

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001972-WC

WILLIAM E. HILL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-000685

AMERICAN MINING & MANUFACTURING/
STONE CHAPEL MINE; HON. MARCEL
SMITH, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR AND WINE, JUDGES; PAISLEY,¹ SENIOR JUDGE

PAISLEY, SENIOR JUDGE: William E. Hill has petitioned this Court for a review of the August 18, 2006 decision of the Workers' Compensation Board affirming the Administrative Law Judges' determination that Hill did not sustain an injury as defined

¹ Senior Judge Lewis G. Paisley, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

by the Workers' Compensation Act. We determine that the Board properly assessed the evidence and affirm.

Hill is a fifty year old male with a GED. He previously worked as a truck driver with a Class A CDL, a prison guard or jailer and also worked stocking shelves for a retail store. He is certified to work in underground mines and spent approximately twelve to thirteen years working in coal mines. He spent at least nine of those years working underground.

In June 2004 he was employed as a belt shoveler by Appellee. He described his work as “we walk either from the unit all the way outside the mines or you walk from outside the mines into the unit checking the belt line and make sure there's no coal on the belt line where it would catch fire or making sure the headers aren't covered up”. Hill testified that on August 10, 2004, while he was throwing a shovel full of material over his right shoulder, the entire left side of his body “went completely numb” and that “something popped out” on the left side of his neck..

He was that day taken to see Dr. Jackson who referred him to physical therapy. He stopped the physical therapy within three weeks because he said it caused pain to run down his left side and into his knee. Later, another physician, Dr. Lee, referred him to physical therapy and again Hill stopped the therapy after several weeks because he said it “started hurting again.”

On October 1, 2004, Hill underwent a cervical spine MRI. A board certified neurosurgeon, Dr. Travis, performed a medical records and diagnostic review

and submitted two reports: one dated October 20, 2004 and the other dated October 28, 2004. Dr. Donley, an orthopedic surgeon requested a second cervical spine MRI the following December. On March 15, 2005, a second orthopedic surgeon, Dr. Goldman, examined Hill and produced a seven page medical report.

The Dr. Donley diagnosed Hill with degenerative disc disease in the cervical spine and recommended surgery. His testimony indicated, however, that the MRI did not disclose any impingement or nerve root compression. He testified that there was no objective medical finding to support Hill's claim that he could not work, yet believed that based on the reported pain, surgery was appropriate with some disability being inevitable as a result. After a full physical examination and review of the medical records, he found that Hill's complaints of pain had no objective medical basis. His medical opinion was there was nothing to prevent Hill from returning to his previous regular duty work.

The Administrative Law Judge reviewed the conflicting opinions of the doctors and considering the evidence in its entirety was more persuaded that Hill had not suffered a harmful change caused by work related trauma. He dismissed Hill's claim. Hill sought reconsideration and after further review, the Administrative Law Judge denied the request. Hill then appealed the decision. The Worker's Compensation Board affirmed the dismissal.

If a work related injury causes the arousal of a dormant degenerative condition, the work trauma is the proximate cause of the harmful change in condition.

See Bright v. American Greetings Corp., 62 S.W.3d 381 (Ky. 2001). The Administrative Law Judge has the sole discretion to determine the quality, character and substance of the evidence. KRS 342.285. Hill's burden on appeal to the Worker's Compensation Board was to demonstrate that the evidence was so overwhelming that no reasonable person could have failed to have been persuaded by it. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984). The Workers' Compensation Board is limited on review to a determination of whether the finding of the Administrative Law Judge was so unreasonable under the evidence to require a reversal as a matter of law. *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000).

Impairment is a medical question. *Kentucky River Enterprises, Inc. v. Elkins*, 107 S.W.3d 206 (Ky. 2003). The medical opinions in this case were conflicting. The Administrative Law Judge fairly reviewed that evidence and his decision will not be disturbed on appeal if supported by substantial evidence. *Rogers v. Deposit Service Corp.*, 410 S.W.2d 621 (Ky. 1967). The review by the Workers' Compensation Board did not disclose evidence sufficient to overturn the Administrative Law Judges' decision. Our own review is limited to determining whether the Workers' Compensation Board overlooked or misconstrued statutes or precedent or committed error in assessing the evidence that is so flagrant that a gross injustice resulted. *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685 (Ky. 1992). We do not find any error and affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Lloyd R. Edens
Lexington, Kentucky

BRIEF FOR APPELLEE:

R. Christion Hutson
Paducah, Kentucky