

**Commonwealth Of Kentucky**

**Court Of Appeals**

NO. 2002-CA-000437-WC

BRADLEY KOBETICH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-98-57085

TOYOTA MOTOR MANUFACTURING  
NORTH AMERICA, INC.;  
HON. DONALD SMITH,  
ADMINISTRATIVE LAW JUDGE;  
WORKERS' COMPENSATION BOARD

APPELLEES

AND

NO. 2002-CA-000583-WC

TOYOTA MOTOR MANUFACUTRING,  
NORTH AMERICA, INC.

CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-98-57085

BRADLEY W. KOBETICH;  
HON. DONALD SMITH,  
ADMINISTRATIVE LAW JUDGE;  
WORKERS' COMPENSATION BOARD

CROSS-APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Bradley Kobetich asks us to review an opinion of the Workers' Compensation Board (Board) rendered January 30, 2002. Kentucky Revised Statutes (KRS) 342.290. Toyota Motor Manufacturing North America, Inc., (Toyota) asks for review on cross-appeal. We affirm.

Kobetich alleged that he was injured while employed by Toyota on January 10, 1998. He claimed he received a back injury while attempting to free a window glass from a jammed position. Toyota maintained that Kobetich received no such injury during his employment. Toyota claimed that Kobetich's back condition was attributable to an injury he sustained on November 6, 1995, while employed at the Menasha Corporation in Ohio, for which he was paid compensation benefits under Ohio law. Toyota pointed out that Kobetich did not pursue the 1998 injury claim against it until he had tried fruitlessly to reopen his 1995 claim in Ohio.

The Administrative Law Judge (ALJ) initially found that Kobetich gave timely notice of his injury, and that he indeed suffered a work-related back injury. The ALJ determined his impairment rating to be 2.5%. Toyota appealed to the Board. The Board agreed with Toyota that the ALJ failed to make sufficient findings of fact to support his legal conclusions. Specifically, the Board held:

It is therefore incumbent upon the ALJ upon remand to set forth an accurate understanding of the totality of the record, including a clear understanding of the alternative statements made by Kobetich and Dr. Holaday and afford both this Board and, more importantly, the parties clear findings of facts and conclusions drawn from those facts.

Upon remand, the ALJ found that Kobetich gave timely notice, and specifically found that Kobetich suffered a work-related injury. The ALJ relied upon Dr. Holaday's Form 107 which attributed causation to the 1998 work injury. The ALJ found the testimony of Kobetich persuasive upon the issue of timely notice. Kobetich testified that his supervisor, one Sandy Buck, was present at the time of injury, and that he gave notice thereof to her.

Toyota again appealed to the Board. The Board concluded that the ALJ was clearly erroneous in relying upon Dr. Holaday's opinion as to causation. It appears that Dr. Holaday filled out two Form 107s. Upon one form, he attributed causation to the 1998 work injury, and upon the other, he attributed causation to the 1995 work injury. In its remand, the Board specifically stated:

For this reason, we retreat from any implication in our previous opinion that Dr. Holaday's testimony might be considered substantive evidence. Because we believe the ALJ's reliance on Dr. Holaday's reports constitutes clear error, we find it necessary to again remand this claim to the ALJ for a determination of causation, without reference to or reliance upon the reports of Dr. Holaday.

These appeals follow.

We shall initially address Kobetich's Direct Appeal No. 2002-CA-000437-WC, and thereafter Toyota's Cross-Appeal No. 2002-CA-000583-WC.

Kobetich contends the Board improperly substituted its judgment for the ALJ's. Specifically, Kobetich argues that the Board improperly directed the ALJ to disregard "probative medical

evidence." We observe that Kobetich makes no further argument, and fails to cite this Court to any case or statutory law to support his argument. We think the Board properly concluded that Dr. Holaday's contradictory evidence lacked sufficient probative value. As pointed out by the Board, the record contains no explanation for the contradictory nature of the evidence, and, as such, reliance upon same constitutes pure "arbitrariness." Thus, we think the Board properly concluded that the ALJ erred by relying upon the medical evidence submitted by Dr. Holaday.

We shall now address Toyota's Cross-Appeal. Toyota maintains that Kobetich failed as a matter of law to prove proper notice and a work-related injury. Toyota therefore argues that this action should be dismissed in its entirety. We disagree. We view Kobetich's testimony of notice to his supervisor as sufficient evidence to support the ALJ's finding of proper and timely notice. Considering the Board's previous remand and the possible confusion therefrom, we think the Board acted appropriately in remanding to the ALJ for determination of causation.

Upon the whole, we affirm the decision of the Workers' Compensation Board under the precepts of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

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

ALL CONCUR.

BRIEF FOR APPELLANT/CROSS-  
APPELLEE:

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BRIEF FOR APPELLEE/CROSS-  
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