

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000045-WC

TIMOTHY R. WILLIAMS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-93441

CAMPBELL HAUSFELD; HONORABLE
JOHN B. COLEMAN, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

AND

NO. 1999-CA-000183-WC

CAMPBELL HAUSFELD

CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-93441

TIMOTHY R. WILLIAMS;
HONORABLE JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE;
AND KENTUCKY WORKERS'
COMPENSATION BOARD

CROSS-APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, EMBERTON, AND GARDNER, JUDGES.

DYCHE, JUDGE: Timothy Williams, recipient of a Workers' Compensation award, now appeals from that award; he does not challenge the percentage of disability or the duration of the award, but makes a wide-ranging attack on the Workers' Compensation statutes, and specifically the 1996 amendments enacted by the General Assembly. His employer, Campbell Hausfeld, cross-appeals, asserting that some pre-existing, active disability should be carved out of the award. We affirm.

Williams first argues that the Workers' Compensation statute runs afoul of the "Jural Rights" doctrine established by our state's highest court. That doctrine forbids the impairment or limitation, by statute, of common law rights existing at the time of the adoption of our present constitution. He maintains that the exclusive remedy provisions of the statute improperly remove his common law right to bring suit seeking compensation for his injuries.

This argument has been repeatedly rejected by the appellate courts of this state. Edwards v. Louisville Ladder, Ky. App., 957 S.W.2d 290, 295 (1997). The fact that an employee can "opt out" of the Workers' Compensation system removes any constitutional impediment. He further argues that he made no knowing and voluntary relinquishment of his common law rights, and was unaware of the opt-out provisions. This argument has also been rejected by our highest court. Wells v. Jefferson County, Ky., 255 S.W.2d 462 (1953). We are bound by that decision. SCR 1.030(8)(a).

Williams asserts that the current law offers "no remedy" to an injured employee. This argument appears to be based upon the size of Williams's award. While he may not be satisfied with the award, that is no reason for us to declare the entire system unconstitutional.

The next argument is that the methodology used in figuring the amount of awards, as mandated by statute, is arbitrary, vague, and against public policy. In dealing with such a subjective area as injury and disability, any system is naturally going to be subject to attack, because those items cannot be proven with scientific certainty. The system provided by the current statute seems to us to be a reasonable and legitimate attempt to fairly quantify and compensate injured workers. We find no deficiency.

Williams's final argument is that the statute has taken away his right to work and earn a living. That argument is patently absurd and deserves no further comment.

The employer maintains that the evidence in this case compels a finding of a pre-existing active disability. We have examined the record herein, and while we might agree with this argument, we are constrained to affirm the Workers' Compensation Board by the dictates of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-8 (1992):

The function of further review of the WCB in the Court of Appeals is to correct the Board only where the the [sic] 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.

While we might agree with the employer, there is evidence to support the finding of the Administrative Law Judge and the opinion of the Board.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT/
CROSS-APPELLEE WILLIAMS

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BRIEF FOR APPELLEE/
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