RENDERED: July 23, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000074-WC

CHARLIE DWAYNE COLLETT — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC96008794

NALLY & HAMILTON ENTERPRISES, INC.;
HON. ROBERT L. WHITAKER, Acting Director
of SPECIAL FUND; HON. DONALD G. SMITH,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: COMBS, EMBERTON, and McANULTY, Judges.

COMBS, JUDGE: Charlie Dwayne Collett appeals from the decision of the Workers' Compensation Board affirming the Administrative Law Judge's (ALJ) dismissal of his claim for retraining incentive benefits. In reviewing the briefs and the record, we note that the opinion of the Board appropriately addressed the issues

presented to this court for review.[1] As a result, we adopt the Board's opinion, in part, as our own as follows:

> Collett, born March 5, 1955, had approximately 23 years['] exposure to coal dust. His last date of injurious exposure was August 30, 1996.
>
> Collett supported his claim with medical evidence from Dr. John E. Myers, Jr. and Dr. Robert W. Powell. Dr. Myers read a film quality 2 x-ray dated December 9, 1996 and showing Category 1/1 coal workers' pneumoconiosis. Dr. Powell read a quality 2 x-ray dated December 9, 1996 as showing Category 1/1 coal workers' pneumoconiosis.
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> Nally & Hamilton [Collett's employer] countered with medical evidence from Dr. Matthew Vuskovich and Dr. John Dineen, both of whom read quality 1 x-rays as showing no evidence of coal workers' pneumoconiosis.
>
> The ALJ reviewed the evidence in the record and concluded that Collett did not sustain his burden of proving the existence of coal workers' pneumoconiosis. The ALJ noted that the negative diagnosis was validated by at least two separate x-ray films. He further noted that the x-rays read by Drs. Myers and Powell were Grade 2. The ALJ chose to rely on the evidence of Dr. Vuskovich who found no definitive stage of pneumoconiosis.
>
> On appeal, Collett argues the ALJ failed to provide sufficient findings of fact for meaningful review. He posits that the ALJ was persuaded by the fact that Drs. Powell and Myers read Grade 2 x-rays. In essence, he argues the ALJ should have relied on the testimony of Dr. Powell because he is regarded as a reliable B reader.
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> Since Collett had the burden of proof before the ALJ, the issue on appeal is whether the evidence is so overwhelming as to compel a finding in his favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418

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[1]This appeal was ordered to be abated pending final disposition by the Kentucky Supreme Court in Breeding v. Colonial Coal Co., Ky., 975 S.W.2d 914 (1998). In Breeding, we held that the 1996 amendment to KRS 342.732 was remedial and that it applied retroactively to the claim being considered. Upon its review, the Supreme Court held that questions relating to the 1996 amendment were not properly before the Court of Appeals and should not have been addressed. Consequently, we resolve this appeal without reference to that decision.

(1985). Compelling evidence is defined as evidence so persuasive that it would be clearly unreasonable for the ALJ not to be convinced by it. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985). It is insufficient to show there is some evidence which would support a reversal of the ALJ's decision. Where the medical evidence is conflicting, as it was in this case, the ALJ is given sole responsibility by the [l]egislature and the [c]ourts to determine the weight and credibility of the evidence. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1997). Although the medical evidence presented on behalf of Collett by Drs. Myers and Powell would have supported a RIB award, that evidence does not compel such an award. The evidence upon which the ALJ relied in dismissing Collett's claim, x-ray interpretations by Drs. Dineen and Vuskovich, is evidence of substance to support that decision and therefore it may not be disturbed on appeal.

Furthermore, Collett argues the ALJ failed to provide sufficient findings of fact for meaningful review. It is not necessary for the ALJ to provide a detailed discussion of either the evidence or the law when making his findings of fact. Big Sandy Community Action Program v. Chaffins, Ky., 502 S.W.2d 526 (1973). It is only incumbent upon the ALJ to support his ultimate conclusions with findings of basic fact taken from the evidence. Shields v. Pittsburg & Midway Coal Mining Co., Ky. App., 634 S.W.2d 440 (1982); Kentland-Elkhorn Coal Co. v. Johnson, Ky. App., 549 S.W.2d 308 (1977). The purpose of the findings is to apprise the litigants of the basis of the ALJ's decision and to allow for meaningful review on appeal.

In this case, we do not confront the mechanical "bare bones" approach that the [c]ourt was faced with in Shields, supra, and Johnson, supra. Here, the ALJ reviewed Collett's history of coal mine employment and exposure to coal dust, as well as the medical evidence in rendering his decision. While the medical evidence presented to the ALJ was sharply disputed as to whether or not Collett had the disease, the ALJ stated he chose to believe the testimony of Dr. Vuskovich which was also supported by the testimony of Dr. Dineen. As reviewed above, this was substantial evidence upon which the ALJ could rely. This is not a case where the ALJ based his ultimate conclusion on an incorrect understanding of the basic facts as in Cook v. Paducah Recapping Serv., Ky., 694 S.W.2d 684 (1985). The ALJ noted that Drs. Powell and Myers read Grade 2 x-rays. This goes to the weight to be afforded to the evidence by the ALJ which is his sole responsibility. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15

(1977). He did not specifically reject their evidence on the grounds of the lesser quality x-rays.

We conclude that the ALJ's decision is supported by substantial evidence and his conclusion was supported by sufficient findings of fact.

Nally & Hamilton request that fees and costs be imposed against Collett due to a frivolous appeal pursuant to KRS 342.310. Although we find no merit with Collett's arguments, we do not believe that it is inconceivable that he was acting in good faith in contesting the ALJ's decision. Hence, we decline to impose sanctions. See Roberts v. Estep, Ky., 845 S.W.2d 544 (1993).

Accordingly, the Opinion and Order rendered by Hon. Donald G. Smith, Administrative Law Judge, is hereby AFFIRMED and the appeal by Charlie Dwayne Collett is hereby DISMISSED.

ALL CONCUR.

The decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edmond Collett
Hyden, KY

BRIEF FOR APPELLEE NALLY AND HAMILTON ENTERPRISES, INC:

Stanley S. Dawson
Lexington, KY

BRIEF FOR APPELLEE SPECIAL FUND:

Benjamin C. Johnson
Louisville, KY