

Commonwealth Of Kentucky

Court Of Appeals

NO. 1997-CA-003222-WC

GOLDEN OAK MINING COMPANY, L.P.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 96-08905

HAROLD JENT; HON. DONALD G. SMITH,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BUCKINGHAM, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Golden Oak Mining Company (Golden Oak) asks us to review an opinion of the Workers' Compensation Board (board) rendered November 14, 1997. We affirm.

In August 1997, the administrative law judge (ALJ) awarded co-appellee Harold Jent retraining incentive benefits (RIB) based upon a finding that Jent suffered from Category I pneumoconiosis resulting from exposure to coal dust. Ky. Rev. Stat. 342.732. Unsatisfied therewith, Golden Oak sought review of the board. In an opinion rendered November 14, 1997, the board affirmed the ALJ's decision. This appeal follows.

The sole issue on appeal is whether substantial evidence supports the ALJ's decision to award RIB. Golden Oak contends that it submitted un rebutted medical evidence upon the issue of causation. Specifically, Drs. B. T. Westerfield and Robert W. Powell opined that Jent's exposure to coal dust did not cause his current disease or condition.

The record reveals that Drs. John E. Myers, Jr., and Emery Lane both diagnosed Jent with Category I pneumoconiosis. As to causation, the board noted that "[b]oth Golden Oak's doctors testified that 20 years plus exposure to coal dust was sufficient exposure to cause pneumoconiosis in a susceptible individual." The board concluded that "[s]ince Jent had over 20 years exposure in the mining industry and it is uncontradicted that this was sufficient to cause coal workers' pneumoconiosis in a susceptible individual, the ALJ's award must be affirmed." Upon the whole, we cannot say that 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, 687-688 (1992).

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE JENT:

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