

RENDERED: OCTOBER 28, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000409-WC

GLENN HAMPTON

APPELLANT

ON REMAND FROM SUPREME COURT OF KENTUCKY
APPEAL NO. 2015-SC-000095-WC

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-98603

FLAV-O-RICH DAIRIES;
HONORABLE WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, MAZE AND VANMETER, JUDGES.

VANMETER, JUDGE: This appeal is before this court on remand from the Kentucky Supreme Court, which reversed our dismissal of this appeal for prematurity, finding that the order of the Worker's Compensation Board ("Board")

was final and appealable, and ordered this court to consider the merits of the appeal.¹ Glenn Hampton appeals from the Board's opinion reversing the decision of an Administrative Law Judge ("ALJ") which awarded Hampton permanent total disability benefits. For the following reasons, we affirm.

Hampton worked for Flav-O-Rich Dairies for eight years. On December 30, 2010, he was injured on the job when he reached into a machine that fills bottles. The machine caught and pulled his right arm, resulting in a sharp pain in his shoulder followed by a loss of strength and range of motion. Hampton underwent rotator cuff surgery, and when his pain was not relieved, an MRI revealed a previously undetected tear in his labrum. The labrum tear was repaired surgically, and afterward Hampton was directed to physical therapy. A year later, Hampton underwent a partial debridement, including repair and removal of post-operative scarring.

Hampton testified that he continues to have pain in his shoulder and elbow. He stated that he cannot return to work at Flav-O-Rich Dairies because of his injury. Hampton's doctors, Dr. Favetto and Dr. Hughes, assigned him a 14% and 10% whole person permanent impairment rating, respectively. Flav-O-Rich Dairies filed the medical report of Dr. Primm, who found that Hampton sustained a 4% whole person permanent impairment, and stated that he would not place any restrictions on the use of Hampton's arm below shoulder level, and above the

¹ *Hampton v. Flav-O-Rich Dairies*, 2015-SC-000095-WC (June 16, 2016).

shoulder level, Hampton should avoid lifting more than 20 pounds on a repetitive basis and more than 40 pounds maximum.

On September 3, 2013, the ALJ awarded Hampton permanent total disability (“PTD”) and temporary total disability benefits for his right shoulder injury. Flav-O-Rich filed a petition for reconsideration, asking the ALJ to make further findings of fact regarding the award of PTD benefits so the ALJ’s award could be better understood. The ALJ denied Flav-O-Rich’s petition for reconsideration, and Flav-O-Rich appealed to the Board, requesting that the ALJ’s opinion be set aside for being devoid of findings of fact.

The Board found that even when reading the summary of evidence together with the ALJ’s findings of fact, it was unable to discern the basis for the ALJ’s decision. The Board noted that the ALJ did not make an individualized determination of what Hampton is and is not able to do, as required by KRS² 342.0011(b), (11)(c), and (34). Further, while the ALJ claimed to have relied upon Hampton’s testimony in rendering his opinion, the Board found that Hampton’s testimony was inconsistent regarding his ability to perform any sort of work, and in such a situation, the ALJ was required to state which portions of the claimant’s testimony he relied upon in making his determination. Ultimately, the Board concluded that the ALJ failed to provide the parties with findings of fact sufficient to inform it of the basis of the ALJ’s decision and permit meaningful review. *See Kentland Elkhorn Coal Corp. v. Yates*, 743 S.W.2d 47, 49 (Ky. App. 1988). The

² Kentucky Revised Statutes.

Board vacated the ALJ's opinion and remanded the case to the ALJ to make additional findings of fact so that a meaningful review could be undertaken.

Hampton's appeal follows.

Hampton argues the Board substituted the ALJ's judgment with its own. He claims sufficient findings of fact were outlined in the ALJ's opinion, and those findings clearly establish the foundation for the ALJ's decision finding him permanently disabled.

The well-established standard of review for the appellate courts of a workers' compensation decision "is to correct the [Workers' Compensation] Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." *E.g., W. Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992); *Butler's Fleet Serv. v. Martin*, 173 S.W.3d 628, 631 (Ky. App. 2005); *Wal-Mart v. Southers*, 152 S.W.3d 242, 245 (Ky. App. 2004). *See also Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986) (if the fact-finder finds in favor of the person having the burden of proof, the burden on appeal is only to show that some substantial evidence supported the decision); *cf. Gray v. Trimmer*, 173 S.W.3d 236, 241 (Ky. 2005) (if the ALJ finds against the party having the burden of proof, the appellant must "show that the ALJ misapplied the law or that the evidence in her favor was so overwhelming that it compelled a favorable finding[]").

“Permanent total disability” means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. KRS 342.0011(11)(c). Hampton claims that the ALJ clearly indicated his belief that Hampton’s testimony stating that he can no longer work was credible and convincing, thus giving a basis for his decision to find Hampton permanently totally disabled.

[W]e conclude that KRS 342.275(2) and KRS 342.285 contemplate an opinion that summarizes the conflicting evidence concerning disputed facts; weighs that evidence to make findings of fact; and determines the legal significance of those findings. Only when an opinion summarizes the conflicting evidence accurately and states the evidentiary basis for the ALJ's finding does it enable the Board and reviewing courts to determine in the summary manner contemplated by KRS 342.285(2) whether the finding is supported by substantial evidence and reasonable.

Arnold v. Toyota Motor Mfg., 375 S.W.3d 56, 61-62 (Ky. 2012).

However, we agree with the Board’s conclusion that the ALJ failed to provide sufficient factual findings to support his conclusion. While the ALJ is tasked with weighing the credibility of the evidence presented, an ALJ still must provide sufficient findings of fact regarding his interpretation of the evidence. The ALJ simply stated that he found Hampton’s testimony that he could not work credible. He did not specify which portions of Hampton’s testimony were persuasive, nor did he state why he found them so. The ALJ notes that he considered the severity of Hampton’s work injuries, his age, work history, and his

education, but he does not explain why or how these factors contributed to his decision. While the ALJ is not required to engage in a detailed discussion of the facts, the parties are entitled to findings of fact sufficient to inform them of the basis of the decision and such an analysis is required to enable appellate review. *Id.* at 62. We believe the Board correctly determined that the ALJ's opinion lacked sufficient factual findings to support his conclusion, and remanding the case for further factual findings was appropriate.

The order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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