

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000536-WC

DARRELL WHITEHEAD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-03-083133

NALLY & HAMILTON; HON. J. LANDON OVERFIELD,
ADMINISTRATIVE LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: ABRAMSON AND DIXON, JUDGES; ROSENBLUM,¹ SENIOR JUDGE.

ROSENBLUM, SENIOR JUDGE: Darrell Whitehead has petitioned this Court for a review of the February 9, 2007 decision of the Workers' Compensation Board affirming the Administrative Law Judge's determination that Whitehead did not sustain an injury

¹ Senior 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 KRS 21.580.

that was work-related. We determine that the Board properly assessed the evidence and affirm.

Whitehead is a 52 year old male and has worked for over 22 years as an oiler/mechanic for Appellee Nally & Hamilton. He was responsible for fueling, changing oil and greasing all of the company's equipment. His job required him to lift heavy objects and climb up and down ladders in order to properly service the equipment. His work schedule averaged almost 64 hours a week. He has a high school education and some vocational training in auto mechanics.

In 1998, Whitehead started seeing Dr. M. Lynn Fogleman, his family doctor, about pain in his hip. He took arthritis medication and medicine for the pain. He was treated for over five years for what the doctors considered a back related problem. Dr. M. Lynn Fogleman stated it was impossible for her to tell what caused the condition. In May 2003, Whitehead saw a different doctor, Dr. Ronald S. Dubin, and stopped working because of pain in his right hip. Whitehead testified that when his hip initially began hurting, he did not think it was work-related. He was ultimately diagnosed with degenerative osteoarthritis. In October 2003, he had hip replacement surgery and that has stopped the constant pain. He does however continue to suffer some soreness and limited mobility. He is no longer able to climb about the equipment and service it properly because of limited strength and mobility brought about by the hip replacement surgery. He currently receives Social Security disability payments.

Whitehead was assessed by Dr. P. D. Patel with a 20 percent impairment caused by the hip problems. Dr. P. D. Patel did not, however, provide any indication of the cause of the hip problem. Dr. Ronald J. Fadel, an orthopedic surgeon, performed a review of the medical records and determined there was nothing in that history to support a conclusion that this was a work-related injury. Another orthopedic surgeon, Dr. Philip F. Corbett, evaluated Whitehead and did not find anything to support the condition was brought on by Whitehead's work. Dr. Phillip F. Corbett assigned a 15 percent whole body functional impairment. He provided testimony that Whitehead's condition was related to a normal progression of time and was not work-related.

The Administrative Law Judge reviewed the medical information and was persuaded that Whitehead had not suffered a harmful change caused by work-related trauma. He dismissed the claim. Whitehead did not seek reconsideration but appealed the decision directly to the Workers' Compensation Board. The Board affirmed the dismissal.

The Administrative Law Judge has the sole discretion to determine the quality, character and substance of the evidence. KRS 342.285. Whitehead's burden on appeal to the Workers' Compensation Board was to demonstrate that the evidence was so overwhelming that no reasonable person could have failed to have been persuaded by it. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984). The Workers' Compensation Board is limited on review to a determination of whether the finding of the Administrative Law Judge was so unreasonable under the evidence that it must be viewed

as erroneous as a matter of law. *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000).

Impairment is a medical question. *Kentucky River Enterprises, Inc. v. Elkins*, 107 S.W.3d 206 (Ky. 2003). The medical opinions in this case tended to find that Whitehead's problem was not work-related. Work-related trauma being the proximate cause of the harmful change in condition must be present before there can be a work-related injury. *See Land v. Burden*, 626 S.W.2d 221 (Ky. App. 1981); KRS 342.0011(1). The Administrative Law Judge fairly reviewed the evidence and his decision will not be disturbed on appeal if supported by substantial evidence. *Rogers v. Deposit Service Corp.*, 410 S.W.2d 621 (Ky. 1967). The review by the Workers' Compensation Board did not disclose evidence sufficient to overturn the Administrative Law Judges' decision. Our own review is limited to determining whether the Workers' Compensation Board overlooked or misconstrued statutes or precedent or committed error in assessing the evidence that is so flagrant that a gross injustice resulted. *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685 (Ky. 1992). We do not find any error and affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Monica Rice Smith
Hyden, Kentucky

BRIEF FOR APPELLEE:

Kamp T. Purdy
Scott M. B. Brown
Lexington, Kentucky