

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000442-WC

HAZARD ARH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-94-48762

JACKIE DIXON; HON. THOMAS NANNEY,
ADMINISTRATIVE LAW JUDGE; SPECIAL FUND;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, GARDNER, AND KNOX, JUDGES.

DYCHE, JUDGE: Hazard ARH has appealed to this Court pursuant to CR 76.25 from a decision of the Workers' Compensation Board. The decision under review affirmed an Administrative Law Judge decision finding that the appellant's employee suffered from carpal tunnel syndrome, that the condition was work related, that the employee suffered an occupational disability of 30%, and that the award should be apportioned equally between the employer and the Special Fund.

When the claim was originally considered by the Administrative Law Judge in February of 1997, the ALJ had dismissed the claim on the ground that the claimant had failed to prove that the condition was work related. On review, the Board reversed that decision upon finding that the medical evidence was uncontradicted that her condition was work related. The matter was remanded to the ALJ for determination of whether the claimant actually suffered from carpal tunnel syndrome. On remand, the ALJ found that the claimant did indeed suffer from carpal tunnel syndrome and found an occupational loss of 30% which was apportioned equally between the employer and the Special Fund. On review, the Board affirmed that decision.

The employer has now appealed to this Court arguing stridently that the Board's initial decision improperly substituted the Board's evaluation of the evidence for that of the ALJ and that the initial decision of the ALJ dismissing the claim should have been affirmed.

At the time of the ALJ's initial decision, the employee, Jackie Dixon, was found to be a 52-year-old female with a ninth-grade education and no specialized or vocational training. She had been employed by Hazard ARH in various capacities since 1973, most recently as a radiology aide. Her duties, as described by herself and her supervisor Kenneth Holbrook involved extensive clerical responsibilities, including typing and filing, and also assisting in the transport of patients to and from radiology. She began experiencing some difficulties in 1992 and actually filed the claim in June of 1994.

The medical evidence as to causation is not as equivocal as the appellant would have us believe. After describing the process by which the employee was diagnosed with carpal tunnel syndrome, Dr. George Chaney was asked if he had an opinion as to where the activities leading to the condition occurred. The doctor responded, "I believe it to have occurred from her employment. She works in the X-Ray Department in our local hospital, doing filing and transportation of patients." Dr. Chaney then went on to describe the analysis utilized to eliminate other possible sources of the condition. Later in his deposition, Dr. Chaney testified that he had actually advised the employee to file a claim for worker's compensation benefits.

In a letter to counsel for the appellant, Dr. Timothy Wagner describes the employee's history and symptoms and makes the following observation: "She has had problems with carpal tunnel syndrome for a long time and I think that this is probably related to the work that she has done."

The deposition of Dr. Tsu-Min Tsai does contain some observations on the legal results of a diagnosis of carpal tunnel syndrome with such a diagnosis being more likely to benefit an employee in Kentucky rather than Indiana. However, the doctor responded affirmatively when directly asked whether he would attribute 50% of the impairment to preexisting dormant condition and 50% to work activities.

Only Dr. Ronald Burgess declined to attribute the employee's condition to her work experience. Dr. Burgess indicated that he could not say whether the condition had been caused by the activities of her employment.

In reviewing the Board, we are constrained to grant relief "only where the Court perceives that the Board has overlooked or misconstrued controlling statutes or precedents, 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, 688 (1992). In turn, when an Administrative Law Judge has found against a claimant, the Board may grant relief only where the evidence is so overwhelming as to compel a finding in the claimant's favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985).

In this case, there was no evidence concerning causation before the Administrative Law Judge other than statements that the carpal tunnel syndrome arose from her employment. There was no medical evidence to the contrary. Since there was no conflict of evidence, the Workers' Compensation Board was correct in reversing the ALJ's initial decision dismissing the claim. The decision of the Workers' Compensation Board affirming the award made by the ALJ on remand is hereby affirmed.

ALL CONCUR.

PETITION FOR HAZARD ARH:

Joel W. Aubrey
Lexington, Kentucky

RESPONSE FOR JACKIE DIXON:

Phillip Lewis
Hyden, Kentucky

RESPONSE FOR SPECIAL FUND:

Joel D. Zakem
Louisville, Kentucky