

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October \_\_, 2015

CLAIM NOS. 201401725 & 201400859

JAMES MICHAEL GRIMES

PETITIONER

VS.

APPEAL FROM HON. DOUGLAS W. GOTT  
ADMINISTRATIVE LAW JUDGE

TMMK INC.  
HON. DOUGLAS W. GOTT  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING  
\* \* \* \* \*

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

**RECHTER, Member.** James Michael Grimes ("Grimes") appeals from the March 31, 2015 Opinion and Order and the April 30, 2015 Order on Reconsideration rendered by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ"). The ALJ determined Grimes failed to prove he suffered any new injuries to his right knee due to cumulative trauma. Grimes challenges this

conclusion on appeal, arguing the ALJ failed to properly consider applicable law. For the reasons set forth herein, we affirm.

Grimes has been working for Toyota since 1994, and has sustained a number of prior injuries which are relevant to this appeal. In 2001, Grimes and Toyota settled a claim for bilateral knee injury resulting from repetitive trauma. The settlement of the claim was based on a 1% impairment rating to the left knee, and meniscectomy was approved for the left knee. Although no impairment rating was assigned to the right knee, medical benefits were preserved for the right knee. In 2005, Grimes settled a claim for injury to his neck and right shoulder due to repetitive trauma. He underwent surgery for a C5-6 disc herniation, and settled the claim based on a 25% impairment.

Grimes filed the current claim on April 16, 2014, alleging a right knee injury due to repetitive twisting.<sup>1</sup> He later amended the claim to allege September 14, 2012 as the date of injury. Toyota moved to dismiss, arguing Grimes had never reported a knee injury. In its motion, Toyota referenced a March 13, 2006 right knee injury which "was settled and approved ...on January 10, 2007." However, no

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<sup>1</sup> Grimes also presented a claim for hearing loss, which has not been appealed and therefore will not be further discussed.

documentation of this 2006 right knee injury was presented to the ALJ.

At deposition, Grimes explained he worked on an underbody line at Toyota since 1994, then was transferred to quality control in 2012. Both positions required a lot of twisting, turning and bending. Grimes stated he has been having on-going problems with his knees since 2000, when he fell to the concrete floor. He underwent surgery on the left knee in 2001, and on the right knee in 2006 for a torn meniscus. In 2009, he began having pain in his knees, and was given cortisone shots. By 2013, a right knee replacement was recommended. Dr. Darren Johnson performed the knee replacement in February, 2013.

Grimes was paid temporary total disability benefits during the seven months he was off work following the right knee replacement surgery, but at the wage rate applicable to his 2006 injury. He stated he disagreed with this decision, because he believes he has suffered a new injury. At the time of his deposition, Grimes explained his right knee still hurts and swells. He is able to continue working full-time with overtime, despite his discomfort.

Dr. Johnson performed Grimes' left knee arthroscopy in 2001, but records submitted in this claim begin on April 19, 2006. Grimes returned to Dr. Johnson

with complaints of pain which started at work, though no specific injury was associated. About ten months after the 2006 surgery to repair the torn right meniscus, Grimes returned to work full-duty. He had no further treatment with Dr. Johnson until 2009, when he returned with pain in his right knee. Dr. Johnson's 2009 notes include a diagnosis of osteoarthritis. Thereafter, he treated with injections until 2013, when knee replacement was recommended.

Dr. Michael Kirk performed the right knee replacement on February 22, 2013. Grimes reported right knee pain for approximately six years. The surgery was successful and Grimes was released to full-duty work on September 13, 2013. Dr. Kirk assigned a 15% impairment rating following the knee replacement, and stated the reason for the knee replacement was "the arthritic condition with bone on bone contact in [the right] knee." At a deposition, Dr. Kirk indicated Grimes' work activities were "likely...a contributing factor." He explained that the loss of meniscal tissue will contribute to the possibility of accelerated arthritis but that arthritis can also develop from repetitive activities without prior surgery. On cross-examination, he acknowledged he was unaware of a 2001 MRI documenting arthritis in the knee. In short, Dr. Kirk

concluded he could not pinpoint with medical certainty the cause of the progression of degenerative arthritis in Grimes' right knee.

Dr. Martin Schiller examined Grimes on February 7, 2013, prior to his knee replacement surgery. He diagnosed bilateral osteoarthritis. He noted a torn meniscus can contribute to the development of degenerative arthritis, but that repeated squatting and twisting at work may also contribute.

Dr. Robert Jacob examined Grimes on October 29, 2014. Dr. Jacob testified at deposition, but his report was not submitted into evidence. Dr. Jacob opined Grimes' current right knee condition is due primarily to genetic predisposition. He also identified Grimes' weight and age as contributing factors. He pointed to the 2001 right knee MRI, which confirmed osteoarthritis in the right knee, to support his conclusion. Dr. Jacob did not believe Grimes' work activities caused or advanced his arthritic condition.

In analyzing the claim, the ALJ first noted the confusion which had been created by the fact that documentation of the alleged 2006 injury and settlement was never submitted into evidence. Regardless of whether the original injury occurred in 2000 or in 2006, the ALJ noted Grimes is time barred from reopening for a worsening of

condition. He then considered Grimes' allegation in the current claim: that his continued, repetitive work at Toyota caused a new injury due to cumulative trauma, and necessitated the 2013 right knee replacement.

The ALJ noted the Kentucky Supreme Court's holding in Brummitt v. Southeastern Kentucky Rehabilitation Industries, 156 S.W.3d 276 (Ky. 2005), that an individual who continues to perform the same repetitive activities after a gradual injury manifests, may sustain subsequent gradual injuries which are compensable. However, the ALJ concluded Grimes had failed to establish his continued work caused any additional injury. The ALJ found Dr. Kirk's testimony ambiguous and inconclusive as to the issue of causation, explaining: "Dr. Kirk [did not] say that a new injury had independently aggravated a pre-existing condition or hastened the need for a knee replacement sooner than otherwise would have been expected from the normal progression of the disease set in motion by the original work injury." Ultimately, the ALJ concluded the 2001 injury set in motion degenerative changes which eventually necessitated the 2006 and 2013 surgeries. In reaching this conclusion, the ALJ was persuaded by Dr. Schiller's opinion that the work-related meniscus tear helped contribute to the degenerative arthritis, whose progression eventually

necessitated the knee replacement. He also noted Dr. Johnson's records do not indicate increasing symptoms between 2009 and 2013, or that Grimes' work caused or aggravated the osteoarthritis such that it became a new injury. Accordingly, the ALJ dismissed Grimes' claim as to a right knee injury.

Grimes petitioned for reconsideration, which the ALJ dismissed as a reargument of the merits of the claim. On appeal, Grimes argues the ALJ failed to properly apply the holding in Brummitt to his claim. We disagree. The ALJ accurately set forth the holding in Brummitt, and recognized Grimes' theory of the case. However, he found insufficient proof that Grimes' subsequent repetitive work after 2006 caused any new injury or worsened his condition.

In essence, Grimes seems to be challenging the sufficiency of the evidence underlying the ALJ's decision. Because Grimes failed to carry his burden of proof as the claimant, 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). Simply put, the ALJ was unpersuaded by Grimes' expert, Dr. Kirk. The ALJ accurately summarized Dr. Kirk's opinion, which was equivocal as to the cause of Grimes' current arthritic condition. Dr. Kirk was unable to say with certainty whether the arthritis was

wholly genetic or a result of his work-related meniscectomy. While Dr. Kirk provided some opinions which would support Grimes' position, he also limited his opinion as to the cause of Grimes' osteoarthritis. The ALJ was not required to believe portions of Dr. Kirk's testimony, and disregard others. As fact-finder, the ALJ enjoys the discretion to choose the evidence upon which to rely, and to believe or disbelieve portions of a witness' testimony. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Regardless, the ALJ also relied upon Dr. Jacob, whose opinion constitutes substantial evidence. Dr. Jacob flatly disagreed with the proposition Grimes' work activities played any role in the development of osteoarthritis in the right knee.

Accordingly, the March 31, 2015 Opinion and Order and the April 30, 2015 Order on Reconsideration rendered by Hon. Douglas W. Gott, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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