

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2003-CA-002261-WC

MAIL CONTRACTORS OF AMERICA

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-53850

CECIL RAY, JR.; HON. SHEILA LOWTHER,
CHIEF ADMINISTRATIVE LAW JUDGE;
JEFFREY T. SAMPSON; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, DYCHE, and KNOPF, Judges.

COMBS, JUDGE. Mail Contractors of America (MCA) petitions for review of a decision of the Workers' Compensation Board which affirmed an award of permanent partial disability benefits to Cecil Ray, Jr. The sole issue presented for our review is whether the Board accurately assessed the medical testimony relied upon by the Administrative Law Judge (ALJ) in rendering her opinion and award. Having reviewed the record, we are unable to find any error in the Board's assessment of the

evidence -- much less any flagrant error. See, Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992). Thus, we affirm.

As the relevant facts and evidence are fully and completely set forth in the Board's opinion of September 24, 2003, it is unnecessary to summarize those facts yet again. In essence, Ray was injured while operating a tractor-trailer as an employee of the appellant on January 16, 2001. He suffered neck and back pain as a result of the accident and underwent disc fusion surgery on December 28, 2001.

In his claim for workers' compensation benefits, MCA argued that Ray failed to establish that it was the accident that caused his back problems; consequently, MCA contended that Ray was not entitled to any permanent disability benefits. It also argued that Ray's surgery was not medically necessary. However, based on the testimony of Dr. Alexander Hawkins, who performed the surgery, and the report authored by Dr. Frank Wood, the IME physician, the ALJ decided both issues in Ray's favor and awarded him benefits based on a 25% impairment rating.

In affirming the award, the Board concluded that there was substantial evidence to support the ALJ's decision. We are in complete agreement with the Board. The following portions of Dr. Wood's report support the ALJ's conclusion with respect to causation:

There is a causal relationship between the Jan. 16, 2001 accident and the Dec. 28, 2001 surgical procedure. There is documentation that [Ray] complained of right-sided neck and shoulder pain immediately after the injury, and there is the suggestion that those complaints continued until the time of the surgery.

There is no objective documentation in the records provided, or in the history given by the examinee, to suggest any pre-existing active impairment prior to the time of the Jan. 16, 2001 motor vehicle accident.

. . .

Based upon the available information, to a reasonable degree of medical certainty, there is a causal relationship between [Ray's] current complaints and the reported injury. [Ray] had a pre-existing dormant condition, cervical spondylosis, which was brought to disabling reality and aggravated by the Jan 16, 2001 injury. There is no history of prior complaints of neck problems, and there are no medical records provided to document any previous treatment for neck problems.

Dr. Hawkins likewise testified that the accident aggravated a dormant, pre-existing condition -- further supporting the ALJ's finding with respect to the issue of causation. The surgeon's testimony also supports the determination of the ALJ that the surgery was reasonable and necessary. Based on the results of medical tests, including MRI's and x-rays, and the fact that eight months of conservative treatment failed to ameliorate Ray's pain and numbness, Dr. Hawkins believed that surgical intervention was indicated.

Despite the substantial evidence to support the ALJ's award, MCA contends that the expert opinions supporting the ALJ's decision are not competent. It alleges that the medical evidence "was based on [Ray's] unbelievable and inconsistent stories." (Appellant's brief, p. 14). It cites Osborne v. Pepsi-Cola, Ky., 816 S.W.2d 643 (1991), for the proposition that the ALJ was required to disregard the evidence establishing causation.

As noted in her opinion and award, the ALJ was well aware of the inconsistencies in Ray's accounts of the accident and of his penchant for symptom magnification. Nevertheless, she believed that he sustained a compensable injury as a result of the work-related vehicular accident. The Board correctly rejected MCA's contention that the ALJ was required to disregard the medical opinions. Rather, it accurately stated the law in Osborne v. Pepsi-Cola, supra, as permitting but not requiring the ALJ to disregard medical opinions based on an imperfect history.

Finding no error, the opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Douglas W. Becker
Louisville, Kentucky

BRIEF FOR APPELLEE:

Jeffrey T. Sampson
Louisville, Kentucky