

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001145-WC

GLENN MONDAY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-98982

COLLINS MASONRY; JACK SEXTON;
UNINSURED EMPLOYERS FUND;
HONORABLE ROGER D. RIGGS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, COMBS, AND DYCHE, JUDGES.

DYCHE, JUDGE. Glenn "Kirk" Monday brings this appeal from an opinion of the Workers' Compensation Board ("Board" or "WCB") which affirmed an order of the Administrative Law Judge ("ALJ") dismissing his claim for benefits from Collins Masonry.

The ALJ is the sole judge of the facts and determines the quality, character, and substance of the evidence presented, and the reviewing court or body may not substitute its judgment on these factual issues. Paramount Foods v. Burkhardt, Ky., 695 S.W.2d 418 (1985). When the claimant is unsuccessful below, the

issue on appeal is whether the evidence compelled a finding in his favor. Wolf Creek Collieries v. Crum, Ky.App., 673 S.W.2d 735 (1984). Compelling evidence is that which is so overwhelming that no reasonable person could reach the same conclusion as that reached by the ALJ. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985).

We have examined the record as a whole, including the testimony of Monday, and can find no compelling evidence that the injuries of which he complains were caused by the fall he allegedly took while in the employ of Collins. The ALJ expressed doubts, (which have a firm basis), about Monday's credibility; his testimony varied on the extent of work he performed after he worked for Collins. The history he related to health care providers cast doubt on his claim.

The WCB is entitled to the same deference for its appellate decisions as we intend when we exercise discretionary review of Kentucky Court of Appeals decisions in cases that originate in circuit court. The function of further review of the WCB in the Court of Appeals 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.

Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992). We find no such error and affirm the opinion of the Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

John E. Cornett
Georgetown, Kentucky

BRIEF FOR APPELLEE
COLLINS MASONRY:

Zaring P. Robertson
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