

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001641-WC

PRAETORIAN INSURANCE COMPANY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
CLAIM NO. WC-12-79781

LUIE WHITAKER FREIGHT AGENCY;
HOUSTON WHITAKER (DECEASED);
BRITTANY WATKINS (WIDOW), GUARDIAN
OF HOUSTON B. WHITAKER; CAROLINE P.
WHITAKER; HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING
** ** ** ** **

BEFORE: ACREE, D. LAMBERT, and VANMETER, JUDGES.

D. LAMBERT, JUDGE: This is an appeal from the October 2, 2015 opinion of the Workers' Compensation Board (the Board) which affirmed the decision of Hon. R. Roland Case, Administrative Law Judge (ALJ), to award death benefits to the estate of Houston Whitaker. After review, we affirm.

I. BACKGROUND

Houston Whitaker was an employee of Luie Whitaker Freight Agency (LWFA), a trucking business owned and operated by his parents. Houston was also the sole member of a farming operation organized as H.B. Whitaker Farms, LLC. On June 29, 2012, Houston died while on LWFA's business premises. An accident occurred when he was performing mechanic work on a 1986 Mack truck during regular business hours. The truck was owned by T&M Trucking. The owner of T&M Trucking, Tom Ruppel, testified that Houston had expressed interest in buying the 1986 Mack truck prior to his death for use on Houston's farm. Ruppel never sold the truck to Houston, but he did allow Houston to occasionally use the truck for his farming operation. Ruppel also authorized Houston to haul freight with the truck—if he ever needed to.

Houston's estate later filed a workers' compensation claim with appellant, Praetorian Insurance Company (Praetorian). Praetorian denied the claim. According to Praetorian, Houston did not suffer a work-related injury because the accident did not occur during the course and scope of his employment with LWFA. Specifically, Praetorian claimed that after 2010, Houston exclusively used the truck for his farming operation and not for LWFA's commercial business.

Following a hearing on the matter, the ALJ concluded the accident was work-related. In addition to noting that LWFA used the truck as a backup hauler for short routes, the ALJ seemingly applied the holding of *W.R. Grace &*

Co. v. Payne, 501 S.W.2d 252 (Ky. 1973)¹ to the facts of the case. The ALJ ultimately awarded Houston death benefits and did not provide any further guidance when faced with a petition to reconsider the award. Praetorian subsequently appealed to the Board.

After observing the ALJ's order suggested a reliance on *Payne* as well as a reliance on the familiar concept of work-relatedness in standard workers' compensation cases, the Board affirmed. According to the Board, the ALJ adequately supported its decision to award death benefits by finding (1) that Houston's work on the truck was within the scope of his employment with LWFA and (2) that LWFA used the truck as a back-up for short hauls. This appeal followed.

¹ The *Payne* claimant suffered an injury during work hours at his place of employment. However, the claimant was injured while using a power saw for personal reasons. In affirming the claimant's award, the former Court of Appeals provided the following:

Appellant's supervisor was aware that appellee was using the saw and made no objection; in fact appellant seems to have approved of the practice generally, since use of such tools by employes [sic] for personal purposes had occurred many times in the past with appellant's knowledge and appellant had made no attempt to stop the practice. Although appellee had used this saw several other times, its use was in no way connected with his duties; and appellant derived no direct benefit from its use by appellee.

Id. at 252.

II. STANDARD OF REVIEW

On review of the Board's decision, the function of an appellate court is to correct the decision only when it perceives the Board overlooked or misconstrued controlling law or committed gross injustice in its assessment of the evidence. *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685 (Ky. 1992).

III. DISCUSSION

On appeal, Praetorian relies heavily on the fact that the truck displayed a "FARM LIMITED" license plate and was registered to be used exclusively on a farm. Praetorian contends the ALJ erred because it did not state a relationship between Houston's work on the "FARM LIMITED" truck and his employment with LWFA. Praetorian also contends the ALJ erred in finding the truck was used for short hauls because the truck was not used in any of LWFA's business operations after 2010. For the following reasons, we are not persuaded by these arguments.

An injury must be work-related in order to be compensable under Kentucky's Workers' Compensation Act. KRS² 342.0011(1). In other words the injury must arise out of and occur during the course of the employment. *Id.* When considering "whether the injury was work-related[,] no single factor should be given conclusive weight. [Instead] [t]he coverage decision must be based upon the quantum of aggregate facts rather than the existence or nonexistence of any

² Kentucky Revised Statutes.

particular factor.” *Hayes v. Gibson Hart Co.*, 789 S.W.2d 775, 777 (Ky. 1990) (internal quotations and citation omitted). Factual issues, along with the quality, character, weight, credibility, and substance of the evidence, are for the ALJ to determine in its sole discretion. *Bowerman v. Black Equipment Co.*, 297 S.W.3d 858, 866 (Ky. App. 2009)(citing KRS 342.285).

Here, the ALJ wrote: “Evidence shows the truck was used as at times as a backup truck for [LWFA] for short hauls.” This factual determination was supported when Ruppel testified that he had told Houston, “[I]f you need an extra truck to haul freight with, you can use [the truck].” Consequently, the truck remained available for LWFA’s use, even after 2010, and Houston’s injury while working on the truck was work-related.

The decision of the Board is hereby affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE
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AGENCY:

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BRIEF FOR APPELLEES
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