

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002404-WC

T. M. FUELS, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-09171

CURTIS P. BLEDSOE;
SPECIAL FUND; HONORABLE
MARK WEBSTER, ADMINISTRATIVE
LAW JUDGE AND WORKERS'
COMPENSATION BOARD

APPELLEES

AND

NO. 1999-CA-002555-WC

ROBERT L. WHITTAKER
DIRECTOR OF SPECIAL FUND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-09171

CURTIS BLEDSOE; T. M.
FUELS, INC.; MARK WEBSTER,
ADMINISTRATIVE LAW JUDGE
AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
REVERSING AND REMANDING
** ** * * * * *

BEFORE: BUCKINGHAM, JOHNSON AND TACKETT, JUDGES.

TACKETT, JUDGE: Curtis Bledsoe (Bledsoe) was an underground coal miner who was last exposed to respirable coal dust in April 1996 while working for T.M. Fuels. Bledsoe filed an application for adjustment of occupational disease claim on December 12, 1996. Among the evidence taken was the report of a university evaluator, Dr. Lieber. The administrative law judge (ALJ) awarded Bledsoe benefits based upon a 100% disability and refused to give presumptive weight to Dr. Lieber's report because Bledsoe's last date of exposure was prior to the effective date of the 1996 version of Kentucky Revised Statute (KRS) 342.315(2).¹ The Special Fund and T.M. Fuels appealed to the Board arguing that the ALJ erred by failing to give Dr. Lieber's report presumptive weight. The Board affirmed, after which the Special Fund and T. M. Fuels filed the petitions for review at hand. As both appeals involve the same issue, both will be resolved in this opinion.

T. M. Fuels' appeal was held in abeyance pending the Kentucky Supreme Court's ruling in Magic Coal Co. v. Fox, 1999-SC-0163. The Supreme Court issued an opinion in that case on May 18, 2000, and T. M. Fuels' appeal has since been removed from

¹KRS 342.315(2) provides in relevant part that "[t]he clinical findings and opinions of the designated [university] evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence."

abeyance. Magic Coal controls the only issue raised: whether the 1996 amendments to KRS 342.315(2) requiring an ALJ to give presumptive weight to a university evaluator's report apply retroactively to Bledsoe's claim. Magic Coal specifically held that "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." ___ S.W.3d ___, 47 K.L.S. 5: 32, 35. (Emphasis added). Thus, the ALJ was required to give Dr. Lieber's report presumptive weight and this case must be reversed and remanded for further proceedings consistent with Magic Coal.

ALL CONCUR.

BRIEF FOR T. M. FUELS, INC.:

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