

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001231-WC

FREEDOM ENERGY MINING COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-00769

PHILLIP A. ADAMS; HONORABLE  
RONALD E. JOHNSON, ADMINISTRATIVE  
LAW JUDGE; WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE. Freedom Energy Mining Company petitions for review of an opinion of the Workers' Compensation Board which reversed and remanded an opinion of the Administrative Law Judge denying Phillip A. Adams's claim for income benefits for temporary total disability (TTD). The sole issue for our review is whether the Board substituted its judgment for that of the ALJ in assessing the evidence.

The testimony which presents the problem in this case is that of a Dr. Ronald Mann, who failed to say directly that Adams had not "reached maximum medical improvement" from his

injury, and had not reached the "level of improvement that would permit a return to employment." KRS 342.0011(11)(a). Dr. Mann did say that Adams was undergoing a work-hardening treatment, at the conclusion of which he should be able to return to work, and that someone in his office might have given Adams a return-to-work slip at Adams's request. He further detailed Adams's symptoms and the limitations which his injuries place upon him.

The ALJ found that there was "no medical testimony that the plaintiff [is] in fact temporar[ily]. . . disabled . . . ." The Board characterized this as a misinterpretation of Dr. Mann's testimony, which it admitted "might be subject to a number of interpretations . . . . Unfortunately, the ALJ does not appear to be drawing an inference[,] but states rather there is no medical testimony that Adams was off work upon the advice of a physician." The Board then credited the ALJ with a thorough job sifting through the evidence, but remanded the case for further findings on the TTD issue.

While Adams might not prevail based upon the gelatinous testimony of Dr. Mann, we agree with the Board that further review by the fact finder is justified. Then a more enlightened review of the ALJ's decision may be accomplished. The opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

A. Stuart Bennett  
Lexington, Kentucky

BRIEF FOR APPELLEE ADAMS:

Miller Kent Carter  
Pikeville, Kentucky

