

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000081-WC

BARBARA SUE RILEY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
FILE NO. WC-91-018101

COMMONWEALTH OF KENTUCKY,
CABINET FOR HUMAN RESOURCES;
SPECIAL FUND; HONORABLE ROGER
D. RIGGS, ADMINISTRATIVE LAW
JUDGE; and COMMONWEALTH OF
KENTUCKY WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: DYCHE, EMBERTON, and HUDDLESTON, Judges.

DYCHE, JUDGE. Barbara Sue Riley appeals from an opinion of the Workers' Compensation Board (Board) which affirmed a decision of the Administrative Law Judge (ALJ) dismissing her claim for disability benefits. Riley was first injured at work on July 22, 1986. She received temporary total benefits from her employer; the last check was issued December 15, 1987. Unfortunately for Riley, her claim for permanent benefits was dismissed due to procedural failures. Cabinet for Human Resources v. Riley, Ky., 921 S.W.2d 616 (1996).

She alleges a second work-related injury on May 18, 1989. This claim resulted in a finding by the ALJ that she received no work-related injury of significant proportions in 1989, but that incident was an exacerbation of the non-compensable 1986 injury; her claim was dismissed by the ALJ. The ALJ's decision and the record were thoroughly analyzed by the Board, which affirmed.

When the claimant is unsuccessful below, her burden on appeal is to show that the evidence compels a finding in her favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Riley must show that the evidence was so persuasive that it was clearly unreasonable for the ALJ to find against her. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985).

The WCB is entitled to the same deference for its appellate decisions as we intend when we exercise discretionary review of Kentucky Court of Appeals decisions in cases that originate in circuit court. The function of further review of the WCB in the Court of Appeals is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.

Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-8 (1992). We have examined the record herein under the above standards, and can find no evidence which compels a finding in appellant's favor. While there is evidence from which the ALJ could have found in her favor, the ALJ is the sole judge of the facts and determines "the quality, character, and substance of

the evidence presented," and the reviewing court or body may not substitute its judgment on these factual issues. Paramount Foods v. Burkhardt, 695 S.W.2d at 419.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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