

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001163-WC

LUCIAN RATLIFF

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-01765

PEABODY COAL COMPANY; HON. R. SCOTT
BORDERS, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: KELLER AND TAYLOR, JUDGES; HENRY,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Lucian Ratliff brings this appeal from a May 9, 2007, opinion of the Workers' Compensation Board (Board) affirming the Administrative Law Judge's dismissal of a workers' compensation claim for benefits based upon pneumoconiosis.

We affirm.

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Ratliff worked in the coal mine industry for some thirty-six years. He filed an application for workers' compensation benefits based upon the occupational disease of pneumoconiosis. The Administrative Law Judge (ALJ) found that Ratliff failed to rebut by clear and convincing evidence the negative consensus reached by the three member "B" reader panel under Kentucky Revised Statutes (KRS) 342.316. By opinion entered February 1, 2007, the ALJ dismissed Ratliff's claim. Ratliff sought review with the Board. By opinion entered May 9, 2007, the Board noted that Ratliff's sole issue was whether KRS 342.316 is unconstitutional as violative of the equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and Sections 1, 2, and 3, of the Kentucky Constitution. The Board concluded that it had "no jurisdiction to determine the constitutionality of a statute enacted by the Kentucky General Assembly" and summarily affirmed the decision of the ALJ to dismiss the claim. *Blue Diamond Coal Co. v. Cornett*, 300 Ky. 647, 189 S.W.2d 963 (1945). Our review follows.

Ratliff argues that KRS 342.316 is violative of the equal protection clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 1, 2, and 3, of the Kentucky Constitution. In particular, Ratliff maintains:

Based solely on the fact that the miner's injury stems from years of exposure to coal dust, he is discriminated against in that similarly situated workers who suffer traumatic injuries are treated more favorably. In other words, a worker who is crushed by mine machinery or has a limb or body part amputated in the coal mines, is afforded greater protection under the Workers' Compensation Laws. For instance, in a "traditional" injury claim, the ALJ is not bound by the medical evidence in making his findings. Indeed, it has long been held that the "ALJ" has the discretion to choose whom

and what to believe. Addington Resources, Inc. v. Perkins, Ky.App., 947 S.W.2d 421 (1997). Furthermore, “the ALJ may reject any testimony or believe or disbelieve various parts of the evidence, regardless of whether it came from the same witness or the same adversary parties' total proof.” Caudill v. Mahoney Discount Stores, Ky., 560 S.W.2d 15 (1977). Furthermore, a worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured. Hush v. Abrams, Ky., 584 S.W.2d 48 (1979).

Under KRS 342.315, the ALJ has been stripped of all of the discretion afforded him under the Workers' Compensation Laws. The role of the ALJ has been replaced by the “cookie cutter” consensus process. . . . This discrimination between types of injured workers is arbitrary and capricious and is not rationally related to any State interest. Furthermore, there is no substantial or justifiable reason for this discriminatory classification contained in KRS 342.316.

Ratliff's Brief at 5-6.

The precise issue before us has been recently decided by the Court of Appeals in *Lutz v. Energy Conversion Corp.*, _____ S.W.3d ____ (Ky.App. 2007). In that case, appellant also argued that KRS 342.316 violated the equal protection clauses of the Fourteenth Amendment to the U.S. Constitution and Sections 1, 2, and 3, of the Kentucky Constitution. In particular, appellant argued that “KRS 342.316 is discriminatory against coal miners complaining of pneumoconiosis, as opposed to other workers subjected to more immediate and traumatic injuries, because they are treated differently.” *Id.* at _____. In resolving the equal protection challenge, the Court of Appeals concluded that a coal miner with pneumoconiosis and a worker with a traditional type of injury were not “similarly situated”; thus, the difference in treatment did not

offend the equal protection clauses. Additionally, the Court concluded that a legitimate state interest existed to justify the difference afforded both groups under the workers' compensation statutory scheme.

We view *Lutz* as dispositive. *See id.* Pursuant thereto, we reject Ratliff's claim that KRS 342.316 violates the equal protection clauses of the Fourteenth Amendment of the U.S. Constitution and Sections 1, 2, and 3, of the Kentucky Constitution.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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