

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000433-WC

CARTER BRANCH MINING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-94-42921

GEORGE F. JUSTICE;
HON. ROGER D. RIGGS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
VACATING AND REMANDING
** **

BEFORE: HUDDLESTON, MILLER, AND TACKETT, JUDGES.

MILLER, JUDGE: Carter Branch Mining asks us to review a decision of the Workers' Compensation Board rendered January 28, 2000.

Kentucky Revised Statutes (KRS) 342.290. We vacate and remand.

We have reviewed the record in this matter and are of the opinion that the issues raised are controlled by Magic Coal Company v. Fox, Ky., _____ S.W.3d _____ (2000). In that case it was stated:

In summary, the amendments to KRS 342.315 which became effective on December 12, 1996, apply to all claims pending before the fact-

finder on or after that date. KRS 342.315(2) creates a rebuttable presumption which is governed by KRE 301 and, therefore, does not shift the burden of persuasion. . . .

Id. at ____.

For the foregoing reasons, the opinion and award of the Workers' Compensation Board rendered January 28, 2000, is vacated and this cause is remanded for reconsideration.

ALL CONCUR.

BRIEF FOR APPELLANT:

NO BRIEF FILED FOR APPELLEES

David H. Neeley
Prestonsburg, Kentucky