

96-CA-0240-WC

BILLY WAYNE HENRY

APPELLANT

PETITION FOR REVIEW UNDER CR 76.25
v. OF A DECISION OF THE WORKERS' COMPENSATION BOARD
WC-94-19554

JERICOL MINING, INC.;
WILLIAM O. WINDCHY,
the Director of the Special Fund;
HON. ZARING P. ROBERTSON,
Administrative Law Judge;
and THE WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: DYCHE, HOWERTON and SCHRODER, Judges.

HOWERTON, JUDGE. Billy Wayne Henry petitions for review of an opinion of the Workers' Compensation Board (Board) rendered on January 5, 1996. The Board's opinion affirmed the decision of the Administrative Law Judge (ALJ), which dismissed Henry's claim for benefits for back injuries he alleged to have occurred on three separate occasions while he was employed with Jericol Mining, Inc. The ALJ determined that Henry had failed to prove that a work-related injury occurred on either July 1, 1993, or February 4, 1994. Further, the ALJ concluded that although there

was sufficient evidence that an accident did occur on February 10, 1994, Henry failed to establish that any permanent physical or psychological disability arose as a result of that accident. We affirm the Board's decision.

Henry argues that the medical evidence contained in the record, when viewed in its totality, compels a decision in his favor, and that the ALJ's decision was clearly erroneous and constitutes an abuse of discretion. The scope of review by this Court is limited as the second tier of appellate review and we may not substitute our judgment for that of the ALJ. KRS 342.290; Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

The Board thoroughly and correctly addressed Henry's issues in its opinion rendered January 5, 1996. We find no error and hereby affirm and adopt the Board's opinion as the opinion of this Court.

ALL CONCUR.

BRIEF FOR APPELLANT:

Floyd Allen Lewis
Pineville, KY

BRIEFS FOR JERICOL MINING:

Charles W. Berger
Pineville, KY

James R. Carpenter
Lexington, KY

BRIEF FOR SPECIAL FUND:

Joel D. Zakem
Labor Cabinet
Lexington, KY