

RENDERED: April 10, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-001046-WC

RICKY GERALD BROCK

APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
NO. WC-90-029455

WISER OIL COMPANY; RONALD W.
MAY, Administrative Law Judge;
ROBERT E. SPURLIN, Director
of SPECIAL FUND; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: ABRAMSON, DYCHE and HUDDLESTON, Judges.

HUDDLESTON, JUDGE. Ricky Gerald Brock appeals from a Workers' Compensation Board opinion that affirmed an Administrative Law Judge's decision to dismiss his reopened claim.

During Brock's employment with Wisser Oil Company in 1988, he was seriously injured when a pipe on an oil rig struck him in the right temporal area rendering him unconscious. As a result, he developed some hearing loss and double vision, experienced difficulty with his temporomandibular joint, and sustained injuries to his neck and low back and a closed-head injury which affected

his memory and concentration. Brock eventually returned to full time employment with Wiser. In the ALJ's original opinion of 1991, it was noted that Brock would be unable to compete on a day-to-day basis in a competitive environment. Brock was determined to be 55 percent occupationally disabled.

In January 1996, Brock moved to reopen his award after his termination from Wiser. Brock produced testimony from Dr. Jeffrey Hecht that his head injuries and memory problems would make it difficult for him to learn a new job. However, Dr. Hecht also stated that Brock's condition was essentially unchanged since the award made in 1991. Dr. Gary Twyman testified that Brock has experienced progressive memory difficulty, numbness and gait ataxia, but it was his opinion that these symptoms are not related to the original head injury.

Dr. Robert Goodman testified that his examination of Brock resulted in a diagnosis of preexisting degenerative changes to the lumbar spine with arousal. He assessed an impairment rating of 5 percent as a result of the lumbar spine condition. Dr. Goodman imposed a lifting restriction of 75 pounds and concurred with Dr. Hecht that Brock's condition had not worsened. Dr. O. M. Patrick examined Brock in 1990 and 1996. From his 1996 examination, he found definite suggestions of degenerative disk disease at the L4-5 and L5-S1 levels with nerve root impingement and limited motion that were not present in 1990. Dr. Patrick assessed a 26 percent impairment rating.

Dr. Robert Granacher, a psychiatrist, examined Brock in 1990 and 1996. In 1996, he conducted a repeat brain SPECT scan and performed several of the same tests as in 1990. The SPECT scan showed no decrease in blood flow to the front of Brock's brain and the neurological findings were essentially the same as in 1990. Dr. Granacher testified that it was his opinion that Brock's memory had improved and there was no worsening of his functional impairment. According to Dr. Granacher, Brock has the mental capacity to engage in any work for which he had training, education or experience.

Further review of a Workers' Compensation Board opinion in the Court of Appeals is guided by the standard set forth in Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992), where the Supreme Court said that this Court's function is to "correct the Board only where the Court perceives 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." Id. at 687.

Brock had the burden of proof on the issue of increased occupational disability. The question the Board had to answer, and the question we must answer, is whether the evidence is so overwhelming as to compel a finding in Brock's favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Compelling evidence is evidence so persuasive that it is clearly unreasonable for the ALJ not to be convinced by it. REO Mechanical v. Barnes, Ky.App., 691 S.W.2d 224 (1985). We believe the Board correctly

concluded, based on the medical evidence in the record, that the ALJ's decision was not unreasonable.

Accordingly, the Board's decision is affirmed.

ALL CONCUR.

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