

RENDERED: August 16, 1996; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-0751-WC

EARL RANDALL MAGGARD

APPELLANT

V. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-94-030960

CASEY INDUSTRIAL, INC.;
SPECIAL FUND; ZARING P. ROBERTSON,
ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: COMBS, GARDNER and GUDGEL, Judges.

GARDNER, JUDGE. Earl Randall Maggard (Maggard) appeals from a decision of the Workers' Compensation Board (the board) which affirmed a decision of the Administrative Law Judge (ALJ) holding that Maggard failed to prove that he had incurred a work-related injury to his back resulting in disability. We affirm.

Maggard worked for Casey Industrial, Inc. (Casey). Maggard alleged that on June 13, 1994, in the course and scope of his employment with Casey, he suffered a heat stroke and as a result, fell and struck his back. He contended that this aroused a dormant back condition resulting in disability.

The ALJ in an opinion of September 23, 1995, concluded that Maggard failed to meet his burden of proving that he

suffered a back injury at work on June 13, 1994. In so doing, he determined that the testimony of the primary testifying physician was not reliable as a result of the physician's outside relationship with Maggard and his belligerent attitude upon examination. The board in an opinion of February 16, 1996, affirmed the ALJ's opinion.

Maggard on appeal to this Court contends that the evidence in this case compels a finding that he aggravated a dormant, preexisting injury to his back as a result of the alleged work-related injury, and the ALJ's ruling to the contrary was erroneous. After reviewing the record, we cannot conclude that the evidence compelled a finding in Maggard's favor. See Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). The ALJ provided sufficient reasons for rejecting the evidence by the testifying physician. See Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). We cannot conclude that the board misconstrued the law or erroneously assessed the evidence so flagrantly as to cause gross injustice in affirming the ALJ. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 735 (1992).

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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