

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-000885-WC

JOHNNY RICHARD MORGAN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-01-00160

LESLIE RESOURCES, INC.;  
HON. SHEILA C. LOWTHER,  
CHIEF ADMINISTRATIVE LAW JUDGE;  
WORKERS' COMPENSATION BOARD

APELLEES

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

BEFORE: BARBER, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Johnny Richard Morgan asks us to review an opinion of the Workers' Compensation Board (Board) rendered March 27, 2002. Kentucky Revised Statutes (KRS) 342.290. We affirm.

On January 31, 2001, Johnny Richard Morgan filed a claim for workers' compensation benefits alleging he suffered work-related injuries on September 2, 1998 and June 7, 1999 while in the employe of Leslie Resources, Inc. The Chief Administrative Law Judge (CALJ) found that Morgan's claim for the 1998 injury was barred by the statute of limitations. The CALJ

further found that Morgan had not proved that he suffered an injury of appreciable proportion in 1999. The Board affirmed, thus precipitating this appeal.

The 1998 injury, which was held to have been barred by the statute of limitations, is not at issue in this appeal. The sole issue is whether the evidence compels a finding in Morgan's favor for the alleged injury of 1999. See Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). That is to say, where the CALJ denied benefits, the question is whether the record compels an adverse ruling. In determining whether the record so compels, we must recognize that the CALJ has sole authority to determine the weight and credibility of evidence, including inferences to be drawn therefrom. See Paramount Food, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Where the evidence is conflicting, the CALJ may choose to believe part of the evidence and disbelieve other parts. See Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977); Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977).

We have examined the evidence in this case and are not convinced that it compels a finding of an appreciable work-related injury emanating from Morgan's 1999 incident. Therefore, we are compelled to uphold the Board under the precepts of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

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

ALL CONCUR.

BRIEF FOR APPELLANT:

McKinnley Morgan  
Hyden, Kentucky

BRIEF FOR APPELLEE, LESLIE  
RESOURCES, INC.:

Bonnie Hoskins  
Lexington, Kentucky