

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001113-WC

JIMMIE A. MCCULLOUGH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-93-26911

DOVER CORPORATION;
SPECIAL FUND;
HON. ROGER D. RIGGS,
ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING
** ** * * * * *

BEFORE: JOHNSON, KNOPE, AND MILLER, JUDGES.

MILLER, JUDGE: Jimmie A. McCullough asks us to review an opinion of the Workers' Compensation Board (Board) rendered April 24, 2002. Kentucky Revised Statutes (KRS) 342.290. We affirm.

This matter involves McCullough's motion to reopen an award under KRS 342.125. The motion was denied.

McCullough sets forth but one issue for our consideration and that is whether the Administrative Law Judge (ALJ) ignored uncontroverted and unrebutted evidence concerning McCullough's increased disability.

The Board made a thorough examination of the record and noted that the evidence was conflicting. As the burden of proof was upon McCullough, the Board concluded that he had failed in his burden. Upon considering the entire record, the Board was of the opinion that the record did not compel a finding in McCullough's favor. Perforce, the decision of the ALJ was affirmed.

We have examined the record herein and are constrained to agree with the reasoning of the Board. As the finder of fact, the ALJ has authority to assign weight and credibility to the evidence. See Paramount Foods, Inc. v. Burkhardt, Inc., Ky., 695 S.W.2d 418 (1985). The ALJ has discretion in determining what evidence to believe. See Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977). Finally, it is insufficient that there may be some evidence to support the contention of the party bearing the burden of proof; the evidence must be so compelling as to warrant a decision in his favor. See Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). We cannot conclude that the evidence so compelled.

Upon the case as a whole, we are bound to affirm under the authority of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

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

KNOPF, JUDGE, CONCURS.

JOHNSON, JUDGE, CONCURS IN RESULT ONLY.

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