

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001199-WC

LAKIN RAE TRUCKING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-94-31019

BENNY SULLIVAN, SPECIAL FUND,
HON. RONALD W. MAY, ADMINISTRATIVE LAW JUDGE,
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, KNOPF, AND MILLER, JUDGES.

MILLER, JUDGE: Lakin Rae Trucking (Lakin Rae) asks us to review an opinion of the Workers' Compensation Board (board) rendered April 23, 1999. Kentucky Revised Statutes (KRS) 342.290. We affirm.

On June 30, 1994, Bennie Sullivan was driving a coal truck for Lakin Rae when an oncoming vehicle crossed the center line and struck Sullivan's truck. The driver of the other vehicle was killed and the passenger was injured. Sullivan sustained injury to his low back with radiation into his right leg. Subsequent to the accident, Sullivan developed significant

depression and post traumatic stress disorder. He filed for benefits under the Workers' Compensation Act. KRS Chapter 342. The administrative law judge (ALJ), in an Opinion and Award rendered September 21, 1998, held that Sullivan's physical problems and post-traumatic stress disorder had resolved. He further found, however, that Sullivan's depression was significant and precluded him from returning to work as a truck driver. The ALJ held that Sullivan's psychological problems are the direct result of a work-related event which resulted in physical injury to him. As such, the ALJ opined, Sullivan's psychological condition constitutes an "injury" under the 1994 amendment to KRS 342.0011(1) and, thus, is compensable. Based on said condition, the ALJ determined Sullivan to be 40% permanently and partially disabled. Lakin Rae appealed to the board, which, in turn, affirmed the ALJ. This appeal followed.

The sole issue on appeal revolves around the 1994 amendment to KRS 342.0011(1). Said subsection reads in relevant part as follows:

"Injury" means any work-related harmful change in the human organism, arising out of and in the course of employment, . . .
"Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury. (Emphasis added.)

In his Opinion and Award, the ALJ addressed the emphasized phrase above as follows:

the . . . appropriate interpretation is that the psychological or psychiatric stress related change in the human organism must be

the direct result of the same work related injury event that caused the physical injury. (Emphasis added.)

Lakin Rae challenges this interpretation and maintains that for a psychological condition to constitute an "injury" under KRS 342.0011(1), it must stem directly from a physical injury and not merely from the event in which the injury was sustained. It maintains that the uncontradicted evidence proves that Sullivan's condition is the result of having been involved in the death of the other driver - "survivor's guilt." As such, Lakin Rae asserts that Sullivan's psychological condition is not an injury and not compensable, as it was not the direct result of the physical injuries he sustained in the June 30, 1994 accident.

In affirming the ALJ's interpretation of KRS 342.0011(1) as amended in 1994, the board stated the following:

[I]t is our opinion that the phrase "physical injury" as used in the definition of work injury means a physical incident resulting in a work-related harmful change in the human organism including a psychiatric disorder in the event it is directly attributable to that physical event.

We believe this interpretation to be justified by the language of the statute and to be consistent with the purpose behind the Workers' Compensation Act. See Newberg v. Weaver, Ky., 866 S.W.2d 435 (1993). Hence, we affirm on this issue under the precepts of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

On a final note, Lakin Rae states that it seeks to overturn the ALJ's order on Special Fund's Petition for Reconsideration. This issue, however, was not addressed by the

board. Therefore, we shall not address it. See Fordson Coal Co. V. Palko, 282 Ky. 397, 138 S.W.2d 456 (1940).

For the foregoing reasons, the Opinion of the Workers' Compensation Board is AFFIRMED.

KNOPF, JUDGE, CONCURS.

BUCKINGHAM, JUDGE, CONCURS IN PART AND DISSENTS IN PART BY SEPARATE OPINION.

BUCKINGHAM, JUDGE, CONCURRING IN PART AND DISSENTING IN PART:

I concur with the result in this case, but I disagree with the majority opinion's approval of the board's interpretation of the definition of "injury." While the legislature may have intended that "injury" be defined in accordance with the board's interpretation, it did not define it in that manner in the statute.

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