

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001438-WC

J. CRESS COAL COMPANY

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-95-28085

HAROLD HALL;
HON. RICHARD H. CAMPBELL;
HON. SHEILA C. LOWTHER;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, KNOPE, AND MILLER, JUDGES.

MILLER, JUDGE: J. Cress Coal Company (J. Cress) asks us to review an opinion of the Workers' Compensation Board (Board) rendered June 5, 2002. Kentucky Revised Statutes (KRS) 342.290. We affirm.

On April 6, 1995, Harold Hall received a work-related injury to his left shoulder while in the employe of J. Cress. In 1997, he received a twenty-five percent occupational disability award. In 2001, Hall filed a motion to reopen the award pursuant to KRS 342.125(1). The matter was reopened and his disability was increased to one hundred percent. The Board

applied the law (KRS 342.125), which was in existence on the date of his injury in 1995. J. Cress contends that the December 12, 1996 amendment of KRS 342.125 should have been applied to the reopening. J. Cress perceives that the 1996 amendment, if applicable, would have rendered it more difficult for Hall to succeed upon reopening.

As a general rule, the law in effect on the date of injury is controlling. See Maggard v. International Harvester Company, Ky., 508 S.W.2d 777 (1974). A legislative enactment is not ordinarily given retroactive effect unless the legislature so provides. KRS 446.080. A statute, however, may be given retroactive effect by the court if it is determined to be remedial. J. Cress maintains that the 1996 amendment was remedial and, thus should be given retroactive effect. We are not so convinced.

J. Cress cites us to Peabody Coal Company v. Gossett, Ky., 819 S.W.2d 33 (1991). That case involved the 1987 amendment to KRS 342.125. The Court held the 1987 amendment to be a remedial measure designed to bring conformity within the standards for review. The 1987 amendment was intended to equalize the standards for reopening with the standards for original awards. Conversely, the 1996 amendment reflects a substantial recasting of the Workers' Compensation Act and therefore, cannot be considered remedial.

J. Cress's second argument is that the award upon reopening was not supported by substantial evidence. We perceive no merit in this contention as the record contains sufficient

evidence supporting the increase. At the very least, the evidence is conflicting. In such cases, the Administrative Law Judge (ALJ) is the sole arbiter of the weight and sufficiency of evidence. See Luttrell v. Cardinal Aluminum Company, Ky. App., 909 S.W.2d 334 (1995). In order to reverse the ALJ, it must be shown that the decision is not supported by substantial evidence of probative value; this J. Cress has failed to do. See Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). We think Hall's own testimony regarding his increase in symptoms and in deterioration of his physical ability combined with the increased impairment rating and restrictions placed upon Hall by one Dr. James Templin sufficient to support the ALJ's finding of increased disability.

Upon the whole of this case we are bound to affirm the decision of the Board under the authority of 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.

BRIEF FOR APPELLANT:
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BRIEF FOR APPELLEE, HAROLD
HALL:
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