Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 16, 2016

CLAIM NO. 201400649

JAMES HAMILTON PETITIONER

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

EXCEL MINING, LLC
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

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

RECHTER, Member. James Hamilton ("Hamilton") appeals from the January 28, 2016 Opinion and Order rendered by Hon. Chris Davis, Administrative Law Judge ("ALJ"). The ALJ dismissed Hamilton's claim alleging he contracted coal workers' pneumoconiosis ("CWP") while working in coal mines. On appeal, Hamilton argues the ALJ's opinion was not based on substantial evidence and the ALJ failed to

give presumptive weight to the university medical evaluator's opinion. For the reasons set forth herein, we affirm.

Hamilton worked in coal mines for thirty-three years and was exposed to coal dust the entire time. He last worked for Excel Mining, LLC on May 16, 2013 and filed this CWP claim on March 20, 2014. He was directed to be evaluated by Dr. Sanjay Chavda, who read Hamilton's chest x-ray as 0/1 for CWP. On pulmonary function testing, Hamilton produced an FVC of 57% predicted and an FEV1 of 60% predicted. Dr. Chavda noted Hamilton indicated he had never smoked.

At the employer's request, Hamilton was evaluated by Dr. Bruce Broudy. Dr. Broudy performed pulmonary testing and interpreted an x-ray as 0/0, or negative for CWP. Hamilton produced an FVC of 48% of predicted and an FEV1 of 56% predicted. Dr. Broudy opined spirometry was performed with less than optimal effort. Hamilton reported to Dr. Broudy that he was a non-smoker. However, arterial blood gas studies were performed which revealed a slight elevation of carboxyhemoglobin, indicating continued exposure to cigarette smoke.

Dr. Matthew Vuskovich read Hamilton's x-ray dated December 18, 2013. He interpreted profusion 1/1, indicating CWP. He read the x-ray to show profusions 1/1, with p/p size/shape and in the right, left upper, middle and lower zones with small and large opacities.

The ALJ first noted Dr. Chavda conducted a university evaluation and, therefore, his conclusions are afforded presumptive weight. While acknowledging Dr. Chavda found the presence of pulmonary impairment and "some level of black lung", the ALJ concluded Dr. Chavda's diagnosis did not rise to the level of compensable CWP. He also stated he took into account "Dr. Broudy's opinion regarding the reliability of the vent studies and the accuracy of Hamilton's claims regarding his smoking history and tobacco use." Accordingly, relying on KRS 342.732, the ALJ dismissed the claim.

Hamilton did not file a petition for reconsideration. On appeal, he first argues the ALJ's decision is not based on substantial evidence because he "found Hamilton had used tobacco products." We disagree. The ALJ clearly did not determine Hamilton used tobacco. Rather, to buttress his reliance on Dr. Chavda's report, the ALJ noted Dr. Broudy's opinion that Hamilton did not

suffer from any level of CWP. The ALJ afforded Dr. Chavda's opinion presumptive weight, and it constitutes the requisite substantial evidence to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Hamilton also argues Dr. Vuskovich's opinion sufficiently rebutted Dr. Chavda's opinion. In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Therefore, it is not the function of this Board, on appeal, to determine the weight which should be afforded the evidence. The ALJ afforded Dr. Chavda's opinion presumptive weight, and noted Dr. Broudy's opinion was largely consistent. Dr. Vuskovich's opinion is simply conflicting evidence upon which the ALJ could have, but is not required, to rely. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979).

For the foregoing reasons, the January 28, 2016 Opinion and Order of Hon. Chris Davis, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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