Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 2, 2013

CLAIM NO. 200801231

DONALD S. HULETTE PETITIONER

VS. **APPEAL FROM HON. CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE**

TOYOTA MOTOR MANUFACURING, KENTUCKY, INC.
and HON. CHRIS DAVIS
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Donald Scott Hulette ("Hulette") appeals from the January 3, 2013 Opinion and Order rendered by Hon. Chris Davis, Administrative Law Judge ("ALJ") dismissing his claim. Hulette alleged he had sustained back and knee injuries during the course of his employment with Toyota Motor Manufacturing Kentucky, Inc. ("Toyota"). ALJ Davis

determined Hulette had failed to meet his burden of proving his knee and back conditions are work-related. Hulette also appeals from the February 7, 2013 order denying his petition for reconsideration. On appeal, Hulette again challenges the ALJ's conclusion regarding work-relatedness as unsupported by the evidence. For the reasons set forth herein, we affirm.

At the outset, we reiterate it is Hulette's burden to establish he suffered an injury as defined by KRS 342.001. Addington Resources, Inc. v. Perkins, 947 S.W.2d 421, 423 (Ky. App. 1997). The primary question for this Board is whether the ALJ's decision is supported by substantial evidence. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence is evidence of "relevant consequence having the fitness to induce conviction in the minds of reasonable men." Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367, 369 (Ky. 1971). Because the ALJ determined Hulette did not meet 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 Collierries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

We first address Hulette's knee condition, which he alleges was the result of a single traumatic event

occurring on February 28, 2008. On that day, Hulette was lying on the floor during his lunch break, in order to relieve ongoing back pain. He suddenly remembered he needed to submit paperwork to his supervisor, and swung his leg to quickly stand up. He felt immediate pain in his left knee, which “locked”. Hulette was attended by medical personnel and taken to Industrial Health Services (“IHS”). Eventually, his knee “unlocked” and the pain subsided enough for Hulette to walk. In the following days, however, his knee would repeatedly “lock up” and cause severe pain.

Hulette had problems with his left knee prior to this incident. Some ten years earlier, he had undergone two surgeries to repair a torn meniscus in his left knee. He had an additional procedure in 2004 to remove loose material. For the next four years, Hulette’s knee had not caused him any problems. However, he began experiencing intermittent pain in the left knee in February, 2008. In fact, just two days before this incident, Hulette had visited Dr. Gregory D’Angelo complaining his knee had been “locking up on him” for the previous two to three weeks. Following the February 28, 2008 incident, Hulette underwent several more procedures to his knee, including a knee replacement.

The ALJ determined Hulette's left knee condition, though "relatively severe," was not the result of a work-related injury. In making this conclusion, the ALJ relied on the opinions of Drs. Corbett, Timothy Kriss, and Warren Bilkey. All three physicians performed an independent medical examination ("IME").

Dr. Corbett conducted his examination on April 28, 2008. Relying in part on Hulette's previous knee surgeries, Dr. Corbett concluded Hulette had a "strong history for mechanical changes in his left knee" which indicated "an active ongoing degenerative process in his left knee." However, because Dr. Corbett did not have the benefit of surgical notes from Hulette's 1998 surgery or of x-rays performed two months earlier, he was unwilling to conclusively identify an exact cause of Hulette's condition. Upon later being provided additional operative reports, Dr. Corbett supplemented his report, stating: "This makes it less likely that the patient's current problem of intra-articular loose bodies and degenerative joint disease is traumatic in origin."

Dr. Kriss offered a more definitive opinion following his independent medical evaluations of Hulette in 2010 and 2012. During his deposition, Dr. Kriss testified he "didn't think that there was anything intrinsic to

[Hulette's] job that caused his knee to lock up that day." Taking into account Hulette's significant surgical history of his left knee, Dr. Kriss opined the condition was anatomical and not caused by any work-related injury or event.

Hulette submitted the report of Dr. Bilkey, who performed his IME on June 15, 2010. Dr. Bilkey concluded Hulette had suffered a knee strain superimposed on a previous degenerative condition. Of particular note to the issue of whether Hulette's injury was work-related, Dr. Bilkey opined Hulette's injury "more likely occurr[ed] on or about February 9, 2008" because he had complained of the knee locking up for the previous two to three weeks. Though Dr. Bilkey concluded Hulette's knee condition was due to a work injury, he identified no work-related action or movement that would have caused the injury.

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). In this matter, the ALJ relied upon the opinions of Drs. Corbett and Kriss, both of whom concluded the injury is not work-related. Their expert opinions constitute the requisite substantial evidence necessary to support the

ALJ's determination. We find no reason to disturb this conclusion.

We next turn to Hulette's back condition. Hulette began working at Toyota in 1995, and had worked in several different positions requiring him to lift, twist, bend, kneel, stand and crouch. He testified he began experiencing low back pain around 2004. He was reassigned to a different line which allowed him to perform his work standing and at waist level, which relieved his pain temporarily. According to Hulette's deposition testimony, he again began experiencing lower back pain, ache in his hips, numbness and tingling in his lower extremities, and stabbing pains in his buttocks sometime in 2005.

According to Hulette, the pains progressively intensified from approximately 2005 to 2007. He did not miss any days of work due to these problems, however. It should also be noted there is no medical documentation of lumbar discomfort or pain, despite the fact Hulette visited Industrial Health Services ("IHS") on numerous occasions during this two year period. Further, Hulette underwent a functional capacity evaluation during this period and was able to lift forty pounds with "zero discomfort."

On or about July 23, 2007, Hulette stated the pain became "intolerable" and he visited IHS. He thereafter was

evaluated by three different physicians, and eventually underwent a fusion at the L4 and L5 levels in 2008. In 2010, he underwent an additional fusion, again at the L4 and L5 levels, as well as an implantation of a spinal cord stimulator.

Again, the question on appeal is whether the ALJ properly concluded Hulette's back condition is not work-related. ALJ Davis primarily relied upon the expert opinion of Dr. Kriss in reaching this conclusion. Dr. Kriss conducted two IMEs for Hulette's lumbar condition, and reviewed medical reports provided by three other treating physicians as well as Hulette's records from IHS.

Dr. Kriss concluded Hulette suffers from "well-documented diffuse, systemic, spontaneous, and naturally occurring degenerative disk disease, spinal osteoarthristis, and spondylosis throughout multiple levels of the lumbar and thoracic spine, all contributing to chronic low back pain." He strongly rejected any indication of cumulative work-related trauma, finding Hulette's jobs were diverse biomechanically and unlikely to cause an acceleration of disc degeneration. Dr. Kriss also pointed to the lack of any documentation of intensifying back problems from 2005 to 2007. Instead, Dr. Kriss attributed Hulette's condition to naturally occurring degenerative processes.

The ALJ's conclusion was based on substantial evidence. The fact that Hulette's expert, Dr. Bilkey, attributed his lumbar condition to a work-related strain does not compel a different result. *See* Magic Coal Co. v. Fox, 19 S.W.3d 88, 98 (Ky. 2000). Rather, the ALJ properly considered all the evidence submitted and stated a reasonable basis for choosing to rely upon Dr. Kriss' expert opinion. He acted well within his authority in doing so. Id.

Accordingly, the January 3, 2013 Opinion and Award rendered by Hon. Chris Davis, Administrative Law Judge, and the February 7, 2013 Order on Reconsideration are hereby **AFFIRMED**.

ALL CONCUR.

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