

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-002577-WC

WEBSTER COUNTY COAL CORP.

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-09172

LEONARD J. BELT, AND
HON. DONALD G. SMITH,
ADMINISTRATIVE LAW JUDGE
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
REVERSING AND REMANDING
** **

BEFORE: BARBER, KNOPF, AND TACKETT, JUDGES.

BARBER, JUDGE: This appeal of a Workers' Compensation Board decision was abated by order of this Court pending the Supreme Court's final determination in Magic Coal v. Fox, Ky., 19 S.W.3d 88 (2000). That decision is now final. On our own motion we now order the above-styled appeal removed from abatement and returned to the active docket. We reverse and remand for further proceedings as outlined below.

The Appellee, Leonard Belt (Belt) filed an application for retraining incentive benefits (RIB) on December 12, 1996. He alleged

that he stopped working in the coal mine industry on December 10, 1996. In an opinion and award dated September 15, 1997, the ALJ determined that Belt was entitled to an award of RIB, based upon the opinion of Dr. Robert Powell, who diagnosed coal workers' pneumoconiosis, category 1/1. The ALJ declined to apply the presumptive weight provisions of KRS 342.315 to the opinion of the university evaluator, Dr. Betty Joyce, because Belt's last exposure occurred before the effective date of the 1996 amendments to KRS Chapter 342. The employer appealed to the Board which affirmed.

The sole issue on appeal is whether KRS 342.315, as amended December 12, 1996, should apply to all occupational disease claims filed and litigated after the effective date of the amendment. The amendment was held to so apply in Magic Coal, id., at p. 97:

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. 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.

Here, evidence was presented which rebutted the opinion of the university evaluator. We therefore reverse and remand to the ALJ for further proceedings consistent with the Supreme Court's direction in Magic Coal.

ALL CONCUR.

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