

96-CA-0854-WC

PATRICIA HOLTHAUSER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
 THE WORKERS' COMPENSATION BOARD
 CLAIM NO. 89-43560

MEADOWS SOUTH NURSING HOME;
WILLIAM O. WINDCHY, Acting Director
of the SPECIAL FUND; HON. THOMAS L.
NANNEY, Administrative Law Judge;
and the WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING
* * * * *

BEFORE: Combs, Gardner, and Gudgel, Judges.

Gudgel, Judge. This is a petition for review from a decision of the Workers' Compensation Board (Board) rendered on March 1, 1996, affirming the opinion and award of an Administrative Law Judge (ALJ) which added a 10% occupational disability on reopening to a previous 1989 30% occupational disability awarded for a back injury.

The appellant moved to reopen her original injury claim and sought total disability benefits based upon an alleged increase in occupational disability stemming from surgery to her back. The ALJ found, however, that appellant only sustained a 10%

increase in occupational disability since the initial award. On appeal to the Board the ALJ's decision was affirmed. This petition for review followed.

Despite appellant's contentions to the contrary, the Board did not dismiss her claim based upon the fact that her notice of appeal was filed prior to the ALJ's ruling on the Special Fund's motion for reconsideration. The Board clearly addressed the merits of her appeal in affirming the ALJ. Moreover, we are satisfied that the ALJ clearly committed no error in finding there has been an increase in occupational disability of only 10% rather than the more significant increase sought by appellant. The movant in reopening proceedings bears the burden of establishing that there has been a change in occupational disability since the time of the original award. See Peabody Coal Co. v. Gossett, Ky., 819 S.W.2d 33 (1991). Further, this court can not disturb the ALJ's decision against the claimant absent a showing that there is evidence which compelled a finding in favor of the claimant. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). Here our review of the record reveals that there was, in fact, substantial evidence on which the ALJ could rely in finding that there has only been a 10% increase in occupational disability. This evidence is discussed and clearly set forth in the opinion of the Board. Nothing in appellant's brief convinces us that the Board erred in its assessment of this evidence such that gross injustice occurred. That being so the

Board's opinion may not be disturbed. Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992).

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

Petition for Appellant:
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Response for Appellee
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