

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000543-WC

BANK ONE

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-97899

VICKI BARNA;
HON. DONALD G. SMITH,
ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: EMBERTON, GUIDUGLI, AND MILLER, JUDGES.

MILLER, JUDGE: Bank One asks us to review an opinion of the Worker's Compensation Board (Board) entered February 13, 2002. Kentucky Revised Statutes (KRS) 342.290. We affirm.

The petition before us emanates from an order of the Board remanding to the Administrative Law Judge (ALJ) for a second time.

Barna began working for Bank One as a machine operator in 1997. The work required her to sit with a calculator and computer and place checks in a machine for the purpose of encoding the amounts thereon. In November of 1997, she developed

pain in her left upper extremity. She feared a heart attack. Ultimately, she was referred to doctors, Amit Gupta, and Erdogan Atasoy, for treatment. She was diagnosed as suffering from "bilateral carpal tunnel syndrome," and "thoracic outlet compression." She underwent an operation for each condition. She was seen by Dr. Jeffrey Lawton, who examined her at the University of Kentucky pursuant to KRS 342.315.

The issue in this appeal, and the issue which has been plaguing the ALJ, is how to handle the testimony of the Dr. Gupta and Dr. Atasoy in light of the testimony of Dr. Lawton, the University Evaluator. The matter involves Magic Coal Company v. Fox, Ky., 19 S.W.3d 88 (2000) and the interpretation of KRS 342.315(2). That statute affords the University Evaluator presumptive weight.

The ALJ persists in weighing the evidence of Drs. Gupta and Atasoy, the treating physicians, against the testimony of Dr. Lawton, the University Evaluator. In doing so, he finds Barna suffered a work related occupational disability, and makes an award accordingly. This is contrary to the finding and testimony of Dr. Lawton. We think the ALJ is in error.

The purpose of the statutory enactment was to eliminate the battle of experts in compensation cases, wherein each side was given to marshaling a number of physicians to support its cause. The ALJ's balancing of the testimony of the treating physicians with the University Evaluator simply returns to this pre-statutory chaos. In other words, it eliminates the presumption afforded the University Evaluator under KRS

342.315(2) and returns us to "square-one" - - - the practice of marshaling an array of physicians on each side. This is, of course, inappropriate.

Our view is that since the enactment of KRS 342.315(2) and the decision in Magic Coal the unassailed testimony of the University Evaluator will "carry-the-day." It is not a matter of balancing the testimony and determining that a party might adduce testimony to outweigh the opinion of the Evaluator.

In the case at hand, it is difficult to believe that the testimony of Dr. Lawton can be sufficiently denigrated on remand so as to justify an award to Barna. Nevertheless, we are of the opinion that the Board acted correctly in remanding the case a second time.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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