

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-000507-WC

BURBON GIBSON

APPELLANT

v.

PETITION FOR REVIEW  
OF A DECISION OF  
THE WORKERS' COMPENSATION BOARD  
WC-96-007010 & WC-96-007314

MOUNTAIN CLAY, INC.; ROBERT  
WHITAKER, ACTING DIRECTOR OF  
SPECIAL FUND; RICHARD H.  
CAMPBELL, JR., ADMINISTRATIVE  
LAW JUDGE; and WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\* \* \*

BEFORE: EMBERTON, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: In this workers' compensation case, Burbon Gibson (Gibson) argues that the administrative law judge (ALJ) failed to provide sufficient findings of fact for meaningful appellate review. We disagree, and therefore affirm the Workers' Compensation Board's (Board) decision, affirming the dismissal of Gibson's injury claim.

Gibson worked as a coal miner for many years, including fifteen years for Mountain Clay, Inc. After his last day of employment (due to lay off) on November 27, 1995, Gibson filed claims for occupational disease, hearing loss, and cumulative injury. Regarding the cumulative injury, Gibson alleged that years of repetitive jolting, jarring, vibration, and manipulation of levers and pedals led to disability in his neck and right shoulder. He opined that if he had not been laid off, the pain in his neck and shoulder would have forced him to quit.

Medical evidence on the issue came from Drs. Christa Muckenhausen and O.M. Patrick. Dr. Muckenhausen assessed 8-10% functional impairment due to right shoulder impingement syndrome and chronic and progressive neck pain involving cervical radiculopathy. She attributed these conditions to appellant's work. Dr. Patrick noted that Gibson believed the etiology of his symptoms was his repetitive work activities. He noted Gibson's explanation that he had not suffered a specific injury but that his neck pain developed gradually and that he'd had right shoulder tendinitis for four to five years. Dr. Patrick found the physical examination to be essentially normal. He diagnosed nonspecific neck pain of undiagnosed etiology and did not feel that Gibson suffered any measurable functional impairment. Nor would he place any physical restrictions on appellant.

The ALJ dismissed the injury claim, concluding:

[P]laintiff has failed to sustain his burden of proof or overcome his risk of nonpersuasion in establishing that his work

activities caused him to suffer a cumulative stress injury to his neck and right shoulder. While Dr. Muckenhausen prepared a report which indicated that plaintiff suffers from neck and right shoulder ailments that are occupationally related, at least in part, such reports failed to provide an explanation as to why she thought that was so. Further, Dr. Muckenhausen's conclusions were countered by the negative findings of Dr. Patrick, a physician noted for his reliability and nonpartisan attitude in providing a medical assessment of a legion of workers' compensation claimants. Moreover, during the course of [the] hearing, plaintiff offered testimony and displayed a demeanor which left the impression that he furnished exaggerated or disingenuous responses to at least some of the questions put to him. Therefore, when considered in its entirety, the record establishes nothing more than a possibility, not probability, that plaintiff suffers from disabling neck and shoulder conditions that are in any way work-related; and, "the mere possibility" of a causal relationship is insufficient to categorize a claim as one compensable under the Act. (Citations omitted.)

The Board affirmed, finding the ALJ's dismissal was supported by substantial evidence. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). The Board also pointed out the ALJ's sole prerogative to determine the credibility of witnesses, Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985), and to choose whom to believe when medical evidence conflicts. Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977). The Board was satisfied that the ALJ had cited sufficient evidence to support the dismissal and added that it is not necessary to provide a detailed discussion of either the evidence or the law when making

findings of fact. Big Sandy Community Action Program v. Chaffins, Ky., 502 S.W.2d 526 (1973).

Appellant makes the same argument before this Court that he made before the Board: the ALJ failed to give an adequate explanation as to why he discredited Dr. Muckenhausen's opinion. He further asserts that Dr. Patrick's opinion provides no foundation for dismissing his claim. We disagree.

The ALJ must set out the basic facts to support his ultimate conclusion to allow meaningful appellate review. Kentland Elkhorn Coal Corp. v. Yates, Ky. App., 743 S.W.2d 47 (1988). The ALJ in this case pointed to the negative findings of Dr. Patrick, who diagnosed nonspecific neck pain of unknown etiology. This means Dr. Patrick did not associate the pain to the claimant's work. The ALJ also found Dr. Patrick to be the more credible witness because of his lack of bias. This falls within the sole authority of the ALJ. Paramount Foods, Inc., 695 S.W. 2d 418. Finally, the ALJ relied on his own observation of the witness to conclude that he was magnifying his symptoms. Given these factors, we believe the ALJ did set forth basic facts which allow for meaningful appellate review. Furthermore, the dismissal is supported by substantial evidence and must be affirmed. Special Fund v. Francis, 708 S.W.2d 641.

For the foregoing reasons, the decision of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

BRIEF FOR APPELLEE, SPECIAL

Edmond Collett  
Hyden, Kentucky

FUND:

David W. Barr  
Louisville, Kentucky