

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 11, 2015

CLAIM NO. 201369579

DONNIE CAUDILL

PETITIONER

VS.

APPEAL FROM HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

CITY OF MOREHEAD and
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Donnie Caudill ("Caudill") seeks review of the Opinion and Order rendered July 22, 2015 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") finding he sustained a transitory thoracic strain/sprain due to a May 21, 2013 work accident, but sustained no work-related psychological condition. Caudill also seeks review of the

August 21, 2015 order denying in part his petition for reconsideration.

On appeal, Caudill argues the ALJ erred in relying upon Dr. Henry Tutt's opinion he did not suffer from a work-related psychological injury. Caudill also argues the ALJ failed to properly consider the objective evidence supporting the opinions of Drs. James Owen and Bruce Guberman in concluding there was no permanent injury or impairment. Because the ALJ's determinations are supported by substantial evidence and no contrary result is compelled, we affirm.

Caudill filed a Form 101 alleging injuries to his back and neck, accompanied by tingling into his left leg, on May 21, 2013, while lifting a seventy-five to one hundred pound welder onto a stand. At the time of his injury, Caudill was working as a mechanic for the City of Morehead ("Morehead"). Caudill's application was later amended to include a psychological condition.

Caudill testified by deposition on May 20, 2014 and at the hearing held May 26, 2015. Caudill began working for Morehead in July 1993 initially picking up garbage. He performed several jobs for Morehead before he became a mechanic. He had been the head mechanic for two years at the time he quit his job in August 2013. He

worked on city vehicles and equipment, and primarily performed his job duties in a garage.

On May 21, 2013, Caudill was working in the garage by himself. As he was lifting a welder weighing approximately one hundred pounds from the floor to a high stand, he felt pain in his mid and upper back. Although not certain he had injured himself, he sought treatment the following day at St. Clair Outreach Center. He was treated by Dr. Alyssa Hunter and Shirley Irvin, a physician's assistant. Caudill was then referred to Dr. Phillip Tibbs who recommended injections, which were denied. He then returned to Dr. Hunter, who prescribed medication.

Following his injury, Caudill continued to work for Morehead as a mechanic until August 2013. During those three months, Caudill stated he was unable to perform all of his work duties. He avoided lifting heavy objects, and a co-worker assisted with tasks he was unable to do himself. Caudill stated he may have missed two days in a row due to his work injury. Caudill quit his job with Morehead due to his back and neck pain.

Caudill stated he continues to experience constant pain in his mid and upper back, extending into his neck. His pain causes headaches two to three times a week. Caudill experiences occasional low back pain, with tingling

in his left hip and leg. Caudill also stated he is depressed, and described his symptoms at the hearing. His primary care physician prescribes medication for depression which he attributes to his work injury and pain. He has not worked since August 2013, and does not feel he is capable of returning to his former job with Morehead.

In support of his claim, Caudill filed records from Saint Claire Family Medicine for treatment with Ms. Irvin or Dr. Hunter on four occasions. On June 6, 2013, Caudill reported the onset of pain three weeks prior in his mid and low back after lifting a welder at work. Caudill was diagnosed with back pain, and was treated with medication, injections and physical therapy. On July 30, 2013, Dr. Hunter ordered a thoracic MRI after Caudill reported worsening mid back pain radiating down his back and up his spine, with pain and tingling in his groin area, subsequent to a physical therapy session. On September 6, 2013, Dr. Hunter noted the MRI demonstrated mild central canal stenosis of the cervical vertebrae unrelated to his pain or work injury. Dr. Hunter referred Caudill to Dr. Tibbs. Although Caudill testified he saw Dr. Tibbs on at least two occasions, those records were not filed as evidence.

Morehead filed the February 27, 2014 report of Dr. Tutt, a neurosurgeon. He noted Caudill primarily complained of pain in the left interscapular thoracic region extending up to his neck, as well as headaches. In reviewing Caudill's symptoms, Dr. Tutt noted "he does admit to some depression," for which he has not undergone treatment. Dr. Tutt noted Caudill's depression arose after his separation and divorce from his second wife, which was finalized approximately one year prior to the examination. Dr. Tutt noted Caudill wept during the interview while discussing his separation, divorce and current condition.

Dr. Tutt performed an examination, and reviewed the medical records, including those from Dr. Tibbs. He noted Dr. Tibbs ordered a cervical MRI which demonstrated mild to moderate degenerative changes, most prominent at C5-6. He also noted Dr. Tibbs found Caudill is not a surgical candidate but recommended conservative management, including a TENS unit, and a referral for a pain management consult with possible epidural steroid injections.

Dr. Tutt diagnosed Caudill with a resolved transient myofascial injury, i.e., a thoracic strain/sprain, due to the May 2013 work accident based on his normal musculoskeletal and neurological examination and imaging studies. Dr. Tutt also stated the following:

Unfortunately, because of various stressors in his life, Mr. Caudill, about the same time, suffered a clinical depression, not recognized, diagnosed, or treated, which has probably played a role in perpetuating his complaints, which, based on standard treatment guidelines for a transient myofascial injury, should have resolved within 6 weeks, maximum, following the work event of record. From a physical standpoint, he is not considered to have sustained any permanent injury, is considered fully capable of performing his usual job duties without restrictions, is considered to have reached an endpoint to treatment, and to have acquired no functional impairment. He is considered to have a clinical depression warranting treatment, a clinical entity unrelated to the work event and which should be addressed by his primary care physician

Dr. Tutt stated Caudill reached maximum medical improvement ("MMI") on July 1, 2013, requiring no additional treatment. Dr. Tutt opined Caudill's work injury does not warrant an impairment rating or permanent restrictions.

Caudill filed the June 26, 2014 report of Dr. Owen who diagnosed persistent neck and mid-back pain with mild MRI findings particularly prominent in the T6-7 area with tiny protrusions and disk bulges, and degenerative disc disease of the cervical spine. Dr. Owen found mild paraspinal muscle tenderness in both areas, and slight

dysmetria. Dr. Owen noted Caudill's complaints and the pain score is significantly greater than the objective evidence. Dr. Owen opined Caudill's injuries caused his complaints, and found no evidence of a prior, active impairment. Dr. Owen found Caudill had reached MMI. He assessed a 7% impairment rating for the thoracic spine and a 0% for the cervical spine pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Owen stated Caudill does not have the capacity to return to his former job.

Caudill also filed the July 9, 2014 report of Dr. Guberman who diagnosed chronic post-traumatic strain of the thoracic, lumbar and cervical spine. Dr. Guberman found thoracic and lumbar strains were caused by the heavy lifting episode on May 21, 2013, while the cervical strain was caused by activities in physical therapy. Dr. Guberman found Caudill reached MMI on July 9, 2014. He assessed a 7% impairment rating for the thoracic spine, 6% impairment rating for lumbar spine, and 0% impairment rating for the cervical spine, combining for a total 13% impairment rating pursuant to the AMA Guides. Like Dr. Owen, Dr. Guberman opined Caudill cannot return to his former job as a mechanic and he assigned restrictions.

Morehead filed the July 10, 2014 report of Dr. Gregory Snider. He diagnosed Caudill with a thoracic strain/sprain superimposed on mild, age-consistent degenerative changes, warranting a 0% impairment rating pursuant to the AMA Guides. Dr. Snider stated Caudill reached MMI on February 27, 2014. He recommended no additional medical treatment, and opined Caudill could return to his previous job without restriction.

Caudill filed the July 14, 2014 report and Form 107-P of Dr. Leigh Ann Ford, a psychologist. Dr. Ford noted Caudill reported experiencing depressive and anxiety symptoms subsequent to his May 2013 work accident. Dr. Ford also reviewed Dr. Tutt's opinion attributing the depressive symptoms to unrelated factors. Several tests were administered, and Dr. Ford diagnosed Caudill with generalized anxiety disorder, depressive disorder, NOS, and reading disorder. Under Axis III, she diagnosed high blood pressure, bulging discs, bone spurs, neck pain, and restless leg syndrome. Dr. Ford opined Caudill's psychological complaints are the direct result of his physical work-related injury. Based upon her examination, Dr. Ford stated it appears his "depressive and anxiety symptoms are at least in some part due to the frustration associated from pain and his inability to work and engage

in other activities." Dr. Ford assessed a 5% impairment rating pursuant to the 2nd and 5th Editions of the AMA Guides, and opined he did not have a prior active psychological impairment.

Morehead filed the September 2, 2014 psychiatric report of Dr. Douglas Ruth who noted Caudill reported depressive and anxiety symptoms arising from his work injury, which have not been treated. Caudill denied his symptoms are due to the separation and divorce from his second wife, which preceded the work injury. Caudill remarried in June 2014. Dr. Ruth diagnosed Caudill with depressive disorder, NOS and learning disorder, NOS. Since Caudill had yet to seek treatment, Dr. Ruth opined he has not reached MMI. However, if Caudill does not undergo treatment, Dr. Ruth assessed an 11% psychiatric impairment rating using the 2nd and 5th Editions of the AMA Guides, attributing 5% to the depressive disorder and 6% to his learning disability. Dr. Ruth stated the depressive disorder diagnosis and impairment would be work-related if his back pain and subsequent functional limitations are determined to be work-related, and assuming he does not undergo treatment or is considered at MMI. The remaining 6% impairment rating is not attributable to a work injury.

Dr. Ruth recommended treatment for the depression but found no need for psychiatric work restrictions.

After providing a thorough summary of the evidence in the July 22, 2015 opinion, the ALJ ultimately determined Caudill suffered a temporary work-related thoracic sprain or strain injury on May 21, 2013, resulting in no permanent disability. The ALJ relied upon the opinions of Drs. Tutt and Snider, as well as Caudill's testimony, in reaching his determination. The ALJ stated he found them to be most persuasive because of the history of the case and the lack of objective findings noted by every physician except Dr. Guberman. The ALJ did not believe Dr. Guberman accurately gauged the accuracy of Caudill's complaints, which were not substantiated by objective standards. The ALJ found this especially true in view of the "extreme disparity in the plaintiff's cervical and thoracic flexion in one 24 hour period."¹

The ALJ also found Caudill is not entitled to temporary total disability ("TTD") benefits noting he considered several factors. He noted Caudill continued to work for almost three months following the injury, and was found neither incapable of working nor given work

¹ Dr. Guberman examined Caudill on July 9, 2014 and Dr. Snider examined him the following day on July 10, 2014.

restrictions by any physician before quitting work of his own volition in August 2013. The ALJ noted Caudill testified he quit in August 2013 due to his pain, but at the time he was not restricted from work by any physician. The ALJ also found Caudill reached MMI on or about July 1, 2013, relying upon Dr. Tutt's opinion, which was more than a month prior to the date he abandoned his job. The ALJ noted it was not until Dr. Owen's examination on July 1, 2014 when any limitation was placed on Caudill, nearly a year after he quit working.

The ALJ concluded Caudill failed to prove he is entitled to TTD benefits or permanent partial disability ("PPD") benefits since he did not establish his injury was other than transitory in nature, or that it interfered with his physical ability to perform his job for three months afterwards.

With regard to Caudill's alleged psychological condition, the ALJ found Dr. Tutt's opinion was the most persuasive, despite the fact he is not a psychiatrist or psychologist, rather than the opinions of Drs. Ford or Ruth. After reviewing the opinions, the ALJ stated as follows:

I have to agree with Dr. Tutt. Nothing else explains the strange behavior of Mr. Caudill. He is injured. Every

doctor who treats him is unable to explain the expansion of his symptoms and his failure to recover from what has been described as a fairly minor sprain/strain that was transitory in nature. Yet without any objective verification of his increasing complaints, Mr. Caudill declares himself disabled and abandons a job that he has held for 20 years and purports to enjoy. No doctor placed limitations on him and certainly no physician at the time told him he couldn't work. Clearly, the depression was already pre-existing and active based upon Dr. Tutt's clinical discussion with Mr. Caudill.

The opinions of both Dr. Ruth and Dr. Ford (a psychologist) were both corrupted to some extent by the incomplete history given to them by Mr. Caudill. The law in Kentucky is that a medical opinion that has been corrupted by inaccurate or incomplete information is not substantial evidence which could support an award of benefits to a claimant. *Cepera[sic] v. Fabricated Metals Corp.*, 132 S.W.3d 839 (Ky. 2004).

Therefore, notwithstanding the differing qualifications of the three medical professionals, I find the opinion of Dr. Tutt to be the most compelling and persuasive as to the issue of plaintiff's psychological/psychiatric condition.

The ALJ found Caudill's work-related trauma did not result in any degree of psychological or psychiatric disability. The ALJ declined to award TTD benefits or PPD benefits for the temporary thoracic strain. The ALJ also

found Caudill is not entitled to future medical benefits for his depressive symptoms.

Caudill filed a petition for reconsideration essentially raising the same arguments as he now makes on appeal. In addition, Caudill requested the ALJ address the issue of past and future medical benefits for his physical injury.

In his August 21, 2015 order on petition for reconsideration, the ALJ awarded temporary medical benefits "for the medical treatment received by him from Family Medicine-Morehead for the time period 06/06/2013 to 09/06/2013, consisting of physical examination, x-ray of the thoracic spine w/swimmers, Toradol injections, medications, MRI of thoracic spine and referral to Phillip A. Tibbs, M.D. as well as examination and treatment by Dr. Tibbs." The ALJ denied the remainder of the petition, stating as follows:

First, he argues that Mr. Caudill should have been found to have a psychological injury. He argues that my reliance on the medical opinion of Dr. Henry Tutt over that of Dr. Ruth and Dr. Ford is error patently appearing on the face of the opinion.

In the opinion and Order of July 22, 2015, I discussed this issue at length.

First, I found Dr. Tutt's medical opinion with regard to Mr. Caudill's

lack of a permanent physical disability to be persuasive. Dr. Tutt, using the AMA Guidelines, 5th Edition, opined there is no evidence that Mr. Caudill has sustained any alteration of the structural integrity of his cervical or thoracic spines relative to the work injury. He went on to opine further that Mr. Caudill did not have a preexisting active impairment at [sic] time of his injury and does not require any restrictions as a result of the work injury. This was also the medical opinion of Dr. Gregory M. Snider, M.D., upon whose medical opinion I also relied in making that finding. Thus, as a matter of law there can be no psychological disability as there is no underlying physical injury from which it can be found to have directly resulted. KRS 342.0011 (1).

Second, I noted that at the time Mr. Caudill presented to Dr. Tutt for an IME on 2/27/2014, he related problems with depression, but ascribed them to non-work related problems in his life.

I read with care the reports of Dr. Ford and Dr. Ruth and compared them with the opinion of Dr. Tutt (who is neither psychiatrist nor psychologist). I found the opinion of Dr. Tutt to be persuasive for several reasons.

At his session with Mr. Caudill on 2/27/2014, Dr. Tutt noted by history that because of various stressors in his life, Mr. Caudill, at about the same time as his work related accident, suffered a clinical depression, not recognized, diagnosed, or treated that Dr. Tutt believes has probably played a role in perpetuating his complaints, which, based on standard treatment guidelines for a transient myofascial injury, should have resolved within a

maximum of 6 weeks following the work event of record.

Dr. Tutt, upon whom I have based my opinion in part opined that from a physical standpoint, Mr. Caudill is not considered to have sustained any permanent injury, is considered fully capable of performing his usual job duties without restrictions, is considered to have reached an endpoint to treatment, and to have acquired no functional impairment. However, Dr. Tutt also opined that Mr. Caudill is considered to have a clinical depression warranting treatment, a clinical entity unrelated to the work event and which should be addressed by his primary care physician, Dr. Timothy Hart.

Dr. Ruth, a psychiatrist, saw Mr. Caudill on September 2, 2014, after he had been formally released from his job. Mr. Caudill denied any prior psychiatric complaints, ignoring or forgetting the history he had given to Dr. Tutt just 7 months earlier. He ascribed all of his depression to the pain from which he was allegedly suffering from his physical injuries. Dr. Ruth went on to opine that 5% of Mr. Caudill's current psychiatric impairment would be attributable to the 5/21/2013 work injury only if Mr. Caudill's back pain is attributable to an injury of that date. Of course, that is just the opposite of Dr. Tutt who opines that the back pain is the result of a previously existing, active depression suffered by Mr. Caudill.

I agreed with Dr. Tutt. Nothing else explains the strange behavior of Mr. Caudill. He is injured. Every doctor who treats him is unable to explain the expansion of his symptoms and his

failure to recover from what has been described as a fairly minor sprain/strain that was transitory in nature. Yet without any objective verification of his increasing complaints, Mr. Caudill declares himself disabled and abandons a job that he has held for 20 years and purports to enjoy. No doctor placed limitations on him and certainly no physician at the time told him he couldn't work. Clearly, the depression was already pre-existing and active based upon Dr. Tutt's clinical discussion with Mr. Caudill.

The opinions of both Dr. Ruth and Dr. Ford (a psychologist) were both corrupted to some extent by the incomplete history given to them by Mr. Caudill. I noted that he failed to relate to either of them his previous history of psychological problems, including depression. The law in Kentucky is that a medical opinion that has been corrupted by inaccurate or incomplete information is not substantial evidence which could support an award of benefits to a claimant. *Cepera[sic] v. Fabricated Metals Corp.*, 132 S.W.3d 839 (Ky. 2004).

Therefore, notwithstanding the differing qualifications of the three medical professionals, I found the opinion of Dr. Tutt to be the most compelling and persuasive as to the issue of plaintiff's psychological/psychiatric condition, as much on the basis of what he was told by the plaintiff as what he diagnosed. That information was apparently not divulged to either Dr. Ford or Dr. Ruth.

For those reasons, I believe that this allegation of error patently appearing on the face of the Opinion, Award &

Order is a disagreement with my interpretation of the medical evidence in the record, which is not within the scope of my review under the provisions of KRS 342.281. *Francis v. Glenmore Distilleries*, 718 S.W.2d 953 (Ky. App. 1986).

I believe that the same principle applies to plaintiff's second argument that Mr. Caudill should have been found to have permanent impairment. First of all, the circumstances surrounding his ever expanding claims of injury were not supported by objective medical findings. Even Dr. Owen, upon whom Mr. Caudill relies, made the statement in his report that the pain complaints and the pain score "certainly are significantly greater than the objective evidence."

I relied on the opinions of Dr. Tutt and Dr. Snider in finding that Mr. Caudill had failed to bear his burden of proof that he had a permanent impairment. In this instance, given Dr. Owen's comment and the fact that there is little or no objective evidence to substantiate Mr. Caudill's complaints, as well as my analysis of the facts of the case, I simply could not have made an award that I do not believe is supported by the evidence.

The ALJ reiterated his findings regarding TTD and his reliance upon the opinions of Drs. Tutt and Snider.

On appeal, Caudill argues the ALJ failed to consider the objective evidence supporting the opinions of Drs. Guberman and Owen in concluding there was no permanent

injury and impairment, and should have not discredited their findings without explanation.

Caudill also argues the ALJ erred in relying upon Dr. Tutt's opinion in finding he suffered no psychological injury warranting no impairment rating since he is not a psychiatrist or psychologist, administered no testing in support of his conclusions, and only provided a conclusory statement as to the cause of his symptoms. Caudill alleges the ALJ failed to provide an adequate basis for concluding the histories provided to Drs. Ruth and Ford are incomplete, and disagrees with this conclusion.

Caudill argues the ALJ created confusion on the issue of psychological injury in the order on petition for reconsideration, and erred when he stated, "as a matter of law, there can be no psychological disability as there is no underlying physical injury from which it can be found to have directly resulted." Caudill argues KRS 342.0011(1) requires a physical trauma, but it does not require the harmful change must be physical. Caudill argues "the ALJ erred in stating that a finding of no permanent physical impairment necessitated a dismissal of a claim for work-related psychological injury." Caudill states although a work-related psychological injury requires a physical

injury pursuant to the Act, it does not require a permanent physical impairment.

As the claimant in a workers' compensation proceeding, Caudill had the burden of proving each of the essential elements of his cause of action, including extent and duration of disability and causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Caudill 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).

Essentially, Caudill has asked this Board to reweigh the evidence and reach an alternate conclusion, which we may not do. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). 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.

In essence, Caudill has asked this Board to reweigh the evidence, and rely upon the opinions of Drs. Owen and Guberman to find he sustained a permanent physical injury and impairment rather than a temporary injury. It is not the function of this Board to reweigh the evidence. Whittaker v. Rowland, supra. The ALJ provided thorough summaries of the medical opinions and articulated his reasoning for finding the opinions of Drs. Tutt and Snider most persuasive in finding Caudill suffered a temporary work-related thoracic sprain or strain injury on May 21, 2013, resulting in no permanent partial disability. Although not required, the ALJ clearly outlined why he found the opinions of Drs. Tutt and Snider more persuasive than those propounded by Drs. Owen and Guberman.

The ALJ's findings of fact provided in the opinion and order on reconsideration are more than sufficient to apprise the parties of the basis for his decision with regard to finding a temporary injury. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line

specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

After reviewing the opinion and order on reconsideration, it is clear the ALJ adopted the opinion of Dr. Tutt in finding any psychological or psychiatric condition is not casually related to the May 2013 work injury, but rather due to a separation and divorce occurring around the same time period.

Generally, causation is a factual question to be determined within the sound discretion of the ALJ, and the ALJ, as fact-finder, is vested with broad authority to decide such matters. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003); 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 was conflicting evidence as to the cause of Caudill's psychological condition. The ALJ again articulated his reasoning for finding Dr. Tutt's opinion regarding causation most persuasive, even though he is not a psychologist or psychiatrist.

The AMA Guides, page 18, provide impairment evaluations are to be performed by a licensed physician,

but do not require they be assessed by certain specialties of practice. There is likewise no provision in the AMA Guides stating causation may only be assessed by certain specialties of practice. Where the evidence is conflicting, the ALJ has the sole authority to determine whom and what to believe. Pruitt vs. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977).

In this instance, the ALJ properly exercised his discretion in finding Dr. Tutt's opinion most persuasive as to the cause of Caudill's psychological condition, and clearly articulated his reasoning for doing so in the opinion and order on reconsideration. Caudill's attacks upon the ALJ's determination go to the weight of the evidence, and do not render Dr. Tutt's opinion unsubstantial.

Finally, the ALJ did not err when stating in the order on reconsideration, "Thus, as a matter of law there can be no psychological disability as there is no underlying physical injury from which it can be found to have directly resulted." We find this is merely a recitation of KRS 342.0011(1), which provides "injury . . . shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury." Here, the ALJ ultimately

relied upon the opinion of Dr. Tutt, who found Caudill's psychological condition unrelated to his temporary work injury.

Because substantial evidence supports the ALJ's determination Caudill sustained a temporary injury warranting no impairment rating, and his psychological condition is not work-related, and no contrary result is compelled, we affirm.

Accordingly, July 22, 2015 Opinion and Order and the August 21, 2015 order on the petition for reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED**.

RECHTER, MEMBER, CONCURS.

STIVERS, MEMBER, CONCURS IN PART, DISSENTS IN PART, AND FILES A SEPARATE OPINION.

STIVERS, Member. Because the statements of Dr. Tutt, unsupported by any testing or analysis, do not constitute substantial evidence supporting the ALJ's dismissal of Caudill's psychological injury claim, I respectfully disagree with the majority's opinion to affirm the ALJ's decision on this issue.

More importantly, the ALJ's statement on page two of his August 21, 2015, Order ruling on Caudill's petition for reconsideration that "[t]hus, as a matter of law there

can be no psychological disability as there is no underlying physical injury from which it can be found to have directly resulted" clearly demonstrates he does not understand the law pertaining to psychological injuries. Consequently, that portion of the ALJ's decision dismissing the psychological claim should be vacated and the claim remanded for additional findings of fact and a decision based on a correct understanding of the law regarding psychological injuries.

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