

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001083-WC

UNINSURED EMPLOYERS' FUND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-93-14775

BELLSOUTH TELECOMMUNICATIONS, INC.
D/B/A SOUTH CENTRAL BELL TELEPHONE CO.;
LESLIE A. JOHNSON; 4-WAY HOUSING
CORPORATION; SPECIAL FUND;
HON. THOMAS A. DOCKTER,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: GUDGEL, CHIEF JUDGE; GUIDUGLI AND MILLER, JUDGES.

MILLER, JUDGE: MILLER, JUDGE. The Uninsured Employers' Fund (UEF) asks us to review an opinion of the Workers' Compensation Board (board) rendered April 3, 1998. Kentucky Revised Statute (KRS) 342.290. We affirm.

On February 6, 1993, Leslie A. Johnson, Jr. (Johnson), injured himself in a work-related accident while in the employ of 4-Way Housing Corporation (4-Way), an asbestos removing company. At the time of the accident, employees of 4-Way were removing

asbestos from a building owned by BellSouth Communications Inc. (BellSouth). BellSouth and 4-Way were parties to a contract whereby 4-Way was committed to provide up to \$250,000.00 in asbestos removal for BellSouth over a one-year period. BellSouth owned approximately 350 pieces of property in Kentucky.

After Johnson filed for benefits under the Kentucky Workers' Compensation Act, the administrative law judge (ALJ) held 4-Way and the UEF liable for benefits. He determined that, under these circumstances, BellSouth does not qualify as a contractor for purposes of KRS 342.610(2). As such, it is not responsible for any benefits owed to Johnson. KRS 342.610(2) reads in relevant part as follows:

A contractor who subcontracts all or any part of a contract and his carrier shall be liable for the payment of compensation to the employees of the subcontractor A person who contracts with another:

. . . .

(B) To have work performed of a kind which is a regular or recurrent part of the work of the trade, business, occupation, or profession of such person shall for the purposes of this section be deemed a contractor, and such other person a subcontractor

In a separate opinion, the ALJ found Johnson to be 60% occupationally disabled. The UEF appealed to the board on the issue of liability. Affirming, the board concluded "there is no essential relationship between asbestos removal and providing telecommunication services." This appeal followed.

The UEF makes the following arguments:

1 Bell South is such a large property holder that removing asbestos from its buildings is

a necessary and essential part of its business.

2 Any activity which a business is required by law to perform is a necessary part of that business.

The evidence establishes BellSouth is in the business of telecommunications. Asbestos removal is a highly specialized trade which BellSouth has never performed. We agree with the board that asbestos removal is not "a regular or recurrent part of the work of the trade, business, occupation or profession" of BellSouth. Further, we find no merit in the UEF's contention that asbestos removal became a part of BellSouth's business simply because the law required it to remove asbestos from certain of its properties. Such a proposition would lead to an absurd result. In sum, we believe the board committed no error under the precepts of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

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

ALL CONCUR.

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