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Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001240-WC

M & R TRUCKING, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-00766

LESLIE SPENCE; HON. CAROLINE
PITT CLARK, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * * * **

BEFORE: KELLER AND WINE, JUDGES; LAMBERT,¹ SENIOR JUDGE.

LAMBERT, SENIOR JUDGE: Leslie Spence was awarded permanent partial disability benefits by an Administrative Law Judge (ALJ) who found that Spence sustained a compensable psychological impairment resulting from a work-related

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

injury. The employer, M & R Trucking, Inc., appealed from the decision of the ALJ, challenging the determination of impairment based on post-traumatic stress. The Workers' Compensation Board affirmed. Upon further review, this court has discovered no reversible error and affirms the Workers' Compensation Board.

Spence was employed by M & R Trucking, Inc., and was driving a truck on January 22, 2008 when he encountered a patch of "black ice." The truck Spence was driving struck the vehicle in front and swung around striking other vehicles with the rear portion of the truck. One of those vehicles was an ambulance that was transporting a pregnant woman who had been involved in a different accident. The pregnant woman and an emergency medical technician were both killed as a result of the collision between Spence's truck and the ambulance.

Spence suffered primarily from a mental impairment but did report a lower back injury sustained as a result of the accident. Three physicians testified as to the nature and extent of Spence's injuries. Dr. Lafferty determined that Spence suffered from an 8% whole person impairment due to the work related lower back injury. Dr. Travis' opined that Spence did not sustain any physical injury. Dr. Sheridan's conclusions were that Spence sustained cervical and lumbar strains as a result of the accident but that those ailments had resolved and there was no permanent impairment. The ALJ examined the medical opinions and

determined that Dr. Sheridan's assessment was the most accurate and authoritative. Where there is conflicting testimony from medical experts, the decision of the ALJ will not be disturbed. *Staples, Inc. v. Konvelski*, 56 S.W.3d 412 (Ky. 2001).

Turning to the psychological injury claim, we observe that a compensable injury "shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury[.]" KRS 342.0011(1). In *Lexington-Fayette Urban County Government v. West*, 52 S.W.3d 564 (Ky. 2001), a police officer was diagnosed with post-traumatic stress disorder after being assaulted by a knife-wielding suspect. The officer sustained minor scratches, abrasions and muscle soreness during what was described as a "full-fledged fight[.]" *Id.* at 567. The Supreme Court held that the psychological injury was compensable as it was a direct result of the physical injury. In this case, Spence suffered post-traumatic stress disorder after sustaining personal injuries from being involved in a traffic accident that also took the lives of two other people.

As used in KRS 342.0011(1), an injury "refers to the traumatic event or series of such events that causes a harmful change rather than to the harmful change itself." *Ryan's Family Steakhouse v. Thomasson*, 82 S.W.3d 889, 893 (Ky. 2002). "[A] harmful change that is psychological, psychiatric, or stress-related must result from an event that involves physical rather than mental trauma." *Id.* Spence was involved in a horrific vehicular accident that caused trauma to his back and a harmful change in his mental condition.

The medical record is not clear whether Spence's sprained back was as a direct result of the collision or whether it resulted from his attempts to control the truck when he encountered the icy condition on the roadway. Regardless, "physical trauma need not involve an impact from an outside force; it may involve physical exertion." *Richard E. Jacobs Group, Inc. v. White*, 202 S.W.3d 24, 27 (Ky. 2006). The ALJ found that Spence suffered physical trauma to his back as a direct result of the accident and that this physical injury led directly to his post-traumatic stress disorder and subsequent impairment.

The Workers' Compensation Board affirmed the ALJ and we affirm the Board.

ALL CONCUR.

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