

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000761-WC

CARROLL PERDUE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 96-78464

WRIGHT TRUCKING CO.; SPECIAL FUND;
HONORABLE VONNELL TINGLE, ARBITRATOR;
HONORABLE JAMES L. KERR, ADMINISTRATIVE
LAW JUDGE; and WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: DYCHE, MCANULTY, AND SCHRODER, JUDGES.

DYCHE, JUDGE: The sole question involved herein is the extent of appellant's disability. Appellant, Carroll Perdue, was employed by Wright Trucking Co. as a driver hauling coal when his truck was struck by a loader, with the bucket of the loader protruding through the driver's side window. Perdue was apparently injured in an attempt to avoid being decapitated by the loader's bucket.

He filed a claim for workers' compensation benefits and supported his claim with the testimony of Dr. Paul K. Gardner, a neurosurgeon, who assessed his impairment at 15%, and found that

it would be inadvisable for him to return to his occupation; unfortunately, Dr. Gardner's credibility is somewhat impaired by his statement that Perdue was a coal miner rather than a truck driver.

Dr. E. V. Schaffer performed an independent medical examination, and found "minimal" impairment, suspecting malingering or psychologic overlay. Dr. Schaffer opined that Perdue could return to work without restriction "after a period of time" (about eight weeks).

The employer presented the report of Dr. Ellen Ballard, who found a 10% impairment, and placed restrictions of no repetitive bending, and no lifting of more than 50 pounds.

A vocational expert reported, based on information from Dr. Gardner and Perdue himself, that he could perform no work activity. When informed of Dr. Ballard's findings, he stated that such findings would indicate a 30-40% loss of access to the local labor market.

The Administrative Law Judge ("ALJ") found Perdue to have a 40% permanent partial disability. Perdue appeals, asserting that he is totally and permanently disabled. He has the burden of proof on this appeal, and must show that the evidence compels a finding in his favor. Paramount Foods v. Burkhardt, Ky., 695 S.W.2d 418 (1985). If the ALJ's finding is supported by substantial evidence, a different result cannot be compelled. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

As indicated above, we have examined the entire record, and find substantial evidence to support the ALJ's decision, and

the Board. The evidence does not compel a finding in Perdue's favor. There is no flagrant error in assessing the evidence, or any misconstruction of the law. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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