

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-001298-WC

RYDER INTEGRATED LOGISTICS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-80519

RONALD GARGALA, DEC'D;
YOLANDA GARGALA, ADMIN;
HON. SHEILA LOWTHER, CHIEF
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, CHIEF JUDGE; ACREE, JUDGE; HENRY,¹ SENIOR JUDGE.

COMBS, CHIEF JUDGE: Appellant, Ryder Integrated Logistics (Ryder), seeks review of a decision of the Workers' Compensation Board of May 25, 2007, which affirmed a ruling by an administrative law judge decision awarding compensation to the estate of Ronald Gargala. After our review, we affirm.

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.

FACTS

On March 14, 2004, Appellee Ronald Gargala, Sr., died in a tractor trailer accident on the Mountain Parkway near Campton, Kentucky. When state troopers arrived at the accident scene, Mr. Gargala was already deceased, his body draped over the steering wheel. The troopers determined that Mr. Gargala had never applied the truck brakes even though the truck had traveled an unusually long distance along the guardrail before overturning on its side in the median. Mr. Gargala was found upside-down, pinned in place by the steering wheel. Because of these facts, the police believed that Gargala had lost consciousness, resulting in his loss of control of the vehicle. The medical examiner ruled that the cause of death was positional asphyxiation as a result of the trauma from the severe accident; however, he also determined that Gargala had suffered a massive heart attack.

Appellee Yolanda Gargala (Yolanda), Gargala's widow and administratrix of his estate, filed a worker's compensation claim on October 20, 2005. Appellant Ryder Integrated Logistics denied the claim as not having been work related, arguing that the heart attack very likely caused the accident. After a hearing on August 14, 2006, Chief Administrative Law Judge Sheila Lowther (the ALJ) issued an Opinion and Order on October 13, 2006, upholding Yolanda's claim. The ALJ found the heart attack which incapacitated Gargala prior to the accident was not work related. However, because the cause of death was positional asphyxiation, the ALJ held that "Mr. Gargala's death was caused by physical aspects and hazards of his employment . . . thereby rendering this a

compensable event pursuant to Kentucky Revised Statutes (KRS) Chapter 342.020.” ALJ's Order at 9-10. Ryder appealed to the Workers' Compensation Board, which affirmed the order of the ALJ on May 25, 2007. Ryder now appeals the Board's decision.

ANALYSIS

We shall first set forth the standard of review governing our analysis of this case. The Supreme Court of Kentucky has directed that “a reviewing court may not substitute its judgment for that of the Board as a finder of fact.” *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 420 (Ky. 1985). In Kentucky, courts will only grant *de novo* review in workers' compensation cases if there is a question of statutory interpretation. *Newberg v. Thomas Industries*, 852 S.W.2d 339, 340 (Ky.App. 1993). When statutory interpretation is not at issue, this Court must defer to the finding of the Workers' Compensation Board unless “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.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

In workers' compensation cases, “the claimant bears the burden of proof . . . before the fact-finder with regard to every element of a workers' compensation claim.” *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). However, when the claimant prevails before the ALJ and the Board, his burden is lessened on appeal:

when the decision of the fact-finder favors the person with burden of proof, his only burden on appeal is to show that there was some evidence of substance to support the finding,

meaning evidence which would permit a fact-finder to reasonably find as it did.

Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Therefore, in this case, Yolanda must be able to demonstrate that there was substantial evidence upon which the ALJ and the Board reasonably relied in support of their findings.

The ALJ examined the evidence to determine whether Gargala's injury occurred “in the course of” and “arose out of” his employment based on the standard provided by the Supreme Court of Kentucky in *Stasel v. Am. Radiator and Standard Sanitary Corp.*, 278 S.W.2d 721, 723 (Ky. 1955):

Accidents arising out of the employment are those in which it is possible to trace the injury to the nature of the employee's work or to the risks to which the employer's business exposes the employee.

The ALJ also considered *Indian Leasing Company v. Turbyfill*, 577 S.W.2d 24 (Ky.App. 1978), in which the plaintiff suffered a non-work related heart attack that caused him to fall and to sustain a fatal head injury. In *Turbyfill*, this Court held that “the nature of his work, i.e., being on top of the truck, placed him at greater risk, rendering the fatal head injury compensable.” ALJ's Order at 8.

The ALJ then reviewed the medical evidence to determine whether Gargala's accident was a result of loss of consciousness due to a major heart attack. She carefully considered the medical examiner's report, which concluded that the cause of death was positional asphyxiation. She finally determined the positional asphyxiation “occurred in the course of and arose out of his employment with the defendant, thereby

rendering this a compensable event pursuant to KRS Chapter 342.020.” ALJ's Order at 9-10. The Board agreed, equating Gargala's accident to an idiopathic fall, and cited the *Turbyfill* court, which held such an accident to be compensable “if the employment placed the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or **in a moving vehicle.**” Board's Order at 17, quoting *Turbyfill*, 577 S.W.2d at 26 (Emphasis added). Both the ALJ and the Board decided that Gargala was exposed to additional risk by being in a large vehicle on a rural highway when the accident occurred and that but for his employment, he would not have been in that position.

The claimant bears the burden on appeal to show **some evidence** that would permit the fact-finder to reasonably find as it did, and we conclude that Yolanda has successfully met her burden. The medical evidence supported the ALJ's finding that Gargala's employment caused him to be placed in the position that caused his death. We find no error in the determination of the ALJ or of the Board.

We affirm the opinion and order of the Board.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
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ORAL ARGUMENT FOR APPELLEES
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