

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 20, 2015

CLAIM NOS. 201382420 & 201301604

ANTHONY ST. CLAIR

PETITIONER

VS.

APPEAL FROM HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE

HUBBLE MINING CO., LLC
HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. Anthony St. Clair ("St. Clair") appeals from the June 23, 2014 Opinion, Award and Order rendered by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"), and from the October 30, 2014 Order on Reconsideration. The ALJ awarded a period of temporary total disability benefits as previously paid but otherwise dismissed St. Clair's claim

for permanent benefits related to a specific cervical injury, cumulative trauma injuries to his low back and knees, and hearing loss. St. Clair argues the ALJ erred in failing to find permanent injuries as a result of the specific trauma and cumulative trauma. Because the ALJ's determination is supported by substantial evidence, we affirm.

St. Clair filed his claim on October 24, 2013 alleging a specific injury to his neck occurring on May 6, 2013 when he "ran into the top" in a mine. Additionally, he alleged cumulative trauma injuries to his low back and knees.

St. Clair testified by deposition on January 13, 2014, and at the hearing on April 22, 2014. He began his employment with Hubble Mining Co., LLC ("Hubble") as a mechanic working underground in October 2012. When he was transferred to another mine, he began working as a miner helper and fill-in miner operator. His work involved handling cable for the continuous mining machine and hanging curtains for ventilation. With the exception of a few months working in a grocery store, the entirety of St. Clair's work history is in the mining industry.

St. Clair acknowledged two prior injuries to his low back. In 1984, he was struck in the back by a cable.

He was treated at Buchanan General Hospital and released. He did not file a claim. A second injury occurred in 1988 when the canopy of a mining car fell on him. He was treated at the emergency room and released. He did not file a claim. He has also periodically experienced back pain over the years, depending on the type of work he performed. St. Clair has treated for low back pain at East Kentucky Pain Physicians since 2011. However, he seldom missed work prior to the May 6, 2013 injury and he was under no restrictions. He also began experiencing knee pain in the 1990s but continued to work.

St. Clair last worked on May 6, 2013 when he jammed his head into a ledge extending from the top of the mine. He felt a sharp pain between his shoulders at the base of his neck and felt like he was about to black out when he attempted to get up. He was unable to complete his shift and left the mine. St. Clair sought treatment the next morning at the Pikeville Medical Center emergency room. He followed up with Dr. Ronald F. Mann, who prescribed Mobic and physical therapy.

St. Clair continues to have pain in his neck at the level of his shoulders. He occasionally gets headaches and at times experiences a sharp pain through his neck if he turns his head too fast. He experiences aching, stabbing

and burning lower back pain across the beltline on a daily basis.

St. Clair filed Dr. Mann's June 5, 2013 treatment notes. St. Clair reported the incident of striking his head in the mine on May 6, 2013. He complained of continued neck pain, upper back pain and tingling in the right arm. Dr. Mann noted tenderness in the paraspinal musculature of the posterior cervical spine and mild facet tenderness in the cervical and moderate tenderness in the upper dorsal spine. Straight leg raise testing was negative. Dr. Mann diagnosed cervical and dorsal strain and muscle spasm. He took St. Clair off work for one month and directed him to return to the office in two weeks or on an as needed basis.

Dr. Dale Williams, D.C. examined St. Clair on July 22, 2013 and prepared a one page report. Dr. Williams diagnosed cervicgia with degeneration throughout the cervical spine and lumbalgia with moderate to severe degeneration of the lumbar spine, more severe at L3 through L-5. He also noted pelvic imbalance of the right ilium, posterior and inferior. Regarding causation, Dr. Williams opined "Due to the wide spread nature of Mr. St. Clair's degeneration I feel that 30+ years in the mining industry has contributed to his degeneration; multiple injuries and occupational hazards combined."

Dr. Arthur L. Hughes performed an independent medical evaluation ("IME") on February 26, 2014 at St. Clair's request. Dr. Hughes diagnosed neck pain without definite radiculopathy; bilateral shoulder pain and limitation of motion; lower back pain with radiculopathy; bilateral knee pain and headaches. Dr. Hughes indicated St. Clair's injury was the cause of the complaints, explaining as follows:

Within reasonable medical probability, Mr. St. Clair had no neck pain prior to the injury of May 6, 2013. He had a history of lower back pain as a consequence of cumulative trauma dating back many years and extending into both legs. This worsened over the years. He also did not have any prior shoulder pain or knee pain prior to the development of cumulative trauma to these areas of the body occurring as a consequence of his years as an underground miner. He had no headaches prior to the injury of May 6, 2013.

Dr. Hughes classified St. Clair's prior low back and knee conditions as dormant because, while there were complaints of pain in these areas, he was able to work despite the pain. Referencing the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. Hughes assigned a 0% impairment for neck pain, 6% for right shoulder pain and limitation of motion, 5% for left shoulder pain and

limitation of motion, and 5% for lower back pain with radiculopathy for a combined 15% whole body impairment. Dr. Hughes indicated there was no active impairment prior to the injury. He opined St. Clair reached maximum medical improvement ("MMI") for the cervical injury as of October 23, 2013 and was not at MMI for back and leg pain. He further stated St. Clair does not possess the physical capacity to return to the type of work he performed at the time of his injury.

Hubble filed the May 7, 2013 medical record from Pikeville Medical Center. Dr. Dennis Halbert interpreted a CT scan of the cervical spine as revealing no evidence of soft or hard disc protrusion or herniation into the cervical canal. There was no evidence of spinal stenosis. The bony elements of the cervical spine and paraspinal soft tissues were unremarkable. Dr. Halbert's impression was a normal CT scan of the cervical spine.

Dr. Richard T. Sheridan performed an IME on October 23, 2013. Dr. Sheridan diagnosed resolved acute cervical strain. He felt MMI was reached on May 6, 2013. Dr. Sheridan opined no treatment or medication is medically necessary or appropriate. St. Clair has a normal exam of the cervical spine and upper extremities and can return to work with no permanent restrictions. St. Clair falls within

DRE category I for his cervical condition with a 0% impairment pursuant to the AMA Guides.

Dr. David Muffly evaluated St. Clair on February 27, 2014 and testified by deposition on April 2, 2014. His physical examination of St. Clair's cervical spine revealed no spasm, good range of motion, and no radicular complaints. A CT scan of the cervical spine taken May 7, 2013 was normal. An MRI of the cervical spine on August 27, 2013 showed minimal disc bulge at C5-6 with degenerative change. Dr. Muffly indicated St. Clair had no permanent change to the human organism as a result of the work injury. He further indicated degenerative changes identified on diagnostic studies were not in excess of what would be expected for an individual of St. Clair's age. He saw no need for treatment or medication relative to the May 6, 2013 neck injury. St. Clair has a 0% impairment rating for the cervical spine.

Dr. Muffly's examination of St. Clair's knees revealed no swelling, no sign of ligament injury, no sign of meniscal tear, and full movement. He therefore opined no medical treatment is medically necessary for the knees. He assigned a 0% impairment for the knees.

Dr. Muffly reviewed a March 4, 2011 lumbar CT scan which revealed osteoarthritic changes at L3-4 without

narrowing of the disc space, and a June 13, 2011 lumbar MRI which showed a mild degenerative disc bulge at L3-4 without disc herniation. Dr. Muffly opined he could not relate the changes to cumulative trauma and they were appropriate for St. Clair's age. Physical examination of the lumbar spine revealed no spasm and only a slight reduction in range of motion. Dr. Muffly noted St. Clair's history of substance abuse and was concerned he was expressing complaints of back pain as a method of obtaining narcotic medication. Dr. Muffly assigned a 0% impairment for the lumbar spine and found no medication is medically necessary. Dr. Muffly felt the seven months of employment with Hubble was not long enough for St. Clair's lumbar spine to suffer from cumulative trauma.

The ALJ's findings relevant to this appeal are as follows:

5. As to the Plaintiff's claim for income and medical benefits due to cumulative trauma, there is no objective evidence that Plaintiff's work with this employer has caused any permanent harmful change to the claimant. The injury claim must be dismissed. In making this finding, I rely on the medical reports of Dr. David Muffly, M.D. and Dr. Richard Sheridan, M.D., which medical evidence I find to be the most complete, compelling and persuasive evidence in the record as to that issue.

6. As to the Plaintiff's claim for income and medical benefits due to the alleged traumatic injury of May 6, 2013, there is no objective evidence that Plaintiff's work with this employer has caused any permanent harmful change to the claimant. The injury claim must be dismissed. In making this finding, I rely on the medical reports of Dr. Arthur Hughes M.D. and Dr. Richard Sheridan, M.D., which medical evidence I find to be the most complete, compelling and persuasive evidence in the record as to that issue. KRS 342.0011(1); KRS 342.730.

7. As to Plaintiff's claim for income and medical benefits due to the alleged traumatic injury of May 6, 2013, I do find that the Plaintiff suffered a work-related injury to the cervical spine which was temporary in nature and which entitled him to TTD and the payment of his medical expenses for the cure and relief of his injury. KRS 342.730; KRS 342.020.

St. Clair filed a petition for reconsideration noting contradictory statements in the ALJ's opinion. St. Clair noted the ALJ stated on page 25 of the opinion "[t]here can be no doubt that Mr. St. Clair sustained a harmful change to the human organism as the result of his work-related accident" but later states the work-related accident did not result in a harmful change of the cervical spine or knees and further found only a temporary injury. St. Clair further argued he had sufficient years of exposure to cumulative trauma to aggravate or accelerate the

degenerative condition and there was no evidence he had a prior active impairment.

In his October 30, 2014 Order on Reconsideration, the ALJ amended the second full paragraph on page 25 of the opinion to read as follows:

There can be no doubt that Mr. St. Clair sustained a work-related accident of May 6, 2013, for which he is entitled to medical treatment and whatever benefits to which he can show he is entitled.

In all other respects, the opinion remained unchanged.

On appeal, St. Clair argues the ALJ erred in failing to find a permanent injury. He again asserts the ALJ's findings are inconsistent regarding whether there was a harmful change as a result of the traumatic event or cumulative trauma. St. Clair urges he sustained a sufficient period of exposure to trauma over his career to aggravate or accelerate the degenerative changes. He notes the date of manifestation in a cumulative trauma injury is the date when the injured worker is advised by a physician that he has a condition which is caused by work. St. Clair contends there is no evidence, nor any finding, that he had any prior impairment or disability. St. Clair asks the Board to reverse and remand with instructions to award permanent benefits for the specific and cumulative trauma injuries.

This Board must reject St. Clair's contention the ALJ erred in finding the work accident caused no permanent injury and erred in failing to award income and future medical benefits for his physical injuries. In Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), the Kentucky Supreme Court held a claimant may submit evidence of a temporary injury for which temporary income and medical benefits may be awarded, yet fail to prove a permanent harmful change to the human organism for which permanent benefits are appropriate. The claimant, in Robertson, failed to prove more than a temporary harmful change as a result of the work injury. Thus, the Court ruled the claimant was not entitled to income benefits or future medical expenses, but was limited to compensation for only those medical expenses incurred in treating the temporary symptoms resulting from the work-related incident.

The opinions of Drs. Muffly, Sheridan and Hughes constitute substantial evidence upon which the ALJ was free to rely. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Dr. Muffly determined St. Clair's cervical strain resolved and produced no permanent impairment. He specifically found there was no permanent injury. He reviewed prior diagnostic studies and opined

St. Clair's low back complaints were attributable to ongoing problems from the prior injuries. While Dr. Hughes assigned an impairment rating for the lumbar condition, he assigned 0% ratings for the cervical and knee conditions. Dr. Sheridan also diagnosed a resolved cervical strain and assessed a 0% impairment rating. He did not anticipate the condition would require any further treatment or affect St. Clair's ability to work. As explained in Robertson, the ALJ could reasonably conclude from this evidence the injury of May 6, 2013, produced only temporary harmful changes that had fully resolved. The evidence falls far short of compelling a finding St. Clair sustained a permanent injury as a result of the specific trauma on May 6, 2013.

The evidence also falls far short of compelling a finding St. Clair sustained permanent injuries as a result of cumulative trauma. Dr. Muffly indicated the changes seen on diagnostic studies of the lumbar spine were appropriate for St. Clair's age and he could not relate them to cumulative trauma in the workplace. Degenerative changes were consistent with natural aging and were not more than would be expected for his age. Dr. Muffly indicated the May 7, 2013 CT scan of the cervical spine was normal.

St. Clair's arguments on appeal are essentially an attempt to have the Board re-weigh the evidence and substitute its opinion for that of the ALJ. We may not do so. While St. Clair has identified evidence supporting his position that a permanent impairment resulted from his injury, the totality of the evidence does not compel such a result. Although a party may note evidence supporting a different outcome, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The ALJ properly considered all evidence of record, weighed the evidence, and reached a decision supported by substantial evidence and in conformity with the law. Thus, we are without authority to direct a different result.

In his order on reconsideration, the ALJ addressed the apparently conflicting statements contained in his analysis regarding whether the accident produced a harmful change. The ALJ clarified that he determined an accident did occur on May 6, 2013 for which some benefits could be awarded. The ALJ left intact his findings that St. Clair did not sustain a permanent harmful change as a result of either the specific trauma or cumulative trauma. The ALJ's order on reconsideration is sufficiently clear to apprise the parties of the basis for the decision.

Accordingly, the June 23, 2014 Opinion, Award and Order and the October 30, 2014 Order ruling on St. Clair's petition for reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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