

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000748-WC

PIERCE A. WILLIS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-00308

PEABODY COAL COMPANY;
HON. SHEILA C. LOWTHER, CHIEF ADMINISTRATIVE
LAW JUDGE FOR THOMAS NANNY (DECEASED);
KENTUCKY WORKERS' COMPENSATION BOARD

APPELLEES

AND CROSS-APPEAL NO. 2002-CA-000811-WC

PEABODY COAL COMPANY

CROSS-APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-00307, WC-01-00308 & WC-99-99138

PIERCE A. WILLIS;
HON. SHEILA C. LOWTHER, ADMINISTRATIVE
LAW JUDGE FOR THOMAS NANNY (DECEASED);
KENTUCKY WORKERS' COMPENSATION BOARD

CROSS-APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Pierce Willis asks us to review an opinion of the Workers' Compensation Board (Board) rendered March 13, 2002. Kentucky Revised Statutes (KRS) 342.290. Peabody Coal files a cross-appeal. We affirm on both appeal and cross-appeal.

Willis worked for Peabody Coal as an underground miner for a period of twenty-seven years, largely as a mechanic. His last day of employment was February 16, 2000. After this, he filed a claim for workers' compensation benefits alleging he suffered (1) a hernia on October 15, 1998, (2) a cumulative knee injury, and (3) a cumulative hearing loss. The matter came on for hearing before the Administrative Law Judge (ALJ). A modest award was made for the hernia condition, but the ALJ dismissed the claims for knee disability and hearing loss as lacking timely notification pursuant to KRS 342.185. On appeal to the Board, the Board affirmed the ALJ's dismissal of the claim for knee injury, but remanded upon the claim of hearing loss. This precipitated the appeal by Willis for the knee injury, and a cross-appeal by Peabody from the remand on the loss of hearing claim.

On appeal, Willis maintains the Board erred in determining Peabody was not given sufficient notice of his work-related knee injury. Upon review of the record, we perceive little to support Willis' position. The record is clear that he was advised at least as early as 1997 that he was suffering from work-related knee injury. As such, we believe the Board did not err in determining Willis did not provide sufficient notice of his work-related knee injury.

On cross-appeal, Peabody asserts the Board erred in remanding Willis' hearing loss claim for specific determination of "whether, under the circumstances, a three-week delay [in giving notice] is excusable." The Board concluded that Willis gave notice some three weeks after manifestation of disability. Peabody contends that Willis' hearing loss claim is time barred.

Peabody avers Willis was aware of his work-related hearing loss some fifteen years ago. In support of this contention, Peabody points to a consultation Willis had with an attorney concerning hearing loss. Peabody argues that the attorney would not have discussed hearing loss had there not been "some type of medical opinion" rendered to Willis that the hearing loss was work-related. We think the record is not clear as to whether Willis provided Peabody with "due and timely" notice of this impairment. Thus, we believe the Board appropriately remanded the hearing loss claim for determination of whether he gave due and timely notice.

Upon examination of the record as a whole, we perceive no basis for reversal. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-
APPELLEE:

Randall L. Hardesty
Madisonville, Kentucky

BRIEF FOR APPELLEE/CROSS-
APPELLANT, PEABODY COAL
COMPANY:

Walter Harding
Philip J. Reverman, Jr.
Louisville, Kentucky