Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 23, 2015

CLAIM NO. 201374521

CHRISTOPHER SCOTT FARLEY PETITIONER

VS. **APPEAL FROM HON. JEANIE OWEN MILLER, ADMINISTRATIVE LAW JUDGE**

BLEDSOE COAL CORPORATION
HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

RECHTER, Member. Christopher Scott Farley ("Farley") appeals from the July 18, 2014 Opinion, Order and Award rendered by Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ"), and from the August 26, 2014 Order denying his petition for reconsideration. The ALJ determined Farley sustained no permanent impairment rating as a result

of a work-related accident, but was entitled to a period of temporary total disability benefits and future medical benefits. On appeal, Farley argues the ALJ erred in relying on the opinions of Dr. Gregory T. Snider and Dr. James R. Bean. We disagree and affirm.

Farley testified by deposition on April 8, 2014 and at the hearing held May 28, 2014. He began working for Bledsoe Coal Corporation as a laborer in 2002. Farley was injured on July 9, 2013 while working in an underground mine. He was attempting to move a mining timber weighing approximately 150 pounds when he slipped on the muddy mine floor. He fell on his back with the mine timber across his torso. Farley immediately felt pain in his spine from his neck through his thoracic spine and in his low back above his buttocks. He was able to push the timber off his body, and drove himself to the emergency room in Harlan.

Farley was taken off work and received temporary total disability benefits. The mine shut down in September 2013 and Farley did not return to work for any employer. He indicated he continues to have sharp pains between his shoulder blades and in his low back running down his legs to his feet. His left arm occasionally goes numb.

Farley was treated at the Harlan Appalachian Regional Hospital (Harlan "ARH") emergency department by

Dr. Donald Ramsey who diagnosed a dorsolumbar sprain. He prescribed medication and took Farley off work for a day or two. Dr. Ramsey assigned temporary restrictions and indicated Farley should be examined again if his back pain was not better after one week.

Farley submitted notes from Judy M. Calton, APRN of Mountain Comprehensive Health Care. Farley first presented on July 11, 2013 with complaints of persistent upper and low back pain that continued to worsen. There was no radicular pain. On July 19, 2013, Farley reported having pain radiating into his right leg at times but his neck pain had resolved. An August 2, 2013 MRI of the lumbar spine was interpreted as normal. Nurse Calton referred Farley to Dr. Bean for a neurosurgical consultation.

Farley visited Dr. Bean on August 27, 2013 with complaints of low back pain sometimes radiating to his legs. He reported improvement since a work injury six weeks earlier, but he was bothered when trying to rest in bed or with continuous movement or lifting. Farley also complained of some neck pain. His lumbar MRI scan showed no abnormalities. Straight leg raising was negative, and knee extension and ankle dorsiflexion were intact. There was no sensory loss or reflex asymmetry. Dr. Bean

diagnosed a lumbar sprain. He recommended Farley return to work with a twenty pound lifting restriction for two weeks and then no restrictions.

On November 14, 2013, Dr. Bean noted Farley was still having back pain and stiffness whenever he tried to exercise. Dr. Bean felt this was due to an annular injury although there was no herniation. Dr. Bean recommended a return to physical therapy for an exercise program to help manage his back problem with core strengthening and flexibility. He did not believe additional follow-up was needed unless Farley had new problems.

Dr. Robert C. Hoskins performed an independent medical examination ("IME") on February 6, 2014. He diagnosed cervical sprain/strain, left cervical radiculitis, lumbosacral sprain/strain, and bilateral lumbar radiculitis. Farley did not have an active impairment prior to the work injury. Dr. Hoskins did not feel Farley was at maximum medical improvement but indicated if the ALJ disagreed, Farley would be assessed with a 13% impairment consisting of 6% for the cervical condition and 7% for the lumbar condition pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Hoskins assigned extensive physical restrictions: no

lifting greater than fifty pounds below waist level; no repetitive and heavy pushing, pulling, or carrying; no continuous sitting greater than three hours with ten to fifteen minutes to stand or walk thereafter; no continuous standing or walking greater than two hours with ten to fifteen minutes to sit thereafter; no activities involving sustained posturing of the lumbosacral spine at extremes of motion or repetitive movements into extremes of lumbosacral motion; no prolonged or repetitive use of equipment subjecting the spinal column to vibration; no prolonged or repetitive stooping or crouching; no prolonged or repetitive overhead work; and no activities involving sustained posturing of the cervical spine at extremes of motion or repetitive movements into extremes of cervical motion.

In an April 28, 2014 report, Dr. Hoskins criticized Dr. Snider's report, indicating his comments and conclusions did not comply with the AMA Guides. Dr. Hoskins noted Dr. Snider was unaware of Dr. Bean's treatment recommendations and did not have access to any of Farley's treatment records.

Dr. Snider performed an IME on April 11, 2014 and reviewed pre-injury records from 2008 through April 24, 2013, the Harlan ARH emergency room notes, x-ray reports

and a physical therapy note. He indicated the nurse practitioner notes, Dr. Bean's notes, the MRI report, and Dr. Chaney's notes were not available. Dr. Snider diagnosed cervical and lumbar strains. He opined Farley sustained a transient musculoligamentous strain to his neck and/or low back. Dr. Snider noted imaging studies revealed no evidence of any acute changes. Farley's neurologic and musculoskeletal examination was benign. Farley reached MMI on September 9, 2013 and could return to work without restrictions. Dr. Snider indicated no further medical treatment is reasonable or necessary for the injury. Dr. Snider placed Farley in DRE Category I with 0% impairment in accordance with the AMA Guides. He stated there is no basis for an impairment rating based upon any anatomic changes attributable to the work injury.

Dr. Snider testified by deposition on April 25, 2014. He had reviewed treatment records including a CD-ROM containing diagnostic x-rays and the lumbar MRI, and notes of Dr. Chaney and Nurse Calton. The imaging studies revealed no abnormality or finding that would be considered trauma-related. Farley lacked any objective findings suggesting anything other than a sprain or strain. Dr. Snider indicated his opinion had not changed since the time he prepared his report. He felt Farley's cervical and

lumbar strains had resolved without any objective residual abnormality. He reiterated that Farley has no impairment rating caused by the work injury and needs no restrictions or limitations. Dr. Snider noted the AMA Guides provide that subjective complaints in isolation are not enough to qualify someone for an impairment rating.

Based upon Dr. Snider's opinions and Dr. Bean's records, the ALJ found Farley suffered a work related injury resulting in no impairment rating pursuant to the AMA Guides. The ALJ awarded temporary total disability benefits from July 9, 2013 through September 9, 2013 based upon Nurse Calton's medical records and Dr. Snider's opinion. Pursuant to FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the ALJ determined Farley is entitled to an award of reasonable and necessary medical treatment for the work injury despite the lack of an impairment rating.

Farley filed a petition for reconsideration challenging the ALJ's reliance on Dr. Snider's opinion. The ALJ denied the petition by order dated August 26, 2014, noting Farley was rearguing the merits of the case. The ALJ further noted Dr. Snider had been provided with the medical records from Dr. Bean, Nurse Calton and the physical therapy records prior to being deposed, and had

considered Farley's subjective complaints in rendering his opinion. Finally, the ALJ noted she found persuasive Dr. Bean's opinion that Farley could return to full duty work.

On appeal, Farley argues the ALJ's acceptance of Dr. Snider's opinion is reversible error because he improperly interpreted the AMA Guides in assigning no permanent impairment rating for his lumbar and cervical spine conditions. Farley argues an impairment rating can be assessed pursuant to DRE Category II when there is a clinical history and examination findings compatible with injury, and findings necessary for assessment of a DRE Category II rating include muscle guarding or spasm, asymmetric loss of range of motion or non-verifiable complaints of radicular pain without objective findings, no alteration of structural integrity and no significant radiculopathy. Farley also contends Dr. Snider failed to review all medical records as required by the AMA Guides, rendering his opinion unreliable.

Farley also contends the ALJ erred in relying upon Dr. Bean's opinion because the AMA Guides do not require an inability to labor or a disc herniation before an impairment rating can be assessed. Rather, an impairment rating pursuant to the AMA Guides is based upon a decrease in the individual's ability to perform activities of daily living,

excluding work. Farley observes Dr. Bean's second note indicates there is an annular injury suggesting an ongoing back problem.

As the claimant in a workers' compensation proceeding, Farley had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Farley was unsuccessful in that 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 under 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).

The ALJ relied upon Dr. Snider's opinion in finding Farley had no permanent impairment rating. Dr. Snider expressly based his opinion on the AMA Guides, placing Farley in DRE Category I, defined in Table 15-3 and 15-5 as injuries producing "No significant clinical

findings, no observed muscle guarding or spasm, no documentable neurologic impairment, no documented alteration in structural integrity, and no other indication of impairment related to injury or illness; no fractures." This is precisely what Dr. Snider's examination and review of diagnostic studies revealed. Dr. Snider noted he found no objective abnormality and noted the MRI of the low back was "flat out read as normal." As such, his opinion constitutes the requisite substantial evidence to support the ALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

While Dr. Hoskins placed Farley in DRE Lumbar Category II and assigned a permanent impairment rating, his opinions are merely conflicting medical evidence. Though Dr. Bean indicated Farley had an annular injury, his brief November 14, 2013 note does not indicate this constitutes a permanent injury. Furthermore, this single notation falls far short of compelling a finding of a permanent impairment rating. Farley's arguments on appeal essentially are an attempt to have this Board reweigh the evidence and direct a finding contrary to the ALJ's decision. We are without authority to do so. The ALJ was well within her authority in finding persuasive the opinion of Dr. Snider.

For the foregoing reasons, the July 18, 2014 Opinion, Order and Award rendered by Hon. Jeanie Owen Miller, Administrative Law Judge, and the August 26, 2014 order denying Farley's petition for reconsideration are hereby **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON SHERRY BRASHEAR
PO BOX 1626
HARLAN, KY 40831

COUNSEL FOR RESPONDENT:

HON DENISE DAVIDSON
PO DRAWER 986
HAZARD, KY 41702

ADMINISTRATIVE LAW JUDGE:

HON. JEANIE OWEN MILLER
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601