

Commonwealth Of Kentucky

Court Of Appeals

No. 1998-CA-001832-WC

BILL HOLBROOK

APPELLANT

v.

PETITION FOR REVIEW
OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
WC-97-01326

GOLDEN OAK MINING
COMPANY, L.P.;
WORKERS' COMPENSATION BOARD;
and HON. DONALD G. SMITH,
ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
REVERSING AND REMANDING

* * * * *

BEFORE: BUCKINGHAM, MILLER, and McANULTY, Judges.

BUCKINGHAM, JUDGE. Bill Holbrook (Holbrook) appeals from an opinion of the Workers' Compensation Board (the Board) which reversed and remanded a decision of an administrative law judge (ALJ) awarding Holbrook retraining incentive benefits (RIB). We reverse and remand.

Holbrook was employed as an underground miner in the coal mining industry for approximately twenty-five years. On

May 29, 1997, Holbrook filed a claim for benefits, with the last date of exposure to coal dust being on January 17, 1997, while he was employed by Golden Oak Mining Company, L.P. (Golden Oak). In proceedings before the ALJ, Holbrook relied upon reports from Dr. John E. Myers, Jr., and Dr. Glen R. Baker, both of whom found Holbrook to have pneumoconiosis. Golden Oak relied upon reports from Dr. Bruce Broudy and Dr. B. T. Westerfield, both of whom found no evidence of pneumoconiosis. Pursuant to Kentucky Revised Statute (KRS) 342.315(2) and 803 Kentucky Administrative Regulation (KAR) 25:010 § 9(1), Holbrook was referred to Dr. Arthur Leiber at the University of Kentucky for an independent medical evaluation. Dr. Leiber was of the opinion that Holbrook did not suffer from pneumoconiosis.

The ALJ concluded that Holbrook's claim was governed by the law in effect on the date of his last exposure, that the version of KRS 342.315(2) which became effective in December 1996 thus had no applicability, and that Holbrook had sustained his burden of proving the existence of pneumoconiosis. The ALJ thus made an award of RIB. On Golden Oak's appeal to the Board, the Board held that the ALJ erroneously determined that the December 1996 version of KRS 342.315(2) was not applicable and further held that the "presumptive weight" to be given to Dr. Leiber's report was not overcome by "clear, convincing, positive proof," and that Holbrook was, therefore, not entitled to RIB. When the Board issued its opinion reversing the RIB award and remanding

the claim to the ALJ for dismissal, Holbrook's petition to this court for review followed.

The significant issue involved in this case is the interpretation of KRS 342.315(2), as amended effective December 12, 1996, which provides as follows:

The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

In Magic Coal Company v. Fox, 47 Ky. L. Summ. 5 (May 26, 2000) Ky., ___ S.W.3d ___ (2000), the Kentucky Supreme Court held that the 1996 amendments to KRS 342.315 apply to all claims pending before the fact finder on or after that date and that KRS 342.315(2) creates a rebuttable presumption which is governed by Kentucky Rules of Evidence (KRE) 301 and does not shift the burden of persuasion. As we have noted, Holbrook's last day of exposure to coal dust was after the effective date of the 1996 amendment. Further, his claim for benefits was filed after that date. Therefore, the ALJ erred in not applying the 1996 amendment of KRS 342.315(2) to the case and in not giving presumptive weight to Dr. Leiber's report. Even though the Board recognized that the ALJ erred in not applying the amended

statute, the Board erred in determining that the presumptive weight given to Dr. Leiber's report must be overcome by "clear, convincing, positive proof." See Magic Coal, supra.

Holbrook also argues that KRS 342.315(2) is unconstitutional because it requires that the findings of the designated evaluators be given presumptive weight. He asserts that no rational connection exists between the fact that the evaluators are university physicians and the fact that their opinions should be presumptively correct.

"A strong presumption exists in favor of the constitutionality of a statute. Furthermore, one who seeks to have a statute declared unconstitutional bears the burden of dispelling any conceivable basis which might justify the legislation." Buford v. Commonwealth, Ky. App., 942 S.W.2d 909, 911 (1997). (Citation omitted.) Also, legislative bodies may prescribe that a certain state of facts shall constitute a presumption. Commonwealth v. Kroger, 276 Ky. 20, 22, 122 S.W.2d 1006, 1007-08 (1938).

Concerning the presumption found in KRS 342.315(2), it is clear that the university evaluators, who are not beholden to any party, can reasonably be expected to provide accurate diagnoses of the medical conditions of persons seeking workers' compensation benefits. Thus, the presumptive weight to be given to their opinions is rationally related to the legitimate public purpose of providing expert, unbiased diagnoses of those persons

who apply for benefits. Accordingly, we hold that KRS 342.315(2) is constitutional.

The Board's opinion is therefore reversed, and this case is remanded to the ALJ for determination in accordance with the Kentucky Supreme Court's opinion in Magic Coal.

ALL CONCUR.

BRIEF FOR APPELLANT:

Tim Wilson
Lexington, KY

BRIEF FOR APPELLEE,
GOLDEN OAK:

Barkley J. Sturgill, Jr.
Prestonsburg, KY