

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-000433-WC

ISLAND CREEK COAL COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-94-40696; WC-95-42320; WC-96-01201

WILLIAM C. LOGSDON;
ROBERT WHITTAKER, DIRECTOR OF SPECIAL FUND;
HON. THOMAS A. NANNEY, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: JOHNSON, MILLER, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: Island Creek Coal Company petitions for review of an opinion of the Workers' Compensation Board which affirmed an Administrative Law Judge's finding that William C. Logsdon was 100% occupationally disabled upon reopening. Island Creek argues that the earlier award is res judicata as to the reopening case and regardless, the evidence did not support a finding of additional or total disability. Because compensation cases are different, res judicata does not apply to reopenings and the Board did not flagrantly err in assessing the evidence. Thus we affirm.

In his original claim, Logsdon alleged he sustained three lower back injuries and suffered from coal workers' pneumoconiosis while working for Island Creek. The ALJ found Logsdon to be 50% occupationally disabled from the injury claim and awarded retraining incentive benefits for the occupational disease claim in an Opinion and Award dated May 27, 1997. Subsequent to the award, Logsdon was released to return to work by his physician. He passed a pre-employment physical and underwent two days of recertification in mining training at the mine. However, upon returning to the mine for work, Logsdon experienced such an increase in back pain that he had to be taken from the mine without ever actually working. On June 17, 1998, Logsdon had another back surgery which had mixed results. The ALJ considered the evidence on reopening and concluded that Logsdon was now totally occupationally disabled.

Island Creek appealed to the Board which affirmed the ALJ. In its appeal, Island Creek had argued that the ALJ's earlier findings were res judicata as to Logsdon's restrictions as found and relied upon by the ALJ in awarding disability. The Board recognized that Logsdon had to show a "change" in disability to merit a reopening and then stated:

Contrary to the assertions made by Island Creek, we do not believe the Opinion of the original ALJ is res judicata as to the restrictions then found and relied upon by the ALJ therein. While the ultimate decision of the ALJ upon reopening mandates a finding that there is a greater degree of occupational disability than existed at the time of the original award, such a decision need not be made in a vacuum nor is the ALJ without authority to consider alterations in the moving party's condition between the time of the original opinion and the opinion on reopening. To do so would ignore reality.

On appeal to this Court, Island Creek contends the Board erred as a matter of law in not holding the prior award is res judicata.

We agree with the Board that the case of Stambaugh v. Cedar Creek Mining Company, Ky., 488 S.W.2d 681 (1972) is controlling.

Stambaugh dealt with a reopening of a worker's compensation claim and distinguished compensation cases as different:

Compensation cases may be reopened on grounds that would not be sufficient to authorize the disturbance of judgments in common law or equity proceedings. A "change of condition," for example, would not overcome the defense of res adjudicata in a tort case as it does in a compensation case. Cf. KRS 342.125.

Id. at 682. See also W. E. Caldwell Co. v. Borders, 301 Ky. 843, 193 S.W.2d 453 (1946). This "difference" in compensation cases justifies a complete review of all aspects of the original award to see if there is in fact, a "change."

Island Creek's second argument to this Court is that the claimant failed to demonstrate a change for the worse in his condition since the time of the original award of benefits. We believe the record supports the ALJ's conclusions that between the original decision and the reopening there had been some deterioration in Logsdon's condition. After the award, he passed the pre-employment physical and actually attempted to return to work. He had a medical release to return to work and he believed he could return. He was unsuccessful and had another back surgery, after which his doctor said he was 100% disabled. True, there was conflicting evidence, but the ALJ found for Logsdon. That is the ALJ's function. Caudill v. Maloney's Discount

Stores, Ky., 560 S.W.2d 15 (1977); McCloud v. Beth-Elkhorn Corp.,
Ky., 514 S.W.2d 46 (1974).

The Board's review is limited to whether the evidence is sufficient to support a particular finding made by the ALJ. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). The Board so found. The function of the Court of Appeals in reviewing a decision of the Board is to correct the Board only where the Court perceives the Board has overlooked or misconstrued statutes, precedent or has flagrantly erred in assessing the evidence so as to cause a gross injustice. Id. at 687-688. We find no such errors and therefore affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

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