Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-001005-WC

JOSHUA BANKS   APPELLANT

PETITION FOR REVIEW OF A DECISION
v.   OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-00302

PELLA CORPORATION; HON.
CAROLINE PITT CLARK,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD   APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KELLER, MOORE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Joshua Banks petitions this Court to review an opinion of the

Workers' Compensation Board (Board) entered April 23, 2009, affirming the

Administrative Law Judge's (ALJ) opinion dismissing Banks' workers'

compensation claim against Pella Corporation (Pella). We affirm.

On June 9, 2006, Banks – then twenty-two years old – claimed to have injured his lower back while working for Pella. Pella terminated Banks' employment on June 29, 2006. Banks subsequently filed a claim for workers' compensation benefits as a result of his alleged injury. Ultimately, the ALJ found that Banks was not a credible witness and that he did not sustain his burden of proving a work-related injury. By opinion and order rendered October 3, 2008, the ALJ dismissed Banks' claim for workers' compensation benefits. Being dissatisfied with the ALJ's decision, Banks sought review with the Board. By opinion entered April 23, 2009, the Board affirmed the ALJ's decision, thus precipitating this petition for our review.

In order to prevail upon appeal, Banks must demonstrate that the record compels a finding in his favor. *See Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). Furthermore, it is within the sole province of the ALJ to determine the weight and credibility of the evidence presented. *Square D Company v. Tipton*, 862 S.W.2d 308 (Ky. 1993).

Banks contends that the ALJ committed error by dismissing his claim for workers' compensation benefits. Banks asserts that the ALJ erred by finding that Bank's did not suffer a work-related injury on June 9, 2009. Banks specifically asserts the ALJ erred by relying upon the testimony of his department manager, John Burress, and upon the testimony of Dr. Joseph Rowland. Banks' argument on appeal is essentially that the ALJ erred by finding the testimony of Burress and Dr. Rowland credible.

Instead of relying upon Burress's testimony, Banks asserts that the ALJ should have relied upon his testimony. Specifically, Banks cites to his testimony that he did not report the injury to Burress on Friday, June 9, 2009, because he thought his injury would improve over the next few days. Also, Banks points to his testimony that he was lifting windows weighing a few hundred pounds on the date of the injury. And, instead of relying upon the medical opinion of Dr. Rowland, Banks believes that "Dr. Richard Fishbein was in the best position to render opinions on the issues of causation and permanency since he reviewed all of [Banks'] medical doctor's records . . . and also had an opportunity to review [Banks'] updated lumbar MRI . . . and also reviewed the job descriptions of [Banks]." Banks' Brief at 19.

It is entirely within the province of the ALJ to judge the weight of evidence and credibility of a witness's testimony. *Square D*, 862 S.W.2d 308. As a reviewing Court, we will not disturb the ALJ's decision upon weight and credibility of evidence. Hence, we perceive no error in the ALJ's reliance upon the testimonies of Burress and Dr. Rowland. Such reliance was well within the province of the ALJ. As such, we conclude that the ALJ did not err by relying upon the testimony of Burress and Dr. Rowland to conclude that Banks did not suffer a work-related injury on June 9, 2009. We, thus, agree with the Board that the evidence did not compel a finding in favor of Banks. *See Wolf Creek Collieries*, 673 S.W.2d 735.

For the foregoing reasons, the opinion of the Workers' Compensation

Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Paris, Tennessee

BRIEF FOR APPELLEE PELLA
CORPORATION:

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