN RESOURCES, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-00666

BILLY DAILEY, DECEASED; SHEILA
DAILEY, WIDOW; HONORABLE BRUCE
COWDEN, JR., ADMINISTRATIVE LAW
JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE AND SCHRODER, JUDGES; ROSENBLUM, SENIOR JUDGE. ¹

DYCHE, JUDGE. The sole question before us on this petition for review is whether there was substantial evidence to support the

¹ Senior Status Judge Paul W. Rosenblum sitting as Special Judge by Assignment of the Chief Justice pursuant to Section 110 (5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

finding that Billy Dailey's fatal heart attack was a work-related injury. We find that it was, and affirm.

Appellant, Ken American Resources, argues that there was no evidence that the heart attack was the result of traumatic injury. That is not the standard to be met by a claimant. McCowan v. Matsushita Appliance Co., 95 S.W.3d 30 (Ky. 2002), holds that emotional and stress-related trauma which caused or contributed to a heart attack were sufficient to support an award of compensation benefits. A harmful change need not directly result from a physically traumatic event.

In this case, there was ample evidence that Dailey had been under tremendous stress, caused by, among other things, overwork (350 work hours in the month preceding his death), and having to testify before a grand jury against his employer. His work was of a physically demanding nature. He died while working in low underground coal, repairing a piece of equipment. The finding of the Administrative Law Judge, as affirmed by the Workers' Compensation Board, was supported by substantial evidence.

The opinion of the Workers' Compensation Board is affirmed.

SCHRODER, JUDGE, CONCURS.

ROSENBLUM, SENIOR JUDGE, CONCURS IN RESULT.

BRIEF FOR APPELLANT:

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DAILEY AND SHEILA DAILEY,
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