Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 11, 2015

CLAIM NO. 201400972

CARLOS COMBS PETITIONER

VS. **APPEAL FROM HON. OTTO D. WOLFF, IV, ADMINISTRATIVE LAW JUDGE**

CUMBERLAND RIVER COAL CO. and
HON. OTTO D. WOLFF, IV,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. Carlos Combs ("Combs") seeks review of the Opinion and Order rendered March 27, 2015 by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ"), dismissing his claim for multiple injuries allegedly sustained while working for Cumberland River Coal Co.

("Cumberland"). Combs also seeks review of the May 20, 2015 order denying his petition for reconsideration.

On appeal, Combs argues the fact he was able to perform his job did not disprove his cumulative trauma impairment. He also argues the fact the records of his primary care treatment do not relate his work activity to his complaints does not disprove a connection. Finally, Combs argues the fact Dr. Snider refused to identify evidence of cumulative trauma does not mean it was lacking. Because the ALJ's decision is supported by substantial evidence and a contrary result is not compelled, we affirm.

Combs filed a Form 101 on May 1, 2014, which alleged no particular injury, and likewise did not identify any body part injured. It merely stated, "These impairments rendered me unable to do my job at this time", without identifying the impairments to which he was referring. He alleged the injuries occurred on February 26, 2014, while working for Cumberland in Letcher County, Kentucky. On September 8, 2014, four months after the filing of the Form 101, and four days prior to the Benefit Review Conference ("BRC"), Combs filed a motion to amend the Form 101 to assert claims for cervical, lumbar and bilateral upper extremity injuries. The Form 104 medical history attached to the Form 101 identifies Combs worked at a factory from

1971 to 1979 where he poured iron. He subsequently worked as a coal mine laborer/repairman until February 26, 2014.

Combs testified at the hearing held January 27, 2015. He completed the eleventh grade and has no GED. He has an underground electric certification. Prior to February 26, 2014, he earned thirty dollars per hour, and worked approximately ten hours per day, six days per week. He missed no work during his last year of employment, and worked overtime until he quit working due to pain in his hands, arms, back and neck. He additionally stated he was having difficulty lifting mining tools and parts. He described his job as working in a forty-two to forty-eight inch seam of coal which required heavy lifting and getting into awkward positions. He also testified he worked at least part of the time on the surface during his last two years of employment. He stated he was taken off work by Dr. William Collins, his family physician. However, Dr. Collins' records only reflect he saw Combs on February 26, 2014 to complete retirement paperwork.

Combs stated he has pain in his back above his belt line, and down his right leg. He also described neck pain down his shoulders into his arms and fingers, primarily on the right. He stated he drops items due to finger numbness. He also described headaches. He stated he had a

specific traumatic injury to his neck which occurred approximately six years ago. He stated his hand problems began approximately eight years ago. Combs stated he began taking Ultram in the 1990s.

In support of the Form 101, Combs filed the Form 107-I report of Dr. Robert Hoskins who conducted an evaluation on March 31, 2014. Dr. Hoskins noted Combs complained of several musculoskeletal problems. He diagnosed a cervical sprain/strain; right cervical radiculitis; cephalgia; cervical degenerative disk disease; herniations at C3-4, C4-5 and C5-6 of moderate severity; lumbosacral sprain/strain; right lumbar radiculitis; annular disk bulging at L2-3 and L3-4; small right sided herniations at T11-T12 and T12-L1; bilateral median neuropathy(right greater than left); axonal and demyelinating sensorimotor peripheral polyneuropathy. Dr. Hoskins opined all of these problems were caused by Combs' work of many years as a repairman in the coal mining industry. He stated Combs does not retain the capacity to return to his previous work. Dr. Hoskins assessed a 19% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides").

In a subsequent note dated September 18 2014, Dr. Hoskins stated his disagreement with the report of Dr.

Gregory Snider. He found it troubling that Dr. Snider doubted Combs' veracity. He stated Combs has not reached maximum medical improvement, and reiterated his assessment of 19% impairment. He again stated Combs' problems stem from the cumulative trauma and repetitive strain of performing his job over the years.

Combs also filed the report of Dr. Collins, his family physician, dated September 20, 2014. Dr. Collins began treating Combs with Ultram for low back in 1991. He has additionally treated Combs for GERD, anxiety and upper respiratory complaints. Dr. Collins stated over the years Combs has complained of right knee pain, knots on his neck, leg cramps, a knot on his right arm, fatigue, shortness of breath, right upper and lower extremity numbness, neck pain and stiffness, right shoulder pain, stiffness and numbness in his hands. He specifically noted a 2012 episode of neck soreness when Combs was kicked by a horse. He stated he ordered electrodiagnostic testing which was consistent with carpal tunnel syndrome and bilateral ulnar entrapment, although the test results were not filed of record, nor were they provided for review either by Dr. Hoskins or Dr. Snider. He stated Combs has osteoarthritis which in his opinion is beyond those characteristic of the aging process. Combs declined a referral to either an orthopedic or

neurosurgeon. He stated he promised to assist Combs in filing for disability retirement and Social Security disability benefits.

Cumberland filed voluminous records of Dr. Collins for treatment from 1991 to 2014, many of which are illegible. The May 8, 1991 note reflects Combs complained of back pain with spasm on the right, with pain upon straight leg raising. On March 2, 1992, he complained of pain in the back of his neck. On May 7, 2005, Combs complained of a knot on his neck and significant back pain. On August 27, 2005, Dr. Collins diagnosed osteoarthritis and generalized anxiety disorder. On December 30, 2005, Dr. Collins prescribed Ultram and Xanax. On December 3, 2009, Dr. Collins discussed retirement with Combs and a referral to specialists. The February 26, 2014 note states, “PT here to have paperwork filled out concerning his retirement”. The note does not reflect Combs was taken off work.

Dr. Snider examined Combs on August 25, 2014 at Cumberland’s request. He noted Combs’ lengthy history of employment as an underground repairman. He noted Combs complained of shortness of breath along with multiple musculoskeletal complaints. He stated Combs complained of neck pain which increased with range of motion, low back pain especially with prolonged standing or sitting, and pain

radiating into the right leg with occasional swelling. He noted Combs had no specific hand complaints. Dr. Snider diagnosed neck pain, low back pain, and carpal tunnel syndrome by history. He noted the physical examination was relatively benign. He stated Combs has mild to moderate degenerative changes in his low back, but no conclusive evidence of cumulative trauma. He saw no basis for cumulative trauma treatment. Dr. Snider assessed a 0% impairment rating pursuant to the AMA Guides, and stated he found no objective abnormalities beyond what would be expected for Combs' age.

Dr. Snider testified by deposition on September 11, 2014. He noted Combs provided no specific date of injury, but last worked on February 26, 2014 due to several musculoskeletal complaints and shortness of breath. He stated he had not been provided with records from Dr. Collins, but noted Combs stated he was not interested in surgery if offered. Combs complained of neck pain with movement, back pain with prolonged sitting or standing, and pain in the right leg with occasional swelling.

Dr. Snider stated the neck had no gross abnormality on observation. He detected no cervical spasm. Range of motion of the neck was normal. He stated the neurological examination of the neck was grossly normal, and

wrist reflexes were intact. He detected no gross atrophy in the hands, but noted some degenerative changes in the joints. The lumbar examination revealed no abnormality on range of motion testing. Straight leg raising tests were negative. He noted no sensory loss in the lower extremities. He stated Combs was able to squat and arise without difficulty.

Dr. Snider opined Combs' degenerative findings were typical for a 61 year old. Combs did not mention any problems with his arms, hands or wrists. He stated objectively there was no reason Combs could not return to work doing what he wanted to do. He saw no indication for formal treatment.

In a supplemental note dated December 29, 2014, Dr. Snider noted he had reviewed MRI and x-ray reports. The records showed degenerative findings which were within the realm of normal based upon Combs' age.

A BRC was held on September 12, 2014. Cumberland did not stipulate Combs had sustained a work injury. Listed as issues were Combs' ability to return to the job performed at the time of injury; benefits per KRS 342.730; causation/ work-relatedness; injury as defined by the Act; credit for unemployment benefits; and exclusion for pre-existing disability/impairment.

In his decision rendered March 17, 2015, the ALJ first noted Combs did not initially note any particular injuries, or how they may have occurred. He then found as follows:

> An employee has the burden of proof and the risk of non-persuasion to convince the ALJ of every element of his workers' compensation claim. *Snawder v. Stice, 576 SW2d 276 (Ky. App., 1979).*
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> When medical evidence is conflicting, the question of which evidence to believe is within the exclusive province of the ALJ. *Square D Company v. Tipton, 862 S.W.2d 308 (Ky., 1993).*
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> The ALJ has the sole discretion to determine the quality, character and substance of the evidence and to draw reasonable inferences from the evidence. *Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky., 1985).*
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> The ALJ has the sole authority to judge the weight to be afforded the testimony of a particular witness. *McCloud v. Beth-Elkhorn Corporation, 514 S.W.2d 46 (Ky., 1974).*
>
> The significant issue is to determine is[sic] whether Plaintiff's alleged cumulative trauma injuries were caused by or arose out of the years of work Plaintiff did as an underground coal miner.
>
> CAUSATION
>
> There are two essential elements to every workers' compensation claim: (1) an injury and (2) causation. "Causation" consists of two components,

medical and legal.

Medical causation is a question to be addressed by healthcare providers within the realm of "reasonable medical probability." Legal causation, commonly referred to as "work-relatedness," is a factual determination to be made by the ALJ. Medical evidence, although relevant and material, must be considered not as determinative but rather as a part of the "totality of circumstances" upon which the ALJ must make the factual determination of whether the alleged disability was caused by the work the alleged employee performed for an employer. *Hudson v. Owens, 439 S.W.2d 565 (Ky., 1969).*

In determining whether an injury is work-related, no single factor should be given conclusive weight, and the decision must be based on the quantum of aggregate facts rather than the existence or non-existence of any particular factor. *Hayes v. Gibson Hart Co., 789 S.W.2d 775 (Ky., 1990).*

"Work-related" and "arising out of and in the course of employment" are synonymous terms. *Armco Steel Co. v. Lyons, 561 S.W.2d 676 (Ky., 1978).*

The role of weighing evidence, drawing inferences, and making determinations rests solely in the hands of the ALJ. *Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).*

On February 26, 2014 Plaintiff decided to quit working. He has not worked since.

Plaintiff testified he worked 5 to 6 days a week, 10 hours a day through February 25, 2014. He worked without restriction. He did not miss any time at work due to musculoskeletal problems,

he testified, “I would not miss work.” (FH, p. 47).

Plaintiff testified he worked on the surface during the last couple years of his employment with Defendant, but acknowledged he continued to work at least three-fourths of his time underground.

Based upon Plaintiff’s testimony, particularly that part acknowledging he could work 10 hours a day, 5 to 6 days a week without restriction through February 25, 2014, it is difficult to understand how he can now validly claim he could not as of February 26, 2014.

Furthermore, a page by page review of the content of Dr. Collins’ 140-pages of medical records does not present much persuasive proof Plaintiff’s alleged cumulative trauma injuries, if any, were caused by and/or arose out of Plaintiff’s underground mining work.

These records provide little indication Plaintiff’s occasional complaints of back and/or neck pain were due to work. In fact Dr. Collins’ February 1, 2014 record does not associate Plaintiff’s problems with work, but specifically notes, “HPI: in for back pain from arthritis.”

The greater bulk of Dr. Collins’ records do not mention back or neck pain, but many of his records, particularly those in the years immediately prior to Plaintiff’s retirement in 2014, do document Plaintiff’s arthritis and associated problems – specifically, but not limited to, records from February 2004, August 2004, August 2005, December 2005, June 2012, August 2012, December 2012, April 2013, July 2013, and February 2014.

> Even in his September 20, 2014 letter Dr. Collins does not make a strong, if any, link between Plaintiff's work and his spine problems. Plaintiff may have had questionable fitness to perform his job duties, but Dr. Collins seems to attribute Plaintiff's lack of fitness to osteoarthritis and aging.
>
> Not surprisingly, but seemingly correct, Defendant's Dr. Snider wrote, "I certainly have not said that Mr. Combs does not potentially have impairment. I have simply pointed out that based on the information available to me I cannot identify clear evidence of 'cumulative trauma', beyond what is essentially attributable to age and other conditions, that warrants impairment."
>
> Based upon the above, it is determined Plaintiff has not presented ample persuasive proof of a link between his work and the cumulative trauma he alleges herein: consequently, Plaintiff's claim will be dismissed in its entirety.

Combs filed a petition for reconsideration essentially requesting the ALJ to revisit the evidence to make a different determination. On May 20, 2015, the ALJ issued an order denying the petition for reconsideration.

As the claimant in a workers' compensation proceeding, Combs had the burden of proving each of the essential elements of his cause of action, including causation/work-relatedness. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Combs was unsuccessful in his

burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable based on the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may 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. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's

decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Despite Combs' argument to the contrary, we find Dr. Snider's opinion constitutes substantial evidence supporting the ALJ's dismissal of the claim, and no contrary result is compelled. An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969).

In this instance, there were differing medical opinions in the record addressing both Combs' condition, and the cause of his complaints. The ALJ, as fact-finder, has full discretion to determine the physician or physicians upon which he relies. We acknowledge the differing medical opinions in the record. However, if "the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006).

Although Combs advocates Dr. Collins' opinion is most persuasive as the treating physician, nothing in Chapter 342 mandates greater weight be given to a treating physician's testimony. Wells v. Morris, 698 S.W.2d 321 (Ky. App. 1985); Sweeney v. King's Daughters Medical Center, 260 S.W.3d 829, 830 (Ky. 2008). Where the evidence is conflicting, the ALJ, as fact-finder, has the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

Combs' arguments discrediting the opinion of Dr. Snider go to the weight of the evidence and do not serve to render his opinions unsubstantial. In this instance, the ALJ found Dr. Snider's opinion most persuasive and his

opinion constitutes substantial evidence supporting the ALJ's determination. Although contrary evidence exists in the record, this does not compel a different result.

Accordingly, the March 27, 2015, Opinion and Order and the May 20, 2015 order denying the petition for reconsideration by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

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