

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000420-WC

RANDALL DANIELS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-78746
ACTION NO. WC-98-65600

B.R. & D. ENTERPRISES, INC.;
LONE MOUNTAIN PROCESSING, INC.;
SHEILA C. LOWTHER, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Randall Daniels petitions for review of an opinion of the Workers' Compensation Board which affirmed a decision of the Administrative Law Judge finding that Daniels' claim against Lone Mountain Processing was barred by KRS 342.165(2) due to the falsification of an application for employment. We agree with the Board that there was a causal connection between the false representation and the subsequent injury, hence, we affirm.

On September 8, 1998, in the course of his employment with B.R. & D. Enterprises ("B.R. & D."), Daniels injured his lower back when trying to move a large rock with a pry bar. Daniels was diagnosed with lumbar strain by neurosurgeon Dr. James Bean on September 28, 1998. Daniels received temporary total disability benefits for 3 ½ weeks, and returned to his employment with B.R. & D. On November 16, 1998, Dr. Bean reviewed an MRI which showed degenerative disc disease at L5-S1 without a herniation. As of December 7, 1998, Daniels reported continued pain in his back and left leg. Daniels' final follow-up visit with Dr. Bean was on March 1, 1999, at which time Daniels reported experiencing back pain with lifting and shoveling. Dr. Bean assessed Daniels at maximum medical improvement, retaining a 5% functional impairment. Daniels settled his workers' compensation claim arising out of this accident on July 1, 1999, on the basis of a 5% functional impairment.

Daniels continued to work for B.R. & D. until October 2001, when he was hired by Lone Mountain Processing (Lone Mountain). As part of the hiring process with Lone Mountain, Daniels was required to undergo a physical examination and complete a medical history questionnaire. On this questionnaire, Daniels answered "No" to questions which included whether he ever had or has now a back injury or back pain; if he

had ever filed a compensation claim or received benefits as a result of an industrial injury or disease; if he had any physical complaints or disabilities at the present time; and if he had ever consulted or been treated by physicians within the past five years. Based on the physical examination and review of the medical questionnaire, Daniels was approved for work without restrictions.

On June 11, 2002, while pulling on a miner cable, Daniels felt a sharp pain in his back and hips. Daniels was treated on June 12, 2002, at the emergency room and subsequently by Dr. LeFeuvre, who diagnosed him with acute chronic lumbar sprain. Daniels was eventually referred back to Dr. Bean. Dr. Bean saw Daniels on August 5, 2002, at which time Daniels reported back pain which had begun on June 11, 2002 while hanging a miner cable. Dr. Bean ordered a new MRI which, in a note dated August 19, 2002, he reported as showing degenerative disc at L5-S1 with no evidence of disc herniation. Dr. Bean stated that this was the same finding at L5-S1 as seen in 1998. Dr. Bean also stated Daniels "has a new injury preceding a chronic degenerative disk. This is 50% preexistant [sic]/ 50% new." As of September 16, 2002, Dr. Bean assessed Daniels at maximum medical improvement with a 7% impairment rating.

Daniels filed a claim and Lone Mountain resisted, contending that Daniels willfully made a false representation as

to his physical condition or medical condition on his application and that his claim is barred under KRS 342.165(2).

In an opinion and order entered March 26, 2004, the ALJ found, in pertinent part:

Having reviewed the totality of the lay and medical evidence contained in the record in Mr. Daniels' claim against Lone Mountain Processing, it is the finding of the Administrative Law Judge that the facts in that claim cannot be distinguished from those in [Gutermuth v. Excel, 43 S.W.3d 270 (Ky. 2001)]. Mr. Daniels had a previous back injury, for which he underwent diagnostic testing and treatment by a neurosurgeon. He was off work for several weeks following that injury, and subsequently prosecuted a workers' compensation claim and received a settlement. Three years later, he sought employment as an underground coal miner with Lone Mountain Processing. He was required to undergo a pre-employment physical as a condition of that hiring. In the medical questionnaire which the plaintiff was required to complete as part of that physical, multiple questions were posed to the plaintiff, which should have revealed his history of previous back complaints and a workers' compensation claim. Instead, the plaintiff denied any such medical history. Mr. Biggerstaff and Mr. Bowman both testified that they were unaware of the plaintiff's history of back problems. Mr. Bowman indicated that the medical examination was an essential part of the hiring process. As in Gutermuth, by misrepresenting his physical condition Mr. Daniels defeated the purpose of this medical examination. He subsequently sustained a work related injury to his low back, at the same level where he was injured in 1998. Based upon this evidence, it is the finding of the Administrative Law Judge that

[Daniels' claim] against Lone Mountain Processing is barred by the provisions of KRS 342.165 (2). Therefore, that claim is hereby DISMISSED.

In an opinion entered January 28, 2005, the Board affirmed, finding:

[T]he CALJ's decision is supported by substantial evidence in the record. Lone Mountain did not have to produce evidence that there was a causal relationship between Daniels' previous injury and the one incurred with Lone Mountain; only that the work-related injury was causally related to Daniels' misrepresentation about any prior back problem. . . . The CALJ noted the 2002 injury was at the same level as the 1998 injury. Though Dr. Bean classified the incident as a new injury, the MRI in 2002 showed degenerative disc disease at L5-S1 with no evidence of disc herniation. This was the same finding of degeneration at L5-S1 as found in 1998. . . . We believe this evidence supports the reasonable inference by the CALJ that if not for the falsification on the questionnaire Daniels would not have been permitted to perform the heavy labor with Lone Mountain, which caused his work-related injury.

On appeal, Daniels contends the Board and ALJ erred in that there is no proof to support the three-prong test of KRS 342.165(2). KRS 342.165(2) provides:

No compensation shall be payable for work-related injuries if the employee at the time of entering the employment of the employer by whom compensation would otherwise be payable falsely represents, in writing, his physical condition or medical history, if all of the following factors are present:

(a) The employee has knowingly and willfully made a false representation as to his physical condition or medical history;

(b) The employer has relied upon the false representation, and this reliance was a substantial factor in the hiring; and

(c) There is a causal connection between the false representation and the injury for which compensation has been claimed.

Daniels' appeal basically concedes the first two prongs. Daniels argues, however, that the third prong of the test (whether there is a causal connection between the false representation and the subsequent injury for which compensation is being claimed) is a medical question, to be determined by medical experts, and that there was no medical evidence to support the ALJ and the Board's finding. Daniels contends that both the ALJ and the Board based their finding of a causal connection on the fact that there was no change in the MRI following the 1998 injury and the MRI following the 2002 injury, but that they are not qualified to make such a medical interpretation.

Gutermuth v. Excel, 43 S.W.3d 270, 273 (Ky. 2001) indicates that the question of a causal connection is an issue of fact for the ALJ. In the present case, we cannot say the ALJ's finding was unreasonable.

The function of the Court of Appeals in reviewing a decision of the Workers' Compensation Board is to correct the

Board only where the Court perceives the Board has overlooked or misconstrued statutes, precedent, or has flagrantly erred in assessing the evidence so as to cause a gross injustice.

Western Baptist Hospital v. Kelly, 827 S.W.2d 685 (Ky. 1992).

Having reviewed the evidence and the law, we find no errors and therefore the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John E. Anderson
Barbourville, Kentucky

BRIEF FOR APPELLEE B.R. & D.
ENTERPRISES, INC.:

Denise Kirk Ash
Lexington, Kentucky

BRIEF FOR APPELLEE LONE
MOUNTAIN PROCESSING, INC.:

Denise M. Davidson
Hazard, Kentucky