RENDERED: AUGUST 25, 2000; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002536-WC

AERO ENERGY — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-00413

EDDIE BOYD;
HON. LLOYD R. EDENS,
ADMINISTRATIVE LAW JUDGE;
SPECIAL FUND; AND
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: DYCHE, EMBERTON, AND MILLER, JUDGES.

MILLER, JUDGE: Aero Energy asks us to review an opinion of the Workers' Compensation Board (board) rendered September 24, 1999. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Eddie Boyd worked in the coal mining industry from 1978 until 1988 and then again from 1993 until 1995. On August 31, 1995, he was laid off by Aero Energy. Since that time, Boyd has not returned to work in the coal mining industry. On February 12, 1997, Boyd filed for retraining incentive benefits under the Workers' Compensation Act. KRS Chapter 342. The Department of

Workers' Claims referred Boyd to university evaluator, Dr. A. Lieber, for an independent evaluation. The case was submitted to an administrative law judge (ALJ) who entered an opinion, order and award on September 18, 1997. In same, the ALJ first held that KRS 342.315(2), as amended on December 12, 1996 (the 1996 amendment), should be applied to this claim. The ALJ then went on to state the following:

> In view of [Boyd's] 12 year work history as a roof bolter and the category 1/2 diagnosis of Dr. Baker, I am persuaded that the presumption accorded the category 0/1 diagnosis by Dr. Lieber has been overcome and that the Plaintiff has category 1 coal workers pneumoconiosis.

On appeal, the board affirmed the ALJ's decision on different grounds. It opined that the 1996 amendment was not to be applied retroactively. However, it stated, when it does apply, the presumptive weight accorded the university evaluator's conclusions by the amendment are not overcome by mere contradictory medical evidence. The board concluded that:

> [A]lthough the ALJ reached his conclusion for the wrong reasons, he was well within his authority in not according presumptive weight to the evaluation of [the university evaluator]. Once the presumptive weight of that report is removed, [the university evaluator's] report merely becomes another piece of medical evidence to be considered by the ALJ. The ALJ, prior to December 12, 1996, was clothed with the discretion to determine that which he believed to be more credible and so long as there was substantial evidence of probative value to support his conclusion, it could not be altered on appeal.

This appeal followed.

The issues of retroactivity and presumptive weight accorded by the 1996 amendment were finally decided by the Kentucky Supreme Court in Magic Coal Company v. Fox, Ky., 19 S.W.3d 88 (2000). Magic Coal was decided subsequent to the board's opinion. In Magic Coal, the Supreme Court stated that:

> [T]he 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. Pursuant to KRS 342.315(2), the clinical findings and opinions of the university evaluator constitute substantial evidence of the worker's medical condition which may not be disregarded by the fact-finder unless it is rebutted. Where the clinical findings and opinions of the university evaluator are rebutted, KRS 342.315(2) does not restrict the authority of the fact-finder to weigh the conflicting medical evidence. In instances where a fact-finder chooses to disregard the testimony of the university evaluator, a reasonable basis for doing so must be specifically stated.

Id. at 97.

Our review proceeds under the precepts of Magic Coal. The ALJ determined that the 1996 amendment applied retroactively to Boyd's claim. Magic Coal specifically holds that the amendment is to apply to all cases pending on or after December 12, 1996. Boyd's claim was filed after that date. Hence, we conclude the ALJ correctly applied the 1996 amendment to Boyd's claim.

The ALJ next held there was sufficient evidence to overcome the presumptive weight accorded the university evaluator's conclusion under the 1996 amendment. In his opinion,

the ALJ specifically stated that said presumption was overcome by Boyd's 12-year work history in the coal mines and Dr. Glen Baker's diagnosis of category 1/2 coal worker's pneumoconiosis. It is our opinion the ALJ specified a reasonable basis for disregarding the university evaluator's conclusion that Boyd did not suffer from pneumoconiosis. Furthermore, we believe the ALJ's decision was based upon substantial evidence. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). Aero Energy argues that the ALJ did not comply with the 1996 amendment because he did not specifically state the reasons for rejecting the university evaluator's report. It claims it is not enough to merely explain the reasons benefits were awarded. We reject this argument. The ALJ made it clear he rejected the university evaluator's diagnosis because he found Dr. Baker's diagnosis more credible under the circumstances. We conclude the ALJ's award was proper.

The board disagreed with the ALJ's ratiocination but affirmed the ALJ upon a different basis. We perceive no error with the ALJ's analysis. We, therefore, affirm the board, albeit, upon different reasoning.

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

ALL CONCUR.

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