

RENDERED: December 24, 1997; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 97-CA-0472-WC

GARY FOTH

APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
 THE WORKERS' COMPENSATION BOARD
 ACTION NO. WC-94-3589

GENERAL MEDICAL CORPORATION;
ROBERT E. SPURLIN, Director
of Special Fund; HONORABLE
THOMAS A. NANNEY, Administrative
Law Judge; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: DYCHE, HUDDLESTON, and KNOPF, Judges.

DYCHE, JUDGE. Shorn of its irrelevancies and charges of improper conduct by the attorneys involved, the issue in this case is whether appellant failed to present a prima facie case of work-related injury and disability. The Administrative Law Judge dismissed his claim for failing to submit proper medical proof, and the Workers' Compensation Board affirmed that dismissal.

The brief submitted to the Board filed by counsel for the Special Fund clearly and succinctly sets out the facts and issues, and the correct legal analysis applicable herein:

. . . Petitioner filed an Application for Adjustment of Claim on March 4, 1996. On April 9, 1996, a scheduling order was issued giving the Petitioner until June 8, 1996 for the introduction of proof in support of his claim. The Petitioner submitted no proof within that time, and on or about June 19, 1996, the employer filed a motion to dismiss. The ALJ sustained that motion in an order dated July 21, 1996.

The medical reports attached to the Application for Adjustment of Claim are not evidence. They serve as a means for early settlement and handling of uncontested claims and to provide a default judgment procedure in uncontested claims. They are merely a part of the pleadings. Brooks v. Island Creek Coal Co., Ky. App., 678 S.W.2d 791 (1984). The Petitioner filed no motion to have the reports included as part of the evidence, nor did he serve notice that he intended to rely on them as part of the evidence. Given these circumstances, and the fact that no motion for extension of time was filed, the ALJ properly dismissed the claim for benefits. Cornett v. Corbin Materials, Inc., Ky., 807 S.W.2d 56 (1991).

We agree with the above, and affirm the opinion of the Workers' Compensation Board. We decline to impose frivolous appeal sanctions against appellant's counsel.

KNOPF, JUDGE, CONCURS.

HUDDLESTON, JUDGE, CONCURS.

HUDDLESTON, JUDGE, CONCURRING. I concur in the Court's opinion. I write separately to state my reason for concurring in

the Court's refusal to impose frivolous appeal sanctions against appellant's counsel. I understand from the Workers' Compensation Board's opinion of January 24, 1997, that sanctions are to be imposed on counsel for filing an appeal with the Board, addressing the issue of fraud, that was frivolous and so lacking in merit as to be groundless. A second sanction, although possibly justified, would simply be, in football terms, piling on.

BRIEF FOR APPELLANT

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BRIEF FOR APPELLEE
GENERAL MEDICAL CORPORATION

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