

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000261-WC

JEFFREY ANGLIN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-82104

HARLAN CUMBERLAND COAL COMPANY;
HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: JOHNSON AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Jeffrey Anglin petitions for review of an opinion of the Workers' Compensation Board (the Board) entered January 6, 2006, affirming the Administrative Law Judge's (ALJ's) decision regarding the termination of his temporary total disability (TTD) benefits and award of permanent partial disability benefits. We affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

The facts of this case are rather straightforward. Anglin sustained a work-related injury to his lower back on September 9, 2000, while in the employ of Harlan Cumberland Coal Company (Harlan). The ALJ found that Anglin suffered a 17% permanent partial disability as a result of the work-related injury. On appeal, the Board determined that the award of TTD benefits was in error. The Board concluded the date of November 25, 2003, was arbitrary because there was no evidence that Anglin reached maximum medical improvement on this date. The Board remanded the matter to the ALJ to conduct an additional hearing and to make further findings of fact in accordance with Kentucky Revised Statutes 342.001(11)(a).

Upon remand, the ALJ conducted an additional hearing and found that Anglin reached maximum medical improvement on July 11, 2002. In support thereof, the ALJ cited the opinion of Anglin's treating physician, Dr. Kenneth Smith. Dr. Smith opined that Anglin had reached maximum medical improvement on July 11, 2002, because he was no longer responding to physical therapy. The ALJ determined that Anglin was entitled to TTD benefits "from January 9, 2002 through and including July 11, 2002" and permanent partial disability benefits thereafter. Anglin filed a petition for reconsideration that was denied by the ALJ.

Being unsatisfied with this decision, Anglin sought review by the Board. On January 6, 2006, the Board entered an opinion affirming the Board, thus precipitating our review.

Anglin contends the ALJ committed error by determining that TTD benefits should have ended on July 11, 2002. Specifically, Anglin contends that the ALJ's finding that he reached maximum medical improvement on July 11, 2002, was arbitrary and not supported by the evidence. Instead, Anglin believes that he is entitled to TTD benefits based upon the "best evidence in the record, that being the testimony of Dr. [Jose] Echeverria" Based upon this evidence, Anglin contends that he did not reach maximum medical improvement until November 2003, and thus, was entitled to TTD benefits until this time.

To prevail on appeal, Anglin must demonstrate that the evidence compels a finding in his favor. See Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky.App. 1984). To be compelling, the evidence must be so overwhelming that no reasonable person could have reached the same conclusion as the ALJ. See Webster Co. Coal Corp. v. Lee, 125 S.W.3d 310 (Ky.App. 2003). Moreover, the credibility and weight of evidence is within the sole province of the ALJ.

The ALJ found as follows:

In this regard the Administrative Law Judge has once again reviewed the medical proof in this file and is persuaded by the testimony of Dr. Kenneth Smith, the Plaintiff's treating surgeon, who opined that he reached maximum medical improvement on July 11, 2002 as set forth in his March 2004 report. Therefore the Administrative Law Judge finds that Mr. Anglin was temporary[sic] and totally disabled from January 9, 2002 through and including July 11, 2002 and will thereafter receive his permanent partial disability benefits awarded herein.

We view the opinion of Dr. Smith as constituting substantial evidence to support the ALJ's decision that Anglin reached maximum medical improvement on July 11, 2002. It is well within the discretion of the ALJ to find Dr. Smith's testimony more persuasive than that of Dr. Jose Echeverria. As such, we are of the opinion that the Workers' Compensation Board did not err in affirming the ALJ's decision that Anglin reached maximum medical improvement on July 11, 2002, which required the termination of TTD benefits on that date.

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:

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