

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000042-WC

DENNIS LEFAN and DICK ADAMS

APPELLANTS

v. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
FILE NO. WC-96-000999

GENERAL ELECTRIC; SPECIAL
FUND; HONORABLE SHEILA C.
LOWTHER, ADMINISTRATIVE LAW
JUDGE; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * * *

BEFORE: GUDGEL, Chief Judge; DYCHE and KNOX, Judges.

DYCHE, JUDGE. Dennis Lefan, the claimant, and his attorney Dick Adams appeal from an opinion of the Workers' Compensation Board affirming an order of the Administrative Law Judge denying their request for an attorney fee for Adams to be paid by the employer, General Electric. We affirm.

Adams filed this action on Lefan's behalf seeking income benefits and medical payments as a result of an allegedly work-related hearing loss. As the proof developed in the case, it became apparent that there was no valid claim for income benefits, so the action proceeded on the claim for medical

benefits alone. General Electric contested the work-relatedness of claimant's hearing loss, but that issue was resolved against the employer, and the Administrative Law Judge entered an award providing for the payment of medical benefits "as may reasonably be required at the time of the injury and thereafter during disability."

A subsequent motion seeking a fee for Adams to be paid by General Electric was denied. General Electric took no further appeal, but Lefan and Adams sought review by the Workers' Compensation Board, which found no statutory basis for the award in such circumstances. This appeal followed.

While KRS 342.320 authorizes a fee to the worker's attorney for successfully prosecuting a claim for income benefits or a reopening, it is silent regarding other instances in which a worker may be required to employ an attorney to protect his interests, for example: for prosecuting a claim for medical expenses where the worker seeks no award of temporary or permanent occupational disability benefits

Peabody Coal Co. V. Goforth, Ky., 857 S.W.2d 167, 169 (1993).

This being so, we will not be so presumptuous as to exercise the legislative function of establishing such a provision. The opinion of the Workers' Compensation Board is affirmed.

GUDGEL, CHIEF JUDGE, CONCURS.

KNOX, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANTS DENNIS
LEFAN AND DICK ADAMS:

Dick Adams
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BRIEF FOR APPELLEE
GENERAL ELECTRIC:

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BRIEF FOR APPELLEE
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