

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000553-WC

ROBERT L. WHITTAKER,
DIRECTOR OF SPECIAL FUND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-87-33199 & WC-98-84753

GERALD BROWN; ROADWAY EXPRESS, INC.;
DONALD G. SMITH, ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

AND: NO. 2001-CA-000704-WC

ROADWAY EXPRESS, INC.

CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-87-33199 & WC-98-84753

GERALD BROWN; ROBERT L. WHITTAKER,
DIRECTOR OF SPECIAL FUND;
DONALD G. SMITH, ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

CROSS-APPELLEES

TO BE HEARD WITH: NO. 2001-CA-000557-WC

ROADWAY EXPRESS, INC.

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-87-33199 & WC-98-84753

GERALD BROWN; ROBERT L. WHITTAKER,
DIRECTOR OF SPECIAL FUND;
DONALD G. SMITH, ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING IN PART AND
REVERSING AND REMANDING IN PART

*** ** ** ** **

BEFORE: JOHNSON, MILLER, AND SCHRODER, JUDGES.

MILLER, JUDGE: Robert L. Whittaker, Director of Special Fund, and Roadway Express, Inc. (Roadway) ask us to review an opinion of the Workers' Compensation Board rendered February 14, 2001. Kentucky Revised Statutes (KRS) 342.290. We affirm in part and reverse and remand in part.

Gerald Brown was an employee of Roadway. In 1985, during the course of his employment, he sustained an injury. He settled a claim for the injury with Board approval. In 1997, he sustained another injury, resulting in a new claim being filed. After filing his new claim, he moved to re-open the 1985 settlement. The two proceedings were consolidated. Thereupon, the Board rendered the opinion which we are asked to review.

We have considered the record herein, and reverse and remand the Board's decision in the Special Fund's Appeal No. 2001-CA-000553-WC, so far as it imposes liability upon the Special Fund growing out of Brown's 1997 injury. KRS 342.120(2).

All other aspects of the opinion of the Board are affirmed under the authority of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed in part and reversed in part and remanded in Appeal No. 2001-CA-000553-WC. Appeal No. 2001-CA-000557-WC and Cross-Appeal No. 2001-CA-000704-WC are affirmed.

SCHRODER, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

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