

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1999-CA-002437-WC

SHAWN C. DOTSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-96-83155

NARROWS BRANCH COAL COMPANY;  
ROBERT L. WHITTAKER, DIRECTOR OF  
SPECIAL FUND; HON. IRENE STEEN,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\*

BEFORE: BUCKINGHAM, JOHNSON AND TACKETT, JUDGES.

JOHNSON, JUDGE: Shawn C. Dotson has filed a petition for review of an opinion rendered by the Workers' Compensation Board on September 10, 1999. Having concluded that the Board has not "overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice," we affirm.<sup>1</sup>

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<sup>1</sup>Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

Dotson, who was born August 9, 1972, has a high school education and has worked as a general laborer in the coal mining industry. He was injured on July 29, 1996, when a piece of a mine's roof fell, striking him on the left side of his head and shoulder. Dotson claims the rock was about three inches to four inches thick and measured four feet by six feet. When Dotson was struck by the rock, he went to the ground and the rock pinned him there. It took several co-workers to remove the rock from Dotson, so he could be taken to the Appalachian Regional Hospital (ARH) in South Williamson, where he was examined and released.

Dotson was subsequently treated by Dr. Prithan Kohli and Dr. Craig Knox, who referred him to a pain treatment clinic, where he was seen by Dr. L. Douglas Kennedy. At the time of his deposition, Dotson was treating with Dr. Kennedy.

When this case was submitted for a decision, Dotson was still having problems with his neck and head; and he also complained of continuing problems of nervousness. Because of his nervous condition, he was hospitalized at the ARH in South Williamson around Easter of 1997; and since then he has received treatment from Mountain Comprehensive Care. Dotson indicated that prior to this injury he had not had any serious injuries and he had not had any previous problems with nervousness. At the time of the hearing, Dotson was taking Kolonopin, Amitriptyline, and at times medications for pain and muscle relaxers. He complained of persistent headaches, stiffness and lack of motion in the cervical spine. Dotson said his condition had improved some since the time of the injury; but he did not think that he

was capable of holding any type of job. He claimed he would like to return to work sometime in the future.

Dotson submitted evidence from Drs. Kohli, Knox and Kennedy regarding his physical injury and from Dr. David Forrester regarding his psychiatric problems. Dr. Kohli diagnosed a sprain and a strain of the cervical spine and prescribed Dotson pain medication and muscle relaxants. MRI's of Dotson's cervical and dorsal spine were essentially negative. A CT scan of his head was also negative. On September 18, 1996, Dr. Kohli noted that Dotson was very nervous. He was still having persistent symptoms, and his neurological examination was essentially negative. A bone scan taken on October 16, 1996, was also found to be normal.

Upon the retirement of Dr. Kohli, Dotson began treating with Dr. Knox, who examined him on October 23, 1996. Dotson was complaining of headaches, neck pain and poor balance. He claimed he had neck pain and headaches on a daily basis; he also felt shaky and nervous. Dr. Knox reported that Dotson occasionally had some crying spells and felt down and out and somewhat depressed. Dotson's sleep was poor and his appetite had decreased. On examination, Dr. Knox noted severe spasm of the cervical paraspinous muscles, but his strength reflexes and sensation were normal. Dr. Knox felt that Dotson had sustained a cervical sprain or a whiplash type injury. Dr. Knox prescribed Voltarin and Soma for Dotson; and stated that he would try to gradually increase Dotson's Doxepin up to 100 milligrams at bedtime to see if that might help his depression, sleep and

headaches. Dotson was seen again by Dr. Knox on December 11, 1996. Dr. Knox noted that Dotson was doing much better; and a note from Dotson's physical therapist reported that Dotson's neck range of motion had improved. Dotson noted that the Voltarin had helped the pain, and he was taking Doxepin, 75 milligrams, at bedtime which helped his sleep and his depression. On examination, Dr. Knox noted Dotson's neck range of motion remained "strikingly limited." There was still some cervical paraspinous muscle spasm and tenderness. Dr. Knox noted the limitation of motion of the neck was more dramatic than he would normally expect, particularly since Dotson and the physical therapist had noted an improvement in his neck range of motion. Dr. Knox wrote: "I would wonder about some symptom magnification." Dr. Knox indicated Dotson should return in three months for a reassessment. If there were no significant improvement, Dr. Knox indicated he would recommend referral to a pain clinic. Dotson returned to Dr. Knox on March 17, 1997. He again indicated his neck pain and range of motion were improved; physical therapy seemed to help. Dr. Knox's impression at that time was that Dotson suffered a chronic cervical sprain secondary to a work-related injury. With the normal MRI and CT scan of the head, he was surprised that Dotson was not doing any better. Dotson's neck range of motion had improved slightly. Dr. Knox stated: "I think there is a significant psychogenic component of his neck limitation of movement and I also told him that his tremors are probably due to anxiety." Dr. Knox referred Dotson to Dr. Kennedy at the pain clinic. Dr. Knox doubted Dotson would

be able to return to work in the mines because he was probably extremely fearful about having another accident. Dr. Knox thought anxiety was contributing significantly to Dotson's symptoms.

Dr. Kennedy, who was Dotson's treating physician at the time of the hearing, noted complaints of headaches, limited cervical range of motion and tenderness over the occipital nerves and splenius muscles bilaterally. Dr. Kennedy believed Dotson's headaches were primarily stress induced. Dr. Kennedy was deposed on August 19, 1998; and at that time, he assessed Dotson with a 15% impairment to the whole person due to the injury to the nerves, head and neck area and the headaches that Dotson continued to experience. Dr. Kennedy believed Dotson to be 100% occupationally disabled for any job for which he had training and that he was not a good candidate for vocational rehabilitation. Dr. Kennedy's prescribed treatment included nerve blocks and medication. Dr. Kennedy also noted that Dotson experienced symptoms of depression, and he felt that Dotson should be tested to determine whether he had received a brain injury in the accident.

Dr. Kennedy had Dotson evaluated by Dr. Donald W. Receveur, a neuropsychologist, who performed testing on October 14, 1998. It was Dr. Receveur's opinion that Dotson suffered major depression and a significant post-traumatic stress disorder. Dr. Kennedy adopted Dr. Receveur's findings and included them in a Form 107-I completed on October 28, 1998. At that time, he indicated that Dotson would have a 10% impairment

for injury to his nervous system with an additional 5% for the severe nature of his pain. He also indicated that Dotson suffered from severe anxiety, depression and severe post-traumatic stress disorder. Dr. Kennedy believed Dotson had suffered a mild to moderate traumatic brain injury. Under the AMA Guidelines, Dotson was assessed with an impairment of between 15% and 29% for his psychological conditions. Dr. Kennedy gave Dotson a 25% disability rating based on the psychological impairment. When the injury to Dotson's nerves and the psychological impairment were combined, Dr. Kennedy assessed Dotson's whole person impairment at 31%. Dr. Kennedy opined that it would be an additional one to two years before Dotson would reach maximum medical improvement.

Dotson also presented evidence from Dr. David Forrester, a psychiatrist, who evaluated him on May 1, 1998. Dr. Forrester diagnosed Dotson with a post-traumatic stress disorder as well as major depression. Dr. Forrester assessed Dotson with a 20% disability as a result of the psychiatric problems, and he related the entirety of Dotson's impairment to the incident at work. Dr. Forrester did not believe that Dotson could return to underground coal mining since his injury was traumatic in nature; and, in Dr. Forrester's opinion, the incident precipitated a significant anxiety disorder. Dr. Forrester suggested that Dotson should become involved in some hobbies or activities which were not physically demanding and which would not increase his pain, but would give him some sense of purpose and sense of accomplishment. Dr. Forrester thought Dotson would need ongoing,

out-patient psychiatric treatment for years to come. Without this treatment, Dr. Forrester believed Dotson would be likely to decompensate.

Narrows Branch Coal Company introduced evidence from Dr. David Muffly, who evaluated Dotson on April 9, 1998. Dotson complained of intermittent pain to the back of the neck. Dr. Muffly noted that "he seems to get tension of the muscles and then headache type pain." Dr. Muffly stated that Dotson gets a feeling of pressure and occasional sharp pain, but that he had no history of radicular symptoms into the arms. During the history-taking portion of the examination, Dr. Muffly observed that Dotson was able to move his neck normally without significant stiffness. The examination of Dotson's cervical spine indicated no cervical muscle spasms, but Dotson complained of tenderness at the upper cervical area. Dotson did have full flexion and extension, right and left lateral bend, right and left rotation, but he complained of pain at the limits of motion. X-rays of Dotson's cervical spine were normal. Dr. Muffly further noted that a cervical MRI and dorsal spine MRI of Dotson dated August 29, 1996, were normal. Dotson's bone scan on October 16, 1996, was normal, as was a CT scan of the head dated August 1, 1996. Dr. Muffly's assessment of Dotson was that he suffered muscular cervical pain with no sign of herniated disk or nerve root impingement. Dr. Muffly assigned Dotson a 0% orthopedic impairment, Category DRE I cervical-thoracic. The only restrictions Dr. Muffly would place on Dotson were avoidance of frequent turning of the neck and overhead work requiring backward

extension of the cervical spine. Otherwise, Dr. Muffly opined that Dotson could return to his previous work.

Dotson was examined on September 22, 1998, by Dr. Bart Goldman on behalf of Narrows Branch Coal. On physical examination, Dr. Goldman noted that Dotson appeared extremely stiff in his neck and upper back area. Dotson held his neck stiff and would not spontaneously move it but rather would turn his whole body. Dotson also held his shoulders up. Dotson had severe palpable muscle spasm in the cervical paraspinal muscles from the base of the skull to the cervical thoracic junction. Dr. Goldman noted that Dotson's range of motion of his neck was limited to about 50% of normal. Dr. Goldman stated that the range of motion appeared to be limited voluntarily; however, Dotson's muscle spasm did get worse with attempted range of motion. Dotson was evaluated by using the Ergasys/Matheson Functional Testing Protocol. The results indicated the presence of at least some symptom magnification. Dr. Goldman diagnosed Dotson with a chronic cervical strain. Dr. Goldman noted that multiple evaluations of Dotson revealed no significant anatomical problem. However, Dotson did have objective findings of rather significant muscle spasm. Dr. Goldman believed Dotson had reached maximum medical improvement; and he assigned a Dotson 5% impairment for his cervical-thoracic condition. Dr. Goldman found no evidence of occipital neuralgia, and noted that Dotson had no complaints of headache whatsoever at the examination. Even with the evidence of symptom magnification on Dotson's functional capacity evaluation, Dr. Goldman believed Dotson



should be able to do medium duty work. Dr. Goldman did not believe Dotson should be placed back in a job where he would be required to turn or nod his head quickly. It was Dr. Goldman's opinion that Dotson should be able to return to medium-type duty initially with a gradual return to medium to heavy-duty over two to three months. Dr. Goldman did not feel that Dotson could return to the mining industry, but that he could return to a different type of work environment.

Pursuant to a request by Narrows Branch Coal, Dotson was independently evaluated by Dr. David Schraberg, who is board certified in psychiatry and neurology. Dr. Schraberg performed a psychiatric evaluation on Dotson on May 15, 1997, and a reevaluation on October 7, 1998. Dr. Schraberg noted that Dotson and his wife had separated shortly before the initial evaluation in 1997. At the time of the second evaluation, Dotson had reconciled with his wife; and it was noted that he had not needed to take any types of anti-depressant medication for a year proceeding the evaluation. Following the second examination, Dr. Schraberg believed Dotson had greatly improved; and Dr. Schraberg opined that Dotson's mental problems were, in fact, due to the marital discord. Dr. Schraberg did not believe that Dotson had any psychological disability as a result of the injury which would keep him from returning to his previous employment or any other job. Psychological testing indicated that Dotson had a long-standing personality disorder and that he was engaged in symptom magnification. Dr. Schraberg stated that individuals with Dotson's profile often report much physiologic distress and

difficulty adjusting psychologically. Dr. Schraberg stated that such persons commonly report that they feel weak, tired, tense, fatigued and nervous much of the time. He stated that there is a tendency for their complaints to increase during times of stress and abate when the stressor subsides. Although these individuals are focused on their physical complaints, they also report that they feel depressed and anxious. They commonly report headaches or abdominal discomfort. Dr. Schraberg noted that many people with personality disorders who are having problems in their marriages will go into the hospital as a way of getting attention and, to some extent, pity from the spouse, with the hope that this will bring the spouse back. Dr. Schraberg saw nothing in the records to suggest Dotson suffered from post-traumatic stress disorder. It was his opinion that Dotson was not in need of treatment for his psychological problems and that he had reached maximum medical improvement.

After summarizing the evidence, the ALJ made the following findings relevant to this appeal:

Based upon the record herein, it is the finding of this ALJ that Plaintiff has failed to sustain his burden of proof to show that he, in fact, suffers from any occupational disability due to the injuries herein. The credible testimony indicates that diagnostic testings reveal absolutely no abnormalities relative to Plaintiff's neck, but rather that his headaches and neck complaints are more related to muscle spasms due to tension. Additionally, I note that the record contains evidence of severe symptom magnification Plaintiff's part [sic]. Likewise, I find no evidence to support an award of an occupational disability relative to a psychiatric problem, and, certainly, a large part of Plaintiff's mental problems, if any he has, are attributable to the marital

discord he has gone through as well as the loss of a close friend.

Dotson filed a petition for reconsideration pointing out that the ALJ in her opinion had summarized evidence from Dr. Joseph Zerga which was not a part of the record in this case. Dotson requested the ALJ to strike the evidence from Dr. Zerga and to enter new findings of fact, conclusions of law and judgment without considering Dr. Zerga's evidence. Dotson further requested specific findings regarding the compensability of his medical treatment for his psychological condition.

The ALJ entered an order striking the evidence from Dr. Zerga from the record. The ALJ stated that she had not relied upon Dr. Zerga's opinion "as there was sufficient evidence from other physicians to dismiss Plaintiff's claim, particularly from Drs. Muffly and Shraberg [sic]." The ALJ then ordered the remainder of the opinion and dismissal to stand as previously entered.

Dotson then filed his request for more specific findings concerning his petition for reconsideration. Dotson asked the ALJ for specific findings regarding the future medical expenses related to his psychiatric problems. On June 16, 1999, the ALJ entered an order referring Dotson to paragraph 7 of the opinion and dismissal, which contained the summary of evidence from Dr. Schraberg. The ALJ then stated, "[s]pecifically this ALJ relied upon Dr. Shraberg [sic] in concluding that Plaintiff does not suffer from any work-related psychiatric problems. Therefore, there is no compensable medical coverage for that aspect of Plaintiff's claim."

On appeal to the Workers' Compensation Board, Dotson argued that the ALJ's order and dismissal must be reversed and remanded with specific instructions to find an amount of occupational disability and for an order requiring future medical bills to be paid. Dotson contended that the ALJ did not set out basic facts she had used to support her ultimate conclusions. He further contended that it was obvious the ALJ did indeed rely upon evidence from Dr. Zerga, since the ALJ talked about negative studies, and one of those studies from Dr. Zerga had been summarized by the ALJ in her opinion. Dotson further contended that the ALJ failed to specifically set forth the evidence she had relied upon. Further, Dotson took issue with the ALJ's conclusion that his headaches and neck complaints were more related to muscle spasms due to tension. Dotson contended this finding was not supported by the evidence and was based upon an incorrect interpretation of the evidence. Dotson claimed that no doctor stated that the muscle spasms in his neck were due to tension. With regard to the compensability of expenses for the psychological condition, Dotson argued that the evidence showed he was having at least some problems related to the rock fall; and that even if only a portion of his current psychiatric difficulties were related to the rock fall, he was entitled to medical expenses for his anxiety. Dotson pointed out that it was not necessary for his psychological condition to produce disability in order for his medical expenses to be compensable. The Board affirmed the ALJ. Dotson makes these same arguments in his petition for review to this Court.

The claimant in a workers' compensation action has the burden of proving his entitlement to benefits.<sup>2</sup> Where the party who bears the burden of proof is unsuccessful before the ALJ, the question on appeal is whether the evidence compels a different result.<sup>3</sup> Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ.<sup>4</sup> It is not enough for Dotson to show there is merely some evidence that would support a contrary conclusion.<sup>5</sup> So long as the ALJ's decision is supported by any evidence of substance, it cannot be said the evidence compels a different result, and the ALJ's findings may not be reversed.<sup>6</sup> The ALJ, as fact-finder, has the sole authority to determine the weight, credibility, substance and inferences to be drawn from the evidence.<sup>7</sup> The Board may not substitute its judgment for that of the ALJ as to the weight to be accorded factual issues before the ALJ.<sup>8</sup>

We believe the Board correctly addressed Dotson's arguments on appeal; and we adopt the following discussion from its opinion:

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<sup>2</sup>Snawder v. Stice, Ky.App., 576 S.W.2d 276 (1979).

<sup>3</sup>Wolf Creek Collieries v. Crum, Ky.App., 673 S.W.2d 735 (1984).

<sup>4</sup>REO Mechanical v. Barnes, Ky.App., 691 S.W.2d 224 (1985).

<sup>5</sup>McCloud v. Beth-Elkhorn Corp., Ky., 514 S.W.2d 46 (1974).

<sup>6</sup>Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

<sup>7</sup>Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985).

<sup>8</sup>KRS 342.285.

We believe there is substantial evidence to support the ALJ's finding of no occupational disability due to the injury. As summarized above, there was extensive testing, including MRIs, x-rays, CAT scans and a bone scan, which were all normal. Dr. Knox, one of Dotson's treating physicians, stated the neurological exam was normal. Dr. Muffly assigned a 0% functional impairment. In our opinion, this is substantial evidence supporting a conclusion that there was no occupational disability as a result of Dotson's physical condition. We believe evidence from Dr. Schraberg is substantial evidence to support a finding that there is no occupational disability based upon the psychiatric condition. Dr. Schraberg diagnosed an acute stress reaction which had resolved and a personality disorder with symptom magnification. It was his opinion that any emotional problems Dotson had were due to his marital difficulties. In the second evaluation, he stated these had resolved. He found no need for further treatment of a psychiatric condition. In response to the petition for reconsideration, the ALJ stated she relied upon Drs. Muffly and Schraberg, as was her prerogative as fact finder. We find no merit in Dotson's argument that the ALJ misinterpreted the evidence in stating that his headaches and neck complaints were more related to muscle spasms and tension. Dr. Kennedy and Dr. Schraberg both stated that Dotson's headaches were tension in nature. Dr. Muffly also noted that Dotson seems to get tension of the muscles and then headache type pain. The ALJ's statement is therefore a permissible inference. We also believe the ALJ, through the Opinion and Dismissal and the two orders entered subsequently, set out sufficiently the basis for her decision. Finally, we disagree with Dotson's arguments concerning the compensability of medical expenses for the psychiatric condition. Again, evidence from Dr. Schraberg supported a finding that there were no medical expenses related to the work injury. He found a pre-existing personality disorder and stated he believed Dotson's psychiatric problems were related to stress from his marital difficulties which had resolved. He did not feel any further treatment was necessary. While there was conflicting medical evidence that would have

permitted a finding that some portion of his psychiatric problems were related to the work injury, we do not believe the evidence presented compelled a finding in Dotson's favor.

We also conclude that the record contains no compelling evidence which would prevent a reasonable person from reaching the same conclusion as the ALJ in this case. As noted by the Board, though some medical evidence was presented in Dotson's favor as to his psychiatric condition being related to his work injury, the mere introduction of such evidence does not warrant a finding for Dotson. Further, we find the ALJ did meet the requirements of Mosely v. Ford Motor Co.<sup>9</sup> by setting out the facts she used to support her ultimate conclusions. "The function of further review of the WCB in the Court of Appeals is to correct the Board only where the the [sic] 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."<sup>10</sup> We find no such error.

Accordingly, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Randy G. Clark  
Pikeville, KY

BRIEF FOR APPELLEE, NARROWS  
BRANCH COAL COMPANY:

Brent Turner  
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<sup>9</sup>Ky.App., 968 S.W.2d 675, 677-78 (1998).

<sup>10</sup>Western Baptist, supra at 687-88.