

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000208-WC

MARINE ELECTRIC

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-93419

DANIEL DELLAROSA;
HONORABLE THOMAS A. NANNEY,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: DYCHE, MCANULTY, AND MILLER, JUDGES.

MILLER, JUDGE: Marine Electric asks us to review a decision of the Workers' Compensation Board (board) rendered January 8, 1999. We affirm.

On February 7, 1996, Daniel Dellarosa, a 64-year old electrician, was injured in the employ of Marine Electric. While working atop a 14-foot ladder, Dellarosa suffered an electrical shock and fell to the floor. As a result of the injuries, he suffers "post-concussion vertigo." After unsuccessfully

attempting to return to his normal duties at Marine Electric, Dellarosa performed light duty until he retired at age 65.

On November 13, 1997, Dellarosa filed a claim for workers' compensation benefits. Ky. Rev. Stat. (KRS) Chapter 342. The claim was submitted to an arbitrator who entered a benefit determination awarding Dellarosa medical benefits only. Dellarosa, in turn, requested a hearing before an administrative law judge (ALJ). The ALJ entered an order awarding Dellarosa income and medical benefits based upon 100% occupational disability. Marine Electric appealed to the board, which affirmed the decision of the ALJ. This appeal followed.

Marine Electric first argues that the ALJ erred in finding Dellarosa 100% occupationally disabled. We disagree and believe the ALJ's opinion was based upon substantial evidence. One Dr. Richard Spalding diagnosed Dellarosa with post-concussion vertigo and noted that Dellarosa suffers intermittent chest pain and paresthesia of the upper extremities. He restricted Dellarosa from working in high places and with hazardous machinery. For the previous 40 years, Dellarosa had worked as a construction electrician where he was exposed to great heights. Dellarosa testified that he still suffers dizziness and, consequently, is unable to perform odd jobs around his home. Although he returned to work prior to retiring at age 65, he was unable to perform his regular duties and was placed on "light duty." Dellarosa believes the company "carried" him. In view of the aforementioned evidence and the factors enumerated in KRS 342.0011(11), since amended, and Osborne v. Johnson, Ky., 432

S.W.2d 800 (1968), we find no error with the ALJ's determination of 100% occupational disability.

Next, Marine Electric points out that the ALJ incorrectly stated that Dr. Spalding believed Dellarosa was totally disabled. It maintains that as a result thereof, this case should be remanded for a determination based on a correct understanding of the evidence. We disagree. Although the ALJ misstated Dr. Spalding's testimony, we do not believe he relied on same insofar as it concerned Spalding's opinion of the degree of disability. Determination of occupational disability is not a medical question and is within the sole authority of the ALJ. Id. As the opinion identifies substantial independent evidence supporting same, we deem this error in the recitation of facts immaterial.

Last, Marine Electric complains that the ALJ's award does not specifically state that the "tier-down" provisions of KRS 342.730(4) (as written prior to the 1996 amendment) are applicable to Dellarosa's award. We perceive no error in the ALJ's omission and are of the opinion the tier-down provisions apply automatically. There is no doubt that Dellarosa's injuries occurred during the period the provisions were in effect. We do not believe it necessary that the opinion specifically include language to that effect.

Pursuant to KRS 342.310(1), Dellarosa requests sanctions be imposed against Marine Electric. We deny same as we do not believe these proceedings were brought without reasonable grounds.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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Louisville, KY

BRIEF FOR APPELLEE/DELLAROSA:

Bart Colomb
New Albany, Indiana