IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: June 16, 2005
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL
DATE 7-7-05 [illegible]

2004-SC-0654-WC

MORGAN KIRK APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2004-CA-0675-WC
WORKERS' COMPENSATION BOARD NO. 84-27402

RUTH CONTRACTORS; KNOLL COUNTY MEDICAL CLINIC; HIGHLAND REGIONAL MEDICAL CENTER; UNIVERSITY OF KENTUCKY MEDICAL CENTER; MEDI HOME CARE; HON. KEVIN J. KING, ADMINISTRATIVE LAW JUDGE; WORKERS' COMPENSATION BOARD; AND WORKERS' COMPENSATION FUNDS APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

On March 10, 1986, the claimant was found to be permanently and totally disabled by coal workers' pneumoconiosis and was awarded income and medical benefits. This appeal concerns the decision in a reopening by his employer to contest the compensability of certain post-award medical services. In a decision that was affirmed by the Workers' Compensation Board (Board) and the Court of Appeals, an Administrative Law Judge (ALJ) determined that the services were unrelated to the pneumoconiosis and, therefore, were not compensable. We affirm.

The claimant's last exposure to coal dust occurred on June 4, 1983. Relying on unspecified evidence from Drs. Anderson, Bangudi, Bassali, Long, Potter, and White, the "old" Board determined that he was totally disabled by pneumoconiosis due to his occupational exposure to coal dust. Among other things, the opinion and award

required the employer to pay "such medical, surgical and hospital expenses as may be reasonably required for the treatment of his occupational disease."

On April 11, 2002, the employer moved to reopen in order to resolve a dispute regarding whether treatment by various medical providers was related to the claimant's occupational disease. KRS 342.125; Westvaco Corporation v. Fondaw, 698 S.W.2d 837, 839 (Ky. 1985). Attached to the motion was a Utilization Review report from Drs. Goldstein and McConnel. The motion was granted to the extent that the parties were permitted to take additional proof.

The employer submitted evidence from Drs. Goldstein, McConnel, and Broudy. Dr. Goldstein's report indicated that the claimant's present difficulties and resulting medical treatment were related to chronic obstructive pulmonary disease (COPD) that was due to cigarette smoking. He did not think that the pneumoconiosis required any further treatment. A report from Dr. McConnel noted that the claimant had a long history of chronic bronchitis and underlying COPD and stated that although the medical treatment was necessary and appropriate, it was not related to his black lung disease.

Dr. Broudy examined the claimant on the employer's behalf and conducted diagnostic testing, after which he prepared a report and was deposed. The report indicated that the claimant was exposed to coal dust while working underground for two years, running a buggy, and for about 15 years on the surface, running heavy equipment. He quit in 1983 due to a back injury. He had smoked half a pack of cigarettes daily for 37 years before quitting in about 1991. In Dr. Broudy's opinion, the claimant did not suffer from pneumoconiosis or any other chronic disease caused by the inhalation of coal dust, but he did have a severe obstructive respiratory impairment due

to pulmonary emphysema from cigarette smoking. Dr. Broudy stated that the disputed medical services were related to the latter condition.

When deposed, Dr. Broudy testified that the claimant had a history of cigarette smoking sufficient to cause his respiratory impairment and that the impairment responded to bronchodilation, which would not have occurred if it had been due to pneumoconiosis. He stated that if the impairment were due to pneumoconiosis, the condition would have been evident on the claimant's x-rays, but it was not. Dr. Broudy stated that pneumoconiosis and emphysema were two entirely different conditions. When directed to assume that the claimant suffered from both conditions and then asked about the purpose of each disputed medical service, he stated each time that the service was to treat the effects of smoking rather than the effects of pneumoconiosis. Asked how he could determine whether the claimant's lung problems were caused by cigarette smoking rather than coal dust exposure, Dr. Broudy stated that the chest x-ray showed hyperexpansion and pulmonary emphysema with no evidence of fibrosis or pulmonary restriction, which one would expect to see in such a severe impairment if it were due to pneumoconiosis. He stated that the claimant's history, physical exam, and diagnostic test results were "classical" for an impairment due to a prolonged period of heavy smoking and not what one would expect in an impairment due to pneumoconiosis.

The claimant submitted a report from Dr. Sundaram, his treating pulmonologist. It stated, in its entirety, as follows:

> Mr. Kirk's breathing impairment and recurrent pulmonary infections and industrial bronchitis are caused in part by his prolonged exposure to coal dust. He is considered to be totally disabled.

In its brief to the ALJ, the employer noted that the contested medical bills included some that, on their face, were unrelated to pneumoconiosis or any other lung disease. Many of the bills, themselves, indicated that they were not work-related. Although most were related to lung disease, the employer asserted that the claimant suffered from two different lung diseases, pneumoconiosis and COPD. The award pertained only to pneumoconiosis; whereas, the contested expenses were for the treatment of the non-work-related COPD and were not compensable.

Maintaining that the contested medical bills were compensable, the claimant asserted that the law of the case was that he suffered "from pneumoconiosis which does cause a totally disabling pulmonary impairment." He argued that opinions by the employer's experts were based on a finding that his pulmonary impairment was not caused by his exposure to coal dust; therefore, they could not constitute substantial evidence of the relationship between the expenses and his exposure to coal dust. Furthermore, relying on authority in federal black lung cases, he asserted that Dr. Broudy's opinion could not constitute substantial evidence because he found no evidence of pneumoconiosis. Rejecting the argument, the ALJ relied on the employer's experts and found in the employer's favor.

KRS 342.285 designates the ALJ as the finder of fact in workers' compensation claims, giving the ALJ the sole discretion to determine the weight, credibility, quality, character, and substance of the evidence and to determine what inferences to draw from it. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985). That discretion extends to conflicting medical evidence. Square D. Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993); Pruitt v. Bugg Brothers, 547 S.W.2d 123, 124 (Ky. 1977). If an ALJ's finding in favor of the party with the burden of proof is supported by substantial evidence

in the record, it is reasonable and may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence has been defined as being some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). The substantiality of evidence must take into account whatever fairly detracts from its weight. Pierce v. Kentucky Galvanizing, Co., Inc., 606 S.W.2d 165 (Ky.App.1980). The existence of contrary evidence will not compel a particular result unless it is so overwhelming that it renders the ALJ's decision unreasonable. Special Fund v. Francis, supra; Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977).

The provisions of the claimant's award constituted the law of the case regarding the existence of coal workers' pneumoconiosis and the compensability of any reasonable and necessary medical expenses for the treatment of the disease and its effects. For that reason, the burden was on the employer to prove that the contested post-award medical expenses were not for the treatment of coal worker's pneumoconiosis or its effects and, therefore, were not compensable. R. J. Corman Railroad Construction Co. v. Haddix, 864 S.W.2d 915 (Ky. 1993). Persuaded by the evidence that the disputed expenses were for treating lung conditions that did not result from the claimant's pneumoconiosis, the ALJ concluded that they were not compensable. Hence, his burden on appeal is to establish that the ALJ's decision was unreasonable because no substantial evidence of record supported it. Special Fund v. Francis, supra.

As stated previously, the claimant's award established only that he suffered from pneumoconiosis due to coal dust exposure and that he was entitled to medical benefits

for the treatment of pneumoconiosis and its effects. Pneumoconiosis is an interstitial restrictive pulmonary disease; whereas, chronic bronchitis, emphysema, and asthma are types of obstructive pulmonary diseases. See Newberg v. Chumley, 824 S.W.2d 413, 415 (Ky. 1992). When caused by an exposure to coal dust, an obstructive lung disease such as chronic occupational bronchitis may be compensable. Id. The fact remains, however, that the claimant's award obliged the employer to pay for the medical treatment of pneumoconiosis and its effects. It did not contain a finding he suffered from a work-related obstructive pulmonary disease or any other occupational lung disease in addition to pneumoconiosis; therefore, no such finding was the law of the case at reopening.

Dr. Sudaram attributed the claimant's need for the disputed services to coal dust exposure. He did not attribute it to pneumoconiosis or its effects. The employer's experts testified that the claimant's pulmonary difficulties were due to his history of cigarette smoking. Dr. Broudy's opinion that the claimant did not suffer from pneumoconiosis affects only the weight that might reasonably be given to his opinion that the claimant's emphysema was due to cigarette smoking rather than pneumoconiosis. The fact remains, however, that his opinion of causation was consistent with that of Drs. Goldstein and McConnel, neither of whom disputed the presence of the disease. For that reason, we are not persuaded that the ALJ erred in relying upon it as a partial basis for the decision. Three expert medical witnesses indicated that the disputed medical services were performed for the effects of cigarette smoking, not the effects of pneumoconiosis or the claimant's exposure to coal dust. Under the circumstances, a decision in the employer's favor was reasonable and properly affirmed on appeal.

The decision of the Court of Appeals is affirmed.

Lambert, C.J., and Cooper, Graves, Johnstone, Scott, and Wintersheimer, J.J., sitting.

All concur.

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