

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002302-WC

WILLIAM WILLIAMS

APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-92-16964

SPRAY TECH, INC; SPECIAL
FUND; RONALD W. MAY,
Administrative Law Judge;
and WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: GUDGEL, Chief Judge; GUIDUGLI and SCHRODER, Judges.

GUDGEL, CHIEF JUDGE: This matter is before us on a petition for review of an opinion of the Workers' Compensation Board (board) which affirmed an opinion and order of an Administrative Law Judge (ALJ) denying appellant's motion to reopen an injury claim. On appeal appellant, William Williams, contends that the ALJ erred by denying his motion because he met his burden to prove that his increased occupational disability was related to his prior work injury. We disagree. Hence, we affirm.

Appellant sustained a work-related injury to his back on March 1, 1992. In December 1992, appellant settled with his employer, appellee Spray Tech, Inc., for a lump sum representing benefits for a fifteen percent permanent partial disability. Subsequently, in July 1993, appellant accepted a payment of \$5,000 as a settlement of any claim for future medical expenses stemming from the March 1992 injury.

In March 1997, appellant filed two motions requesting reinstatement of TTD benefits in which he alleged that his condition had deteriorated and that he underwent back surgery in January 1997. These motions were denied by an arbitrator in April 1997 because appellant failed to establish a causal connection between the January 1997 surgery and the 1992 work-related injury. Appellant's motion to reconsider was granted and was treated as a motion to reopen. Another arbitrator rendered a benefit determination on September 25, 1997, also finding that appellant had failed to establish that the worsening of his condition was attributable to his 1992 work-related injury.

Appellant sought a de novo review of the arbitrator's decision by an ALJ. After additional proof was adduced, the ALJ denied appellant's motion to reopen. The opinion and order of the ALJ contained a thorough narrative of the evidence adduced and concluded with the following finding of fact:

Having considered the entirety of the evidence, not only as summarized here, but as contained in the record, the evidence fails

to persuade the ALJ of a causal relationship between the work related injury of March 1, 1992 and the surgery performed January 14, 1997. The ALJ is persuaded that plaintiff's present physical condition and resulting disability is now significantly greater than when the settlement of his case was approved on December 21, 1992 but the evidence is equally persuasive that the worsening is the result of the surgery of January 14, 1997 and not from the effects of the injury of March 1, 1992.

On appeal, the board affirmed the ALJ's decision. This petition for review followed.

Appellant contends that the ALJ erred by denying his motion to reopen because he established that his increased disability resulted from his original work-related injury. We disagree.

A claimant seeking an increase in compensation pursuant to KRS 342.125 must prove not only that an increase in disability in fact exists but also that the increase results from the work-related injury or disease subject to the motion to reopen. Peabody Coal Co. v. Gossett, Ky., 819 S.W.2d 33 (1991). If a claimant fails to sustain this burden before the ALJ, the claimant must demonstrate on appeal to the board that the evidence before the ALJ was so overwhelming as to compel a different result. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). Moreover, evidence is compelling if it is "so overwhelming that no reasonable person could reach the conclusion of the [ALJ]." REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224, 226 (1985). Further, on appeal to this court a claimant

must demonstrate that "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." Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

Appellant asserts that he is entitled to an increase in compensation based upon the ALJ's finding that the January 1997 surgery resulted in an increase in disability. Specifically, he claims that his increased disability caused by the surgery is compensable because he underwent the surgery in reliance upon his treating physician's advice that it was necessitated by his prior work injury. He cites Elizabethtown Sportswear v. Stice, Ky. App., 720 S.W.2d 732, 734 (1986), in which this court held that "aggravation of the primary injury by necessary medical or surgical treatment is compensable."

Contrary to appellant's argument, Stice does not control the outcome of the instant case since it is clearly distinguishable. Indeed, the evidence in Stice was uncontradicted that the medical treatment which ultimately caused Mrs. Stice's death was necessary for the treatment of her original work-related injury.

Here, however, evidence was adduced from Dr. Matt Vuskovich that appellant's 1992 work-related injury did not result in any permanent impairment; that surgery was not indicated either in 1992, subsequent to appellant's injury, or in 1997; and that appellant's 1997 surgery was unrelated to the 1992

work-related injury. Moreover, Dr. Robert Goodman noted that appellant had two normal MRI examinations and two normal neurological examinations subsequent to the 1992 work-related injury, and expressed the opinion that the 1997 surgery was not caused by the prior work-related injury.

Clearly, the evidence before the ALJ does not compel a finding that appellant's increased disability was caused by the work-related injury. Moreover, there is substantial evidence to support the ALJ's finding that appellant's January 1997 surgery was not causally related to the 1992 work-related injury. It follows that the board did not flagrantly err in its assessment of the evidence so as to cause a gross injustice. Moreover, it is equally clear that the board did not misconstrue Stice. Hence, the board's opinion may not be disturbed. Western Baptist Hosp. v. Kelly, supra.

The board's opinion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

William Lawrence Roberts
Pikeville, KY

BRIEF FOR SPRAY TECH, INC.:

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BRIEF FOR SPECIAL FUND:

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