

RENDERED: September 6, 1996; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-0917-WC

W. JAY MURPHY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
CLAIM NO. 94-052580

COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF TRANSPORTATION;
WILLIAM O. WINDCHY, ACTING DIRECTOR
OF SPECIAL FUND; ZARING P. ROBERTSON,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

* * *

BEFORE: DYCHE, HOWERTON, and SCHRODER, Judges.

SCHRODER, JUDGE. This is a petition for review of a decision of the Workers' Compensation Board (Board) rendered on March 1, 1996, affirming the opinion rendered by the administrative law judge (ALJ) finding appellant, W. Jay Murphy (Murphy), failed to sustain his burden of proving the occurrence of any work-related injury. We affirm.

Murphy commenced his employment with appellee, Commonwealth of Kentucky, Department of Transportation

(Department), in October of 1979 in highway repair. Murphy ceased working on April 29, 1994, and has not returned due to the progression of familial spastic paraparesis, a congenital condition which is a hereditary degenerative disease of the nervous system.

Based on all the medical evidence and testimony of the parties, the ALJ dismissed Murphy's claim, in finding that he had failed to prove his current condition was work related. The Board thereafter affirmed the ALJ's decision and this petition for review ensued.

On appeal, Murphy claims that there is substantial evidence which compels a contrary finding by the ALJ. Specifically, Murphy contends that the ALJ misinterpreted the testimony of Dr. Nelson and that Dr. Nelson's opinion compels a finding in his favor. However, if substantial evidence supports the ALJ's determination, it must be affirmed. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

In his opinion, the ALJ stated in pertinent part that:

Dr. Nelson, a neurologist, initially offered the opinion that the condition was exacerbated or made worse by the plaintiff's work activities. To the contrary, Doctors Zerga and Shraberg, also neurologists, testified that exertion was not known to cause any worsening of the condition, which progresses of its own accord. In a second deposition, Dr. Nelson clarified his opinion by explaining that activity did not worsen the underlying disease, but only the symptomatic manifestation of muscle fatigue. My interpretation of his testimony is that the plaintiff's hard work caused temporary exacerbation, but had no permanent effect on the congenital problem.

Although it is true that the Board may not substitute its judgment for that of the ALJ, we cannot agree with appellant that the Board improperly concluded that there was substantial evidence to support the ALJ's dismissal. Where the evidence is conflicting, the ALJ has the discretion to determine the weight and credibility of the evidence. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977). Furthermore, the ALJ may reject or accept any testimony or parts of testimony including evidence from the same witness. Pruitt v. Bugg Bros., Ky., 547 S.W.2d 123 (1977).

In the present case, neither Dr. Zerga nor Dr. Shraberg was of the opinion that Murphy's work was a contributing factor to his medical condition, and Dr. Nelson's testimony is conflicting. At some points Dr. Nelson indicates that the work activities substantially aggravated Murphy's condition, but later he acknowledged that his condition would have progressed even if he had not worked and that the work did not aggravate the biochemical abnormality, but only the severity of the spasticity which is caused by the underlying biochemical abnormality. The ALJ after considering all the evidence, found that the medical evidence did not support Murphy's contentions. Our review of the Board's decision is limited to whether it mischaracterized evidence by the ALJ or made an error of law so flagrant as to cause gross injustice. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). We cannot say that the Board substituted

its opinion for that of the ALJ or committed any error requiring a reversal.

Accordingly, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Julie Atkins
Harlan, Kentucky

BRIEF FOR APPELLEE,
COMMONWEALTH OF KENTUCKY,
DEPARTMENT OF TRANSPORTATION:

W. David Shearer, Jr.
Louisville, Kentucky

BRIEF FOR APPELLEE, SPECIAL
FUND:

Judith K. Bartholomew
Louisville, Kentucky