

RENDERED: December 19, 1997; 10:00 a.m.  
NOT TO BE PUBLISHED

NO. 97-CA-0226-WC

MICHAEL WILSON

APPELLANT

v.                    PETITION FOR REVIEW OF A DECISION  
                      OF THE WORKERS' COMPENSATION BOARD  
                      NO. WC-95-04852

MANNINGTON MINING COMPANY, INC.;  
ROBERT D. SPURLIN, DIRECTOR  
OF SPECIAL FUND;  
HON. J. LANDON OVERFIELD,  
ADMINISTRATIVE LAW JUDGE; and  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: GARDNER, GUIDUGLI and JOHNSON, Judges.

GUIDUGLI, JUDGE. Michael Wilson (Wilson) appeals from an opinion entered by the Workers' Compensation Board on January 21, 1997, affirming an opinion and order entered by the Administrative Law Judge (ALJ) on July 24, 1996, denying his petition for coal workers' pneumoconiosis benefits. We affirm.

Wilson began working as an underground coal miner in the Commonwealth of Kentucky in 1975. Wilson continued to work as an underground coal miner in Kentucky for the next 15 years. He first worked for appellee, Mannington Mining Company, Inc. (Mannington) for a three month period in 1990.

Upon leaving employment with Mannington, Wilson was employed as an underground coal miner for Buck Creek Mining (Buck Creek) in the State of Indiana. Wilson worked for Buck Creek for three months, then returned to Kentucky and worked as an underground coal miner for Wolf Creek Mining for one week until the mine was closed. He then obtained employment as an underground miner with Crab Orchard Mining (Crab Orchard) in the State of Illinois. When Crab Orchard closed one week after his employment, he began working as an underground coal miner for Eagle Valley, also in Illinois, where he remained for one and a half years.

In March 1993, Wilson returned to Kentucky and was rehired by Mannington. Wilson worked as an underground coal miner for Mannington until June 14, 1993. Wilson then returned to Indiana and was rehired as an underground coal miner by Buck Creek, where he remained until June 1994. It is undisputed by the parties that Wilson's last date of injurious exposure to coal dust in Kentucky was June 14, 1993, while he was employed by Mannington.

Wilson was diagnosed with coal workers' pneumoconiosis in July 1994. He filed an application for adjustment of claim in Kentucky asserting that he was last exposed to coal dust on June 14, 1993, while employed by Mannington.

Wilson submitted medical records from Dr. John Myers, Jr. (Dr. Myers) and Dr. Robert Powell (Dr. Powell) in support of his claim. Both Dr. Myers and Dr. Powell diagnosed Category 2/1

coal workers' pneumoconiosis. Although both doctors reported that Wilson's pulmonary function studies were within normal ranges and that Wilson was physically able from a pulmonary standpoint to work in the mines, both doctors indicated that Wilson should avoid further exposure due to the degree of his disease.

Mannington submitted medical evidence from Dr. Ballard Wright (Dr. Wright) and Dr. Bruce Broudy (Dr. Broudy). Dr. Broudy found no evidence of coal workers' pneumoconiosis. Dr. Wright diagnosed Category 0/1 pneumoconiosis.

In his opinion entered July 24, 1996, the ALJ found that Wilson was suffering from Category 2/1 pneumoconiosis based on the reports of Dr. Myers and Dr. Powell. However, the ALJ further held:

Plaintiff has failed to sustain the burden of proving to the satisfaction of the trier of fact that his coal workers pneumoconiosis is a result of an injurious exposure to the hazard of the disease while in the employment of Defendant Employer. While it is true that the vast majority of Plaintiff's coal mine work was in the Commonwealth of Kentucky and the last Kentucky employer was Defendant Employer, there is no medical evidence addressing the issue raised by Defendant Employer of the effect of the subsequent employment outside of Kentucky. For the last 3 1/2 years during which Plaintiff was employed in the coal mine industry, 6 months was while working for Defendant Employer in 2 different 3 months periods. The other 3 years was work in Illinois and Indiana during two 18 month periods. His last significant stretch of employment was in Indiana for 1 1/2 years immediately prior to the time he left the coal mine industry. It is after this 1 1/2 year stretch that he began having symptoms which he related to his coal workers

pneumoconiosis and it was after this Indiana employment when he was first diagnosed, radiographically, as having coal workers pneumoconiosis. Thus, pursuant to KRS 342.316(1)(a), the liability has not been proven to be that of Defendant Employer and Defendant, Special Fund.

The dismissal of Wilson's claim was affirmed by the Board, and this appeal followed.

Wilson contends that notwithstanding the fact that he was exposed to coal dust outside Kentucky, he is entitled to benefits for coal workers' pneumoconiosis under Kentucky Revised Statutes (KRS) 342.316(3)(b), which provides:

Income or retraining incentive benefits for the disease of pneumoconiosis resulting from exposure to coal dust or death therefrom shall not be payable unless the employee has been exposed to the hazards of such pneumoconiosis in the Commonwealth of Kentucky over a continuous period of not less than two (2) years during the ten (10) years immediately preceding the date of his last exposure to such hazard, or for any five (5) of the fifteen (15) years immediately preceding the date of such last exposure.

Wilson also relies on Coal Dust Coal Co. v. Stiltner, Ky., 905 S.W.2d 859 (1995), where the claimant was permitted to receive pneumoconiosis benefits despite the fact that he worked as a coal miner outside Kentucky following the last date of injurious exposure within the Commonwealth because he satisfied the conditions of KRS 342.316(3)(b). Wilson argues that because he meets the requirements of KRS 342.316(3)(b) like the claimant in Stiltner, he, too, is entitled to benefits.

Wilson's reliance on Stiltner is misplaced on two grounds. First, the claimant in Stiltner was diagnosed with coal

workers' pneumoconiosis before he was employed as a coal miner outside the Commonwealth. Stiltner, 905 S.W.2d at 859. Second, all of the claimant's physicians testified that the claimant's condition "dated back to the time of his last employment in Kentucky[.]" Id. at 860. Unlike the claimant in Stiltner, none of Wilson's physicians provided any evidence which would link his condition to his employment with Mannington and Wilson was not diagnosed until after he had worked in an Indiana mine for one year.

We agree with Mannington's argument that this is not a case of jurisdiction. As Mannington points out, there is no evidence in the case which would support a finding that Wilson contracted the disease while employed by Mannington. In fact, the evidence clearly shows that Wilson did not begin to evidence symptoms of coal workers' pneumoconiosis until after he left his job with Buck Creek in June 1994, and was not diagnosed with the disease until July 1994. The ALJ's findings are supported by substantial evidence, and we find nothing in the record which compels a finding in Wilson's favor. Special Fund v. Francis, Ky., 708 S.W.2d 641, 644 (1986).

Having considered the parties' arguments on appeal, the opinion of the Board is affirmed.

ALL CONCUR.

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