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Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000838-WC

HONORABLE ROBERT L. WHITAKER,
DIRECTOR OF THE SPECIAL FUND — APPELLANT

PETITION FOR REVIEW OF A DECISION
v. OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-85-026578

MARY HELEN COAL CORPORATION;
BOBBY R. CHAPMAN;
HONORABLE LLOYD R. EDENS,
ADMINISTRATIVE LAW JUDGE; AND
THE WORKERS' COMPENSATION BOARD — APPELLEES

AND NO. 1998-CA-000997-WC

MARY HELEN COAL CORPORATION — CROSS-APPELLANT

CROSS-PETITION FOR REVIEW OF A DECISION
v. OF THE WORKERS' COMPENSATION BOARD
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DIRECTOR OF THE SPECIAL FUND;
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ADMINISTRATIVE LAW JUDGE; AND
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OPINION
AFFIRMING IN PART, REVERSING IN PART, AND REMANDING
** ** ** ** **

BEFORE: COMBS, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: The Special Fund appeals and Mary Helen Coal Corporation (MHC) cross-appeals from a March 9, 1998, opinion and order of the Workers' Compensation Board affirming an award of income and medical benefits to the appellee, Bobby Chapman. The Special Fund maintains that Chapman has exhausted his eligibility for partial disability income benefits and so should not have been awarded a continuation of them. MHC maintains that Chapman has been awarded medical benefits for an injury that has never been shown to be work related and that was not the subject of a timely claim. We agree with the Special Fund and accordingly reverse that portion of the Board's order awarding Chapman additional partial disability income benefits. We disagree with MHC, however, and affirm that portion of the Board's order making MHC liable for certain of Chapman's medical expenses.

In 1985, during the course of his employment with MHC, Chapman suffered a series of work-related injuries which were eventually found to have resulted in a fifty percent (50%) occupational disability. The Board deemed forty-five percent (45%) of Chapman's disability compensable and apportioned liability between the Special Fund and MHC. Although Chapman alleged that the injuries affected both his back and his legs, the original disability determination focused on Chapman's primary back injury and apparently concluded that all of the compensable disability arose directly therefrom and not from the alleged leg injury.

In January 1994, Chapman petitioned to reopen his 1985 claim. He alleged that his occupational disability had increased

as a result of a worsening of his prior injuries. Among other claims, he alleged that his right knee had become significantly impaired. The Board initially denied reopening on this ground, agreeing with the ALJ that Chapman had failed to include the alleged knee injury in his original claim. On appeal to this Court, however, it was determined that Chapman's original allegations of leg injuries adequately preserved the knee injury issue for reopening. The matter was then remanded to afford Chapman an opportunity to prove either that an original knee injury had worsened or that the back injury had aggravated a pre-existing knee condition.

On remand, the ALJ found that Chapman's knee impairment had significantly worsened as a result of strains brought about by the 1985 back injury. He determined that Chapman's occupational disability had increased an additional fifteen percent (15%). Furthermore, because none of Chapman's original disability had been based on his knee condition, the ALJ ruled that he was entitled to a new 425-week period of partial disability benefits (apportioned entirely to the Special Fund) in addition to medical benefits relating to treatment of the knee. Relying on Newberg v. Cash, Ky. App., 854 S.W.2d 791 (1993), the Board, in a split decision, affirmed these awards. It is from that order affirming that the Special Fund and MHC have appealed.

The Special Fund contends that the ALJ and Board have misconstrued KRS 342.730(1)(b). At the time of Chapman's injury, that statute provided for income benefits for permanent partial disability "for a maximum period, from the date the disability

arises, of four hundred twenty-five (425) weeks." The meaning of this provision was at issue in Newberg v. Cash, *supra*. In that case, the claimant was found upon reopening to have undergone an increase in occupational disability from zero percent (0%) to thirty percent (30%). Noting that these facts were unusual, this Court held that the 425 week limitation on partial disability income benefits is not invoked until benefits are actually paid. Because no benefits had yet been paid to Cash, he was entitled upon his successful reopening to the full 425 week period of benefits. The Court observed, however, that this situation was different from the more common one in which the claimant has originally been awarded partial disability benefits. For in that situation,

> upon reopening and proving a greater degree of disability, [the claimant] will be awarded increased benefits with the compensable period being reduced by the number of weeks for which he has previously been compensated under the original order.

854 S.W.2d at 793.

In this case, Chapman had already received permanent partial disability income benefits for 425 weeks. In light of Cash, however, the ALJ and the Board determined that he was entitled to an additional 425 weeks of such benefits because the knee condition which had become disabling had not figured in the original award. The ALJ and the Board apparently reasoned that Chapman's knee-related disability had increased, like the disability in Cash, from zero percent (0%) to a measurable amount. By conceptually isolating the knee-related disability in this way, they seem further to have concluded that Chapman's

prior award of partial disability benefits had no bearing on his eligibility for the additional award. We disagree with both aspects of this analysis.

We reject first the notion that for the purposes of KRS 342.730(1)(b) the disability arising from an injury can be parsed according to the parts of the body affected. Under that section of the Workers' Compensation Act, injured workers are to be compensated for their total degree of disability whatever form the disability takes, whether it stems from an injury to several body parts or systems or from an injury to a single part. The compensation due for either type of injury is to be based on the degree of disability suffered, not on the number of parts affected. Under the approach adopted by the Board in this case, however, two equally disabling injuries could be compensated differently depending on how diffuse the injury was.

For example, suppose Worker A suffered a back injury and Worker B an injury to his arm and his leg. Both workers are deemed to be forty percent (40%) disabled, but Worker B's leg injury is found to contribute nothing to his disability. Later, both workers are found to have suffered a ten percent (10%) increase in disability, Worker A's due to further degeneration in his back, while Worker B's is due to a worsening of his leg injury. According to the Board, Worker A is eligible for an increased benefit only for the remainder of his original 425 week award, but Worker B is eligible for an additional 425 week award based on the ten percent (10%) of his disability associated with his leg. This is not the result contemplated by the Act. The

Board's approach would encourage workers to allege widespread injuries to numerous parts of their bodies, regardless of the present disabling effect of those injuries, merely on the chance of becoming eligible for a "new" partial disability award sometime in the future. As noted by the dissenting board member, in the current case the Board's approact would be particularly vulnerable to allegations of psychological impairment. The Board's approach would also encourage workers to characterize their injuries as multifaceted. Instead of a disabling "back" injury, for example, a worker could claim that he had suffered myriad injuries to assorted tissues in and near his spine and that only some of those injuries were currently disabling. If his disability were later found to have increased, he might argue that the increase was due to the worsening of those injuries previously deemed non-disabling which should now be compensated with benefits for an additional 425 weeks.

We are convinced that KRS 342.730(1)(b) contemplates the award of partial disability benefits based upon the injurious incident or incidents giving rise to a particular claim, however complex the injury might be, and which has been found to have resulted in a particular, composite degree of occupational disability. Regardless of whether the disability arises from the impairment of one body part or several, the statute contemplates a single award based on the disability's total composite degree. At the time of Chapman's injury, the General Assembly had limited eligibility for benefits in cases involving less than total disability to a fixed period of 425 weeks. The benefit period

was not to be extended by a subsequent increase in disability arising from the same injurious incident, unless the increase was to total disability. The Board erred, therefore, by deeming Chapman's leg injury a discrete, independently compensable source of disability when the allegation was that the leg injury or its disabling reality was caused by the same 1985 incidents that had given rise to Chapman's prior claim and award.

The Board also erred by concluding that Chapman's prior award of benefits under KRS 342.730(1)(b) did not bear upon his eligibility for additional benefits under that statutory section. Cash is clearly distinguishable in this regard. In Cash there was not a prior award of section (1)(b) benefits.[1] Here there was. As was noted in Cash, an injurious, work-related incident that causes partial disability entitles the injured worker to "the payment of P[ermanent] P[artial] D[isability] benefits for a period of 425 weeks; no more, no less." 854 S.W.2d at 793. Chapman's prior receipt of section (1) (b) benefits exhausted, to that extent, his 425 weeks of eligibility, and that eligibility was not restored by the subsequent finding of increased disability. The Board erred by ruling otherwise.

In its cross-appeal, MHC complains that the award of medical benefits was based on an unsupported finding that

[1]The Board also relied on an unpublished opinion by this Court in which it was held that a prior award of total disability income benefits pursuant to KRS 342.730(1)(a) did not bear upon the claimant's eligibility for partial disability income benefits under section (1)(b) when it was determined upon reopening that the claimant's disability had improved from total to partial. In this unpublished case as in Cash, and unlike the case now before us, there had not been a prior award of section (1)(b) benefits.

Chapman's worsened knee condition was due to work-related causes. MHC notes that, at the time of his original award, Chapman was deemed not to be disabled by his alleged knee impairment. MHC further notes that, in the original proceeding, neither the existence of Chapman's alleged knee injury nor its cause was litigated. Given this record, or lack of record, MHC maintains that the ALJ and Board could not reasonably find that the alleged knee injury provides a basis for reopening Chapman's award. As the Board noted, this argument raises issues concerning the law of the case. More fundamentally, we believe, it misses the point of the ALJ's findings.

The ALJ based his decision on medical evidence that Chapman's knee impairment had worsened since the time of the original award to the extent that it had become occupationally disabling. He also relied on medical evidence that the worsening of Chapman's knee condition was a consequence of Chapman's back injury, that changes wrought by that injury had led to increased impairment and had thus aroused the disability directly attributable to the knee. The increase in both impairment and disability, therefore, was found to be a consequence of Chapman's concededly work-related back injury, not, as MHC assumes, the alleged injury to the knee. These findings, we believe, were based upon substantial evidence and thus may not be disturbed on appeal. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

In light of these findings, the ALJ correctly determined that both the increased impairment and the increased

disability were proper objects of benefit analysis. As discussed above, we are persuaded that the analysis was incorrectly carried out with respect to Chapman's entitlement to income benefits. However, we believe that the ALJ correctly determined Chapman to be entitled to medical benefits. Pursuant to KRS 342.020, the employer is liable for payments for "the cure and relief from the effects of an injury . . ." That liability extends to situations, such as this one, where the effect of the injury is the arousal and aggravation of a pre-existing condition. Derr Construction Co. v. Bennett, Ky., 873 S.W.2d 824 (1994). The ALJ and Board did not err, therefore, by awarding Chapman medical benefits against MHC for the reasonable medical treatment of his worsened knee impairment.

To summarize, the Workers' Compensation Act provides for the reopening of awards on the ground that the original award was significantly mistaken or that conditions have changed to such an extent that the original award is no longer suitable. In this case, the ALJ determined that Chapman's impairment and disability had increased enough to warrant a reconsideration of his benefits. The ALJ properly ruled that his increased impairment entitled Chapman to additional medical benefits, but the ALJ misconstrued Chapman's entitlement to income benefits.

At the time of Chapman's injury, the right to income benefits for partial disability arose from a work-related incident or series of incidents and, once commenced, lasted for only a fixed number of weeks. Although the rate of compensation for partial disability varied with the extent of the disability

and could change if the extent of disability changed, the length of the eligibility period was not affected by changes in extent short of the onset of total disability. This was so regardless of whether the increase in disability was related to the worsening of a body part originally affected by the injury or to the spread of the injury's effects to new areas. By the time Chapman filed his petition to reopen, he had already received partial disability income benefits for the entire benefit period. He had exhausted his eligibility for benefits pursuant to KRS 342.730(1)(b). Unless he could establish that he had become totally disabled and was thus entitled to benefits pursuant to KRS 342.730(1)(a), he should not have been deemed entitled to additional income benefits stemming from the 1985 work-related incident or incidents that had given rise to his initial claim. The Board and the ALJ erred by not so ruling.

For the reasons discussed above, we reverse that portion of the March 9, 1998, opinion and order of the Workers' Compensation Board deeming the Special Fund liable for partial disability income benefits, and remand for entry of a new order consistent with this opinion. We affirm, however, that portion of the Board's March 9, 1998, opinion and order deeming Mary Helen Coal Corporation liable for the appellee's specified medical expenses.

SCHRODER, JUDGE, CONCURS.

COMBS, JUDGE, DISSENTS AND FILES A SEPARATE OPINION.

COMBS, JUDGE, DISSENTING: I am more concerned with what actually happened in this case (the worsening of the knee

condition) than with speculating on possible abuses of the compensation system in hypothetical instances. The significant fact of this case is that no award had been previously made for the knee injury against which to compare and to reduce benefits time-wise for this new injury. A new award for 15% permanent partial disability to be paid for a new period of 425 weeks was wholly appropriate under the circumstances of this case. The new injury must be treated separately and without reference to the previous award for purposes of mitigating the time-frame during which the new benefits should be paid. Otherwise, we would be faced with a wrong for which no meaningful remedy could be provided.

Thus, I would affirm the Board as to its award of both medical and income benefits.

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