

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-001349-WC

JACKIE LAMB

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-67936

FKI INDUSTRIES, INC., D/B/A MATHEWS
CONVEYOR, HON. ROBERT WHITTAKER,
DIRECTOR OF SPECIAL FUND, AND
DONNA H. TERRY, CHIEF ADMINISTRATIVE
LAW JUDGE

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, GUIDUGLI, AND McANULTY, JUDGES.

McANULTY, JUDGE: Jackie Lamb (hereinafter, appellant) petitions for review of an opinion of the Workers' Compensation Board (the Board) which affirmed the decision of the chief administrative law judge (the CALJ). The CALJ dismissed appellant's claim against FKI Industries, Inc. (FKI) on the basis that appellant failed to give due and timely notice of the injury and failed to establish a causal relationship between his work activities and his physical ailment. In his petition before this Court, appellant claims that he gave timely notice and the medical

evidence was consistent on the issue of causation, and thus the CALJ misunderstood the facts of the case.

Our review of decisions of the Workers' Compensation Board is limited to correcting the Board only where we perceive 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). Appellant bears the burden of showing that the finding against him was unreasonable, and that the evidence compels a different finding. Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986). We conclude that the Board did not err in its assessment of the case, and so we affirm.

Appellant began working for FKI in 1985, and was working at the time of the injury in question as a fitter/welder. Appellant reports that in March 1996 he was injured while building chain transfers at work. When he reached to bring one over, he felt pain. Appellant had experienced prior heart problems, and believed he was having a heart attack. He took nitroglycerin, and informed his supervisor (who is also appellant's half-brother) that he believed he was having a heart attack. The pain diminished after a while and appellant continued working that night.

Thereafter, appellant continued having pains in his chest and after some months was admitted to a hospital intensive care unit because of them. His doctor determined from an MRI on June 26, 1996, that the cause of the pain was a herniated disc in

his neck. Appellant began seeing an orthopedic surgeon, Dr. John Vaughn, who performed surgery on appellant's back on July 18, 1996.

Appellant asserts that FKI received notice in June 1996 that he had suffered an accident and that it was work-related. Appellant's last day of work was June 7, 1996. He contends that while he was off work he informed his supervisor of his change in diagnosis and that he believed the herniated disc was caused by the March incident. However, his supervisor testified in deposition that appellant first told him that in November 1996. On appeal, appellant argues both that he informed his supervisor of the work-related injury in June 1996, and conversely that he could not give notice until his physician diagnosed his condition as work-related in November 1996. Previously, appellant had submitted three disability claims in June, August, and September of 1996 in which his surgeon wrote that the condition was not work-related.

KRS 342.185 provides that no workers' compensation proceeding shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof. Before November 1996, FKI had notice only that appellant believed he had suffered a heart attack at work in March, and that his cervical disc herniation was not work-related. The requirement of KRS 342.185 that notice of accident be given as soon as practicable has been interpreted to mean notice of "the specific injury for which the employee is claiming compensation." Reliance Diecasting Co. v. Freeman, Ky.,

471 S.W.2d 311, 312 (1971). The evidence supports the CALJ'S conclusion that appellant did not notify FKI of a work-related injury as soon as practicable under these circumstances, and that there was not a reasonable explanation for the delay in giving notice. Since the ALJ's decision was supported by evidence in the case, we affirm the Board's conclusion that appellant's assertions do not compel a contrary result.

Appellant also alleges that the CALJ erred in finding that there were inconsistencies in the evidence of causation. We have reviewed the physicians' testimony and find that they conflicted on the issue of whether the tasks appellant was performing at work caused the deterioration to his cervical disc. As the finder of fact, the ALJ has the right to believe part of the evidence and disbelieve other parts, even if it comes from the same witness. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977). Thus, even though appellant can point to some evidence which did not vary significantly, the CALJ had the discretion to discount that portion of the physicians' opinions. We affirm the Board's conclusion that there was evidence of substance to support the CALJ on the causation issue.

Appellant presents evidence on appeal to support his conclusion, but does not provide compelling evidence which requires the CALJ's determination to be set aside. Accordingly, we do not find error in the opinion of the Board, and affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Bradly F. Slutskin
Jackson W. Watts

BRIEF FOR APPELLEE FKI
INDUSTRIES, INC.:

Stanley S. Dawson

Versailles, Kentucky

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BRIEF FOR APPELLEE SPECIAL
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