

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000630-WC

PASCHALL TRUCK LINES, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-00773

HANSFORD YOUNG; HON. DONALD G. SMITH,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: COMBS, EMBERTON, and GUIDUGLI, Judges.

COMBS, JUDGE: Paschall Truck Lines, Inc. (Paschall) asks us to review an opinion of the Workers' Compensation Board (the Board) rendered February 11, 2000. Kentucky Revised Statutes (KRS) 342.290. We affirm.

The Board affirmed an opinion and award of the Administrative Law Judge (ALJ) rendered March 12, 1999, awarding appellee, Hansford Young, benefits for permanent, partial disability as a result of a work-related injury sustained on April 23, 1997. On appeal, Paschall presents a single issue for

our review: whether the Board erred by failing to "carve out" a portion of Young's award for "the natural aging process."

Resolution of this question requires interpretation of KRS 342.0011(1), enacted by the legislature effective December 12, 1996. That section provides as follows:

"Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

(Emphasis added).

In view of the foregoing, we must look to the evidence to determine whether it supports the award. In reaching his conclusions, the ALJ observed as follows:

On April 23, 1997, Plaintiff slipped and twisted his left knee while getting down from his truck. Plaintiff was first seen by Dr. Pushkarewicz. Dr. Pushkarewicz eventually performed surgery on the Plaintiff's knee. Plaintiff could not return to work as a truck driver because he has difficulty walking and climbing into his truck and securing the loads. Plaintiff continues to treat with Dr. Pushkarewicz.

* * * *

Dr. Pushkarewicz first examined the Plaintiff on July 17, 1997. He reported that the Plaintiff has reached maximum medical improvement on April 30, 1998. He assigned

the Plaintiff an 8% impairment rating. He apportioned 70% of this impairment to arousal of the natural aging process due to his diagnosis of degenerative arthritis of the left knee.

* * * *

Both Dr. Pushkarewicz and Dr. Sharps indicated Plaintiff's left knee condition was caused, at least in part, by the work injury on April 23, 1997.

(Opinion at 3-5). The essence of the appellant's argument is that the ALJ should have excluded the effects of "the natural aging process" in computing Young's award. Paschall contends that the majority of Young's disability is attributable to the effects of degenerative arthritis. Consequently, it argues that the ALJ erred by failing to "carve out" a significant portion of the award. We do not agree.

The effects of "the natural aging process" are not at issue in this matter. While degenerative arthritis may be said to be a part of the natural aging process in some cases, the extent to which Young suffered its disabling effects was a direct result of his work-related injury. We agree with the Board's conclusion that "that which is a dormant, nondisabling condition has not now become 'the natural aging process.'" An equating of these terms would serve to preclude automatically an award for a work-related injury simply by reference to the worker's age. We believe that the circumstances of each case must be carefully reviewed to discern where an injury is the result of working conditions at its inception – rather than invoking the term "natural aging process" as a blanket exclusion for recovery.

The medical evidence presented in this case indicates simply that Young's April 1997 fall caused him to suffer a disability. Therefore, the evidence requires a finding that Young suffered a work-related injury, entitling him to coverage under the Workers' Compensation Act. KRS 342.0011(1). Since there is ample evidence in the record to support a finding of work-related disability, we are bound to affirm. The weight and sufficiency of the evidence are matters for the fact-finder. See Square D Co. v. Tipton, Ky., 862 S.W.2d 308 (1993), and Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). We are not at liberty to disturb the ALJ's determination. See Cal Glo Coal Co. v. Mahan, Ky. App., 729 S.W.2d 455 (1987).

We affirm the opinion and award of the Workers' Compensation Board.

ALL CONCUR.

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