RENDERED: September 22, 2000; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002589-WC

MURRIEL-DON COAL CO., INC. APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-08736

CHAD ERIC SANDLIN; THOMAS A. DOCKTER,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD APPELLEES

OPINION
REVERSING
** ** ** ** **

BEFORE: GUDGEL, Chief Judge; COMBS and McANULTY, Judges.

COMBS, JUDGE: Murriel-Don Coal Co., Inc. (Murriel-Don) appeals from an opinion of the Workers' Compensation Board (the Board) which reversed and remanded a decision of an administrative law judge (ALJ) dismissing Chad Eric Sandlin's claim for retraining incentive benefits (RIB). We reverse.

Sandlin worked for multiple employers as a coal miner for approximately five years. On December 9, 1996, Sandlin filed a claim for benefits with the last date of exposure to the hazards of respirable coal dust having occurred on January 2, 1995, while he was employed by Murriel-Don. In proceedings

before the ALJ, Sandlin relied upon reports from Dr. Emery Lane and Dr. Ballard Wright, both of whom found that Sandlin suffered from Category 1 coal workers' pneumoconiosis. Murriel-Don relied upon reports from Dr. B.T. Westerfield and Dr. John E. Myers, Jr., both of whom found no evidence of pneumoconiosis. Pursuant to Kentucky Revised Statute (KRS) 342.315(2) and 803 Kentucky Administrative Regulation (KAR) 25:010 § 9(1), Sandlin was referred to Dr. John Woodring at the University of Kentucky for an independent medical evaluation. Dr. Woodring was of the opinion that Sandlin did not suffer from pneumoconiosis.

The ALJ concluded that Sandlin's claim was governed by the version of KRS 342.315(2) which became effective in December 1996 and that Sandlin had failed to sustain his burden of proving the existence of pneumoconiosis. In dismissing the claim, the ALJ found as follows:

> In reviewing the medical evidence in the within claim, this Administrative Law Judge is most persuaded by the proof provided by Drs. Woodring, Myers and Westerfield, who have all interpreted x-rays as showing Category 0 pneumoconiosis. It is noted that Dr. Woodring's interpretation is given presumptive weight statutorily.
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> Since the Plaintiff bears the burden of persuasion under Roark v. Alva Coal Corporation, Ky., 371 S.W.2d 856 (1963), Young v. Burgett, Ky., 389 S.W.2d 926 (1965) and Wells v. Hamilton, Ky., App., 645 S.W.2d 353 (1983), it is ultimately concluded that based upon the negative findings of the cited doctors, this claim must be DISMISSED.

On Sandlin's appeal to the Board, the Board held that the ALJ erroneously determined that the December 1996 version of KRS 342.315(2) was applicable and that the ALJ had also erred in affording presumptive weight to the report of the university

evaluator. The Board issued an opinion reversing and remanding the claim to the ALJ for additional proceedings. Murriel-Don's petition for review to this court followed.

The sole issue involved in this case is the interpretation of KRS 342.315(2), as amended effective December 12, 1996, which provides as follows:

> The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the commissioner. The clinical findings and opinions of the designated 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. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

In Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88(2000), the Kentucky Supreme Court held that the 1996 amendments to KRS 342.315 apply to all claims pending before the fact-finder on or after the amendments' effective date and that KRS 342.315(2) creates a rebuttable presumption which is governed by Kentucky Rules of Evidence (KRE) 301 and does not shift the burden of persuasion. As we have noted, Sandlin's claim for benefits was pending before the ALJ after the effective date of the 1996 amendment. Therefore, the ALJ did not err by applying the 1996 amendment of KRS 342.315(2) to the case or by affording presumptive weight to the opinion of the university evaluator -- especially where the ALJ cited his reliance upon the evaluations of the physicians who had found no evidence of pneumoconiosis. Sandlin presented no evidence to rebut the presumption. Magic Coal precludes us from granting relief:

> ... the clinical findings and evidence of the university evaluator constitute substantial evidence with regard to medical questions which, if uncontradicted, may not be disregarded by the fact-finder.

Id. at 35.

Pursuant to the direction of Magic Coal, we reverse the opinion of the Board and affirm the decision of the ALJ.

ALL CONCUR.

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