

RENDERED: June 20, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-2596-WC

MOUNTAIN TRUCK PARTS, INC.,
and DODSON INSURANCE GROUP

APPELLANTS

V. PETITION FOR REVIEW OF A DECISION
 OF THE WORKERS' COMPENSATION BOARD
 ACTION NO. WC-81-035223

RONNIE GENE BRYANT; and
and THE WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING IN PART and REVERSING IN PART

** ** ** **

BEFORE: JOHNSON, KNOPE, and MILLER, Judges.

MILLER, JUDGE. Mountain Truck Parts, Inc., and Dodson Insurance Group (appellants) ask us to review an opinion of the Workers' Compensation Board (board) rendered August 16, 1996. Ky. Rev. Stat. (KRS) 342.290. We affirm in part and reverse in part.

As the result of a work-related injury, Ronnie Gene Bryant, co-appellee, was found to be 38% disabled. His employer, Mountain Truck Parts, Inc., was held responsible for future medical expenses related to his injury. On November 1, 1995, appellants filed a "Request to Resolve Medical Fee Dispute" and a "Motion to Reopen and for Attorney Fees." Apparently, appellants

received medical bills for Bryant's CT scan and related medicine. Appellants disavowed responsibility for payment of these medical bills as such were unconnected to Bryant's work-related injury and as appellants were not obligated to pay bills generated by one Dr. N. Roger Jurich. Bryant failed to respond to the above motion.

On January 2, 1996, the administrative law judge (ALJ) granted appellants' motion and concluded that they were not liable for payment of the contested medical bills. The ALJ also entered a show cause order as to why attorney fees and expenses should not be imposed on Bryant pursuant to KRS 342.310. On February 20, 1996, appellants filed a motion setting forth the amount of attorney fees and other costs that were incurred relative to reopening the action. On February 22, 1996, Bryant filed a response to the motion for attorney fees arguing that he should not be held responsible for appellants' attorney fees and costs. By order entered February 28, 1996, the ALJ denied appellants' motion for attorney fees and concluded that it could not find that Bryant individually caused the bills to be sent to appellants. An appeal ensued to the board, and, on August 16, 1996, the board affirmed the ALJ's decision not to assess attorney fees and costs against Bryant. The board, however, did assess the attorney fees and costs of the appeal against the appellants. This appeal followed.

Appellants contend that the ALJ erred by refusing to impose attorney fees and costs pursuant to KRS 342.310. That statute states in relevant part as follows:

If any administrative law judge, the board or any court before whom any proceedings are brought under this chapter determines that such proceedings have been brought, prosecuted, or defended without reasonable ground, he or it may assess the whole cost of the proceedings

In the case at hand, we cannot say that the ALJ abused his discretion by not imposing attorney fees and costs against Bryant. As pointed out by the ALJ and the board, there is no evidence that Bryant caused the medical bills to be submitted to the appellants. Moreover, it should be noted that Bryant did not oppose the motion to reopen and never argued that appellants were responsible for payment of the medical bills. The board concluded:

We would, furthermore, note that KRS 342.310 only authorizes the imposition of sanctions against a party who has "brought, prosecuted, or defended" proceedings brought under KRS Chapter 342. Bryant filed no response to Dodson's [co-appellant's] motion to reopen. . . . It is difficult to ascertain the grounds upon which Dodson relies in its request for the imposition of sanctions. Bryant did not unreasonably defend proceedings brought under KRS 342.

We agree with the board and believe that the ALJ's decision to impose no sanctions against Bryant should be affirmed.

Appellants also assert that the board erred in assessing attorney fees and costs against it pursuant to KRS 342.310.

The board specifically found:

Regrettably, at times, third-party payors are going to inadvertently receive invoices for medical expenditures not related to a work injury and are, at times, compelled to file a motion to reopen to relieve themselves of the responsibility of paying that invoice. If there had been evidence in the instant claim that Bryant [co-appellee] had repeatedly submitted invoices for medical expenses and treatment not related to his injury, the manner in which Dodson [co-appellant] proceeded in this action would not only be understandable but encouraged. However, there is no such evidence. . . . Subsequently, an uncontested motion to reopen relieved Dodson of any responsibility for the invoice in question. Regrettably, Dodson incurred costs in accomplishing this. Its pursuant [sic] of sanctions in this manner, however, is, in our opinion, "without reasonable ground" and, accordingly, under KRS 342.310, the whole costs of the proceedings before this Board are assessed against Dodson.

We believe the board erred in assessing attorney fees and costs against appellants pursuant to KRS 342.310. We believe appellants had a "reasonable ground" for its appeal to the board.

As argued by appellants:

Failure to assess costs against Bryant [co-appellee] leaves him in the position of incurring no penalty for wrongfully sending medical bills to Dodson [co-appellant] for payment or for **failing to withdraw such bills** once it is determined they are not Dodson's responsibility. Without assessment of costs, there is nothing to prevent this situation from arising time and again, causing Dodson to incur the expenses of effecting a motion to re-open each time [emphasis added].

Even though ultimately attorney fees were not assessed against Bryant, we do not believe appellants' argument for the imposition for such fees is "without reasonable ground." Thus, we are of the opinion that the board abused its discretion in assessing attorneys fees and costs against appellants.

For the foregoing reasons, the opinion of the board is affirmed in part and reversed in part.

KNOPF, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION.

JOHNSON, JUDGE, CONCURRING IN PART AND DISSENTING IN PART: I concur with the Majority Opinion affirming the board's decision to impose no sanctions against Bryant. However, I dissent from the Majority's reversal of the board's sanctions against appellants. The ALJ's decision not to sanction Bryant cannot be seriously argued as an abuse of discretion. Accordingly, the appellants' repeated appeals of that decision are frivolous.

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