Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 13, 2013

CLAIM NO. 201200507

DAVID K. SPEARS PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

KENTUCKY DEPARTMENT OF PARKS
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. David K. Spears ("Spears") seeks review of the Opinion and Order rendered August 13, 2013 by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"), dismissing his claim for carpal tunnel syndrome, and awarding medical benefits only for a temporary neuropathy he sustained while employed by the Kentucky Department of Parks

("KDP"). Spears did not file a petition for reconsideration.

On appeal, Spears argues the opinion is clearly erroneous on the basis of reliable, probative and material evidence contained in the record as a whole, or is a clearly unwarranted abuse of discretion. We note the ALJ performed a proper analysis pursuant to Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001); FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007). Because the ALJ's determination is supported by substantial evidence, and a contrary result is not compelled, we affirm.

Spears filed a Form 101 on April 23, 2012, alleging he injured his hands and wrists on May 16, 2010 when he was assaulted by a co-worker. He later moved to amend the Form 101 on January 28, 2013 to allege his condition was caused by his ten years of working as a carpenter. Spears' employment history consists of working as a machine operator, forklift operator and carpenter/ maintenance worker.

Spears testified by deposition on June 26, 2012, and at the hearing held June 28, 2013. He is a resident of Barren County, Kentucky. He is a high school graduate with some college coursework. While in high school, Spears also took drafting courses in vocational school.

Spears was hired by KDP as a carpenter in 2002. He stated his job consisted of painting, drywall repair, and repairing tile floors, windows and doors. He also assisted the maintenance department with trash removal and setup for special events.

Based upon Spears' testimony and the records submitted, he was apparently arrested or detained on three occasions by state park rangers on various charges. Spears testified that on May 16, 2010 he reported to a ranger he had observed illegal drinking activity at one of the cabins. The incident reports from the same date indicate Spears had previously been admonished for parking in a handicap parking space earlier in the day. At the time of the incident, he confronted the ranger in apparently a boisterous manner, and was arrested in the dining room of the facility for harassment and disorderly conduct. Thereafter he was handcuffed and placed in the ranger's vehicle. A second ranger was called to assist. Spears testified he was initially handcuffed with his hands behind his back. A second ranger later adjusted the handcuffs at Spears' request, although he noted they were not tight on his wrists. Later, Spears' hands were cuffed in front of his body. Spears complained the handcuffs caused him to lose

circulation, and he has suffered numbness in the backs of his hands and thumbs since the incident.

Spears was taken to the Barren County Detention Center where the handcuffs were removed. He stated the skin was not broken from the cuffs, but his wrists remained red for several days. After he was released from the detention center, Spears sought treatment at the T. J. Sampson Hospital in Glasgow, Kentucky.

Spears returned to work on May 29, 2010, and continued to work at the park until May 2011. He was then transferred to another park where he worked until the end of September 2011. In addition to ongoing numbness, Spears stated he has occasional aching. Spears had a right carpal tunnel release surgery two years after the incident. He stated his condition has improved, but he is unable to return to work as a carpenter.

Spears filed numerous records from Dr. Stephen Rose. Dr. Rose had previously treated Spears for an unrelated knee injury. Dr. Rose first treated Spears for his wrists and hands on April 27, 2011. He noted complaints of bilateral hand numbness, left worse than right, which Spears related to being handcuffed by a park ranger. EMG/NCV studies revealed right worse than left radial nerve sensory neuropathies, along with bilateral carpal tunnel

syndrome, right worse than left. On June 15, 2011, Dr. Rose noted the radial sensory nerve compression had resolved, and radial ulnar studies were normal; although bilateral carpal tunnel syndrome was still present. Subsequent treatment notes from August 17, 2011; October 28, 2011; January 4, 2012; February 8, 2012; and June 22, 2012 indicated ongoing complaints of carpal tunnel syndrome. On June 22, 2012, Dr. Rose cautioned against repetitive motion or gripping, and stated if no job was available to accommodate such restrictions, he was to remain off work until surgery was performed. A right carpal tunnel release was performed on September 27, 2012. On October 30, 2012, Dr. Rose assessed a 5% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment.

KDP filed the May 19, 2010 office note of Dr. Paul Burke. He noted Spears had been handcuffed three days prior, and complained of bilateral hand numbness. He stated the radial nerves were primarily involved.

KDP filed reports of EMG/NCV studies performed on May 27, 2010; June 10, 2011 and October 3, 2012. The first study demonstrated mild bilateral sensory neuropathy which was worse on the right. The second study noted mild to moderate sensory nerve compression greater on the right, and

normal ulnar motor and sensory abnormalities. The last study noted all nerve conduction measurements were within normal limits.

KDP filed the October 14, 2011 utilization review report of Dr. Ronald Fadel. Dr. Fadel stated as follows:

> While there are reported cases of median nerve compromise as a result of blunt trauma, the sketch details regarding the injury, such as cuff pressure etc. fail to provide sufficient evidence to conclusively support the speculation offered by the claimant and his provider.

Dr. Thomas Gabriel evaluated Spears on October 3, 2012. He was provided a history of the handcuffing incident. He noted the two-point discrimination test for sensation to light touch was normal through the right hand. He diagnosed transient bilateral radial sensory neuritis which may have been caused by the handcuffing incident, had resolved. He stated carpal tunnel syndrome is not a known, suspected or anticipated complication of a brief period in handcuffs. He opined Spears' carpal tunnel syndrome was not caused by the handcuffing incident. He further opined Spears has no impairment due to the work incident, did not need surgery, and required no restrictions.

A Benefit Review Conference ("BRC") was held on April 10, 2013. The BRC order and memorandum reflects the

contested issues were benefits per KRS 342.730; work-relatedness/causation; unpaid and contested medical bills; and whether Spears was injured in the course and scope of his employment.

On August 13, 2013, the ALJ awarded temporary medical benefits for the radial sensory neuropathies, but dismissed Spear's claim in all other respects. The ALJ clearly detailed the medical evidence, and noted none of it established the carpal tunnel syndrome was caused by Spears' work. No petition for reconsideration was filed.

Spears, as the claimant in a workers' compensation case, bore the burden of proving each of the essential elements of his cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he was unsuccessful in his burden, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence 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).

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).

Additionally, no petition for reconsideration was filed. 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. Stated differently, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence

in the record that supports the ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985).

Here, the record contains substantial evidence supporting the ALJ's finding Spears sustained only a temporary injury which resolved prior to his last day of work with KDP, and no contrary result is compelled. The ALJ acted well within her discretion as fact-finder. Magic Coal Co. v. Fox, supra.

The ALJ explained why she did not find Spears sustained a permanent injury. Since substantial evidence exists in the record and no contrary result is compelled, we will not disturb the ALJ's determination Spear's work incident caused only a temporary injury without resulting permanent impairment.

Since the rendition of Robertson v. United Parcel Service, supra, this Board has consistently held it is possible for an injured worker to establish a temporary injury for which temporary benefits may be paid, but fail in his burden of proving a permanent harmful change to the human organism for which permanent benefits are authorized. In Robertson, the ALJ determined the claimant failed to prove more than a temporary exacerbation and sustained no permanent disability as a result of his injury. Therefore, the ALJ found the worker was entitled to only medical

expenses the employer had paid for the treatment of the temporary flare-up of symptoms. The Kentucky Supreme Court noted the ALJ concluded Robertson suffered a work-related injury, but its effect was only transient and resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis. The Court stated:

> Thus, the claimant was not entitled to income benefits for permanent partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident. Robertson, supra.

Here, the ALJ correctly followed this standard, and awarded temporary medical benefits for the sensory neuropathies which resolved while Spears was still working for KDP, pursuant to FEI Installation v. Williams, supra. The evidence does not compel a finding Spears is entitled to any additional award.

Accordingly, the August 13, 2013 Opinion and Order rendered by Hon. Jane Rice Williams, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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