

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000626-WC

PATRICIA LOONEY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-00346 & WC-85-08999

APPALACHIAN REGIONAL HEALTHCARE;
HON. IRENE STEEN, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AND ORDER DISMISSING
** ** * * * * *

BEFORE: JOHNSON, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Patricia Looney (Patricia) petitions for a review of a decision of the Workers' Compensation Board which reversed and remanded the Administrative Law Judge's (ALJ) award of increased benefits on a reopening of a previous award. We believe the Board actually "vacated and remanded" the award for further findings to clear up inconsistent findings. We also opine that until further findings are made, the award, or lack of award, is not final and this petition must be dismissed and the matter remanded, as ordered by the Board, to the ALJ for further findings.

Patricia was originally injured on February 7, 1985, when she sustained a lower back injury with a psychological overlay. She received a 30% permanent partial disability award on September 8, 1987. After returning to work, Patricia allegedly suffered new injuries in 1991 to her low back, legs, and hips with psychological overlays. She filed a new claim as well as a motion to reopen her earlier award. The new claim was dismissed by the ALJ who found the 1991 injuries were actually an exacerbation of her 1985 injuries, but that Patricia had not proven a worsening of her condition.

Patricia again returned to work and allegedly sustained another back injury on April 3, 1998. She again filed a motion to reopen her old 1985 injury award and filed a new injury claim (00-00346). The motion to reopen was sustained, with the ALJ eventually finding Patricia to be 100% disabled with 50% due to her low back and 50% due to her psychiatric condition. Half of the psychiatric condition was deemed pre-existing. On appeal to the Board, the award was reversed and remanded back to the ALJ for reconsideration in light of certain inconsistent findings. i.e. there was an injury and there was not an injury. Although the Board's opinion says "Reversing and Remanding," it actually vacated the award and remanded for reconsideration of certain findings of fact and for further findings. At this point, the ALJ is free to evaluate the evidence and make or deny an award. Until the ALJ clears up certain inconsistencies, the decision could go either way. The Board is not telling the ALJ what to find, and this Court is clearly not in a position to second guess

the ALJ or the Board as to findings. Until the ALJ rules and the Board reviews the decision, the matter is not final. See Stewart v. Lawson, Ky., 689 S.W.2d 21 (1985), which was overruled by Davis v. Island Creek Coal Co., Ky., 969 S.W.2d 712 (1998) as to an award that is reversed or taken away. Here, the findings put the award in limbo and it cannot be final. Until we receive consistent findings, an award cannot be a final and appealable order. There is nothing yet for our Court to review and this petition for review must be dismissed. Hook v. Hook, Ky., 563 S.W.2d 716 (1978).

For the foregoing reasons, this petition for review is dismissed and the matter is remanded to the ALJ as ordered by the Board.

MILLER, JUDGE, CONCURS.

JOHNSON, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING: I respectfully dissent. I believe pursuant to Davis v. Island Creek Coal Co., Ky., 969 S.W.2d 712, 714 (1998), that since the Board's order in the case sub judice "set aside an award in favor of Appellant" and "allowed the ALJ on remand to divest Appellant of [her] vested right to [an] award, it was final and appealable to the Court of Appeals." Furthermore, I adopt Chairman Lovan's dissent and would reverse the Board and reinstate the ALJ's award.

ENTERED: August 31, 2001

/s/ Wil Schroder
JUDGE, COURT OF APPEALS

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE,
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