

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001153-WC

GEORGE HUMFLEET MOBILE HOMES

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-96269

DENNIS CHRISTMAN;
HONORABLE LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: DIXON AND THOMPSON, JUDGES; HENRY,¹ SENIOR JUDGE.

DIXON, JUDGE: George Humfleet Mobile Homes (“Humfleet”) petitions this Court for review of a Workers' Compensation Board opinion affirming an Administrative Law Judge's (ALJ) award on reopening in favor of Humfleet's former employee, Dennis Christman.

¹ Senior Judge Michael L. Henry sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Christman sustained a work-related back injury on January 26, 2000, while an employee of Humfleet. Christman pursued a workers' compensation claim, and an opinion and award was entered by ALJ Donna Terry on January 28, 2002, finding Christman permanently partially disabled. Christman appealed to the Workers' Compensation Board, which remanded the claim to ALJ Terry to assign an impairment under the Fifth Edition of the *AMA Guides to the Evaluation of Permanent Impairment (Guides)*.² Ultimately, the Board's order of remand was affirmed by both this Court³ and the Kentucky Supreme Court.⁴ On March 5, 2004, the Board remanded the claim to ALJ Terry for resolution consistent with the Supreme Court's opinion. ALJ Terry issued an opinion and award on remand on April 19, 2004. Finally, on May 25, 2004, pursuant to Christman's petition for reconsideration, ALJ Terry entered an order modifying the April 19 award to properly extend the benefit period from 425 weeks to 520 weeks.

Six months later, on November 30, 2004, Christman filed a petition pursuant to Kentucky Revised Statutes (KRS) 342.125(1)(d) to reopen his claim alleging his impairment had worsened and that he was totally disabled. ALJ Lawrence Smith granted the petition to reopen. After considering the medical evidence and testimony, ALJ Smith awarded Christman total permanent disability benefits on October 17, 2005. Humfleet appealed the award to the Board, alleging ALJ Smith misconstrued KRS

² In the initial award, ALJ Terry relied upon an impairment rating under the Fourth Edition of the *Guides* to calculate Christman's income benefit.

³ *George Humfleet Mobile Homes v. Christman*, 2002-CA-001332-WC (Dec. 20, 2002).

⁴ *George Humfleet Mobile Homes v. Christman*, 125 S.W.3d 288 (Ky. 2004).

342.125(1)(d) and that Christman failed to meet his burden of proof under the statute. The Board acknowledged that Humfleet's argument had not been directly addressed by the Board or the appellate courts. However, in a well-reasoned opinion, the Board affirmed the ALJ Smith's award on reopening. Humfleet now petitions this Court for review and requests that we reverse the Board and remand to ALJ Smith with instructions to dismiss Christman's petition to reopen.

Normally, this Court gives deference to the Board's decision and only intervenes when the Board's action constitutes a flagrant error resulting in gross injustice. *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). However, in this case the facts are undisputed, and Humfleet's appeal turns on a question of statutory interpretation. Consequently, because statutory interpretation is a matter of law, we owe no deference to the findings of the Board, and our review is *de novo*. *Newberg v. Thomas Industries*, 852 S.W.2d 339, 340 (Ky.App. 1993).

The statute at issue here, KRS 342.125, states in pertinent part:

1) Upon motion by any party or upon an administrative law judge's own motion, an administrative law judge may reopen and review any award or order on any of the following grounds:

...

(d) Change of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order.

It is well-settled that, “[w]here the words used in a statute are clear and unambiguous and express the legislative intent, there is no room for construction and the statute must be accepted as it is written.” *Griffin v. City of Bowling Green*, 458 S.W.2d 456, 457 (Ky. 1970) citing *Fryman v. Electric Steam Radiator Corp.*, 277 S.W.2d 25 (Ky. 1955). Furthermore, we are mindful to liberally construe a statute to ensure the intent of the legislature is carried out. Ky. Rev. Stat. 446.080(1).

Our review in this case is limited to the meaning of the phrase, “since the date of the award or order” in KRS 342.125(1)(d). Humfleet argues that under this statute, the relevant date to consider for reopening a claim is the date the original award became final. We disagree.

Humfleet does not dispute that Christman produced medical records from 2002 through 2004 to support his claim of total disability. Rather, Humfleet contends that Christman failed to meet his burden of proving his condition worsened after May 25, 2004 -- the date ALJ Terry sustained Christman's petition for reconsideration on remand. Humfleet asserts that, in granting the petition to reopen, ALJ Smith erred by considering medical evidence of Christman's worsened impairment prior to May 25, 2004.

We acknowledge that Christman had the burden of proving by objective medical evidence that his impairment worsened. However, based upon our review, we find KRS 342.125(1)(d) clear and unambiguous on its face. The statute plainly says that a movant must establish a changed condition “since the date of the award or order.” It does not say 'since the date the award or order became final,' as Humfleet argues. As

such, Christman satisfied his burden and produced sufficient evidence that his condition deteriorated in the thirty-three months following the original award.

Furthermore, although our review is *de novo*, we agree with the Board's reasoning:

Here, the evidence established Christman was permanently and partially disabled as of January 28, 2002. Further, it was established that he sustained a 5% whole person impairment to the lumbar spine and some degree of permanent partial impairment to the cervical spine. On remand from the Supreme Court, ALJ Terry was not authorized to alter her conclusions on permanent partial disability nor the degree of impairment to the lumbar spine. *See Wells v. Peabody Coal Co.*, 714 S.W.2d 481 (Ky. 1986). All the evidence relied on by ALJ Terry was developed by the parties post-injury, but before January 28, 2002. The evidence of worsened condition and increased impairment was developed after that date.

Under the plain meaning of KRS 342.125(1)(d), we find ALJ Smith properly relied on medical evidence submitted after January 28, 2002, when making his decision to reopen Christman's claim and award additional benefits.

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

ALL CONCUR.

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