

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 01-3964

MARY LOSCOMBE, A WIDOW,
FOR THE ESTATE OF
JOHN D. LOSCOMBE, DECEASED,
Petitioner

v.

RAILROAD RETIREMENT BOARD

On Petition To Review Decision of the
Railroad Retirement Board
(R.R.B. No. A-176-22-4021 dated November 03, 2000)

Submitted Under Third Circuit LAR 34.1(a)
on April 22, 2002

Before: SCIRICA, RENDELL, and NOONAN*, Circuit Judges,

(Filed: April 25, 2002)

OPINION OF THE COURT

*The Honorable John T. Noonan, Jr., Senior Circuit Judge for the Ninth Circuit, sitting by designation.

RENDELL, Circuit Judge.

Mary Loscombe appeals from a November 3, 2000 decision of the Railroad Retirement Board (hereinafter referred to as "the Board"). Because we write only for the parties, who are familiar with the facts, we need not set forth the facts and procedural history of the case at length. We exercise jurisdiction pursuant to Section 8 of the Railroad Retirement Act (45 U.S.C. 355(f)). We can only set aside a decision of the Board, if on review, we find that the decision was not supported by substantial evidence or was based on an error of law. *Carter v. Railroad Retirement Board*, 834 F.2d 62, 64 (3d Cir. 1987)

On November 3, 2000 the Board found that an award of a period of disability to Mary Loscombe's late husband John Loscombe, should be reopened and denied. The board found that evidence supported the conclusion that John Loscombe had not been permanently disabled and had been working at "substantial gainful activity" as defined by the Board's regulations under Section 220.141 (20 CFR.141), during his period of disability. The evidence supporting the Board's decision was videotape of John Loscombe doing light construction work for his son's building business, and a witnessed ten-page statement, signed by John Loscombe, in which he acknowledged working for and being paid by his son's business.

Substantial evidence is defined as not "a large or considerable amount of evidence, but rather such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Hartranft v. Apfel*, 181 F.3d 358 (3d Cir. 1999). We cannot set it aside such a decision, even if we would have decided the factual inquiry differently. *Monsour Medical Ctr. V. Heckler*, 806 F.2d 1185 (3d Cir. 1986). In addition, we cannot weigh the evidence or substitute factual conclusions. *Early v. Heckler*, 743 F.2d 1002 (3d Cir. 1984). Under this standard we conclude that there is substantial evidence supporting the Board's decision.

Accordingly, the Railroad Retirement Board's decision of November 3, 2000 will be AFFIRMED. _____

Please file the foregoing Not Precedential Opinion.

/s/ Marjorie O. Rendell
Circuit Judge