

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000060-WC

THE NEIGHBORGALL
CONSTRUCTION COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-092389

JAMES W. PARSONS;
HONORABLE ROGER D. RIGGS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * **

BEFORE: JOHNSON, KNOPF, and MILLER, Judges.

MILLER, JUDGE: The Neighborgall Construction Company (Neighborgall) asks us to review an Opinion of the Workers' Compensation Board (board) rendered December 5, 1997, affirming in part, reversing in part and remanding an Opinion and Award of the Administrative Law Judge (ALJ). We affirm.

Notwithstanding the board's partial remand, we dispose of this appeal under the authority of Davis v. Island Creek Coal Co., Ky., 969 S.W.2d 712 (1998).

On April 30, 1996, co-appellee, James W. Parsons sustained a work-related injury while in the employ of Neighborgall. Subsequently he filed a workers' compensation claim. In March, 1997, the ALJ awarded Parsons compensation

based upon 75% disability. Parson appealed to the board claiming total disability. Additionally, he claimed that his benefits were insufficient in that computation of his average weekly wage was erroneous. (Parsons had worked for Neighborgall but a short time before the injury and at somewhat irregular wages.)

The board rejected Parson's claim for increased disability but remanded to the ALJ for re-computation of Parson's average weekly wage.

Neighborgall brings this petition for review claiming that the board exceeded its authority in reversing the ALJ's determination of Parson's average weekly wage. Relying upon C & D Bulldozing Co. v. Brock, Ky., 820 S.W.2d 482 (1991), Neighborgall contends the ALJ's computation was correct. We agree with the board in distinguishing the Brock decision from the case at hand.

Having reviewed the record in light of Neighborgall's contentions, we find no error. We are of the opinion the board did not fail 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 opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO APPELLEE BRIEF

J. Logan Griffith
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