

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000438-WC

BILL AND CAROLYN MCCALL
D/B/A SOUTHSIDE LAUNDROMAT

APPELLANTS

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-92-48636

CATHERINE COX; DEPARTMENT OF
WORKERS' CLAIMS, WORKERS'
COMPENSATION BOARD; AND
HONORABLE SHEILA C. LOWTHER,
ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
VACATING AND REMANDING
** **

BEFORE: DYCHE, KNOPF, AND MCANULTY, JUDGES.

DYCHE, JUDGE. This is the second trip for this case to this court; our duty, as we see it, is to determine if the award made by the Administrative Law Judge ("ALJ") is supported by substantial evidence. Although the Workers' Compensation Board ("Board") found that to be the case, it nevertheless remanded to the ALJ for further findings of fact to support the award. We believe such findings to be unnecessary, and vacate the Board's opinion and remand for an opinion affirming the ALJ.

The initial award by the ALJ found that the Special Fund was not a party to the action, and that there was "no basis for allocating any portion of the liability herein to the Special Fund." On appeal, the Board found that the absence of the Special Fund, alone, was not sufficient ground to deny apportionment of some liability to the Fund, if the evidence justified such an action. The Board examined the evidence, and found that the ALJ could have properly found the employer to be solely liable for the employee's injuries. On further review, a panel of this court found that the Board had overstepped its bounds, and reweighed the evidence in a manner contrary to the findings of the ALJ. The Board was instructed to remand to the ALJ "to weigh the medical evidence relating to the issue of apportionment, and to make findings of fact in support of any decision made with respect to that issue."

On remand, the ALJ found that the evidence showed that "but for the preexisting degenerative arthritis, the work-related accident in 1992 would not have resulted in any permanent impairment to Ms. Cox." All liability would have been apportioned to the Special Fund, had it been a party. Since it was not, the claimant could receive medical benefits, alone, from the employer. Unfortunately, the ALJ used the term "unrebutted" in describing the evidence concerning apportionment.

On appeal, the Board pounced on that term, and indicated that in its review of the evidence, some apportionment of liability should have been made to the employer, as the evidence was not, in actuality, unrebutted. The Board

acknowledged that sufficient probative evidence existed in the record to support the ALJ's decision. But the Board reversed the ALJ and remanded for further findings.

It is time to halt this seemingly endless semantic process, and acknowledge the parties' proper place in the scheme of things. The ALJ has found that sufficient competent evidence exists to apportion all of the liability to the Special Fund. The Board agrees but, because the ALJ misspoke as to the "unrebutted" nature of the evidence, reverses and remands. We find this unnecessary. We agree that such evidence is in the record, and supports the ALJ. The opinion of the Board is therefore reversed, and this matter is remanded for an opinion affirming the ALJ.

ALL CONCUR.

BRIEF FOR APPELLANTS:

Allan Weiss
W. Charles Jobson
Louisville, Kentucky

BRIEF FOR APPELLEE
CATHERINE COX:

Thomas A. Noe III
Jesse L. Riley, Jr.
Russellville, Kentucky