

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-000405-WC

ROCKCASTLE COUNTY HOSPITAL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-95-21275

EDITH Y. PRICE;  
WORKERS' COMPENSATION BOARD;  
AND ROBERT WHITTAKER, DIRECTOR  
OF THE SPECIAL FUND

APPELLEES

AND

NO. 1999-CA-000614-WC

ROBERT L. WHITTAKER, DIRECTOR  
OF THE SPECIAL FUND

CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-95-21275

ROCKCASTLE COUNTY HOSPITAL  
AND RESPIRATORY CENTER;  
EDITH PRICE; SHEILA C. LOWTHER,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

CROSS-APPELLEES

### OPINION AFFIRMING

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BEFORE: KNOPF, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: An employer petitions for, and the Special Fund cross-petitions for, a review of an opinion of the Workers' Compensation Board (Board) which affirmed in part an award to an injured employee. The Administrative Law Judge (ALJ) awarded the injured employee 40% permanent partial disability for a left knee injury and the development of carpal tunnel syndrome. The Board remanded in part for the ALJ to discuss and decide the relationship, if any, between the employee's low back complaints and her work-related trauma. As a result of that remand, the ALJ must make additional findings of fact and may or may not increase the award, depending on the findings that are still to be made.

With the recent Supreme Court case of Davis v. Island Creek Coal Co., Ky., 969 S.W.2d 712 (1998), "[T]he final and appealable analysis in CR 54 has no application to the board's orders." Id. at 713. Even though the remand in the case sub judice would not divest the employee of any benefits (it may actually increase the benefits award), the question this Court must decide is whether the Board, as an appellate body, erred in holding that the parties are entitled to a finding of fact on all relevant issues presented to the ALJ, citing Shields v. Pittsburg & Midway Coal Mining Co., Ky. App., 634 S.W.2d 685, 687 (1992). Under Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687 (1992), the Board ". . . is suppose to decide whether the evidence is sufficient to support a particular finding made by the ALJ, or whether such evidence as there was before the ALJ should be viewed as uncontradicted and compelling a different result." Also,

the body performing further review is there to address new problems, not to redecide the same evidentiary questions.

The WCB is entitled to the same deference for its appellate decisions as we intend when we exercise discretionary review of Kentucky Court of Appeals decisions in cases that originate in circuit court. The function of further review of the WCB in the Court of Appeals is to correct the Board only where the the [sic] Court perceives 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.

Id. at 687, 688.

Under Shields, 634 S.W.2d at 440, the employee is entitled to a consideration with findings as to the relationship, if any, between the low back complaints and her work-related trauma. Therefore, we affirm the Board's remand on direct appeal and affirm the Board's findings on cross-appeal.

ALL CONCUR.

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