

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 13, 2015

CLAIM NO. 201374504

DONALD MEECE

PETITIONER

VS.

APPEAL FROM HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE

MASCO CABINETRY
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
VACATING AND REMANDING
AND ORDER DENYING ORAL ARGUMENT

* * * * *

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

STIVERS, Member. Donald Meece ("Meece") appeals from the September 3, 2014, Opinion and Order and the October 9, 2014, Order on Reconsideration of Hon. R. Scott Borders, Administrative Law Judge ("ALJ"). In the September 3, 2014, Opinion and Order, the ALJ dismissed Meece's claim for

benefits against Masco Cabinetry ("Masco") for alleged work-related low back and groin injuries.

On appeal, Meece asserts substantial evidence in the record shows there were objective changes in Meece's back and groin as a result of the work-related fall. Alternatively, Meece argues the ALJ "must" put forth specific findings as to why either temporary and/or permanent medical benefits should not be awarded. Also, Meece asserts substantial evidence does not support the ALJ's conclusion he did not suffer a hernia injury, either temporary or permanent, from the work injury.

The Form 101 alleged on February 6, 2013, Meece sustained the following injuries: "Back, L-4 and L-5, pain in groin area and pain down right leg, hernia." It alleges Meece sustained his injuries while working for Masco in the following manner: "Plaintiff was crossing a steel transfer line with wheels, when he slipped and fell on his back."

The July 9, 2014, Benefit Review Conference ("BRC") Order and Memorandum lists the following contested issues: benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses; injury as defined by the ACT; and exclusion for pre-existing disability/impairment. The parties stipulated

Meece "sustained a work-related injury or injuries alleged on 2-6-13."

Dr. Rick Lyon's August 15, 2013, report was introduced. After conducting a physical examination and a medical records review, Dr. Lyon provided the following assessment:

1. Left inguinal hernia.
2. Chronic degenerative lumbar spine.
3. Exacerbation of low back pain.

Dr. Lyon opined as follows:

It is my opinion that Mr. Meece has had an aggravation of his underlying and chronic degenerative disc disease of the lumbar spine. There is no evidence that the fall at work has had any structural effect [sic] on his back. Since he has had an aggravation, I would recommend physical therapy to include the use of a TENS unit, instruction on lumbar traction and an abdominal and low back strengthening program. In addition, I recommend an aerobic conditioning program. It is my opinion this treatment is related to the work injury.

Mr. Meece would also benefit from an EMG and NCV of the bilateral lower extremities to evaluate radiculopathy. However, since he has had chronic radicular complaints, it is my opinion this study and any additional treatment is not related to the work event. Mr. Meece simply had an exacerbation of an active condition which included pre-existing radicular complaints. It

should be noted that in spite of this exacerbation, Mr. Meece has not required additional pain medication and has continued working. His complaints of bilateral hip pain are consistent with his chronic lumbar degenerative disease and can be addressed with the recommended physical therapy.

Finally, it is my opinion that is [sic] groin pain is not related to his lumbar spine. As this is outside my area of expertise, I am uncomfortable in recommending an evaluation for his groin pain. However, the fact that he has had multiple abdominal surgeries and the right inguinal orchiectomy is likely a contributing factor.

Dr. Lyon further opined as follows:

1. Please see objective findings above for current signs and symptoms. He subjectively distinguishes new right lower extremity paresthesias and pain in the lower region of the lumbar spine as a result of the alleged fall in February of 2013.
2. There is no specific documentation of an injury other than his subjective complaints and the reference to the date of injury in the providers [sic] records. As a result of the fall, he has had another exacerbation of his chronic lumbar complaints.
3. There is no evidence of structural change attributed to the work injury.
4. There is no objective and subjective correlation. In addition, the subjective paresthesias and subjective sensory changes are not consistent with the level confirmed by MRI.

5. He continues to have groin pain. It is my opinion that the groin pain is unrelated to the lower back and is not an orthopedic or neurosurgical issue. It is my suggestion that further workup be performed by a general surgeon. It is noted that he has had multiple abdominal surgeries including removal of right testicle and resultant scar tissue. It is likely that this could be the cause of his continued pain.

6. It is my opinion that referral to a neurosurgeon is not appropriate as a result of the alleged work event. A referral could be considered for his chronic lumbar condition.

7. It is my opinion that Mr. Meece has returned to his baseline. It is my opinion he has no new restrictions as a result of the alleged work event.

8. As per the AMA guide to impairment 5th edition, Mr. Meece would be characterized as DRE lumbar category II with 5% whole person impairment. Based from the medical records reviewed from Dr. Oliver, he had preexisting radiculitis. Therefore his impairment is unchanged as a result of the work event.

In a September 25, 2013, supplemental report Dr.

Lyon opined further:

I received your correspondence dated 9/25/2013. Based on the assumption that Mr. Meece did have a work event on 02/05/2013 [sic], his subjective history is consistent with an exacerbation of his lumbar symptoms. Although there is no evidence of a harmful change, Mr. Meece does report increased symptoms. I would therefore recommend a 4 week course of physical

therapy, 3 times per week to instruct on a low back strengthening and aerobic conditioning program. This treatment along with a TENS unit is palliative in nature and is recommended as a result of the work event. Any additional care, including the recommended nerve studies are not related to the work event.

In regards to past care, it is my opinion his care to date has been appropriate and related [sic] the work event on 02/05/2013 [sic]. The evaluation has confirmed no harmful change to the human organism in regards to his lumbar spine. It has also demonstrated that the groin pain is not related to the lumbar spine.

In a second supplemental report dated June 14, 2014, Dr. Lyon opined as follows:

Mr. Meece was again cooperative with the evaluation. He complains of continued low back pain and claims to have had no treatment since my last evaluation. On examination today, he has objectively improved since the last examination as demonstrated by increased lumbar ROM. More importantly, he no longer manifests positive Waddell's signs. Therefor [sic], it is my opinion that current examination is more reliable. He continues to have no objective radicular findings. The subjective sensory complaints are not consistent with a radiculopathy.

It remains my opinion that Mr. Meece has had an aggravation of his underlying chronic and active degenerative disc disease of the lumbar spine. There is no objective evidence that the fall at work has had any harmful change on his back. He has not

undergone any of the recommended treatments since his last visit but has actually improved and continued to work. It is my opinion that he has returned to the chronic and stable condition that existed prior to the work event.

Mr. Meece has returned to a full duty job and has continued at his usual and customary job. He does continue to take narcotic medications as he did prior to the alleged work event. It is my opinion he has no new work restrictions as a result of the alleged work event.

In response to your questions:

1. It is my opinion there has been no harmful change to the human organism arising from the February 6, 2013 slip and fall.

2. As Mr. Meece has improved since the last visit, it is my opinion he needs no additional care. It is my opinion, he has returned to his stable condition that existed prior to the alleged work event. Mr. Meece needs no additional treatment as a result of the alleged event on February 6, 2013.

3. Mr. Meece does not require any permanent functional restrictions as a result of the alleged work event in February of 2013.

4. I have found no signs of symptom magnification or non-anatomic findings. These have resolved since the last visit.

5. It is my opinion, Mr. Meece retains a [sic] physical capacity continued [sic] working at the type of work he

was performing prior to the alleged February 6, 2013 event.

A radiology report from St. Joseph Mount Sterling dated July 27, 2012, notes a "small fat-containing inguinal hernia." Another radiology report from St. Joseph Mount Sterling dated May 13, 2013, notes: "There is a small fat containing left inguinal hernia which appears similar as compared to the prior exam."

A Form 107 report prepared by Dr. James C. Owen was introduced by Meece.¹ After examining Meece, Dr. Owen diagnosed the following:

Diagnosis is persistent low back pain with probable S1 radiculopathy, reflex is not changed, but his sensory is diminished, and his calf size is diminished in circumference. A straight leg raise is clearly positive and he had significant range of motion problems. All in all given the MRI change in verbiage, I think this points to a radiculopathy at the present time. He has a left side inguinal hernia that is symptomatic.

Dr. Owen attributed Meece's injuries to the February 6, 2013, work-related event explaining as follows:

Any part preexisting, dormant, nondisabling: Yes. In this situation, he has clear cut preexisting problems both the low back and hernia, but both were being well treated and he was

¹ The date is illegible.

working on a routine basis on pain medication. The mechanism of injury was to [sic] excessive torsion torque to the lumbar spine for the S1 radiculopathy and excessive torsion torque of inguinal hernia.

Regarding an impairment rating, Dr. Owen opined as follows:

The impairment rating would be appropriately DRE category II within that categorization for an ADL of 7/10, one would describe a 12% whole person impairment. The impairment rating based upon the hernia would be combined with this and that is derived per page 136, Table 6-9, which would fall into the class I within a class 8% whole person impairment would be appropriate combining 8% and 12% per Combined Value Chart, 19% whole person impairment.

Any part preexisting active: Yes. Using the gradation in pain as the primary determinant here, he has pain prior to this injury he describes as a 7/10. At the present time, it is 9/10 that represents a 2/10 increase in the pain for the low back that would be about 2/7 or 1/3 increase. Therefore, subtracting 2/3 from the 12% that one would arrive at 4% whole person impairment for the most recent injury as being the incremental appropriate percentage. The inguinal hernia was by his history significantly less symptomatic prior to the most recent injury and I would place that at approximately 50% and therefore out of a total of 8% appropriately assigned to the hernia, 4% would be most reasonably assigned to the most recent injury. Therefore, combining [sic] 4% and 4% per Combined Values Chart, total whole

person impairment that is work-related of recent date is 8%.

As to whether Meece had attained maximum medical improvement ("MMI"), Dr. Owen opined as follows:

Is he at maximum medial [sic] improvement? No. He currently needs to have the hernia repaired. The low back pain I think is appropriately treated and I would think that is at maximum medical improvement and I doubt surgical intervention would be recommended.

Medical records from Dr. Dr. Oliver James, II, were filed in the record. These records pre-date the February 6, 2013, injury and show Meece was receiving treatment for lumbar degenerative disc disease and lumbar radiculitis.

Meece's May 1, 2014, deposition was introduced. He testified that after his fall on February 6, 2013, his lower back hurt and his groin area started hurting about three weeks later. His testimony regarding the groin pain is as follows:

Q: When did the pain in your groin area start?

A: One morning I woke up, got out of bed, and my groin was hurting. It was sore than it was when I went to bed. Got ready, went to work. I was helping Billy Stanfield. And we picked up- there was a quarter-inch wood. They're stacked ten pieces high. And I believe

it was- I believe it was, like, a 18-by-20-inch. They weren't they [sic] big. Ten pieces of them. And they slide across the air table. I got them to the edge. I picked them up and turned to stack them onto the pallet, and I almost hit the floor. I mean, I was screaming in pain. And it felt like somebody just reached down into my groin area and was pulling my privates up through my throat.

Q: And how long was this after you fell did this sensation occur?

A: It was about a couple of three weeks. Somewhere are there.

Meece testified that he is supposed to be on light duty, but his supervisor is "breaking it every day." His restrictions are supposed to be no twisting, bending, lifting, torso twisting, and lifting over five pounds. Meece continued working after the February 6, 2013, fall. He is not performing the same type of work he performed at the time of the fall. He described the difference in his pre-injury and post-injury duties as follows:

Q: What's different?

A: Right now I'm off loading. He had me off loading wall backs, quarter-inch wall backs. I did for a couple of weeks, but that was twisting and it got to where it was hurting me. And it was hurting my hand because I had to use two hands. But now the job he's got me on is wall backs. And they kind of just slide off the machine right onto the pallet. And I can take my foot and hit

the control and let the table down. And then the guy that's feeding it, Alec, he helps me push- or pushes most of the big stuff.

Meece also testified at the July 23, 2014, hearing. Meece takes Percocet, Tramadol, and Aleve on a daily basis to help with his pain. He testified that if he was not taking medication, he would be unable to work. At the time of the hearing, Meece was earning more money per hour than before the February 6, 2013, fall.

The September 3, 2014, Opinion and Order, contains the following Findings of Facts and Conclusions of Law:

At the Benefit Review Conference the parties stipulated to coverage under the Act; the existence of an employment relationship; Plaintiff sustained a work-related injury on February 6, 2013; the Employer had due and timely notice; medical expenses in the amount of \$3,981.97 have been paid; Plaintiff's average weekly wage was \$614.08; Plaintiff did not miss time from work and currently is earning equal/greater wages; Plaintiff's date of birth is January 6, 1965, he has a 12th grade education with no specialized or vocational training.

The contested issues were identified as to entitlement to benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses; injury as defined by the Act; and exclusion for pre-existing disability/impairment.

The Plaintiff's deposition was taken on May 1, 2014, Mr. Meece testified he was born on January 6, 1965, he is 49 years of age, and lives in Wellington, Kentucky with his wife. Mr. Meece has a 12th grade education with no specialized or vocational training. He served in the Army right after he graduated and received an honorable discharge.

Mr. Meece's work history includes employment as a mechanic at a used car lot, tree trimming for his father's business, landscaping and tree trimming for his own business, and line leader at Mitsubishi Electric Automotive America. Mr. Meece has also worked in construction and at several fast food restaurants and worked manufacturing telephones and radar detectors. Mr. Meece then moved from his home in Ohio to Kentucky approximately 4 years ago to take care of his grandparents.

Mr. Meece began working for the Defendant/Employer, Masco Cabinetry in 2010 and continues to be employed there.

Mr. Meece admitted that prior to the February 6, 2013, work-related incident he has [sic] been diagnosed and treated for cancer, has [sic] significant abdominal and testicular problems, and also was treated for what he described as a middle back pain that ran down his left side. He testified that he had lymph nodes removed from his spine and he also had a testicle removed.

Mr. Meece admitted to suffering from pain as a result of these conditions for years. He has been taking pain medications as a result.

After he moved to Kentucky Mr. Meece began treatment with Dr. Oliver James in 2012, and was prescribed Percocet for his back pain. Prior to the February 6, 2013, work-related incident Mr. Meece was taking four or five Percocet's a day. Mr. Meece had back pain that radiated down his left side to his foot but now he has pain in the right side. He has constant shooting pain on a daily basis. He also now has pain in his groin that he never had before.

Mr. Meece testified that on February 6, 2013, he was performing his job duties consisting of wrapping pallets with banding. The processes required him to band one side of the pallet and then walk to the other side and band it. It was while walking around the pallet to band the other side that he slipped and fell landing on the bottom of his spine and on his back. He was able to finish the shift and reported this incident the next morning. Mr. Meece continued working performing his normal job duties for the next two or three weeks. Eventually the pain became severe enough that he presented himself for medical treatment. He eventually came under the care of Dr. James and says he is supposed to be on light duty but his restrictions were not accommodated. He understands that he is restricted to no twisting, no bending, no lifting, no torso twisting, and no lifting over 5 pounds.

Mr. Meece has continued to work for the Defendant/Employer and continues to see Dr. James every two months and receive medications including narcotics. He has been on this schedule with Dr. James since before the February 2013, accident.

The Final Hearing was held on July 22, 2014. Mr. Meece testified that he is 49 years of age and has a work history consisting of tree cutting service, working in a factory, working as a forklift operator, working in shipping and receiving, and working as a part handler. He has primarily performed heavy labor type jobs most of his life.

Mr. Meece testified that he suffered previous work injuries to his upper back, his wrist, his hand, and has undergone five surgeries for cancer treatment in the late 1980's. At the time of the Hearing he was wearing a wrist brace as a result of what he claimed was severe tendinitis. He feels it is due to repetitive motion.

Mr. Meece testified that on February 6, 2013, he slipped and fell while working banding pallets. As a result of his fall he hit his lower back on the steel railing and then hit the floor. The next morning he reported the incident to his supervisor and continued working. As a result of his accident he claims that he injured his lower back and his groin. He is continuing to work but is doing so in pain.

Mr. Meece alleges that as a result of this accident he now has severe low back pain that radiates down his right leg. The pain goes to his toes and is sharp and burning. Mr. Meece testified that he previously had pain going down the left side and this pain was different. Mr. Meece is continuing to work without restrictions and in fact, is working overtime. He has good days and bad days however, his condition is about same. Mr. Meece could not perform

his job duties with the restrictions assessed him by Dr. Owen.

Mr. Meece testified that he continues to take pain medication and in fact takes five Percocet a day, one or two Tramadol a day, and to 2 to 4 Aleve a day. He does not believe that he would be able to work without the medications.

On cross-examination, Mr. Meece admitted that he began having problems with pain in his groin about six months prior to the occurrence of the February 2013, work incident. However he never reported it at the time. Mr. Meece also admitted that since the February 2013, accident he has performed virtually every job in the Defendant/Employer's plant which requires him to lift, push, and pull. In fact he has been working a lot of overtime lately and the last two days before his Hearing he had worked 11 hours each day.

The Plaintiff submitted the medical report of Dr. William Roberts that was attached to the Form 101. This record indicates that Plaintiff was seen on March 27, 2013, complaining of groin pain that appears to be radicular in nature with the pain wrapping around his hips and radiating down into his groin. However the possibility of a hernia could not be excluded. He also reported back pain and falling and hitting his low back at work. He was treated conservatively and released.

The Plaintiff submitted the medical report from Dr. James Owen. Dr. Owen saw Plaintiff on May 22, 2014. He received a history of the Plaintiff injuring himself at work in February of 2013, while crossing a roller line and his foot slipped and he came down

directly on his buttocks and then hit the steel line. He had immediate pain in his lower back eventually got up and went home and the next they reported the accident. He was referred to a doctor, whose name he could not recall.

Mr. Meece was eventually diagnosed with a left inguinal hernia and lumbar pain. He has pain in his low back which he describes as sharp pain that shoots to his toes bilaterally right equal to left.

Dr. Owen received a past medical history of the Plaintiff having a lymph node dissection in 1988, and testicular cancer. He underwent an orchiectomy on his right testicle and had persistent pain in that area ever since. The pain also involved his low back but was on the right side and after his work fall is now on his left side. He was taking narcotic pain medication prior to the February 2013, incident but now his intake has increased. He is continuing to work.

Dr. Owen reviewed the medical records and diagnostic studies regarding Mr. Meece's treatment to date and performed a detailed physical examination. Based on the foregoing, he diagnosed Mr. Meece as having persistent low back pain with probable S1 radiculopathy, reflexes not changed, but his sensory is diminished, and his calf sizes diminished in circumference. Straight leg raises are clearly positive and he has significant range of motion problems. Dr. Owen felt that this pointed to a radiculopathy and he has a left side inguinal hernia that is symptomatic. Dr. Owen opined that the Plaintiff's work injury was the cause of his complaints but notes that the Plaintiff has clear-cut pre-existing

problems to both his low back and the hernia but both were being well treated as he was working on a routine basis on pain medication. The mechanism of injury was to excessive torsion torque to the lumbar spine for the S1 radiculopathy and excessive torsion torque for the inguinal hernia.

Dr. Owen opined that the Plaintiff retained a 12% functional impairment rating for his low back condition, and 8% functional impairment rating for his hernia which would combine for 19% whole person impairment. Dr. Owen opined that two thirds of the 12% for the back would be pre-existing and active leaving a 4% functional impairment rating as a result of the accident. Dr. Owen opined that 50% of the 8% for the hernia would be pre-existing and active leaving a 4% functional impairment rating as a result of the accident, for a combined whole person impairment of 8%. Dr. Owen opined that he has returned to the type of work following the time of injury that he was performing previously and therefore can do so, although certainly appropriate medical care is recommended. He felt the Plaintiff should avoid lifting, handling and carrying objects greater than approximately 20 pounds, and avoid activities that require recurrent bending, squatting, or stooping.

The Defendant/Employer submitted CT scans of the Plaintiff's abdomen, taken on July 27, 2012. The impression was a urinary tract calcification or obstruction. No acute abnormality. There is mention of a small inguinal hernia. Post-surgical changes as noted. Diverticulosis identified, although without diverticulitis.

The Defendant/Employer submitted a CT scan of the abdomen performed on May 13, 2013. The impression was chronic findings with no acute abnormality. There is mention of a small fat containing left inguinal hernia which appears similar as compared to the prior exam and also diverticulosis without evidence of diverticulitis.

The Defendant/Employer submitted the medical records from Dr. Oliver James. The records indicate Mr. Meece was seen in pain management by Dr. James on July 19, 2011. He was complaining of lower back pain from the buttocks to the toes with numbness tingling and shooting pains noting he was working. He wanted to discuss increasing the amount of his medications. He also complained of a pulled muscle on the left side of the low back recurring on June 24, 2011. The impression at the time was multilevel degenerative disc disease of the lumbar spine and lumbar spondylosis. He was prescribed Percocet's.

Dr. James saw Mr. Meece again on November 1, 2012. He was complaining of low back pain radiating into his left lower extremity down to his toes in an L5-S1 distribution with intermittent numbness and tingling sensation. He was continuing to work while taking five Percocet and Tramadol daily. This last tox screen indicated he was positive for hydrocodone as well as oxycodone. He was diagnosed with lumbar degenerative disc disease and lumbar radiculitis. He was given more pain medications.

The last record from Dr. James indicates a visit of December 27, 2012, continuing to complain of low back pain

and continuing with the diagnosis of lumbar degenerative disc disease but no radicular complaints at that time. For a second there was a tox screen indicating he was positive for hydrocodone and he does not know when he has ever taken hydrocodone.

The Defendant/Employer submitted two medical reports from Dr. Rick Lyon. Dr. Lyon initially saw the Plaintiff on August 15, 2013, at the request of the Defendant/Employer. Dr. Lyon received the history of the Plaintiff in 1988, having multiple and extensive abdominal surgeries for Bowen's Disease, and cancer including removal of the right testicle and lymph node dissection in the abdomen. He also described a history of middle back pain since approximately 2004, and in spite of his chronic pain has continued to work in factories and performed tree work. He has been on narcotic medication for the last 8 - 10 years.

Dr. Lyon received a history of the Plaintiff on February 5, 2013, claiming he fell at work and injuring his low back, causing pain in the lower region of the back, bilateral hip pain at the greater trochanter region, and paresthesia into the right leg including the medial aspect of his right foot. He first sought medical treatment on March 25, 2013. He alleged two days later he had a twisting injury at work with resulting groin pain that is progressively worsened. He has been diagnosed with the left inguinal hernia. He claims bilateral leg pain right greater than left.

Dr. Lyon performed a detailed physical examination and reviewed all medical records and diagnostic studies regarding his treatment both before and

after the occurrence of the February 6, 2013, work-related incident. Based on the foregoing, Dr. Lyon diagnosed the Plaintiff as having left inguinal hernia, chronic degenerative lumbar spine, and exacerbation of low back pain. Dr. Lyon opined that on examination Mr. Meece has no objective radicular findings. A review of the May 22, 2013, MRI scan indicated neural foraminal narrowing at L5 - SI which is not consistent with groin pain.

Dr. Lyon therefore opined that Mr. Meece has added aggravation to his underlying chronic degenerative disc disease of the lumbar spine. There's no evidence that the fall at work has had any structural effect on his back. Dr. Lyon opines that Plaintiff retains no functional impairment as a result of his groin condition which Dr. Lyon did not believe was related to his lumbar spine problems. Dr. Lyon opined that the Plaintiff did retain a 5% functional impairment rating for his lumbar spine condition but it was all pre-existing and active.

The Defendant/Employer submitted a second report from Dr. Lyon dated June 14, 2014. Dr. Lyon saw the Plaintiff for a second time and performed an updated physical examination. Mr. Meece had had no additional medical treatment since his previous evaluation and states his symptoms are essentially the same with continued low back pain that he describes as sharp and radiating down both feet to the toes. Dr. Lyon performed an updated physical examination and once again diagnosed him as having a left inguinal hernia, chronic degenerative lumbar spine, and exacerbation of low back pain. Dr. Lyon notes no objective radicular findings

and subjective sensory complaints not consistent with radiculopathy.

Dr. Lyon opined that Mr. Meece has added aggravation of his underlying chronic and active degenerative disc disease of the lumbar spine. There is no objective evidence that the fall at work has had any harmful change on his back. Dr. Lyon felt that he has returned to the chronic and stable condition that existed prior to the work event has returned to full duty job, that is his usual and customary job, and continues to take narcotic medications as he did prior to the alleged work event.

The Defendant/Employer also submitted a Kasper Report's indicating that the Plaintiff was prescribed Endocet and Oxycodone/Acetaminophen from June 11, 2012, through February 18, 2013.

The first issues for determination are whether the Plaintiff suffered an injury as defined by the Act which encompasses the issue of work-related/causation of the Plaintiff's alleged low back and groin condition.

KRS 342.0011 (1) defines injury as meaning "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 Plaintiff bears the burden of proof and risk of non-persuasion in each and every element of his case. *Snawder v. Stice*, 576 SW2d 276 (Ky. App. 1979), *Jones v. Newberg*, 890 SW2d 284 (Ky. 1994).

The Plaintiff has alleged that on February 6, 2013, he was injured when he slipped and fell on his back while attempting to cross the transfer line. As a result he alleges a injury to his back, pain in his groin, as well as a hernia.

In support of his claim the Plaintiff submitted a medical report from Dr. William Roberts, indicating that he sought medical treatment on March 27, 2013, as a result of this work-related incident. The Plaintiff also submitted the medical report of Dr. James Owen, who evaluated the Plaintiff at his request and opines that the February 6, 2013, work-related incident was the cause of the Plaintiff's low back pain/groin complaints. Dr. Owen further found that the Plaintiff retains a combined impairment of 19% for both the groin and back problems but only 8% of this impairment rating for both problems is due to his work-related injury with the remainder being due to pre-existing active low back and groin problems.

The Defendant/Employer argues that the Plaintiff has not met his burden of proving that he suffered an injury as defined by the Act to either his groin or his low back. The Defendant/Employer submitted medical records consisting of two CT scans performed at St. Joseph Mount Sterling; one in July of 2012 and one in May of 2013. Both scans showed evidence of an inguinal hernia.

In addition, the Defendant/Employer submitted medical records from Dr. James Oliver, which clearly indicates that Mr. Meece was being treated from July of 2011, through December of 2012, for lumbar degenerative disc disease and at one

point in time showed evidence of lumbar radiculopathy. The records also clearly indicate that Mr. Meece has been taking narcotic pain medications for both back and groin pain for several years preceding the occurrence of the February 6, 2013, work-related incident.

Finally the Defendant/Employer had the Plaintiff evaluated by Dr. Rick Lyon, who saw the Plaintiff on two occasions and opined that the Plaintiff did not suffer a harmful change to human organism as a result of February 6, 2013, slip and fall incident. Dr. Lyon was of the opinion that Mr. Meece has added aggravation to his underlying chronic and active degenerative disc disease of the lumbar spine and there is no objective evidence that the fall at work has had any harmful change on his back. Therefore, Dr. Lyon opined that the Plaintiff did not suffer an injury as defined by the Act.

In this specific instance, after careful consideration of the lay and medical evidence the Administrative Law Judge finds persuasive and relies upon the opinion of Dr. Lyon, in finding that the Plaintiff has not met his burden of proving that he suffered an injury as defined by the Act to either his groin or lumbar spine as alleged by him on February 6, 2013. In so finding, the Administrative Law Judge notes that the Plaintiff has had chronic and ongoing low back pain for several years and in fact was taking narcotic pain medication at the time of the alleged February 6, 2013, work-related incident. This evidence clearly indicaties [sic] the Plaintiff had chronic and ongoing problems with both his back and groin that were not caused by the February 6, 2013, work-related

incident. In addition, the Plaintiff did not seek medical treatment for this alleged February incident until approximately one month later and has been diagnosed with a lumbar strain and a hernia. The same diagnosis existed prior to the occurrence of the February 6, 2013, work-related incident.

Therefore, the Administrative Law Judge finds that Plaintiff has not met his burden of proving that he suffered an injury as defined by the Act for either his groin or lumbar spine as alleged by him and therefore his claim for Workers' Compensation Benefits shall be dismissed in its entirety.

Due to the foregoing findings the remaining issues herein are deemed moot.

Meece's first argument on appeal is that substantial evidence shows there were objective changes in Meece's back and groin conditions that were caused by the work-related fall on February 6, 2013. Alternatively, Meece asserts the ALJ needs to provide specific findings as to why he is not entitled to temporary and/or permanent medical benefits for these conditions. We vacate the ALJ's determination that Meece failed to sustain his burden of proving back and groin injuries as defined by the Act and the dismissal of Meece's claim for income and medical benefits and remand for additional findings.

The September 3, 2014, Opinion and Order clearly indicates the ALJ relied upon the opinions of Dr. Lyon in

dismissing Meece's claim for income and medical benefits for his alleged back and groin injuries. However, regarding Meece's alleged back injury, it is clear from his three reports that Dr. Lyon believes Meece suffered from an aggravation/exacerbation of his underlying chronic degenerative disc disease and exacerbation of pre-existing active radicular complaints due to the February 6, 2013, work-related event. Thus, the ALJ erroneously dismissed Meece's claim for income and medical benefits for his lumbar spine and radicular complaints based on Dr. Lyon's opinions, as Dr. Lyon's opinions firmly establish Meece sustained a work-related injury to his back on February 6, 2013.

This claim shall be remanded to the ALJ for a determination as to whether Meece suffered a permanent or temporary aggravation/exacerbation of his underlying chronic degenerative disc disease and radiculopathy on February 6, 2013, and his entitlement to temporary and permanent income benefits.² On remand, the ALJ must also enter an appropriate award of medical benefits for Meece's back injury and, if appropriate, determine his entitlement

² While this is ultimately an analysis and determination that needs to be made by the ALJ, Meece's testimony appears to establish he is not entitled to temporary total disability benefits.

to future medical benefits pursuant to FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007).

The ALJ also relied upon Dr. Lyon's opinions in dismissing Meece's alleged groin injury. We are confused as to what Meece contends is the cause of the groin pain; specifically, whether the groin pain was due to Meece's inguinal hernia, or to a separate injury. Meece's brief to the ALJ sheds no light on this issue. We note that in Meece's Form 101, "pain in groin area" is listed separately from "hernia." However, since Dr. Owen specifically linked Meece's groin pain to his inguinal hernia; we will consider the hernia and groin pain, as did the ALJ, to be a groin injury.

Dr. Lyon's opinions do not constitute substantial evidence supporting a complete dismissal of benefits for Meece's groin injury. While noting a left inguinal hernia in the "assessment" portion of the August 15, 2013, report and June 14, 2014, supplemental report, Dr. Lyon failed to offer any opinions on the work-relatedness of the hernia or lack thereof. More importantly, in his August 15, 2013, report, Dr. Lyon opined Meece's groin pain is not related to his lumbar spine but is possibly related to his right inguinal orchiectomy. He stated that this is outside his area of expertise and he is uncomfortable with recommending

an evaluation. As the ALJ relied upon Dr. Lyon's medical opinions in dismissing Meece's claim for income and medical benefits for his groin injury, his dismissal of Meece's claim for a groin injury must be vacated. The claim shall be remanded to the ALJ for additional findings and a decision regarding Meece's entitlement to income and medical benefits due to the groin injury.

Significantly, in his report, Dr. Owen indicated Meece's inguinal hernia was "significantly less symptomatic" prior to the February 6, 2013, fall. Although Dr. Owen assessed a 4% impairment rating, he opined Meece's hernia was not at MMI at the time the impairment rating was assessed. Nevertheless, the ALJ could still conclude Meece sustained a temporary aggravation of a pre-existing active groin injury, thus entitling him to medical benefits, including future medical benefits. As Dr. Owen's opinions comprise uncontradicted substantial evidence regarding the work-relatedness of Meece's groin injury, the ALJ must accept his opinions or provide an explanation for the rejection of Dr. Owen's opinions. Although the ALJ is granted wide latitude in determining the evidence upon which he will rely, when faced with uncontradicted evidence, the ALJ must provide a sufficient explanation for rejection of that evidence. See Com. v. Workers'

Compensation Bd. of Kentucky, 697 S.W.2d 541 (Ky. App. 1985).

Meece's second argument on appeal- that the ALJ's determination that Meece did not suffer any injury regarding his hernia, either temporary or permanent, is not supported by substantial evidence- has been fully addressed.

Finally, Meece's request for oral argument is denied.

Accordingly, the September 3, 2014, Opinion and Order and the October 9, 2014, Order on Reconsideration dismissing Meece's back and groin injury claims are **VACATED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion and award consistent with the views expressed herein.

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