Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 16, 2014

CLAIM NO. 201200920

A. O. SMITH CORPORATION PETITIONER

VS. **APPEAL FROM HON. EDWARD D. HAYS, ADMINISTRATIVE LAW JUDGE**

STEPHEN WATTS
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

STIVERS, Member. A.O. Smith Corporation ("A.O. Smith") appeals from the December 23, 2013, opinion, award, and order of Edward D. Hays, Administrative Law Judge ("ALJ") awarding Stephen Watts ("Watts") temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits. Significantly, no petition for reconsideration was filed. On appeal, A.O. Smith

asserts that the evidence in the record does not support an impairment rating or an award of PPD benefits.

The Form 101 alleges on August 13, 2010, Watts injured his left ankle after slipping "on conduit on the floor." The Form 101 indicates that the type of work he was performing at the time of the injury was "maintenance."

The October 22, 2013, hearing transcript indicates the Benefit Review Conference was held the morning of the hearing and the following contested issues were identified: benefits per KRS 342.730, including multipliers, work relatedness, causation, unpaid or contested medical expenses, injury as defined by the Act, and temporary total disability as to duration.

In the December 23, 2013, opinion, award, and order, the ALJ determined as follows:

> Based on a review of the record of this claim, including the summary and discussion of the evidence as set forth hereinabove, the ALJ does hereby make the following findings of fact and conclusions of law.
>
> First, the stipulations made and entered into by and between the parties at the Benefit Review Conference on October 22, 2013, as set forth hereinabove, are approved and incorporated herein by reference as findings of fact.
>
> The primary question in this claim is one of causation/work-relatedness, and

whether the 12% impairment rating assessed by Dr. Frank Burke is the result of the August 13, 2010, traumatic event. It is significant to note that an incident occurred on August 13, 2010, when Mr. Watts twisted his ankle when he stepped on a pipe at work. Mr. Watts reported the incident to his boss, Phillip Jenkins, and he filled out an incident report on that same day. The Defendant-Employer does not raise notice, or lack thereof, as a defense herein.

The ALJ has closely reviewed the briefs file on behalf of both parties. The ALJ finds the Plaintiff's brief to accurately summarize the facts of the claim and the application of Kentucky law to such facts. The incident occurred on August 13, 2010. Mr. Watts did not seek medical attention until going to the office of Dr. Roberts, the company doctor, where he was actually seen by Dr. Suttor, on January 12, 2011. The Defendant-Employer argues that this delay in Plaintiff's seeking medical attention is fatal to the claim and is evidence that the event of August 13, 2010, had no permanent or lasting effect on Plaintiff's human organism. "Injury" is defined under KRS 342.0011(1) as "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings."

The ALJ had the opportunity to personally observe the testimony given by Mr. Watts at the Formal Hearing held on October 22, 2013. The ALJ found the Plaintiff to be a credible, genuine, and sincere individual. Mr. Watts

explained, to the satisfaction of this ALJ, the reasons why he did not immediately seek medical attention. First, he believed he had merely twisted his ankle causing a strain or sprain and that he would recover soon. Secondly, Mr. Watts had recently learned that his employer, A. O. Smith Corporation, had been acquired by Regal Beloit. Considering his age of 59 years (on the date of the work incident) and the general uncertainty as to whether existing employees would be able to retain their jobs, Mr. Watts explained that he was concerned about having any kind of work injury on his record. However, when his pain did not resolve as he believed it would, he went to the company doctor on January 12, 2011. He saw Dr. Suttor on that date. He was treated conservatively until he finally underwent surgery by Dr. Heilig on July 17, 2012. Mr. Watts was kept off work from the date of surgery until October 4, 2012. He was not paid temporary total disability benefits. He was paid short-term disability benefits under a policy for which he paid.

Mr. Watts returned to work for A. O. Smith Corporation on or about October 5, 2012, and he continues to be an employee thereof.

The Plaintiff has an old medical history involving a motor vehicle accident in 1967 or 1968, in which both his ankles were fractured. He testified he was treated at the Clark County Hospital by Dr. Davis for those injuries. After a short period of recuperation, he “turned me loose.” Mr. Watts testified that he had experienced “no problems whatsoever” with either ankle and he had never had problems with instability. He had not had swelling or ankle sprains. There is no

> evidence in the record to support a finding of any preexisting active condition in either ankle.
>
> Dr. Frank Burke examined Claimant at his request on April 18, 2013. Dr. Burke assessed a whole person impairment of 12% under the AMA Guides, 5th Edition, and found a lack of proper joint space in the ankle. In Dr. Burke's opinion, the work injury on August 13, 2010, caused an aggravation of a preexisting dormant osteoarthritis in the left ankle, which was aroused into disabling reality by the accident. The ALJ is convinced by Dr. Burke's analysis and findings. Case law in Kentucky is clear that the work-related arousal of a preexisting dormant condition such as occurred in this situation is compensable. Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007) and McNutt Construction/First General Services v. Clifford F. Scott, et al., 40 S.W.3d 854 (Ky. 2001).
>
> Dr. Steven J. Lawrence of the University of Kentucky Foot & Ankle Center, agreed with the 12% impairment rating, but could not relate it to the work incident of August 13, 2010. Based on Plaintiff's testimony and the evidence from Dr. Burke, the ALJ finds that Plaintiff's 12% permanent impairment is related to the work incident on August 13, 2010, and it is compensable under the case law cited above.

On appeal, A.O. Smith asserts the impairment rating assessed by Dr. Frank Burke "has nothing to do with an injury to the ligament." It contends as follows:

> The rating is not for instability, and there is no rating assigned for range

> of motion, although either of these could have been a potential consideration. Instead, Dr. Burke assigned an impairment rating based on a diagnostic abnormality, without regard for whether or not that abnormality had anything at all to do with either (1) the injury that the Respondent/Employee sustained at work; or (2) the Respondent/Employee's symptoms.

In his Independent Medical Evaluation report, Dr. Burke opined:

> This patient sustained an acute injury to his left ankle at work on 08/13/2010. This appeared to be probably a sprain of the lateral ligament complex in an ankle that had previously been injured in the distance [sic] past and had remained quiescent until the accident. **This resulted in an aggravation of a preexisting dormant osteoarthritis in the left ankle, which was aroused into disabling reality by the accident.** This patient was closely questioned as was his wife, who was present for the interview about the job activities and its physical requirements, as well as outside activities, including deer hunting and other physical activities on the outside and outdoors. At no time did this patient ever have complaints or problems in this ankle since the accident of 1968. This patient engaged in an activity, which involved repetitive squatting, pushing, pulling, crawling, and climbing, and none of those activities were compromised until this accident for an entire career. This patient appropriately reported and documented this accident. I do believe that he is at maximum medical improvement.

(emphasis added).

Dr. Burke's conclusions are:

> Utilizing the AMA's Guides to the Evaluation of Permanent Impairment, Fifth Edition and Table 17-31 on Page 544, and following the review of the available radiographic studies of this, I think this patient is best rated utilizing this table. He has no remaining joint space, which results in 12% whole person impairment. This patient has continued to try to work utilizing the ankle lacer and appropriate precautions. This is an extremely valuable employee with decades of experience as a general maintenance technician, grade A. He wants to continue to work.
>
> He should be accorded the ability to follow up with orthopedic surgery, as required. This should include the ability to obtain imaging, as well as surgical and nonsurgical treatment required for this injury. But for rolling his foot along the pipe on 08/1/2010, there is actually no way of predicting that this patient would ever have been symptomatic from the findings noted on plain x-ray. The patient, of course, is not the x-ray. He is a living, breathing, person with a history and his history said he had no problems with this ankle for 45 years, despite, which would put incredible stress on a normal joint.

As a claimant in a workers' compensation proceeding, Watts had the burden of proving each of the essential elements of his cause of action, including the extent of his occupational disability and entitlement to

income benefits. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he was successful, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). An ALJ may reject, believe, or disbelieve various parts of the evidence, regardless of whether it comes from the same

witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Clearly Dr. Burke believes Watts sustained an ankle sprain on August 13, 2010, which aggravated and aroused pre-existing dormant osteoarthritis in his left ankle. McNutt Construction Co. v. Scott, 40 S.W.3d 854 (Ky. 2001). A.O. Smith appears to argue the ALJ cannot rely upon Dr. Burke's opinions because the impairment rating he assessed is for osteoarthritis aroused into disabling reality by the sprain on August 13, 2010, and not for a ligament injury. This argument holds little weight.

First, this Board notes that A.O. Smith failed to file a petition for reconsideration requesting additional findings of fact on this issue. Therefore, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985).

Dr. Burke's report clearly indicates his opinion that Watts' impairment ratable injury was caused by a left ankle sprain which aroused pre-existing dormant osteoarthritis into disabling reality on August 13, 2010. McNutt Construction Co. v. Scott, supra. Dr. Burke cited the table and page number of the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") on which the table appears. Thus, the ALJ was permitted to find Dr. Burke's impairment rating was assessed pursuant to the AMA Guides. Consequently, the ALJ is entitled to rely upon Dr. Burke's medical opinion and his decision cannot be disturbed.

Accordingly, the December 23, 2013, opinion, award, and order is **AFFIRMED**.

ALL CONCUR.

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