

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001489-WC

REBECCA KINNER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-02-01439 AND WC-95-28758

TOYOTA MOTOR MANUFACTURING
OF KENTUCKY; HON. MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, KNOFF, AND McANULTY, JUDGES.

McANULTY, JUDGE: In this appeal of a decision of the Worker's Compensation Board, Rebecca Kinner complains that the Board failed to interpret the terms of an agreed order between the parties as a binding admission by appellee Toyota Motor Manufacturing of Kentucky (hereinafter Toyota) to the effect that Kinner's left shoulder injury was work-related and compensable. Kinner alleges she was further prejudiced because

she did not put on evidence of causation in reliance on the alleged admission. Kinner additionally argues that the Board erred in finding that she actually put on evidence regarding causation to counter the conclusions of the defense's witness, Dr. Best. She states she did not provide other evidence because she did not believe that there was a causation question after the agreed order. She asserts that she proffered general medical evidence which only happened to include matters related to causation in addition to other open issues in the case.

Toyota responds that Kinner did not show that the issue of causation was judicially admitted, and she did not ask for an extension of time to put forth additional proof on the issue of causation. Toyota further notes that causation as to the left shoulder was listed as a contested issue at the benefit review conference, and read into the record as such at the final hearing.

The function of further review of the Workers' Compensation Board in this Court is to correct the Board only where we perceive that the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice. Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992). Having examined the Board's opinion for flagrant error, we affirm.

First, we believe that the Board's discussion in the opinion of judicial admissions versus evidentiary admissions is misplaced, as admissions are not a part of practice in Workers' Compensation cases. Indeed, as the Board noted, 803 KAR 25:010 § 17 specifically excludes CR 36, "Requests for Admission," from application to practice before the administrative law judges or the Board. Instead, the assertion in the agreed order is properly treated as a stipulation under KAR 25:010 §16, which governs stipulation of facts in Workers' Compensation adjudications. Thus we find it unnecessary and irrelevant to establish what kind of admission it may have been. We examine the language as a possible stipulation.

In the agreed order, Kinner and Toyota set forth the following reasons for the claim to be temporarily placed in abeyance:

- 1) That the Plaintiff filed a claim to include an injury to her left shoulder;
- 2) That the left shoulder injury was initially denied by the Defendant;
- 3) That the Defendant has now agreed to accept the left shoulder claim to avoid the additional mutual time and expense associated with litigation;
- 4) That the Plaintiff desires to have additional medical studies done on her left shoulder, as requested by her treating physician;

5) That the Defendant agrees to pay for same per KRS 342.020;

6) That the parties therefore jointly request an Order holding these claims in abeyance until said diagnostics are completed and the case then evaluated for settlement.

The Board concluded that it was "apparent from the language of the agreed order that Toyota's concession of liability was for the limited purpose of securing further diagnostic studies relative to Kinner's left shoulder condition."

We accept the Board's interpretation of the agreement, and so we derive that Toyota merely accepted the existence of a shoulder injury rather than stipulated to the fact of causation from Kinner's work duties at Toyota. Moreover, the question of what was stipulated to, if not clear to Kinner from the above agreed order, became clear once Toyota filed its stipulations prior to the final hearing stating that the question of causation was at issue as to the left shoulder injury.

Furthermore, we agree with the Board's conclusion that once Kinner found herself having to prove causation, if she had not believed that she had to prior to the final hearing, her remedy was to ask for time to put on additional proof. Kinner did not, however, seek to put on additional proof regarding causation by requesting an extension of proof time pursuant to 803 KAR 25:010, Section 15. Even if she felt that the evidence

she proffered was not related to causation, there was still an opportunity, of which she did not avail herself, for her to prove causation. Thus, we find no error in the Board's conclusions.

For all the foregoing reasons we affirm the opinion of the Worker's Compensation Board.

ALL CONCUR.

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