

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000424-WC

BOWLING GREEN POLICE DEPARTMENT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-80439

LARRY BREWER; SPECIAL FUND;
DONALD SMITH, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DYCHE, McANULTY, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The Bowling Green Police Department (BGPD) petitions for review of that portion of a decision of the Worker's Compensation Board (Board) awarding appellee a 10% psychological occupational disability. After reviewing the record and applicable law, we affirm the decision of the Board.

Appellee, Larry Brewer (Brewer), began working for the BGPD in May, 1977, and after 10 years was promoted to senior police officer. In early 1996, the police department began requiring officers to complete an agility test, which involved running an obstacle course. Brewer took the agility test for the second time on August 23, 1996. Brewer slipped while climbing

over a four-foot wall, and fell to the ground on the other side. Brewer experienced pain afterwards and was unable to complete the course. Brewer received medical treatment and was diagnosed with groin strain. Brewer continued to experience low back and groin pain after the accident, and received further medical treatment and physical therapy. Brewer began missing work after the accident, and was placed on modified duty in early September, 1996. As there was no "modified duty" work at the BGPD, he was assigned to do office work at the Parks and Recreation Department. Brewer subsequently developed psychological problems, and began treatment for depression and anxiety with Dr. Louis G. Mudd in May, 1997. Brewer was eventually released to regular duty, but was not permitted to take the physical test again until he lost weight. Brewer did not return to work, and was considered resigned as of July 18, 1997.

The Administrative Law Judge (ALJ) determined that Brewer had sustained a work-related back injury on August 23, 1996. In an opinion and award of August 19, 1998, the ALJ stated that Brewer suffered a 35% partial occupational disability equally apportioned between the BGPD and the Special Fund. The ALJ designated 25% of the disability directly to the physical injury and an additional 10% disability due to Brewer's psychological condition. The ALJ's decision was affirmed by the Workers' Compensation Board on January 22, 1999.

BGPD appeals only that portion of the decision awarding Brewer the 10% psychological occupational disability. BGPD argues that the ALJ misapplied the "direct result" standard of

KRS 342.0011(1) in finding that Brewer's psychological disability was a direct result of his work injury. BGPD argues that there is no evidence to indicate that Brewer's psychological condition was the direct result of his work injury as required by KRS 342.0011(1), and therefore that portion of the award should be reversed. The Court of Appeals' function in reviewing the opinions of the Workers' Compensation Board 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." Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

KRS 342.0011(1) defines "injury" to include any work-related harmful change in the human organism arising out of and in the course of employment "but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury." (Emphasis added.)

The medical evidence before the ALJ as to the cause of Brewer's psychological disability was in conflict. Dr. Mudd stated that Brewer's psychological problems were directly related to his inability to work, subsequent financial difficulties, and ongoing conflicts with workers' compensation and his employer. Brewer was also evaluated by Dr. Robert Granacher on April 1, 1998 regarding his psychological condition. Dr. Granacher agreed with Dr. Mudd that Brewer was depressed, but believed that his depression was not the direct result of his work injury. Rather,

Dr. Granacher attributed Brewer's psychological condition to marital problems and a custody battle for his children. The ALJ, as fact finder, has the authority to judge the weight, credibility, substance, and inference to be drawn from the evidence. See Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Furthermore, the ALJ may choose to believe part of the evidence and disbelieve other portions of the evidence whether the evidence came from the same witness or from the same party's total proof. See Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977); Brockway v. Rockwell International, Ky. App., 907 S.W.2d 166 (1995). As fact finder, the ALJ is given the discretion "to determine the degree of functional disability on the basis of the conflicting medical testimony and to translate the functional disability into occupational disability." Kentucky Carbon Corp. v. Dotson, Ky. App., 573 S.W.2d 368, 370 (1978).

After evaluating the evidence the ALJ concluded that, with regard to his psychological condition, Brewer "has shown the causation or work-relatedness of his condition to have been caused, at least in part, by the work injury on August 23, 1996." The function of this Court is not to re-assess the evidence which has been reviewed by the ALJ and re-reviewed by the Worker's Compensation Board. The Board has evaluated the medical evidence and the law applicable to the issues raised and has determined that appellant's psychological disability was the direct result of his work-related injury within the meaning of KRS 342.0011(1). The Board has not misconstrued the meaning of KRS 342.0011(1),

nor committed error in assessing the evidence so flagrant as to cause this Court to overrule the Board's decision.

The decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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