

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000913-WC

HERBERT LEE HONEYCUTT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-95-21581

TAMMY ANNE, INC.; ROBERT L. WHITAKER,
Acting Director of SPECIAL FUND; J. LANDON
OVERFIELD, Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: COMBS, HUDDLESTON, and MILLER, Judges.

COMBS, JUDGE: Herbert Lee Honeycutt asks us to review an opinion of the Workers' Compensation Board (Board) rendered March 28, 2001. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Honeycutt filed a claim for coal workers' pneumoconiosis in June 1995. He eventually settled his claim with both Tammy Anne, Inc., his employer, and the Special Fund.

In January 2000, Honeycutt moved to reopen his occupational disease claim. He supported his motion with reports from Dr. John Myers and Dr. Robert Powell - both indicating Category 2/2 coal workers' pneumoconiosis. Also submitted were pulmonary function studies from Dr. Myers, which indicated an FVC of 77% of predicted normal values and an FEV1 of 80% of predicted

normal values. An order was entered reopening the matter, and it was eventually assigned to an Administrative Law Judge (ALJ).

Honeycutt's employer was dismissed from the proceedings after a determination that it had settled its entire liability in the original action. Pursuant to KRS 342.315, the Special Fund requested the appointment of a university evaluator. The ALJ so ordered, and Honeycutt was evaluated at the University of Louisville.

The University's physician, Dr. Richard Goldwin, interpreted an x-ray as showing no evidence of coal worker's pneumoconiosis. Dr. Antara Mallampalli, also of the University of Louisville, conducted the pulmonary function studies. The post-bronchodilator studies indicated a 70.9% of predicted normal values for the FVC and a 66% of predicted normal values for the FEV1. Dr. Mallampalli attributed any pulmonary impairment to Honeycutt's cigarette smoking and heart disease.

A report from Dr. Bruce Broudy was also introduced in the proceedings. Dr. Broudy interpreted an initial x-ray as showing Category 0/1 coal workers' pneumoconiosis. His post-bronchodilator studies showed 73% of predicted normal values for the FVC and 72% of predicted normal values for the FEV1. Following a subsequent examination, however, Dr. Broudy interpreted an x-ray as indicating no evidence of coal workers' pneumoconiosis. His post-bronchodilator studies revealed an FVC of 82% of predicted normal values and FEV1 of 78% of predicted normal values. Dr. Broudy explained that this improvement was

probably due to Honeycutt's effort as there was some question about his cooperation during the earlier study.

After reviewing the evidence of record, the ALJ determined that while Honeycutt could point to evidence in support of his claim of a progression of pneumoconiosis, there was no evidence of an increase in pulmonary impairment. Both the highest FVC and FEV1 values introduced were higher than those found in the original action and were at or above 80% of predicted normal values. The ALJ dismissed the claim, stating as follows:

The undersigned is required to accept to [sic] highest showing of pulmonary function in the reopening as he would in a new claim. Dr. Broudy's June 6, 2000 post-bronchodilator results show an FVC of 82% of predicted and an FEV-1 of 78% of predicted. By that, Plaintiff's pulmonary impairment has improved. Even the pulmonary function studies performed by Dr. Myers in October of 1999 show an improvement in Plaintiff's pulmonary function.

* * * *

[P]ursuant to the Supreme Court's mandate in Campbell v. Universal Mines, [Ky., 963 S.W.2d 623 (1998)], Plaintiff's claim must be dismissed.

Opinion and Order at 5-7.

Honeycutt appealed the ALJ's opinion and order to the Board. The Board rejected Honeycutt's argument that the requirements of Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88 (2000) and KRS 342.315(2), the "presumptive weight provision," had been overlooked or disregarded. Therefore, it affirmed. Honeycutt asks us to review that decision.

Honeycutt contends that the Board erred by concluding that the ALJ was entitled to disregard the findings and opinions of Dr. Antara Mallampalli, the university evaluator, following his evaluation performed pursuant to KRS 342.315. Honeycutt summarizes his argument as follows:

This appeal presents a unique question in whether KRS 342.732 or KRS 342.316 controls when there is conflict between the highest FVC and FEV-1 of record and the university evaluator's findings. However, considering the legislative intent in enacting KRS 342.316 whereby an independent party would be given presumptive weight unless contrary reasons are given, it is apparent that KRS 342.316 should control.¹

Honeycutt's Petition for Review at 4.

In Magic Coal Co. v. Fox, supra, the Kentucky Supreme Court explained that KRS 342.315(2) created a rebuttable presumption that was governed by Kentucky Rules of Evidence (KRE) 301 and did not shift the burden of persuasion. The court noted that it was reasonable to presume that the clinical findings and opinions of a medical expert who was not hired by the parties would accurately reflect the medical condition of the claimant in the absence of evidence to rebut that presumption. It also reasoned that unbiased medical evidence would assist ALJs in weighing the conflicting evidence that was presented by the parties. The court concluded that an ALJ remained free to weigh conflicting medical evidence and to reject the clinical findings and opinions of a university evaluator – but that the ALJ must

¹KRS 342.315 – not KRS 342.316 – is the presumptive weight provision referred to by Honeycutt.

specifically provide a reasonable basis for doing so in order to comply with the provisions of KRS 342.315(2).

In Newberg v. Wright, Ky., 824 S.W.2d 843 (1992), the Kentucky Supreme Court discussed the American Medical Association's Guides to the Evaluation of Permanent Impairment (Guides). These guidelines provide for a consistent objective standard for evaluating spirometric test results.² Because the results of both the FEV1 and FVC are affected by the degree of the patient's cooperation, the Guides indicate that the greatest result obtained on each test is the most accurate representation of any actual impairment. See Watkins v. Ampak Mining, Inc., 834 S.W.2d 699 (1992). KRS 342.316 governs the admissibility of evidence obtained by spirometric testing. It requires that FVC or FEV1 values reported by a physician be the largest obtained from at least three acceptable spirometric maneuvers. While an ALJ has the discretion to use either the FVC or FEV1 test category, KRS 342.732(2), requires the ALJ to use the single highest value from the chosen category to determine respiratory impairment. Id. An ALJ is not authorized to prefer one physician's spirometric test data over the test data of other physicians. Id.

In this case, the medical evidence indicated that Honeycutt's pulmonary impairment had decreased over time. While Dr. Mallampalli, the university evaluator, presented presumably sound test data, the results were not the highest spirometric

²Spirometry is a forced expiratory maneuver which indicates the degree of pulmonary impairment.

values obtained from Honeycutt. We agree with the Board's conclusion that the ALJ's explicit recognition of his obligation under KRS 342.732 – that is, to accept the single highest value from a chosen category to determine impairment – satisfied his obligation to provide a reasonable basis for rejecting Dr. Mallampalli's study values. The ALJ correctly complied with the provisions of KRS 342.315(2) and the requirements of Magic Coal Co. v. Fox, supra.

The Board did not overlook or misapply controlling law or commit an error in assessing the evidence so flagrantly as to cause gross injustice when it concluded that the ALJ properly accounted for his decision to reject the data of the university evaluator data in this case. Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992). Consequently, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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