

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 29, 2016

CLAIM NO. 201300800

FORD MOTOR COMPANY

PETITIONER

VS.

APPEAL FROM HON. HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

DONALD JOBE
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
* * * * *

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

STIVERS, Member. Ford Motor Company ("Ford") seeks review of the August 6, 2015, Opinion and Award finding Donald Jobe ("Jobe") sustained a right hip injury and the impairment rating attributable to Jobe's low back surgery is work-related. The ALJ awarded permanent partial disability ("PPD") benefits enhanced by the two multiplier and medical benefits. Significantly, only Jobe filed a

petition for reconsideration which the ALJ overruled by Order dated September 11, 2015.

Jobe was injured on January 25, 2012, when he tripped over a rubber mat and immediately felt a pop in his hip. Although he initially did not consider the event significant, Jobe eventually had to hop to the medical station. The dispute on appeal concerns the ALJ's determination that "the low back impairment resulting in the surgery is related to [Jobe's] work-related right hip injury and is therefore compensable." Ford does not contest the finding of a work-related right hip injury and the 3% impairment rating assessed for the injury.

In the case *sub judice*, the doctors to whom Jobe was referred did not agree on whether his problem stemming from the work incident was in the hip or low back. During his August 7, 2013, deposition, Jobe testified that Ford's medical department referred him to Jewish Hospital. Thereafter, Jobe was referred to Dr. Frank Bonnarens. Jobe testified he was treated by Dr. Bonnarens who eventually discussed with him the possible presence of bursitis. Dr. Bonnarens prescribed medication and returned him to work. Ford's medical department then referred Jobe to Dr. Gregory Nazar. After treating Jobe three or four times and reviewing an MRI, Dr. Nazar concluded Jobe's problem was

not in his back but in his hip. As a result, Dr. Nazar referred him to Dr. Greg Rennirt for treatment of his hip problem. After seeing Jobe on one or two occasions, Dr. Rennirt referred him to Dr. Arthur Malkani for treatment of the hip problem. After treating Jobe on a couple of occasions, Dr. Malkani concluded Jobe had back problems and returned him to Dr. Nazar for treatment. When Jobe returned to Dr. Nazar he emphatically informed Jobe he had a slight back problem not requiring surgery. Thereafter, Ford placed him out of work for personal leave in either June or July of 2012.

Because he was no longer being treated by a physician, Jobe obtained an appointment with Dr. John Guarnaschelli who believed his symptoms related to a back condition. Jobe testified Dr. Guarnaschelli advised him back problems can cause symptoms in the hip and down the leg. In recommending treatment, Guarnaschelli informed Jobe that surgery would not relieve the leg pain but would relieve the back pain. Back surgery was performed in March 2013.¹

¹ Dr. Guarnaschelli's operative note reveals surgery consisted of: two level decompressive laminectomy, wide bilateral foraminotomy, L4-L5, L5-S1; and Microsurgical discectomy bilaterally at L4-L5.

After undergoing surgery performed by Dr. Guarnaschelli, the same symptoms persisted. Jobe testified that after surgery he was fine except for his leg problems. Dr. Guarnaschelli returned him to work in June 2013 without restrictions. Because of continued symptoms, Dr. Guarnaschelli referred Jobe to Dr. Thomas Loeb who initially administered a Cortisone injection and sent him to physical therapy. Dr. Loeb also ordered an MRI of the right hip. Because Dr. Loeb did not perform hip surgery, he referred Jobe to Dr. Thomas Byrd, in Nashville, Tennessee. Jobe's November 29, 2014, deposition reveals that after reviewing the results of another MRI, Dr. Byrd performed hip surgery.²

At the June 30, 2015, hearing, Jobe testified that unlike the back surgery, the hip surgery has helped substantially. Jobe believed his back surgery was performed because of the work injury. He testified that he always believed he had injured his hip.

Because Jobe sought time off pursuant to the Family and Medical Leave Act ("FMLA"), on March 21, 2013, Dr. Guarnaschelli completed an FMLA form. In the form, Dr.

² Dr. Byrd's February 13, 2014, operative note reflects surgery consisted of examination under anesthesia, diagnostic arthroscopy of right hip followed by endoscopy of the peritrochanterica space with bursectomy and repair of the gluteus medius with two 4.75 mm Healicoil anchors.

Guarnaschelli indicated January 23, 2012, was the approximate date Jobe's condition commenced.³ His diagnosis was degenerative disc disease of the lumbar spine. Surgery consisting of deep compressive laminectomy at L4-5 and L5-S1 was performed on March 23, 2013. Notably, in response to the last question of the form inquiring if the condition was due to the employee's occupation, Dr. Guarnaschelli marked no. This answer is in marked contrast to Dr. Guarnaschelli's September 6, 2012, initial note in which he indicated Jobe's chief complaint was of back pain and pain in both hips. At that time, Dr. Guarnaschelli stated that on January 22, 2012, while at work, Jobe popped his low back and right hip.⁴ Dr. Guarnaschelli stated Jobe sustained a work-related injury resulting in complaints of persistent back pain and bilateral hip and upper thigh pain.

Jobe introduced the independent medical evaluation ("IME") report of Dr. James Farrage based on his June 9, 2014, examination. Like Dr. Gregory Gleis, Dr. Farrage assessed pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent

³ The January 23, 2012, date appears to be a typographical error as there is no dispute the date of injury is January 25, 2012.

⁴ This date is also a typographical error.

Impairment ("AMA Guides"), an 11% impairment rating for the work-related low back condition and a 3% impairment rating for the hip condition. This resulted in a combined impairment rating of 14%.

Ford introduced the September 17, 2014, report of Dr. Gleis who concluded the low back condition was not work-related but assessed an 11% impairment rating due to the surgery performed by Dr. Guarnaschelli. Dr. Gleis concluded the hip condition was work-related and assessed a 3% impairment rating.

Ford introduced the December 11, 2014, deposition of Dr. Farrage. Dr. Farrage did not retreat from his statement in his report that the low back problem for which he assessed an 11% impairment rating was work-related. However, Dr. Farrage also stated he would defer to Dr. Guarnaschelli's opinions since he would be best able to determine whether the work injury had anything to do with Jobe's low back problems.

Concerning the issue on appeal, the ALJ provided the following analysis and conclusions:

Injury as defined by the Act and causation in regards to the lower back condition?

In *Coleman v. Emily Enterprises*, 58 SW3d 459 (Ky. 2001), the Kentucky Supreme Court held that all of the

injurious consequences flowing from a work-related physical injury and which are not attributable to unrelated causes are compensable. Specifically, anxiety and depression arising from an employer's failure to provide prompt medical treatment for a work-related physical injury may be considered the "direct result" of that injury.

After a review of the totality of the evidence in this case, the ALJ finds the *Coleman* decision to be the most analogous. In that case, the plaintiff's injury was not the direct cause of his development of a psychological disorder. Instead, the psychological disorder developed as result of the failure to provide prompt medical treatment for the work related physical injury. In this instance, it was also the plaintiff's work related hip injury which led him to undergo a low back surgery which led to his impairment. I note the 11% lumbar impairment was assigned to the plaintiff as result of the surgery. The plaintiff underwent the surgery because the doctors were unable to accurately diagnose his work related condition. Dr. Gleis pointed out that the lumbar spine was evaluated only because of the difficulty in making a diagnosis for the causation of his right hip pain. In other words, the only reason the plaintiff underwent low back evaluation and subsequent surgery was because of the difficulty in making the work related right hip diagnosis. As such, the low back impairment resulting from the surgery is related to the plaintiff's work related right hip injury and is therefore compensable. The plaintiff is entitled to both income and medical benefits under KRS 342.020 resulting from this unfortunate situation.

The ALJ concluded Dr. Farrage correctly assessed Jobe's impairment rating for the low back and right hip conditions. The ALJ awarded temporary total disability ("TTD") benefits, the duration of which is not challenged by Ford except to the extent it contests Jobe's entitlement to any income benefits for the alleged work-related back injury.

As previously noted, Ford did not file a petition for reconsideration.

On appeal, Ford contends it should not be liable for the disability attributable to Jobe's unrelated lumbar condition. It submits the ALJ engaged in unsupported speculation when he concluded the only reason Jobe underwent the lumbar surgery was due to a failure to find the source of his hip pain. Ford asserts this speculation is not supported by substantial evidence. Even though Dr. Guarnaschelli felt the L4-5 disc protrusion and disc degeneration required surgery, Ford submits he concluded the back surgery would have been performed at some time regardless of the work-related hip injury. Due to the fact the back injury was unrelated to Jobe's work duties, it submits the award of PPD benefits attributable to the back condition and of TTD benefits must be "dismissed."

Ford also contends the case of Coleman v. Emily Enterprises, 58 S.W.3d 459 (Ky. 2001) relied upon by the ALJ is inapplicable. Ford argues Jobe failed in his burden of proving that but for the hip injury he would not have undergone the back surgery. It posits the lumbar surgery would likely have occurred at a later date once Jobe's condition worsened. Ford concludes by arguing as follows:

To summarize, it just so happened that this additional lumbar condition was discovered during the quest to find out the cause of the hip complaints and there is no proof that this was an unnecessary or unreasonable surgery; but there is only proof that it was not related to the hip complaints stemming from the work injury.

In a very brief second argument, Ford asserts any TTD benefits awarded as it relates to the lumbar injury must also be vacated. Ford notes Dr. Guarnaschelli performed surgery on March 13, 2013, and Jobe was off work until June 7, 2013, when he was released to full duty by Dr. Guarnaschelli. Since the ALJ awarded TTD benefits during this time, the award must be vacated as the back surgery was not necessitated by a work-related condition. We affirm.

Jobe, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including causation. See

KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Jobe was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

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 discretion to determine 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). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514

S.W.2d 46 (Ky. 1974). 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 that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). 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, 708 S.W.2d 641, 643 (Ky. 1986).

In the absence of a petition for reconsideration, concerning 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 otherwise, 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 supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decision.

In his September 6, 2012, medical note, Dr. Guarnaschelli stated Jobe presented with a chief complaint

of "back pain both hips pain." He noted Jobe had been referred by Dr. Hart to Drs. Nazar, Bonnarens, Malkani, and Rennirt. Dr. Guarnaschelli noted as follows:

[A]s the patient explains to me service Drs. feels [sic] it is coming from his hips other [sic] so [sic] that is coming from his back. The patient personally feels as if his pain is primarily hip related aggravated by certain activities but is also aggravated at nighttime.

Dr. Guarnaschelli noted his examination was at Jobe's request. He provided the following diagnosis:

Clinically and radiographically this patient has sustained a work-related injury resulting in complaints of persistent back pain and bilateral hip and upper thigh pain. He does have radiographic evidence of a central disc protrusion at L4-L5 that may be contributing in part are in total to his overall symptom complex. He has had 3 separate orthopedic specialist [sic] examined him. There has been a diagnosis of bursitis. None of the orthopedics feels that he is a candidate for any type of hip surgery and the previous neurologic surgeon did not feel that he is a candidate for spine surgery.

As a result of his examination, Dr. Farrage noted Jobe was status post L4-5, L5-S1 decompressive laminectomy, discectomy, and bilateral foraminotomy. He was also status post right hip arthroscopy at which time a greater trochanteric bursectomy was performed as well as repair of the gluteus medius tendon with two anchors. Dr. Farrage

concluded Jobe's clinical presentation and historical account was consistent with the proposed mechanism of injury. Pursuant to the AMA Guides, Dr. Farrage opined Jobe fell within DRE Lumbar Category III, as outlined in Table 15-3 on page 384, due to a surgically treated disc lesion without residual radiculopathy resulting in an 11% impairment rating due to the work-related spine injury. He also assessed a 3% impairment rating due to the work-related hip injury. The impairment ratings when combined resulted in a 14% impairment rating for the work injury of January 25, 2012.

The September 6, 2012, report of Dr. Guarnaschelli constitutes substantial evidence in support of the ALJ's determination the low back surgery and by extension the 11% whole impairment rating assessed for the surgery is work-related. Moreover, the opinion of Dr. Guarnaschelli expressed in his September 6, 2012, record and Dr. Farrage's opinions support a finding the low back condition is work-related. In his initial report, Dr. Guarnaschelli clearly indicates Jobe sustained work-related hip and back injuries. Jobe's deposition and hearing testimony is consistent with Dr. Guarnaschelli's statement the back injury is work-related as Jobe specifically testified Dr. Guarnaschelli told him hip and leg problems

may result from a back injury. As noted in Dr. Guarnaschelli's September 6, 2012, medical note, the doctors could not agree on whether Jobe sustained a hip or back injury as a result of the event of January 25, 2012.

The ALJ has the discretion to give more credence to Dr. Guarnaschelli's September 6, 2012, report. The fact Dr. Guarnaschelli may have changed his opinion as reflected in his response to the questions posed in the FMLA form does not discount the fact that Dr. Guarnaschelli's September 6, 2012, report constitutes substantial evidence in support of a determination Jobe sustained a work-related back injury in addition to a hip injury on January 25, 2012.

Even though Dr. Farrage testified he would defer to Dr. Guarnaschelli's opinions as to the effects of the January 25, 2012, event, in his June 9, 2014, report and to a certain extent in his deposition, he expressed the opinion Jobe sustained work-related back and hip injuries on January 25, 2012. Thus, the opinions expressed by Dr. Guarnaschelli in his September 6, 2012, report and the opinions expressed by Dr. Farrage in his report and deposition constitute substantial evidence in support of the ALJ's finding the surgery and the impairment rating

assessed pursuant to the AMA Guides due to the surgery are work-related.

Since our task on appeal is only to determine whether substantial evidence supports the ALJ's determination and substantial evidence supports his decision, the August 6, 2015, Opinion and Award must be affirmed.

Accordingly, the August 6, 2015, Opinion and Award is **AFFIRMED**.

ALL CONCUR.

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