

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000810-WC

CLOVERFORK MINING & EXCAVATING, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. 00-WC-86785

AUSTIN CRAIG;
HON. RONALD MAY, ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

MILLER, JUDGE: Cloverfork Mining & Excavating, Inc., asks us to review an Opinion of the Workers' Compensation Board (Board) rendered March 20, 2002. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Craig filed an application for benefits with the Department of Workers Claims on November 13, 2000. It was stipulated that Craig had been exposed to loud noises on the job for approximately thirty years. His last date of employment with Cloverfork Mining & Excavating, Inc., (Cloverfork) was on July 2, 1999.

Craig testified that he began noticing hearing problems approximately eight years prior to leaving work in July of 1999. He testified that these problems worsened with time, especially during the last four years of employment. Two years before his last date of employment, Craig stated he began losing his balance and falling. He also began to experience ringing in his ears. As a result, he was treated by his family physician, one Dr. Jai. The record indicates that Dr. Jai told Craig that his loss of balance was due to inner ear problems, but at no time told Craig that the cause of his hearing condition was work-related.

The undisputed evidence indicates that Dr. Samir Guindi was the first physician to inform Craig that his hearing problems were probably related to noise exposure on the job, and were, therefore, work-related. Dr. Guindi evaluated Craig on November 1, 1999. Upon receiving Dr. Guindi's report, Craig's attorney sent a letter to Cloverfork by certified mail dated November 12, 1999. It notified Cloverfork that Craig had been medically diagnosed as suffering from a work-related hearing impairment, and that a claim for disability benefits would soon be filed.

On May 7, 2001, the Administrative Law Judge (ALJ) found that Craig suffered a 17.5 percent permanent partial disability. The ALJ also awarded Craig medical benefits with regard to his work-related hearing loss. In granting this award, the ALJ characterized Craig's cause of action as an occupational disease for the purposes of notice and the statute of limitations. Cloverfork then appealed to the Board of Workers' Compensation.

In an unanimous decision rendered October 10, 2001, the Board vacated in part the ALJ's opinion and award. The Board determined that it was error for the ALJ to treat Craig's cause of action as an occupational disease rather than a cumulative trauma injury. Upon remand, the ALJ determined that Craig was aware that he had suffered a work-related hearing loss during the last eight years he was employed. In a December 3, 2001 order, the ALJ ruled that Craig failed to timely file his application for benefits, and that Craig failed to provide Cloverfork with timely notice of injury. Craig then pursued an appeal to the Board.

Relying upon Hill v. Sextet Mining Corporation, Ky., 65 S.W.3d 503 (2001), the Board reversed the ALJ's December 3, 2001 order, and reinstated the ALJ's original award. Cloverfork has now asked us to review the decision of the Board.

Cloverfork contends that the Board committed error by reversing the ALJ's December 3, 2001 order. Specifically, Cloverfork believes that there was substantial evidence to support the ALJ's findings that Craig failed to provide timely notice of his injury and failed to timely file an application for benefits. Upon review of the Board's decision, we must conclude that the Board correctly applied the law to the facts at hand. In fact, we agree with the Board's reasoning and adopt it herein:

In Hill, the Court determined it was obvious that the claimant associated his cumulative trauma symptoms with his work long before being informed by a physician that his condition was work-related. Nonetheless, the Supreme Court determined that under such circumstances, an injured worker is not required to self-diagnose. Consequently, the

clocking of the statute of limitations and the requirement to give due and timely notice in cumulative trauma cases, such as the case sub judice, does not arise until the claimant is informed by a physician that his work is gradually causing the harmful changes alleged. Id. at 507.

Our review of the evidence in Craig's claim indicates the petitioner was not actually informed by a physician that his hearing loss was work-related until November 1999. He then immediately provided written notice of that fact to Cloverfork. His application for adjustment of hearing loss claim was filed approximately one year later. Consequently, based upon these irrefutable facts and the Supreme Court's guidance in Hill v. Sextet Mining Corp., Id., as a matter of law, we must now reverse ALJ May's subsequent ruling on remand.

In the foregoing, we believe the Board properly interpreted Hill, and properly applied Hill to the facts at hand. Accordingly, we are of the opinion that Craig timely filed his application for benefits, and timely gave notice of injury to Cloverfork under KRS 342.185.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, AUSTIN
CRAIG:

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