Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 15, 2016

CLAIM NO. 201358839

FORD MOTOR COMPANY PETITIONER

VS. **APPEAL FROM HON. J. GREGORY ALLEN, ADMINISTRATIVE LAW JUDGE**

RONALD COLEMAN and
HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Ford Motor Company (KTP) ("Ford") seeks review of the Opinion, Order and Award rendered January 7, 2016 by Hon. J. Gregory Allen, Administrative Law Judge ("ALJ") awarding Ronald J. Coleman, Jr. ("Coleman") temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits and medical benefits

for work-related right carpal tunnel syndrome and right lateral epicondylitis caused by repetitive activities at work culminating on June 3, 2013. Ford also appeals from the February 17, 2016 order denying its petition for reconsideration.

On appeal, Ford argues there is no substantial evidence in the record which supports the ALJ's finding Coleman's lateral epicondylitis is work-related. Ford also argues substantial evidence does not support the ALJ's finding Coleman has a 6% impairment rating due to his work injury alone. Because the ALJ's decision is supported by substantial evidence, we affirm.

Coleman filed a Form 101 on June 15, 2015, alleging he injured his right elbow, hand and wrist due to his highly repetitive job activities in the assembly department at Ford. Coleman, a resident of Milltown, Indiana, began working in the assembly department at Ford in 1999. Prior to working at Ford, he had worked as an assembler and quality control inspector at a cabinet factory. His only other employment was working as a truck stop clerk. Coleman is a high school graduate, and he has a commercial driver's license. He also attended architectural school for six months.

Coleman testified by deposition on August 31, 2015, and at the hearing held November 18, 2015. Coleman is predominantly right handed, but writes with his left hand. Coleman stated he first experienced right wrist problems while working for Ford in 2005, and treated for this condition until 2007 with Dr. Thomas Harter of Kleinert Kutz Clinic. The problem resolved, and he had no restrictions. He experienced no additional right upper extremity problems until approximately a year and a half prior to June 3, 2013 while working as a VIN stamp operator. He had no treatment from 2007 until June 3, 2013. When he began experiencing symptoms in the right upper extremity, Coleman took Ibuprofen. By June 3, 2013, he was taking twelve to twenty Ibuprofen tablets daily to get through his shift, so he decided to seek treatment at the Ford medical department.

When Coleman was hired at Ford, he worked in the body shop for four years. He was moved to the frame line in 2003 due to a reduction in the workforce. He worked on the truck frame line for ten years, where he initially installed fuel tanks and worked on brake calipers. Part of his job involved connecting chains to truck frames and flipping them over. He was later moved to a VIN stamp operator position which required him to break apart and

install wire looms, or wiring harnesses, on diesel trucks. He stated this was somewhat difficult because the wire looms were taped together, and repetitively breaking them apart caused him to develop throbbing pain and swelling in the elbow. He estimated he did this three hundred to three hundred and fifty times per night.

After Coleman went to the Ford medical department on June 3, 2013, he was placed in physical therapy, and moved to a position which required him to drive trucks off the assembly line. Although Coleman testified he is unable to perform the pre- June 2013 job duties which caused his symptoms, he has no difficulty with his current job, as a truck driver, which is an inspection position, and now his permanent job assignment.

Coleman eventually had surgery on his right wrist and right elbow in November 2013 performed by Dr. Navin Kilambi. The surgery only improved some of his symptoms. He continues to have pain despite subsequent injections. He also has numbness in the right middle and index fingers. He occasionally has sharp pain in his right hand when he performs repetitive activities.

Coleman later treated with Dr. Tuna Ozyurekoglu, who ordered additional physical therapy and administered

additional injections. Dr. Ozyurekoglu discussed additional surgery which Coleman is not currently pursuing.

Coleman continues to work in the truck driving position at Ford which is classified as an inspector position. He earns the same hourly rate as at the time of the injury, but he works more overtime, therefore his earnings are greater. He stated he has less range of motion than he did before he developed symptoms, and he cannot lift as much as he did in the past. He continues to have aching in the right elbow, and pain in the right wrist. He takes Ibuprofen for his right arm when he overuses it.

In support of his claim, Coleman filed the June 3, 2013 records from the Ford Motor Company Occupational Health and Safety Information Management System ("Ford OHSIMS"). Those records reflect Coleman complained of pain in his right elbow and forearm, and numbness in his first three fingers due to repetitively pulling apart wire looms while performing the VIN stamping job. He was diagnosed with right epicondylitis, right forearm sprain/strain, and right wrist sprain/strain. Coleman was restricted to one-handed duty, and was prescribed a splint and tennis elbow band.

Coleman filed the September 24, 2015 report of Dr. Jules Barefoot who evaluated him on that date. Dr. Barefoot noted Coleman's history of complaints and surgery by Dr. Kilambi on November 19, 2013 which consisted of a right carpal tunnel release and right open lateral epicondyle debridement and extensor tendon debridement. Coleman advised he developed progressively severe right arm and hand pain from operating a VIN stamping machine. Dr. Barefoot also noted treatment by Dr. Ozyurekoglu subsequent to the surgery consisted of injections and physical therapy.

Dr. Barefoot diagnosed bilateral median nerve neuropathy, status post carpal tunnel release and right open lateral epicondyle extensor tendon debridement, persistent right elbow common extensor tendinosis, and left carpal tunnel syndrome. Pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), he assessed a 6% rating. Dr. Barefoot also noted Coleman will have difficulty with repetitive grasping, lifting and carrying. He also stated Coleman could not operate vibratory equipment, and would have difficulty operating machinery with hand controls.

Regarding causation, Dr. Barefoot stated, “I would apportion 100% of this 6% whole person impairment to work-relatedness.” In the medical questionnaire attached to the report, Dr. Barefoot reiterated the diagnoses are status post right carpal tunnel release and right open lateral epicondyle debridement, persistent right elbow common extensor tendinosis and left carpal tunnel syndrome. Dr. Barefoot checked the “yes” blank on the next inquiry on the questionnaire which asked, “Absent an injury history to the contrary, do you believe more likely than not that my client’s work related injury brought the condition into a disabling reality?”

Ford filed the November 24, 2003 record from the Jewish Hospital Medical Center East which reflects Coleman treated for a contusion to his right fifth finger. The note reflects he smashed it with a gas tank while working at Ford.

Ford additionally filed records from Ford OHSIMS from November 24, 2003 through September 18, 2007. Those records reflect the right fifth finger injury mentioned above, along with various office visits for seasonal allergic rhinitis. The records also reflect Coleman first complained of pain in the right hand and wrist from pulling

on a vertical gun with the right hand.[1] Coleman was prescribed a wrist splint and Ibuprofen. He was later prescribed Mobic. By September 30, 2005, the wrist had improved, and he was released to regular duty, although there was an indication he may need an injection. In December 2005, Coleman complained of left forearm pain due to lifting fuel tanks. Dr. Thomas Harter saw Coleman and diagnosed right radial styloid tenosynovitis or de Quervain's, and restricted him to left hand use only. On September 17, 2007, Coleman complained of worsening right wrist pain, and complained of bilateral shoulder, wrist and hand soreness from performing the frame flip job. He was restricted from grasping and squeezing. He was also advised to take Aleve and use a left wrist splint. No additional Ford OSHIMS records were submitted until Coleman sought treatment on June 3, 2013.

Ford filed the September 9, 2015 record of Dr. Ozyurekoglu. He diagnosed Coleman with lateral elbow epicondylitis, joint pain, upper arm pain and carpal tunnel syndrome. He released Coleman to regular duty.

Ford also filed records from Dr. Harter who treated Coleman on November 6, 2005; December 19, 2005;

[1] Although not specifically described, this is believed to be a tool utilized in the assembly process.

February 6, 2006; August 2, 2006 and February 9, 2007. Dr. Harter first saw Coleman for complaints of left wrist pain which he diagnosed as first compartment tendonitis. He prescribed a neoprene thumb spica and administered a steroid injection. He later noted Coleman had full range of motion, and administered another injection. In February 2006, Dr. Harter noted Coleman had no serious pathology, no impairment, and released him to his regular job. In both August 2006 and February 2007, Dr. Harter noted Coleman could do his regular job.

Dr. Richard Dubou evaluated Coleman at Ford's request on October 15, 2015. Dr. Dubou noted some swelling distal to the lateral epicondyle on the right. He noted the surgical site was tender to deep palpation. He noted Dr. Ozyurekoglu had released Coleman to return to work with no restrictions. He stated Coleman's grip strength was indicative of post-operative carpal tunnel pathology. He specifically stated, "It is known that work in [sic] automobile assembly line plant can cause carpal tunnel pathology." Dr. Dubou diagnosed Coleman with status post right carpal tunnel and right later epicondylitis releases, and assessed a 2% impairment rating pursuant to the AMA Guides. He stated the carpal tunnel syndrome was work-related, but he is unclear whether the need for the

epicondylitis surgery was caused by his work. Dr. Dubou opined Coleman reached maximum medical improvement six months after the surgery. He stated the carpal tunnel syndrome was caused by the repetitive trauma at Ford. Dr. Dubou stated Coleman can continue to work at Ford, but should avoid the wire loom job.

A Benefit Review Conference ("BRC") was held on November 31, 2015. The only issues preserved were benefits per KRS 342.730, and whether Coleman has the capacity to return to the type of work performed on the date of injury. Subsequent to the BRC, work-relatedness of the right elbow condition, and entitlement to additional TTD benefits were listed as issues. This is reflected in the hearing order dated November 18, 2015.

In his decision rendered January 7, 2016, the ALJ found both the right carpal tunnel and right elbow conditions work-related and compensable. He awarded TTD benefits, PPD benefits and medical benefits. The ALJ relied upon Dr. Barefoot's opinions and awarded PPD benefits based upon his 6% impairment rating. The ALJ specifically found as follows:

> A claimant in a workers' compensation case bears the burden of proving each of the essential elements of his cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979).

Among the essential elements are the work-relatedness causation and the extent and duration of any disability generated by the alleged work injuries. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002).

Here, the evidence on work-relatedness of the right elbow condition is mixed. Plaintiff relies upon the report of Dr. Barefoot who finds the entirety of his 6% impairment rating related to plaintiff's "long history of multiple injuries to his upper extremities."

On the contrary, Dr. DuBou examined the plaintiff at the request of the defendant. The physician did not feel the plaintiff's elbow condition, diagnosed as lateral epicondylitis, was related to the plaintiff's work with the defendant. He did feel the plaintiff's carpal tunnel was work-related, assessed a 2% whole person impairment and felt that while plaintiff could return to work without restrictions, he did agree with plaintiff that work with wire looms would cause him additional discomfort. This was apparently consistent with Dr. DuBou's treatment history of other patients that had related work with wire looms to their presenting symptomology.

The ALJ has thoroughly reviewed the report of Dr. DuBou and his rationale for the opinion the plaintiff's elbow condition is not work-related. The physician makes several references to a publication that questions the sufficiency of only repetitive work as causative of epicondylitis. Dr. DuBou concluded that the "jury is out for an occupational cause of lateral epicondylitis." Dr. DuBou was clear that plaintiff had symptomatic right

lateral epicondylitis, had undergone surgery for the condition and even recommended a different form of non-incisional treatment for same. When formally queried as to the reasonableness, necessity and work-relatedness of treatment and surgery on question 4 of his report, Dr. DuBou testified that while the carpal tunnel surgery was appropriate "it is unclear whether or not the lateral epicondylitis surgery is associated with work. It is not felt to be work related, at least in England."

The ALJ interprets and infers from this testimony that Dr. DuBou is unsure as to the relatedness of the plaintiff's right elbow condition. However, the ALJ does not conclude that it is a definitive rejection of plaintiff's allegations. As noted above, Dr. DuBou indicated that the wire loom part of plaintiff's job had been the cause of a number of patients coming into his office for treatment. Given the plaintiff's complaints, the addition of the wire loom installation into plaintiff's job duties and the opinion of Dr. Barefoot, the ALJ finds the plaintiff's right elbow conditions related to his work with the defendant.

Having determined the plaintiff has carried his burden of demonstrating he sustained work-related injuries in the form of both right carpal tunnel syndrome and right lateral epicondylitis, the ALJ must now address the issue of plaintiff's impairment rating and resulting disability.

As Dr. DuBou did not assess impairment for the right lateral epicondylitis, the ALJ believes that Dr. Barefoot's assessment of impairment most accurately addresses the entirety of

> the plaintiff's compensable conditions. Hence, the ALJ finds the plaintiff retains a 6% whole person impairment under the *AMA Guides to the Evaluation of Permanent Impairment, 5th Edition.*

Ford filed a petition for reconsideration arguing no evidence supports the ALJ's determination the right elbow condition is work-related. In the order on reconsideration issued February 17, 2016 denying Ford's petition, the ALJ stated as follows:

> This matter comes on before the ALJ on the defendant's petition for reconsideration requesting the ALJ reconsider his Opinion, Order and Award dated January 7, 2016. Defendant argues that the report of Dr. Barefoot relied upon by the ALJ to find the plaintiff did sustain a work-related right elbow condition was silent as to the causation of that condition and the report of Dr. DuBou was "unequivocal with regards to causation of the right elbow."
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> Plaintiff has responded pointing out that on page one of Dr. Barefoot's medical questionnaire attached to his narrative report the physician lists the diagnoses that he considered work-related, specifically included the right elbow and further addressed the causation of same in question two.
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> KRS 342.281 permits an ALJ to correct "errors patently appearing on the face of the award" when such errors are raised in a petition for reconsideration. While the scope of the ALJ's authority in ruling on a petition for reconsideration is not

> strictly limited to the correction of clerical errors, the ALJ does not have the authority to reverse himself on the merits of the claim. Garrett Mining Co. v. Nye, 122 S.W.3d 513 (Ky. 2003); Beth-Elkhorn Corp. v. Nash, 470 S.W.2d 329 (Ky. 1971).
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> Here, the ALJ relied upon the report of Dr. Barefoot regarding causation of the plaintiff's right elbow as well as that portion of his questionnaire that indicated plaintiff did retain the physical capacity to return to the type of work he performed at the time of injury with the defendant. The ALJ performed an extensive analysis of the medical evidence regarding work-relatedness of the plaintiff's right elbow condition. He believes his conclusion is supported by evidence in the record.

As the claimant in a workers' compensation proceeding, Coleman had the burden of proving each of the essential elements of his cause of action. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Coleman 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).

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 supporting 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 function of the Board in reviewing an ALJ's decision is limited to determining whether the findings made are so unreasonable under 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or

reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (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).

Here, the ALJ provided a sufficient explanation for his reliance upon the impairment rating assessed by Dr. Barefoot, and in finding Coleman's right elbow condition was caused by his work at Ford. The ALJ clearly explained why he found the opinions of Dr. Barefoot most credible. This falls squarely within the discretion afforded to him and will not be disturbed. We note Dr. Barefoot included both the carpal tunnel and elbow conditions in arriving at the 6% impairment rating. Dr. Barefoot clearly established, especially in the questionnaire attached to his report, these conditions were caused by Coleman's work at Ford. We also note the ALJ found Dr. Dubou did not specifically find Coleman's right elbow condition was not caused by his work at Ford. Because the ALJ's determination is supported by the record, his decision will not be disturbed.

Accordingly, the opinion, order and award rendered January 7, 2016 and the February 17, 2016 order on

reconsideration by Hon. J. Gregory Allen, Administrative Law Judge, are **AFFIRMED**.

ALL CONCUR.

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