

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002584-WC

CHEMICAL SERVICE LABORATORY

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-08731

MICHAEL TRENT;
HONORABLE LLOYD EDENS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING IN PART - REVERSING IN PART
** ** * * * * *

BEFORE: BARBER, DYCHE AND GUIDUGLI, JUDGES.

GUIDUGLI, JUDGE. Chemical Service Laboratory (CSL) appeals from an opinion of the Workers' Compensation Board (the Board) rendered September 24, 1999, which ordered reinstatement of Michael Trent's (Trent) claim for retraining incentive benefits. Although we agree with the Board's reasoning regarding the retroactivity of KRS 342.215, we nevertheless find that the Board erred in ordering reinstatement of Trent's claim.¹

¹Trent did not file an appellee brief.

Trent filed his Application for Retraining Benefits on December 3, 1996. In support of his claim, Trent relied on medical reports from Dr. Peeter Jakobson and Dr. Glen Baker. CSL relied on medical reports from Dr. Robert Powell and Dr. John Myers. Trent's x-rays were also evaluated by Dr. Betty Joyce, an independent university evaluator, pursuant to KRS 342.215. The evidence in regard to whether Trent had contracted coal workers' pneumoconiosis was as follows:

<u>Doctor</u>	<u>Category</u>
Jakobson	1/1
Baker	1/0
Powell	0/0
Myers	0/1
Joyce	0/1

In an opinion and order dated October 6, 1997, the ALJ dismissed Trent's claim. In reaching his decision, the ALJ held that the December 12, 1996, amendments to KRS 342.215, which required that the report of a university evaluator be given presumptive weight, applied retroactively. The ALJ further stated:

Doctors Powell and Myers are experienced and recognized physicians in the diagnosis of coal workers pneumoconiosis. In light of the plaintiff's work history and exposure [and] the findings of Doctors Powell and Myers, I am not persuaded that the plaintiff has coal workers pneumoconiosis. These findings are substantiated by the findings of Doctor Betty Joyce, whose interpretation is afforded presumptive legal weight by KRS 342.315.

In an opinion rendered September 24, 1999, the Board reversed the ALJ's decision and remanded the matter back for reinstatement of Trent's claim. In so ruling, the Board stated as follows:

In [Magic Coal Company v. Fox, 1998-CA-000527-WC], the Court of Appeals affirmed the Workers' Compensation Board's earlier holding that the provisions of KRS 342.315 regarding presumptive weight have substantive impact as it changes the burden and level of proof that the party who did not receive a favorable finding from the adjudicator must meet. By the terms of KRS 342.0015, substantive provisions of the 1996 Special Session apply only to claims arising from an injury or last exposure occurring on or after December 12, 1996. Thus, the presumptive weight provision of the 1996 Act should not be applied retroactively to claims arising before the effective date of the 1996 amendments. In so ruling, the Court of Appeals stated in relevant part as follows:

Generally, the assignment of the burden of proof is a rule of substantive law. Director, Office of Workers' Compensation Program, Dept. of Labor v. Greenwich Collieries, 512 U.S. 267, 114 S.Ct. 2251, 2254, 129 L.Ed.2d 221 (1994). Further, matters have been considered substantive in part where they are outcome determinative. Fite & Warmath Const. Co. v. MYS Corp., Ky., 559 S.W.2D 729, 733 (1977), citing Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817, 82 L.Ed. 1188 (1938).

In that the Court of Appeals has affirmed the Board's ruling in Magic Coal, supra, we agree with the Court's determination and find no reason that the Court's rationale should not be applied to the case sub judice.

This appeal followed.²

CSL contends that the ALJ was correct in applying the presumptive weight provisions of KRS 342.315 to Trent's claim.

²This Court's decision in Magic Coal has been appealed to the Kentucky Supreme Court (1999-SC-163). As of the writing of this opinion, the Kentucky Supreme Court had not yet rendered an opinion on this issue.

We disagree, and stand by this Court's earlier decision in Magic Coal. To the extent that the Board's opinion followed our decision in Magic Coal, it is affirmed.

However, CSL also argues that even if the Board's ruling regarding the presumptive weight provisions of KRS 342.315 is correct, the ALJ's dismissal of Trent's claim should be affirmed because it was based on substantial evidence contained in the record. We agree. It is evident from a review of the ALJ's opinion that he did not give presumptive weight to the opinion of Dr. Joyce in determining that Trent did not have coal workers pneumoconiosis. Instead, he indicated that due to the findings of Drs. Powell and Meyers, he was not persuaded that Trent had coal workers pneumoconiosis, and merely noted that his finding was substantiated by the report of Dr. Joyce. Even if the report of Dr. Joyce is not taken into consideration at all, the ALJ's dismissal of Trent's claim is supported by substantial evidence, and the Board erred in reversing his decision.

Having considered the parties' arguments on appeal, the opinion of the Board in regard to the retroactive application of KRS 342.215 is affirmed, but the portion of the Board's opinion reinstating Trent's claim is reversed as the opinion and order of the ALJ is supported by substantial evidence.

BARBER, JUDGE, CONCURS.

DYCHE, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

No Appearance for Appellees

H. Brett Stonecipher
Lexington, KY

