

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000327-WC

TERRY NELSON, JR.

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-000664

CROCKETT COLLIERIES, INC.;
HON. DENIS S. KLINE,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** ** ** **

BEFORE: KNOX, MILLER, and SCHRODER, Judges.

MILLER, JUDGE. Terry Nelson, Jr., (Nelson) asks us to review a January 9, 1998 opinion of the Workers' Compensation Board (board). Ky. Rev. Stat. (KRS) 342.290. We affirm.

Nelson worked as an underground coal miner from 1978 until 1995. He was last employed by Crockett Collieries, Inc. (Crockett). On March 14, 1997, Nelson filed an application for retraining incentive benefits (RIB) under the Kentucky Worker's Compensation Act. KRS 342.000 *et seq.*

In support of his claim, Nelson presented testimony from Drs. Mathew Vuskovich and John E. Myers, Jr. Dr. Myers read

a quality 1 X-ray of Nelson's chest, taken on September 13, 1996, as positive for pneumoconiosis. Dr. Vuskovich, likewise, interpreted a quality 1 X-ray of Nelson's chest as positive for pneumoconiosis.

Crockett presented testimony from Drs. Thomas Jarboe and John Harrison. Both doctors read the same X-ray, taken on May 7, 1997, which was classified as quality 2 because of scapular overlay. Both doctors interpreted the X-ray as negative for pneumoconiosis.

Finally, Dr. Betty Joyce was appointed to examine Nelson and read a chest X-ray taken on April 29, 1997. That X-ray was also classified as a quality 2 because of scapular overlay. Dr. Joyce read it as negative for pneumoconiosis.

In an Opinion and Order dated August 28, 1997, the administrative law judge (ALJ) stated that he found the testimony of Drs. Jarboe, Harrison, and Joyce most persuasive. He concluded that Nelson did not have pneumoconiosis and dismissed Nelson's claim for RIB. An appeal ensued to the board wherein it affirmed the ALJ's decision. This appeal followed.

Nelson argues the ALJ erred by relying upon the testimony of Drs. Jarboe, Harrison, and Joyce, who interpreted less than optimum quality X-rays. He maintains that he presented the only credible evidence and, perforce, should have been awarded RIB.

A claimant in a workers' compensation case has the burden of proof and risk of persuading the ALJ in his favor. Snawder v. Stice, Ky. App., 576 S.W.2d 276 (1979). When the

claimant fails and there is no award, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). As long as the ALJ's decision is supported by any evidence of substance, it cannot be said the evidence compels a different result. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

The ALJ stated in his opinion that he found the testimony of Drs. Jarboe, Harrison, and Joyce to be most credible. The ALJ, as fact finder, has the sole authority to determine the weight, credibility, substance, and inferences to be drawn from the evidence. Paramount Foods, Inc., v. Burkhardt, Ky., 695 S.W.2d 418 (1985). In that respect, we will not substitute our judgment for the ALJ's. KRS 342.285(2). Each of the aforementioned doctors testified that Nelson did not have pneumoconiosis. We believe this was substantive evidence upon which it was proper for the ALJ to base his decision. See Special Fund v. Francis, Ky. 708 S.W.2d 641 (1986). As such, we hold that the ALJ committed no error in denying Nelson's claim for RIB.

Nelson further contends that the ALJ erred by failing to address the differences in the quality of the X-rays relied upon by the doctors. Under the precepts of Big Sandy Community Action Program v. Chaffins, Ky., 502 S.W.2d 526 (1973), we believe the ALJ provided sufficient findings of fact to support his conclusion. He was not required to provide more detail. Id.

After reviewing the record and opinions of the ALJ and the board, we do not believe the board committed error in

construing the law or assessing the evidence. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ronald C. Cox
Harlan, KY

BRIEF FOR APPELLEE/CROCKETT:

Mary Kay Williams
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