

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-002041-WC

LOUISVILLE METRO GOVERNMENT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-64981

LARRY D. COLLINS;
HON. LAWRENCE F.
SMITH, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, THOMPSON, AND VANMETER, JUDGES.

VANMETER, JUDGE: Louisville Metro Government ("Metro") petitions for review of an opinion of the Workers' Compensation Board ("Board") affirming an

opinion of the Administrative Law Judge (“ALJ”) awarding benefits to Larry D. Collins for a work-related injury. Finding no error, we affirm.

While working as a waste collector for Metro, Collins suffered a work-related injury on November 30, 2005. Following his injury, Collins never returned to work with Metro. The parties stipulated that Collins was discharged from Metro in July 2006 for reasons unrelated to his injury.

Before the ALJ, Metro argued that proof of the fact that Collins was discharged for reasons unrelated to his injury would limit Collins’ compensation to a “1 factor” pursuant to KRS¹ 342.730.² During the hearing, Metro proffered documentation relating to Collins’ discharge for improper conduct and attempted to cross-examine Collins with respect to this issue, which the ALJ prohibited on the basis that the parties stipulated to the fact that Collins was discharged for reasons unrelated to his injury and thus, the reasons for Collins’ discharge were irrelevant. In his opinion, the ALJ does not address the reasons for Collins’ discharge, other than to note that he was discharged for reasons unrelated to his injury, and does not discuss or apply the “1 factor.”

On appeal to the Board, Metro maintained the proof substantiated application of the “1 factor” and the ALJ erred by not admitting documentation relating to Collins’ discharge. The Board did not make any findings concerning these issues. This appeal followed.

¹ Kentucky Revised Statutes.

² The “1 factor” is a formula of $\$416.78 \times .02 \times .65 \times 1$ resulting in a benefit in the amount of \$5.42 per weekly for 425 weeks.

KRE³ 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.”

KRE 402 further provides that “[e]vidence which is not relevant is not admissible.”

In this case, the record reflects that Collins never returned to work at Metro after sustaining his work-related injury and the parties stipulated that Collins was discharged for reasons unrelated to his injury. Further, it does not appear that the “1 factor” was considered by the ALJ in awarding compensation to Collins for his injury and Metro has failed to show how it applies. As correctly noted by the ALJ, the reasons for Collins’ discharge were wholly irrelevant to the proceeding before it and the ALJ did not err by declining to admit any documentation relating to Collins’ discharge or by disallowing any cross-examination of Collins with respect to this issue.

The opinion of the Workers’ Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE
LARRY D. COLLINS:

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³ Kentucky Rules of Evidence.