

FILED
MAY 28 2013
CLERK
SUPREME COURT

COMMONWEALTH OF KENTUCKY
SUPREME COURT
CASE NO. 2012-SC-000008
DWC No. 08-96697

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UNINSURED EMPLOYERS' FUND

APPELLANT

VS.

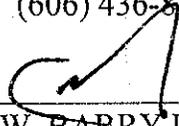
**JULIAN HOSKINS,
FOUR STAR TRANSPORTATION, INC.;
BETTER INTEGRATED SERVICES, INC.;
BEACON ENTERPRISES, INC.;
KENTUCKY EMPLOYERS' MUTUAL INSURANCE;
WORKERS' COMPENSATION BOARD
AND HON. R. SCOTT BORDERS, ALJ**

APPELLEES

**RESPONSE TO MOTION FOR REHEARING BY
KENTUCKY EMPLOYERS' MUTUAL INSURANCE**

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W. BARRY LEWIS

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2013, the original and nine copies of this Brief were delivered via regular mail to Ms. Susan Stokley Clary, Clerk, Kentucky Supreme Court Room 235 Capitol Bldg, 700 Capitol Avenue, Frankfort, KY 40601-3415; and copies were served via regular mail on Hon. Dennis Stutsman, Counsel for Uninsured Employers' Fund, 1024 Capital Center Drive, Frankfort, Kentucky 40601; Hon. Alan S. Rubin, Counsel for Julian Hoskins, 231 S. Fifth Street, Suite 200, Louisville, Kentucky 40202; Hon. Terrance

J. Janes, Counsel for Beacon Enterprises, Inc. and Better Integrated Systems, Inc. P.O. Box 52, Hopkinsville, Kentucky 42241-0052; Four Star Transportation, Inc., 2305 Ralph Avenue, Suite 1, Louisville, Kentucky 40216, the Workers' Compensation Board, Appeals Branch, Department of Workers' Claims, Prevention Park, 657 Chamberlain Avenue, Frankfort, Kentucky 40601; and Hon. R. Scott Borders, ALJ, Department of Workers' Claims, 8120 Dream Street, Florence, Kentucky 41042.



W. BARRY LEWIS

Appellant Uninsured Employers' Fund (hereinafter "UEF") once again challenges the rulings of the Workers' Compensation Board, the Court of Appeals, and the Kentucky Supreme Court as clearly erroneous, repeating the same arguments it made in its brief on appeal. The UEF also uses its Petition as an occasion to expound upon a variety of allegations, all of which are irrelevant to the issues at this stage in the appellate process. The UEF complains about the imposition of liability, making numerous references to its own beliefs about how this Court's decision should have been rendered. There are no parts of the Petition that are even arguably appropriate for consideration on rehearing. The UEF's repetition of its arguments offers no basis for this Court to reweigh the evidence that it has already considered, in concluding that the decisions of the Workers' Compensation Board and the Court of Appeals were not clearly erroneous. Further, the UEF's arguments with respect to what should have been done by the Court are inappropriate for consideration at this stage.

The UEF's argument that the Court's ruling is clearly erroneous provides no sound reason for the Court to revisit its contrary conclusion. A Petition for Rehearing is authorized by the Kentucky Rules of Civil Procedure only when "it appears that the Court has overlooked a material fact in the record, or a controlling statute or decision, or has misconceived the issues presented on the appeal or the law applicable thereto." CR 76.32. A petition for rehearing under CR 76.32 must set out any material fact, statute or decision which has been overlooked. The petition may also point out how the appellate court has misconceived any issues of law. The petition filed by the UEF does not even attempt anything covered under the applicable rule. The UEF offers only its selective review of

evidence already considered by the Court. The UEF's proposed re-weighing of that evidence is insufficient to establish entitlement to rehearing. The petition therefore fails to set forth appropriate grounds for the granting of the extraordinary remedy of rehearing.

The UEF goes on to merely re-argue issues that have already been briefed and considered by the Workers' Compensation Board, the Court of Appeals, and this Court. All the arguments raised by the UEF have already been thoroughly considered and rejected by the Workers' Compensation Board, the Court of Appeals, and this Court. The UEF seeks simply another opportunity to again make the same arguments that have been raised before, and which have been rejected by the Workers' Compensation Board, the Court of Appeals, and this Court.

This Court has long held that petitions for rehearing will be denied if nothing is presented that was not considered in the original decision. Hawkins v. Sunmark Industries, Inc., 727 SW. 2d 397 (Ky. 1986). In case after case, this Court has held that the original opinion will not be disturbed on rehearing, simply because the petitioner believes that an issue has been erroneously decided. A more lenient standard of review would open the door to permitting a rehearing in virtually every case, because almost without exception, the losing party believes that the case has been erroneously decided. The UEF does not even attempt to argue that this Court court overlooked a material fact in the record, or misconceived the issues presented on appeal. Instead, the UEF merely wants to reargue yet again the merits of the case.

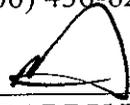
CONCLUSION

For the foregoing reasons, the UEF's petition under CR 76.32 should be denied.

Respectfully submitted,

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