

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001168-WC

HOME OF THE INNOCENTS, INC.

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-00473

WILLIAM D. BEAUCHAMP, SR.,
HON. DONALD G. SMITH,
ADMINISTRATIVE LAW JUDGE and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: BARBER, BUCKINGHAM, AND HUDDLESTON, JUDGES.

BUCKINGHAM, JUDGE: Home of the Innocents, Inc., petitions for review of an opinion by the Workers' Compensation Board affirming an award of benefits by an administrative law judge (ALJ) to William D. Beauchamp, Sr. We affirm.

Beauchamp was employed by Home of the Innocents, a non-profit corporation which has a facility in Louisville for severely disabled children. On July 28, 1999, Beauchamp and three co-workers went to the Louisville Stock Yards, which had recently been acquired by Home of the Innocents, to remove cans of paint which had been dumped on the property. Beauchamp and

the three co-workers picked up the cans of paint, placed them in plastic bags, and took them to a hazardous waste disposal site. The temperature that day was approximately 100 degrees.

During the course of cleaning up the site, Beauchamp became dizzy and nauseous. He continued thereafter to exhibit the same symptoms, and he contacted his personal physician for an appointment. Beauchamp eventually came under the care of other physicians, including Dr. Hal Corwin, a neurologist. Dr. Corwin referred Beauchamp to Dr. Richard Edelson, a neuro-psychologist.

Dr. Edelson caused Beauchamp to undergo an extensive series of neuro-psychological testing. This testing consisted of a battery of thirty-five to forty standardized psychological tests which were administered over a three-day period. Dr. Edelson diagnosed both organic brain damage and major depression, which he attributed to Beauchamp's acute exposure to unknown toxic agents. Beauchamp never returned to work, and Dr. Edelson assigned Beauchamp a rating of 29% impairment to the body as a whole.

Beauchamp filed a claim for benefits on April 4, 2001. Of all the medical evidence, the ALJ found the testimony of Dr. Edelson to be the most persuasive. The ALJ awarded Beauchamp permanent partial disability benefits based on a 29% impairment rating. Further, the ALJ concluded that the brain damage diagnosed by Dr. Edelson satisfied the requirement of a "physical" injury. Home of the Innocents appealed to the Board, but the Board affirmed the decision of the ALJ. This petition for review by Home of the Innocents followed.

Home of the Innocents phrases the issue in this case as "what constitutes a finding of a 'physical injury' in a psychological claim for workers' compensation benefits." It argues that a diagnosis without evidence of a physical change in the tissue or structure of a body part from an alleged work injury is insufficient to support an award of benefits. Stated another way, Home of the Innocents argues that an award "cannot be sustained without objective evidence of some kind of physical alteration of body tissue or structure directly due to the alleged work incident. Without some kind of traumatic event resulting in an observable physical injury changing tissue structure, the claim for permanent benefits should fail."

In pertinent part, KRS¹ 342.0011(1) states:

"Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. . . . "Injury" when used generally, unless the context indicates otherwise . . . shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

Referring to the words of the statute, Home of the Innocents asserts that there was no objective medical evidence to support the diagnosis of organic brain damage. It argues that there must be some objective evidence of a physical change in the tissue or physical structure of Beauchamp's brain, and in support of its argument, it notes that Beauchamp's MRI studies and CT scans of

¹ Kentucky Revised Statutes.

his brain were essentially normal. Thus, Home of the Innocents maintains that Beauchamp did not prove that he suffered a physical injury, and it argues that an award may not be based on subjective responses to a series of questions and answers on a test form.

In response, Beauchamp states that "[t]his claim does not concern a psychiatric injury secondary to a physical injury. Instead, the physical injury is to the brain, and the testing performed by Dr. Richard Edelson has clearly established that an organic brain injury has occurred. . . . [T]he remainder of the argument presented by Appellant is irrelevant to the present case because it addresses situations of physical injury that result in secondary psychological problems."

The ALJ determined that the standardized testing administered by Dr. Edelson supported the definition of "injury," and the Board agreed. The Board relied on the Kentucky Supreme Court's decision in Gibbs v. Premier Scale Company/Indiana, Ky., 50 S.W.3d 754 (2001). The Gibbs court noted that the statute requires that the harmful change in the human organism be evidenced by objective medical findings. Id. at 761. Unless there are objective medical findings to prove the harmful change, the condition is not compensable as an "injury." Id.

The Gibbs court also noted that KRS 342.0011(33) defines "objective medical findings" as "information gained through direct observation and testing of the patient applying objective or standardized methods." The court then reasoned that a diagnosis is not an objective medical finding but that a

diagnosis must be supported by objective medical findings in order to establish the presence of a compensable injury. Id. The court also stated that “[a] patient’s complaints of symptoms clearly are not objective medical findings as the term is defined by KRS 342.0011(33).” Id. at 762.

However, although the worker in the Gibbs case was unsuccessful for lack of proof, the court went on to state:

We know of no reason why the existence of a harmful change could not be established, indirectly, through information gained by direct observation and/or testing applying objective or standardized methods that demonstrated the existence of symptoms of such a change. Furthermore, we know of no reason why a diagnosis which was derived from symptoms that were confirmed by direct objective and/or testing applying objective standardized methods would not comply with the requirements of KRS 322.0011(1).

Id. The ALJ in the case *sub judice* found that the standardized testing of Beauchamp by Dr. Edelson and the results obtained were sufficient to support a finding of an injury as that term is defined in the statute. The Board affirmed the existence of objective medical findings.

Pursuant to Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992), we are “to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.” Id. at 687-88. In accordance with that standard, we find no error. We conclude that the testimony of Dr. Edelson and the findings of the ALJ supported the award of benefits herein.

The opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, WILLIAM D.
BEAUCHAMP, SR.:

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