

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-002760-WC

PIKEVILLE UNITED METHODIST HOSPITAL

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-54654

DOVIE SIMMONS; HON. SHEILA C. LOWTHER,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AND ORDER
DISMISSING

*** ** ** ** **

BEFORE: BARBER, COMBS AND JOHNSON, JUDGES.

JOHNSON, JUDGE: Pikeville United Methodist Hospital (Hospital) petitions for review of an opinion of the Workers' Compensation Board (Board) rendered on February 16, 1996, which remanded the case to the Administrative Law Judge (ALJ) for further evaluation of the medical evidence. Specifically, the Board determined that, in his opinion and award, the ALJ had failed to thoroughly and accurately summarize the medical evidence presented by Dr. Sujata R. Gutti and Dr. Naveed Ahmed, evidence which tended to favor the position of appellee Dovie Simmons. Having concluded

that the Board's decision is not final and appealable, we dismiss the petition for review.

Simmons began her employment with the Hospital in February 1980. Her duties consisted primarily of working in the nursery and labor room where she would care for newborns and assist women in labor and delivery. On November 12, 1998, Simmons suffered an injury to her low back while moving a patient, who had undergone an emergency C-Section. Simmons testified that she experienced immediate pain in the middle part of her low back and down her legs. Simmons additionally testified that on the same date she suffered a second injury when she tripped over a laundry basket, fell to the floor, and struck her knee.

On July 10, 2000, Simmons filed an application for resolution of injury claim with the Department of Workers' Claims. On November 9, 2000, a benefit review conference was held, and on November 22, 2000, a formal hearing was held. On February 16, 2001, the ALJ entered an opinion and award awarding Simmons temporary total disability benefits of \$431.51 per week for the period November 16, 1998, through March 14, 1999, and permanent partial disability income benefits of \$19.64 per week beginning on March 15, 1999, and continuing thereafter for a period not to exceed 425 weeks. Simmons's motion for reconsideration was denied.

Simmons appealed to the Board and argued that the ALJ had failed to consider all of the medical evidence of record and/or that the ALJ had erroneously summarized the evidence in his February 2001 opinion and award. On November 21, 2001, the

Board rendered an opinion vacating the ALJ's opinion and remanding the case to the ALJ "to set forth an accurate understanding of the totality of the record so as to afford both this Board and, more importantly, the parties, clear findings of fact and conclusions drawn from those facts." This petition for review followed.

In its November 21, 2001, opinion, the Board stated, in relevant part, as follows:

Although ultimately we believe there is adequate evidence from Drs. Goodman and Zerga to support ALJ Bedford's overall determination, as is Simmons [sic], we too are troubled with the ALJ's rendition of the medical proof from Drs. Gutti and Ahmed. Similarly, although these matters were properly raised by Simmons on petition for reconsideration, the order overruling that petition did little to resolve what we believe to be legitimate concerns regarding ALJ Bedford's perceived [sic] misunderstanding [sic] of Dr. Gutti's and Dr. Ahmed's medical findings and diagnosis on Simmons' [s] behalf. We therefore believe [sic], given the diversity in the medical opinions expressed by the various medical experts, the inadequate fact findings by ALJ Bedford transcend mere harmless error. Cook v. Paducah Recapping Service, Ky., 694 S.W.2d 684 (1985). If, as it appears from the record, the ALJ conducted only a cursory review of the medical opinions of Dr. Gutti and Dr. Ahmed, especially in light of the extensive objective medical testing conducted by those physicians, such an inaccurate understanding of that medical proof could have reasonably had, in our opinion, a material bearing in this claim's final outcome.

. . .

We therefore vacate the opinion of the ALJ entered on February 16, 2001, and remand this action for entry of a new decision containing an accurate summary of all the evidence of record.

Pikeville United Methodist Hospital argues that the Board should be reversed because the ALJ's opinion and award clearly indicates that the ALJ sufficiently considered the evidence of Dr. Ahmed and Dr. Gutti. Simmons, on the other hand, contends that the appeal should be dismissed because the opinion of the Board is not a final and appealable judgment pursuant to CR 54.01. We agree with Simmons.

This Court's jurisdiction in reviewing the Board's decision is limited to reviewing an order that is final and appealable within the meaning of CR¹ 54.01.² "An action which is remanded only for further findings of fact and not to make a disposition that would terminate the action, as in the case sub judice, is not a final and appealable order within the meaning of CR 54.01."³

The opinion of the Board merely remanded this matter for the ALJ "to set forth an accurate understanding of the totality of the record" by providing "clear findings of fact and conclusions drawn from those facts." The Board's decision is not final and appealable and, accordingly, the petition for review is hereby ordered dismissed.

ALL CONCUR.

Entered: May 24, 2002

/s/ Rick A. Johnson
JUDGE, COURT OF APPEALS

¹Kentucky Rules of Civil Procedure

²Stewart v. Lawson, Ky., 689 S.W.2d 21, 23 (1985); Wagoner v. Mills, Ky.App., 566 S.W.2d 159 (1977).

³King Coal Co. v. King, Ky.App., 940 S.W.2d 510, 511 (1997) (citing Stewart, supra).

BRIEF FOR APPELLANT:

Penelope Justice Turner
Pikeville, Kentucky

BRIEF FOR APPELLEE, DOVIE
SIMMONS:

R. Roland Case
Pikeville, Kentucky