

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-001192-WC

RONNIE D. CORNETT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-00122

ARCH OF KENTUCKY/DIVISION OF
APOGEE COAL COMPANY, INC.;
HONORABLE DENIS S. KLINE,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI, McANULTY AND TACKETT, JUDGES.

TACKETT, JUDGE: Ronnie D. Cornett (Cornett) petitions this court to review a decision by the Worker's Compensation Board (WCB) affirming the Administrative Law Judge's (ALJ) findings. The ALJ found that Cornett suffered an injury while working for Arch of Kentucky (Arch); however, Cornett was not entitled to receive benefits pursuant to KRS 342.730 because he was not permanently impaired. We affirm.

Cornett injured his back while working for Arch by throwing a fifty-pound tool bag over his shoulder. Cornett felt

pain in his lower back, radiating down his right leg. He was taken to the emergency room at Appalachian Regional Hospital where he was treated and released. Cornett did not miss any work as a result of his back injury. In fact, he continued to work for Arch as a mechanic for some seventeen months more until he was laid off when the mine closed.

Cornett argues that the ALJ's decision denying him permanent benefits was clearly erroneous under Snawder v. Stice, 576 S.W.2d 276, Ky. App. (1979). Because Cornett had the burden of persuasion in front of the ALJ, the standard of review is whether the evidence in his favor was so overwhelming that no reasonable person could have found against him. Wolf Creek Collieries v. Crum, 673 S.W.2d 735, Ky. App. (1984); Special Fund v. Francis, 708 S.W.2d 641, Ky. (1986).

Cornett testified that he suffers constant back pain, and that it is worse when he sits, rides, or stands. He takes prescribed pain medication which leaves him drowsy and unable to concentrate. Furthermore, he is unable to sleep because of pain and depression. As a result of his injury, Cornett received a total and permanent disability award from Social Security.

Cornett also relies heavily on the testimony of Dr. Gary K. McAllister (McAllister), an orthopaedic specialist. McAllister in his report stated that Cornett has a 21% permanent medical impairment. The doctor attributed 50% of this impairment to Cornett's injury and the remaining 50% to a pre-existing condition. McAllister placed multiple restrictions on Cornett's work-related activities including: 1) standing, walking, or

sitting for no more than three hours; 2) never climbing, balancing, or crawling; and 3) functional limitations of heights, machinery, temperature extremes, humidity, and vibration. McAllister stated that Cornett had no physical capacity to return to his usual work.

Arch presented testimony from two doctors, Richard T. Sheridan (Sheridan) and Robert P. Goodman. Both doctors stated that the abnormalities in Cornett's back x-rays were due to the natural aging process. Sheridan diagnosed a resolved low-back sprain. Neither of them found any physical impairment nor placed any restrictions on Cornett's ability to return to his usual employment.

When there is conflicting medical testimony, the decision of whom to believe rests solely with the fact finder. Pruitt v. Bugg Brothers, 547 S.W.2d 123, K. (1977). Cornett had the burden of persuasion before the ALJ, and he has not established on appeal that the ALJ's decision was clearly erroneous. The decision of the Worker's Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:
Otis Doan, Jr.
Harlan, Kentucky

BRIEF FOR ARCH OF KENTUCKY,
DIVISION OF APOGEE COAL
COMPANY, INC.:
Monica J. Rice
Harlan, Kentucky