

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000302-WC

MARRIOTT'S GRIFFIN GATE RESORT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-94-08229

KIMBERLY WORKMAN;
HON. J. LANDON OVERFIELD,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: Marriott's Griffin Gate Resort asks us to review a decision of the Workers' Compensation Board (board) rendered December 30, 1999. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Kimberly Workman suffered a work-related injury to her lower back on January 25, 1994, while in the employ of Marriott. She filed a claim for workers' compensation benefits under KRS Chapter 342. The administrative law judge (ALJ) awarded Workman temporary total disability (TTD) benefits for the periods January

28, 1994, through March 3, 1994, and September 1, 1994, through October 14, 1998. Workman was also awarded benefits based upon a finding she was 75% permanently and partially occupationally disabled. Marriott appealed to the board, which, in turn, affirmed the ALJ. This appeal followed.

Marriott seems to argue that Workman was not entitled to TTD benefits from September 1, 1994, through June 19, 1996, as she underwent no medical treatment during such period. In other words, it contends that since there was no medical treatment, there was no disability. We ascribe no merit to this contention. Entitlement to TTD benefits is an issue of fact. W.L. Harper Construction Co. V. Baker, Ky. App., 858 S.W.2d 202 (1993). It is payable until medical evidence establishes the recovery process is over or until the claimant reaches maximum medical improvement (MMI). Id. We do not view either of these conditions as requiring medical treatment during the period of TTD.

We now turn to the issue of whether the ALJ's finding of TTD during the aforementioned period was based on substantial evidence. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). Substantial evidence is that evidence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Company, Ky., 474 S.W.2d 367 (1971). Workman testified that after the January, 1994, lower-back injury she returned to work for Marriott in March or April of 1994. She continued to work until August 31, 1994, when her lower-back problems caused her to quit. Workman testified that

between August 31, 1994, and December 4, 1996 she made a few unsuccessful attempts to work for other employers. In each case, her lower-back problems caused her to quit within one week. Workman's testimony alone is sufficient to carry the burden of proof in a workers' compensation claim. Ruby Construction Co. v. Curling, Ky., 451 S.W.2d 610 (1970). Nevertheless, additional support is found in Dr. John W. Gilbert's testimony that Workman did not reach MMI until October 14, 1998. Upon the whole, we believe there exists substantial evidence to support the ALJ's decision that TTD benefits were payable for the period between September 1, 1994, and June 19, 1996. Hence, we cannot say the board erred. See Western Baptist Hospital, 827 S.W.2d 685.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE, KIMBERLY
WORKMAN:

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