

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-000383-WC

ROBERT LARRY LEACH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
FILE NO. WC-94-031934

JAMES RIVER CORPORATION;
SPECIAL FUND;
WORKERS' COMPENSATION BOARD;
and HONORABLE ROGER D. RIGGS,
ADMINISTRATIVE LAW JUDGE

APELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, DYCHE, and GUIDUGLI, Judges.

DYCHE, JUDGE. Robert Larry Leach appeals from an opinion of the Workers' Compensation Board (Board) which reversed the Administrative Law Judge's (ALJ) award of Temporary Total Disability benefits to him. The period in controversy is from December 23, 1996, through June 11, 1997. Having reviewed the pertinent parts of the record under the standards set down for us by the state's highest court in Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992), we affirm.

Leach was employed by appellee James River in its cup manufacturing facility; he received a series of work-related

injuries, the third of which is of concern to us in this case. He returned to work immediately following this third injury, but was laid off as part of a company-wide plan two days later. Four months later, he was called back to work, and performed his usual tasks with the assistance of co-workers.

He continued to have problems, and sought the advice and treatment of physicians other than those who had treated him to that point. A new diagnosis prompted different treatment, and Leach was placed under light duty work restrictions. James River created a light duty position for Leach, which he filled for forty days; this time limitation was pursuant to a collective bargaining agreement covering Leach's employment. At the end of those forty days, Leach went on disability leave until June 12, 1997, when he returned to full duty. This return was accomplished after Leach asked his treating physician to remove the restrictions due to the financial hardship he was undergoing.

Following the litigation of his Workers' Compensation claims, Leach was awarded, among other things, temporary total disability income benefits for December 23, 1996, to June 11, 1997. On appeal, the Board reversed this portion of the award, holding that there was no evidence of record to support the ALJ's finding "that he was not able to do work within his restrictions" during that period of time. This appeal followed.

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 the [sic] 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.

Id. at 687-8.

We have reviewed the evidence, and are constrained to agree with the Board. While we might desire to see that a worker with Leach's qualities is given all the support available, we are nevertheless bound by the requirements of the statute, and the cases construing it. We find no direct testimony, from Leach or his treating physicians, that he was unable to perform during the times in question. We must therefore affirm the Board.

GUIDUGLI, JUDGE, CONCURS.

COMBS, JUDGE, DISSENTS.

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