

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 30, 2016

CLAIM NO. 201594472

FORD MOTOR COMPANY (LAP)

PETITIONER

VS.

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

LAVERN FRANK DEEDS and
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Ford Motor Company (LAP) ("Ford") appeals from the Opinion, Award and Order rendered April 18, 2016 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") awarding Lavern Frank Deeds ("Deeds") temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits for

bilateral carpal tunnel syndrome. The ALJ dismissed Deeds' cubital tunnel syndrome claim. Ford also seeks review of the June 14, 2016 order denying its petition for reconsideration. On appeal, Ford argues Dr. Jeffery Fadel's opinion regarding causation does not constitute substantial evidence supporting the ALJ's determination. We disagree and affirm.

Deeds filed a Form 101 alleging he developed symptoms in both arms and hands due to the repetitive nature of his job duties with Ford. Deeds listed the date of injury as October 14, 2014. Deeds began working for Ford on January 6, 2014. Prior to that, Deeds had previously worked in the banking industry beginning in 1984.

Deeds testified at the final hearing held February 17, 2016. Deeds, who is fifty-four years old, worked as a driver and front door panel installer for Ford. Deeds stated he retrieved a door panel from a bin, and while holding it with his left hand, he connected it to the door frame with his right hand. He then pushed in eight to ten pins using the palms of his hands as hammers. Some of these pins required approximately forty-five to fifty-five pounds of pressure to push in. Deeds' position was considered an ergonomic job and he was supposed to

alternate the door job with two other employees. Deeds stated he was required to work continuously for thirty minutes, followed by an hour break. Deeds estimated he completed forty-five door panels every thirty minutes and he worked ten hour shifts. Deeds considered his job tasks highly repetitive. Deeds denied having any previous injuries to either wrist.

Deeds began experiencing swelling and pain in his hands in mid-September 2014. He eventually sought treatment at Ford's medical facility on October 14, 2014. Ford referred him to Dr. David Tate, who recommended surgery. Deeds sought a second opinion from Dr. Huey-Yuan Tien in January 2015, who ultimately performed surgery on his left upper extremity on May 28, 2015. Deeds declined surgery on his right upper extremity.

Deeds continued to work regular duty at Ford until he was assigned restrictions in mid-January 2015 by Dr. Tate and subsequently by Dr. Tien. For the first week on restricted duty, he swept the floors. For the next two weeks, he monitored cords on the line. He was then sent to another line to close windows, which increased the symptoms in his hands. The following day, Deeds was sent home with no work available on February 4, 2015. Deeds attempted to return to work in early June after his surgery. He was

placed on a job requiring repetitive use of his right arm which he had also injured and for which he had restrictions. Deeds could only complete part of two shifts. He ceased working for Ford on August 5, 2015, and subsequently lost his health insurance. Ford paid Deeds TTD benefits from February 4, 2015 through April 28, 2015.

Deeds worked fifteen to twenty hours a week as a gas station cashier for Kroger beginning in July 2015 for approximately seven weeks. He also worked as an Uber driver. On December 7, 2015, Deeds began working full-time for Republic Bank reviewing mortgage loans, earning fifteen dollars an hour. He continues to drive for Uber on a limited basis. Despite his post-injury employment, Deeds has not earned the same or greater wages he earned while employed at Ford.

Deeds continues to experience symptoms in both hands, but more so on the right. Based on his restrictions and limitations, Deeds does not believe he can return to his pre-injury job with Ford. Deeds acknowledged his family physician, Dr. Robert Palmer-Ball, currently prescribes Synthroid for his thyroid condition which he believes is stable.

Both parties submitted records from Ford Motor Company OHSIM. On October 21, 2014, Deeds reported he had

experienced bilateral hand pain, swelling and numbness for two or three weeks. Pamela Thomas, RN, noted Deeds was required to push pins into door frames with fifty to ninety pounds of pressure using the palms of his hands. Deeds was diagnosed with sprains/strains to the hands and returned to work without restrictions. On January 16, 2015, Dr. Ring Tsai noted Deeds had recently treated with Dr. Tate. On June 9, 2015, Deeds was restricted from using his left hand through July 14, 2015 and was advised to not repetitively use his right hand.

Ford filed the January 6, 2015 record of Dr. Tate, noting Deeds attributed his bilateral hand complaints to his work activities with Ford. Dr. Tate assessed numbness and tingling in both hands. He discussed with Deeds, "that in fact the cause of nerve entrapment is not known, but rather the patient had noticed his symptoms at work and reported them to his place of work and was therefore covered by Workmen's Compensation." He temporarily restricted Deeds from pushing and lifting over ten pounds with his hands. Dr. Tate did not believe Deeds was a candidate for surgery, and recommended he obtain a second opinion.

The May 28, 2015 operative report from Kliener Kutz Surgery Center indicates Deeds had left carpal tunnel

syndrome, and a left carpal tunnel release was performed by Dr. Tien.

Ford filed the records of Dr. Palmer-Ball. On January 2, 2015, Deeds reported swelling, tenderness, decreased range of motion in both hands, as well as numbness and tingling in his fingertips. Dr. Palmer-Ball indicated Deeds probably does in fact have carpal tunnel syndrome, "which may be somewhat related to his job. There may be additional factors which have been overlooked. Patient has not had labs in quite some time." Deeds returned on January 5, 2015. Dr. Palmer-Ball noted Deeds "has marked edema in his eyes face neck extra lower extremities. Patient had lab work done. Patient was found to have acute renal insufficiency. Patient was also found to have hypothyroidism with a TSH of 95." Dr. Palmer-Ball primarily diagnosed hypothyroidism, as well as acute renal insufficiency, goiter, edema, and hypertension. He prescribed Synthroid to treat Deeds' hypothyroidism and restricted him from work. Deeds followed up with Dr. Palmer-Ball for hypothyroidism on February 2, 2015, March 2, 2015, May 7, 2015 and July 14, 2015, who continued to prescribe Synthroid.

Ford filed the April 7, 2015 report of Dr. Richard DuBou, who examined Deeds at its request. Dr.

DuBou reviewed Deeds' job tasks with Ford. He noted the results of an EMG/NCV study revealed severe nerve abnormalities in both major nerves of both upper extremities. Dr. DuBou noted when there is more than one nerve involved in the upper extremity, "one very often looks for systematic causes rather than occupation causing all major nerves in both upper extremities to show marked abnormalities." Dr. DuBou also discussed the 2nd Edition of AMA Guides to the Evaluation of Disease and Injury Causation. Among other causes, it lists high BMI and thyroid disease as non-occupational risks factors for median nerve entrapment of the wrist. In this instance, Dr. DuBou noted Deeds has a BMI of 32.1 and is being treated for hypothyroidism.

Dr. DuBou noted discrepancies between what Deeds reported concerning his visit with Dr. Tate and the corresponding treatment record. Dr. DuBou reviewed Deeds' treatment with Dr. Tien, who diagnosed bilateral carpal tunnel and cubital tunnel syndrome. Dr. Tien specifically stated hypothyroidism might aggravate, but does not cause, carpal tunnel pathology or symptoms. Dr. DuBou stated medical literature is at odds with Dr. Tien's opinion.

Dr. DuBou noted Deeds has bilateral cubital tunnel syndrome and carpal tunnel syndrome, both of which

became symptomatic at the same time. Dr. DuBou stated, "[t]hat in and of itself indicates something other than work may very well be involved." After performing an examination, Dr. DuBou opined as follows regarding causation:

With all four nerves in both upper extremities, both median nerves and both ulnar nerves which are the main nerves involved in the upper extremities . . . causation would have to be a systematic condition. There would certainly be a question if there was only one nerve involved, but with all four involved, I would have to agree with Dr. Tate rather than Dr. Tien.

Dr. DuBou opined although surgery on both hands is necessary, the procedures are not work-related. He anticipated Deeds would reach maximum medical improvement ("MMI") twenty weeks following the last surgery. He also assigned restrictions.

In a supplemental letter dated April 28, 2015, Dr. DuBou clarified he does not believe Deeds' work activities caused his conditions because he has a high BMI and acute hypothyroidism with documented, marked edema. He also stated there is no association of work to cubital tunnel syndrome. In spite of that, Deeds has some abnormality in each of the two major nerves in both upper

extremities. Ford also filed the literature relied upon by Dr. DuBou on December 4, 2015.

Dr. DuBou re-examined Deeds on November 27, 2015 subsequent to the May 2015 procedure. He again diagnosed bilateral carpal tunnel and cubital tunnel syndrome, neither of which he related to Deeds' work activities with Ford. Dr. DuBou noted although automobile assembly line work is one of the three most common occupational causes of carpal tunnel, Deeds was only in that position at Ford for ten months. Dr. DuBou reaffirmed his belief the vast majority, if not all, of Deeds' carpal tunnel pathology is due to underlying non-work-related obesity and hypothyroidism. Regardless of causation, Dr. DuBou assessed a 2% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, Fifth Edition ("AMA Guides"), for the left carpal tunnel release procedure.

Deeds filed the September 17, 2015 report of Dr. Fadel. He reviewed Deeds job tasks as a line operator with Ford and the treatment records. After performing an examination, Dr. Fadel diagnosed bilateral carpal and cubital tunnel syndrome caused from hypothyroidism and work. He stated as follows regarding causation:

It is my medical opinion that the cubital tunnel syndromes at the elbow were not work related and that those problems were solely caused from the hypothyroidism. The carpal tunnel and resultant median nerve compression to both wrists was probably caused by both his work and the hypothyroidism and should be apportioned, in my view, to a 50/50 ratio.

Dr. Fadel declined to assess an impairment rating for the left upper extremity since Deeds had yet to attain MMI from the May 28, 2015 surgery, which he anticipated would not be reached until one year after the procedure. Dr. Fadel assessed a 13% impairment rating for the right upper extremity pursuant to the AMA Guides. He apportioned 7% to his work activities with Ford and 6% to non-work-related hypothyroidism. Dr. Fadel also imposed restrictions.

Dr. Fadel re-examined Deeds on February 9, 2016. He stated Deeds attained MMI from the left carpal release procedure in January 2016. Dr. Fadel assessed a 6% impairment rating pursuant to the AMA Guides for the left carpal tunnel syndrome after surgical intervention, attributing 3% to Deeds' work activities. Therefore, Dr. Fadel noted the 7% impairment rating for the right upper extremity and the 3% impairment rating for the left upper

extremity combined for a total impairment rating of 10% pursuant to the AMA Guides.

In his April 18, 2016 opinion, the ALJ noted Deeds conceded his bilateral cubital tunnel syndrome is not work-related. The ALJ accepted Deeds' testimony concerning the onset of his carpal tunnel condition as accurate, as well as his description of his job duties as a front door installer, his testimony that his symptoms began in mid-September, and the fact he never had any previous injuries to his wrists. The ALJ made the following analysis regarding causation/work-relatedness:

I have relied on the medical opinion of Dr. DuBou in many cases and have the greatest respect for him and for his professional abilities. However, in this case, I felt that for unknown reasons, he has given indications in his reports that he felt the need to advocate for the employer. From his first report letter, it is clear that he had extensive discussions with the adjuster handling the claim concerning the alleged facts of the case prior to his initial examination of Mr. Deeds. As I noted in my summation herein, Dr. DuBou and Mr. Deeds apparently had a difference of opinion as to whether Deeds was accurately describing the assignment of work. It is apparent from the report that the doctor had been fully briefed by the adjuster before he performed his examination as he confronted Mr. Deeds with information that the doctor thought had been withheld in Deed's initial representations. The same thing is

true of the circumstances under which Mr. Deeds left Ford. Dr. DuBou may think Mr. Deeds was lying, but his apparent attempt at cross-examination damages his credibility in my mind. I hasten to state that I make no accusation of ethical impropriety against the doctor, but for me his aggressiveness in this regard makes me fear that his objectivity may have suffered due to an evident dislike for the examinee.

At the request of the Defendant, Dr. Richard Dubou performed an IME on April 7, 2015. As part of his report, Dr. Dubou specifically notes the findings of Dr. Tien at Kleinert and Kutz: "Dr. Tien specifically dictated a note that hypothyroidism does not cause carpal tunnel pathology." Per Dr. Dubou, "[h]e stated it [hypothyroidism] might aggravate his symptoms but NOT cause the symptoms." Dr. Dubou also quotes Dr. Tien as stating, "[h]is symptoms he stated are work related."

Despite the statements of Dr. Tien, Dr. Dubou nevertheless leans in favor of a non-work-related diagnosis, stating "with all four nerves in both upper extremities, both median and both ulnar nerves which are the main nerves involved in the upper extremities as per the diagram I included in this letter, causation would have to be a systemic condition." Dr. Dubou questioned Dr. Fadel's opinion because there was no accounting for the fact that the carpal tunnel syndrome (that could be work related) and the cubital tunnel syndrome (that could not be work related) seemed to appear simultaneously. We don't know the answer to that question unless we posit that neither condition was related to the work. But that approach does not

reconcile how the assembly line work that the Plaintiff was performing which is known to cause carpal tunnel, did not play a role in the Plaintiff's diagnosis.

Dr. Jeffrey Fadel, an orthopedic surgeon, performed an IME dated April 7, 2015, and a follow-up exam on February 9, 2016. Dr. Fadel noted a detailed history of the Plaintiff's job duties. Dr. Fadel determined that the Plaintiff's bi-lateral carpal tunnel injuries are work-related. However, Dr. Fadel did not ignore the fact that the Plaintiff was diagnosed with hypothyroidism which can be a contributing factor for carpal tunnel. Taking into consideration both the extreme repetitive nature of the Plaintiff's assembly line position, and the underlying disease, Dr. Fadel determined that a causation apportionment between the two is most appropriate. As such, Dr. Fadel apportioned his impairments 50/50.

This is a very close case. I respect Dr. DuBou's opinion, but I believe that the weight of the lay and medical evidence supports a finding of work-relatedness. The only opinion of record that contains a specific finding of non-work-relatedness is the IME Report of Dr. DuBou.

In his report, Dr. Dubou, who freely acknowledges the universal acceptance in the medical community that automobile assembly line work can cause carpal tunnel syndrome, offers no substantial rationale as to how in this case the Plaintiff's work was not a causal factor *at all*.

While many of the physicians of record recognize hypothyroidism as a potential

contributing factor, Dr. Dubou is the only physician to place the sole blame on the underlying disease...completely ignoring the highly repetitive assembly work. Dr. Robert Palmer-Ball, Dr. Henry Tien, the Ford doctors, and Dr. Jeffrey Fadel, all recognize and opine that there is an occupational aspect to the development of the Plaintiff's carpal tunnel. As pointed out by the plaintiff, although Dr. David Tate does address the unknown nature of causation in his medical record, he *does not* opine that the condition is unrelated to work.

Based upon the totality of the lay and medical evidence of record, I feel compelled to find the Plaintiff's injuries are the partial result of his strenuous and repetitive physical work duties as opined by Dr. Fadel, whose medical opinion I find to be persuasive in this case. While the hypothyroidism must surely have been a contributing factor that made the Plaintiff more susceptible to nerve neuropathy, it is known that highly repetitive assembly line work causes carpal tunnel. However, that contributory factor was recognized by Dr. Fadel in his opinion and factored into his considerations in the assignment of a WPI rating. All examining and treating physicians seem to agree that the hypothyroidism and edema arose separately and independent of any traumatic injury.

The ALJ relied upon Dr. Fadel in finding Deeds sustained work-related bilateral injuries to his upper extremities resulting in carpal tunnel syndrome, and warranting a 10% impairment rating pursuant to the AMA Guides. The ALJ determined Deeds attained MMI on July 16,

2015. The ALJ awarded PPD benefits, TTD benefits, and medical benefits.

Ford filed a petition for reconsideration requesting a correction of the onset date for the award of TTD benefits. Ford also challenged the ALJ's statement he could find no other substantiation for Dr. DuBou's statement Deeds decided not to return to work for Ford. Ford requested the ALJ reconsider his factual findings in light of the actual requirements of Deeds' job as he described them, rather than the generalized statement his type of work is of the kind medical literature agrees is a common cause of carpal tunnel syndrome. Ford additionally took issue with the fact the ALJ did not address Dr. DuBou's question of how both the carpal tunnel and cubital tunnel conditions arose at the same time, but from two different causes. Ford requested the ALJ make additional findings of fact, taking into account Deeds' specific work duties, and the impact this has on his causation analysis.

After correcting the clerical error pointed out by Ford, the ALJ stated as follows in the June 14, 2016 Order denying the remainder of its petition:

Defendant's next allegation of error has to do with my observation about Dr. DuBou's 11/24/2015 IME report whereby I opined that I could find "no other substantiation" for Dr. DuBou's

notation to that effect. Of course there is other substantiation in the record as to Mr. Deeds making that statement. I myself noted it at page 27 of the Opinion, Award and Order. Counsel has misapprehended my meaning.

When I used the term "no other substantiation," the substantiation to which I was referring was Dr. DuBou's reason for making that point in his medical report. Whether the comment was elicited by the examiner or simply volunteered by Mr. Deeds, it had nothing to do with a diagnosis and I could not understand why the examining physician thought it relevant. It will be recalled that my concern was that Dr. DuBou was seemingly partisan in his comments concerning the claimant, which to my understanding is not the role of an independent examiner. I would have made the same observation (and have on several occasions) if I thought I detected a similar attitude on the part of an examiner for a claimant.

As to Defendant's other arguments, they [sic] incorrectly state the role of the ALJ in the fact-finding process. While it is true that the ALJ is frequently called upon to decide issues of work-relatedness/causation, Defendant goes through a lengthy exercise of describing the various work activities of the claimant, then suggesting that I ignored the scope of his activities in making an over-generous assignment of disability. While I am flattered by the scope of knowledge imputed to me, that is not within the scope of my powers.

Sometimes the review of work relatedness/causation issues goes to the simple fact of whether the claimant was on the job and performing same when his alleged injury was suffered.

However, in this case, there is no issue as to his presence and work. It is whether the work, by its very nature is, within the realm of reasonable medical probability, the proximate cause of Plaintiff's injury.

I am not a physician. Every human organism has similarities, but also differences. Sufficient cumulative trauma to cause injury in one person could be harmless to another person. I am not qualified to say which is which. That is why we rely on expert medical testimony.

I have reviewed carefully all of the medical testimony herein. I have written what I hope is a thorough discussion of my reasons for believing certain parts of that testimony over others. I did not find the medical testimony of Dr. DuBou to be persuasive. I did find the medical testimony and opinion of Dr. Fadel to be persuasive. Any "inferences" I relied upon were described in my analysis of the medical evidence. Perhaps a closer perusal of it will be instructive. Defendant Employer's 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).

Consequently, with the exception of the technical correction made herein above, I find no error patently appearing on the face of the Opinion, Award and Order of April 18, 2016. KRS 342.281.

On appeal, Ford argues Dr. Fadel's opinion regarding causation cannot constitute substantial evidence. It states Dr. Fadel opined hypothyroidism played a partial role in causing Deeds' carpal tunnel syndrome, but solely caused his cubital tunnel syndrome. However, all of Deeds' complaints began at the same time. Ford also states the ALJ incorrectly stated he felt Dr. DuBou ignored Deeds' job as a cause, arguing Dr. DuBou simply ruled out his job as a cause after considering his short employment. Ford asserts Dr. DuBou could not reconcile Deeds' job caused one condition and not the other when both appeared at the same time. Dr. Fadel concluded the cubital tunnel syndrome is solely due to an unrelated conditions and the carpal tunnel syndrome is 50% work-related despite the fact it consists of the same symptoms. Ford insists this defies logic, and Dr. Fadel offered no explanation for his 50/50 apportionment.

As the claimant in a workers' compensation proceeding, Deeds had the burden of proving each of the essential elements of his cause of action, including work-relatedness/causation. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Deeds was successful in his burden, the question on appeal is whether substantial evidence supports 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).

Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Where the evidence is conflicting, the ALJ, as fact-finder, has the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). 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, 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 this instance, both Drs. Fadel and DuBou agreed, and Deeds conceded, the bilateral cubital tunnel syndrome is wholly unrelated to his work activities with Ford. However, Drs. Fadel and DuBou offered differing medical opinions addressing the cause of Deeds' bilateral carpal tunnel syndrome. Dr. Fadel's opinion constitutes substantial evidence supporting the ALJ's determination Deeds' carpal tunnel syndrome is partially casually related to his work activities at Ford. Dr. Fadel reviewed the medical records, including those of Dr. Palmer-Ball who began treating Deeds' hypothyroidism in January 2015. Dr. Fadel diagnosed bilateral carpal and cubital tunnel syndrome caused from hypothyroidism and work. He opined the cubital tunnel syndromes were solely due to the unrelated hypothyroidism. However, he opined the carpal tunnel condition was caused by both his work and the hypothyroidism, and apportioned 50% of his occupational disability to his work activities.

After considering the opinion in its entirety, it is clear the ALJ believed, from the evidence, Deeds' carpal tunnel syndrome was partially caused by his repetitive work activities with Ford. As noted by the ALJ, Dr. Palmer-Ball, Dr. Tien, the Ford doctors, and Dr. Fadel, all opined there is an occupational aspect to the development of

Deeds' condition. This, in conjunction with the opinion of Dr. Fadel, constitutes substantial evidence supporting the ALJ's determination. The ALJ correctly understood the evidence before him regarding causation, weighed that evidence, and determined Deeds met his burden of proof on the issue of causation. The ALJ, as fact-finder, has full discretion to determine the physician or physicians upon whom he relies. If "the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006).

Accordingly, the April 18, 2016 Opinion, Award and Order and the June 14, 2016 order on petition for reconsideration by Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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