

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000691-WC

KENTUCKY MIRROR & PLATE GLASS

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
CLAIM NO. WC-98-63785

CHRISTOPHER DERRICK BRIAN;
DONNA H. TERRY, Administrative
Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, HUDDLESTON and GUIDUGLI, Judges.

HUDDLESTON, Judge. Kentucky Mirror & Plate Glass appeals from a Workers' Compensation Board opinion affirming an Administrative Law Judge's award of temporary total disability benefits to Christopher Derrick Brian. Kentucky Mirror contends that the ALJ erred in finding that substantial evidence supported Brian's claim that a traumatic event was the proximate cause of his injury.

Brian was a glazer for Kentucky Mirror. On August 20, 1998, he was carrying a 250 pound I-beam with another worker when he fell. The beam landed on his right knee. He experienced pain

immediately and began limping. However, he continued to work. After sitting for lunch, his right ankle began to swell and ache. He sought emergency treatment and was referred to Dr. Gregory Rennirt.

Dr. Rennirt diagnosed a soft tissue abrasion of the right knee and an osteochondritis dissecans (OCD) lesion of the right ankle. On September 23, 1998, Dr. Rennirt removed the lesion surgically. Eventually, Brian was released by Dr. Rennirt to return to work without restrictions.

Dr. Rennirt testified that 70% of OCD problems are trauma related and that it was likely that the August 20, 1998, accident was the precipitating event causing pain and requiring surgery. In addition to the testimony of Dr. Rennirt, the ALJ heard testimony from Dr. Bart Goldman, an orthopedic surgeon who performed a medical records review for Kentucky Mirror. Dr. Goldman concluded that the osteochondritis dissecans lesion did not occur at the time of the August 20, 1998, injury. However, Dr. Goldman also stated that the lesion could have pre-existed the injury and could have been brought into clinical reality by the injury.

The ALJ found Dr. Rennirt's testimony convincing and authoritative. The ALJ specifically found that Brian had sustained his burden of proving that the August 20, 1998, incident was the proximate cause of his right ankle complaints and that he was entitled to benefits for the ankle injury. The ALJ also stated

that this accident clearly fits the statutory definition of injury adopted in Kentucky Revised Statute (KRS) 342.0011(1).¹

Kentucky Mirror argues that the August 20, 1998, accident was not the proximate cause of Brian's injury. Its position is that the accident was merely a contributing factor that allowed the lesion to become clinically apparent. It directs our attention to Young v. McDonald² where the Supreme Court denied a worker compensation for "the arousal into disabling reality of the pre-existing, dormant, nondisabling disease of coronary atherosclerosis."³ However, the McDonald case is not applicable to the case under consideration. In McDonald, the Court noted that there was "no probative evidence of an injury by accident . . . without which there can be no liability on the employer" ⁴ Unlike McDonald, this case involves evidence of an injury by accident.

Kentucky Mirror also directs our attention to Sowers v. Mason Dixon Lines, Inc.,⁵ in which the Supreme Court stated that, "the employer is not liable for symptomatic - even possibly

¹ KRS 342.0011(1) provides, in relevant part, that: "'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."

² Ky., 481 S.W.2d 41 (1972).

³ Id. at 42.

⁴ Id. at 42. [Emphasis in original.]

⁵ Ky., 579 S.W.2d 380 (1979).

disabling – pain arising from a diseased condition which is not causally attributable to work performance or working conditions.”⁶

However, Kentucky Mirror has failed to take notice of the additional statement in Sowers concerning the facts of that case in relation to the outcome.⁷ The Court stated that “[h]ad [Sowers] suffered permanent damage to his heart muscle and proved that the physical strain of his job precipitated the injury, the outcome of this case could well have been different.”⁸

In the case under consideration, Brian successfully proved that the injury to his ankle was due to the physical strain of the I-beam’s impact. In fact, the ALJ noted that in finding that the accident was the proximate cause of the ankle problem, this was not even a close call.

Our function, in reviewing the decision of the Workers’ Compensation Board “is to correct the Board only where the [] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.”⁹ Kentucky Mirror has failed to point to anything in the Board’s decision that meets this threshold. Kentucky Mirror simply disputes the findings of the ALJ as its sole basis of attack on the Board’s decision.

The Board’s decision is affirmed.

⁶ Id. at 382.

⁷ The Board denied benefits to Sowers and the Court affirmed.

⁸ Id. at 381-382.

⁹ Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-688 (1992).

ALL CONCUR.

BRIEF FOR APPELLANT:

James G. Fogle
FERRERI & FOGLE
Louisville, Kentucky

BRIEF FOR APPELLEE
CHRISTOPHER DERRICK BRIAN:

Ched Jennings
Louisville, Kentucky