

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-002222-WC

WOODBIDGE INOAC, INC.

APPELLANT

v.

PETITION FOR REVIEW
OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
WC-93-020627

BEVERLY GREENWELL;
SPECIAL FUND;
HONORABLE DONNA H. TERRY,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: BUCKINGHAM, EMBERTON, and JOHNSON, Judges.

BUCKINGHAM, JUDGE. Woodbridge Inoac, Inc., (Woodbridge) petitions for our review of an opinion of the Workers' Compensation Board (the Board) affirming orders issued by an administrative law judge (ALJ). We affirm.

This case has a somewhat complicated procedural history. In 1993, Beverly Greenwell (Greenwell) filed an application for adjustment of claim seeking workers' compensation

benefits for an injury she allegedly sustained while working for Woodbridge in 1989. She also sought benefits for emotional injuries which allegedly stemmed from her work-related physical injury. In 1995, ALJ George Schuhmann (ALJ Schuhmann) issued an opinion and award in which he found Greenwell to be sixty percent occupationally disabled, with two-thirds of that disability being attributed to Greenwell's physical condition and one-third attributable to her mental condition. ALJ Schuhmann also awarded her temporary total disability (TTD) benefits for a certain period of time.

Greenwell filed an appeal to the Board in which she raised the sole issue of whether she was entitled to a greater period of TTD benefits. The Board issued an opinion affirming the ALJ, and Greenwell then filed a petition for review before this court. This court's opinion found that Greenwell was entitled to an additional period of TTD benefits based upon the testimony of Dr. Gerald Moore concerning her psychological condition and based upon a belief that Woodbridge had waived its right to contest certain TTD payments.

Woodbridge appealed this court's decision to the Kentucky Supreme Court, which issued an opinion affirming this court in part and reversing in part. The supreme court found that Woodbridge had not waived its right to contest the length of TTD payments but found that Dr. Moore's testimony compelled a finding that Greenwell was entitled to an additional period of TTD benefits for the time she was hospitalized in Our Lady of

Peace in early 1992 due to her psychological condition. The supreme court did not believe, however, that Dr. Moore's testimony compelled a finding of a period of additional TTD benefits from the time Greenwell left Our Lady of Peace until Dr. Moore's deposition was taken in September 1993. The court remanded the case to the ALJ as follows:

[T]his matter is remanded to the ALJ in order for an award of TTD benefits to be made to claimant [Greenwell] for the time period of her hospitalization, as well as for the ALJ's reconsideration, based on the medical testimony of record, of whether claimant is entitled to an additional period of TTD subsequent to her hospitalization.

As ALJ Schuhmann had ceased serving in that capacity when the claim was remanded by the supreme court for further findings regarding Greenwell's entitlement to post-hospitalization TTD, the case was assigned to a different ALJ, ALJ Mark Webster (ALJ Webster), on remand. ALJ Webster issued an order on December 18, 1997, in which he ordered Greenwell to receive TTD benefits for the time period during which she was hospitalized in early 1992, but the order was silent on whether Greenwell was entitled to post-hospitalization TTD benefits.

Greenwell filed a petition for reconsideration on December 23, 1997, in which she argued that the evidence compelled an award of additional TTD benefits. ALJ Webster issued an order on the same day denying Greenwell's petition for reconsideration. On February 3, 1998, yet another ALJ, Chief ALJ Donna Terry (CALJ Terry), issued an order stating that she was

ruling on Greenwell's motion to reconsider due to the expiration of ALJ Webster's term on December 31, 1997. CALJ Terry found that ALJ Webster had not addressed whether Greenwell was entitled to post-hospitalization TTD benefits, which she characterized as "an error patent on the face of the December 18, 1997 order" After reviewing the medical evidence, CALJ Terry found that Greenwell was entitled to post-hospitalization TTD benefits from March 7, 1992, to September 3, 1993.

Woodbridge filed a "PETITION FOR RECONSIDERATION TO VACATE" the February 3, 1998, order of the CALJ Terry. The basis of this petition was the fact that ALJ Webster had, unbeknownst to CALJ Terry, issued an order denying Greenwell's petition for reconsideration on December 23, 1997,--over one month prior to CALJ Terry's order granting the petition for reconsideration. Woodbridge argued that no appeal had been taken from ALJ Webster's order and that, accordingly, the order was final and CALJ Terry was without authority to sua sponte issue an order which overruled the December 23 order. Greenwell's attorney responded by stating that he had not received a copy of the December 23 order.

CALJ Terry issued an order on February 25, 1998, which noted that she had been unaware of the December 23 order when she issued her February 3 order, but she refused to yield to the December 23 order because ALJ Webster had failed to wait the requisite ten days for responses to be filed to Greenwell's

petition for reconsideration before ruling on it and because a copy of the order had not been received by Greenwell.

Woodbridge appealed to the Board from the February 3 and the February 25 orders of CALJ Terry, and the Board issued an opinion affirming those orders. The Board stated that

it is readily apparent that Judge Webster, in his order on remand from the Kentucky Supreme Court, failed to undertake the analysis which the Supreme Court directed that he perform in Greenwell's case. . . . Judge Webster, in fact, made insufficient findings of fact in reaching a conclusion to overrule the petition for reconsideration.

The Board further ruled that CALJ Terry had the authority to correct the previous ALJ's "mistake" sua sponte under the authority of Wheatley v. Bryant Auto Service, Ky., 860 S.W.2d 767 (1993), despite the fact that the December 23 order was not appealed from and had become final. Woodbridge then filed a petition for our review.

The Board affirmed CALJ Terry's actions, stating that ALJ Webster failed to address the issue which the Kentucky Supreme Court had directed to be dealt with on remand. The Board also stated that "Judge Webster, in fact, made insufficient findings of fact in reaching a conclusion to overrule the petition for reconsideration." The Board further held that Judge Webster was required to "set forth basic facts with sufficient detail so that all sides could be apprised of the reasons for his decision not to address the Supreme Court's directive in this

case and to provide a basis for meaningful appellate review" and that he failed to do so.

An ALJ is required to "clearly set out" the "basic facts" used to "support the ultimate conclusions." Shields v. Pittsburg & Midway Coal Mining Co., Ky. App., 634 S.W.2d 440, 444 (1982). Furthermore, the ALJ must support his conclusions "with facts drawn from the evidence in each case so that both sides may be dealt with fairly and be properly apprised of the basis for the decision." Id. Finally, the Shields court quoted with approval the trial court's statement that "the litigants are entitled to at least a modicum of attention and consideration to their individual case." Id. See also Chemetron Corp. v. McKinley, Ky. App., 574 S.W.2d 332, 334 (1978), holding that the old Board must "face the issue squarely and make a finding, giving its reason therefor" in order to facilitate proper appellate review.

ALJ Webster's order of December 18, 1997, clearly does not address the issue of post-hospitalization benefits. Furthermore, the December 23, 1997, order denying Greenwell's petition for reconsideration states only that "[t]he plaintiff's Petition for Reconsideration is OVERRULED." There are no factual findings whatsoever in either order, and there is no indication that ALJ Webster "face[d] the issue squarely."

Res judicata does apply to workers' compensation awards. Wheatley, supra at 868. However, awards which have become final may still be corrected pursuant to a reopening.

KRS 342.125(1)(c). In fact, even if an opinion and award has become final and is not appealed, an ALJ may sua sponte amend an award to correct a mistake. Wheatley, supra. See also Uninsured Employer's Fund v. Fox, Ky. App., 862 S.W.2d 902, 904 (1993).

Thus, if ALJ Webster committed an obvious mistake, then CALJ Terry could correct that mistake even though ALJ Webster's order had become final. The utter silence on the issue of post-hospitalization benefits in ALJ Webster's orders is a clear indication that ALJ Webster failed to follow the directive of the supreme court on remand. We conclude that the December 18 order contained a mistake which was not corrected by the December 23 order. In short, we agree with the Board that CALJ Terry acted within her authority and that her orders should be affirmed.

The orders of the Board are affirmed.

ALL CONCUR.

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