

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000966-WC

TILLMAN BROCK

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-93242

NALLY & HAMILTON ENTERPRISES;  
J. LANDON OVERFIELD,  
Administrative Law Judge; and  
WORKERS COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: BUCKINGHAM, COMBS, and DYCHE, Judges.

COMBS, JUDGE: Tillman Brock asks us to review the April 4, 2001, opinion of the Workers' Compensation Board upholding the dismissal of his petition for disability benefits. Brock contends that the Administrative Law Judge (ALJ) and the Board misconstrued compelling evidence that he has suffered a work-related injury as a result of repetitive mini-traumas in the course of his employment with the appellee, Nally & Hamilton Enterprises. Having reviewed the entire record, we are not persuaded that the evidence compels the result Brock seeks. Accordingly, we affirm the order of the Board.

Brock worked for over twenty years as a heavy equipment operator. In mid-1999, he began experiencing headaches, which he

attributed to turning his head while operating a bulldozer. Brock continued to work until November of that year when his headaches and back and neck pain became so severe that he could no longer tolerate his job. He has not been employed since that time.

In May 2000 Brock filed an adjustment of claim, alleging that he had sustained a neck and back injury as a result of cumulative trauma; Nally & Hamilton defended the claim on the basis that Brock's medical problems were not work-related. Several medical reports were submitted and considered by the ALJ. In dismissing Brock's claim, the ALJ summarized the medical information and concluded as follows:

[Brock] has presented a myriad of physical complaints. I do not believe that [Brock] is fabricating all of these complaints. I believe that he does suffer from pain and has some serious medical problems. However, I am not convinced that [Brock's] problems are related to his work for Defendant Employer. According to his family practitioner's records, [Brock's] problems began as early as December of 1998. He has multiple problems and has undergone a complete battery of diagnostic testing without any truly objective evidence of any harmful change in the human organism. With all due respect to Dr. Ausmus, Drs. Tutt and Gilbert, both neurosurgeons, found no significant problems in either the cervical or lumbar spine other than degenerative disc disease and some bulging. I believe the assessments by Drs. Tutt and Shraberg, that [Brock] suffers from depression, morbid obesity and sleep apnea, are the most plausible. These conditions, however, are not work related.

In its review, the Board again set out the evidence in detail from the medical professionals who either treated or

evaluated Brock. In affirming the ALJ's dismissal of the claim, the Board held as follows:

What can readily be seen from the ALJ's conclusion herein is that he believed Brock has real physiological and psychological problems. It is also clear that he believes the evidence that is the most credible in the instant action is from Drs. Tutt and Shraberg, who also believed Brock had significant psychological problems as well as physiological problems but those conditions had nothing to do with his work but instead related to his morbid obesity. . . .

In its simplest terms, the evidence before the ALJ presented him with a picture that would have supported a finding of work-relatedness or a finding of nonwork-relatedness. It became a question of credibility, the credibility of Drs. Tutt and Shraberg and to a degree Dr. Morgan versus the credibility of Drs. Muckenhausen and Ausmus. The ALJ chose the former, as was his right, and, it cannot be said there was compelling evidence to the contrary.

In our review of the record, we also find no compelling evidence in favor of Brock on the issue of the work-relatedness of his numerous and painful medical conditions. Instead, as the Board held, the evidence is conflicting. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418, 419 (1985). Compelling evidence is evidence that is so persuasive that it was clearly unreasonable for the ALJ not to be convinced by it. Hudson v. Owens, Ky., 439 S.W.2d 565 (1969). It is not enough for Brock to show that there is some evidence which would support a reversal of the ALJ's decision. McCloud v. Beth-Elkhorn Corp., Ky., 514 S.W.2d 46 (1974). While we well might have decided the issue differently, we may not at this juncture superimpose our judgment as there is evidence of substance in the record -- particularly

the medical reports of Dr. Tutt and Dr. Schraberg – sufficiently underpinning the ALJ's findings. Thus, we are not persuaded that the Board committed an error, much less a flagrant error, in assessing the evidence in this case. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

The opinion of the Board is affirmed.

ALL CONCUR.

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