

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 27, 2014

CLAIM NO. 201269263

JAMES PENCE

PETITIONER

VS.

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

PERRY COUNTY BOARD OF EDUCATION
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. James Pence ("Pence") appeals from the November 20, 2013 Opinion and Order and the January 7, 2014 Order on Reconsideration¹ rendered by Hon. John B. Coleman, Administrative Law Judge ("ALJ"). The ALJ dismissed

¹ Reissued February 11, 2014.

Pence's claim upon finding his condition was not work-related. On appeal, Pence argues the decision is clearly erroneous and the ALJ failed to provide sufficient findings of fact to apprise the parties of the basis for his findings. We affirm.

Pence, who was employed by the Perry County Board of Education ("Perry County") as a teacher, filed his application on February 7, 2013 alleging injury to his wrists on September 6, 2012 as a result of "continuing use" of his hands. Pence later moved to amend the claim to reflect an injury date of October 19, 2012, the last day he worked.

The ALJ provided the following analysis and conclusions relevant to this appeal:

In this claim, the causal relationship is not apparent to a lay person and therefore, the Administrative Law Judge must rely on the medical evidence presented along with the testimony of the plaintiff regarding the history of his condition. The plaintiff basically states that over the last two to three years of his employment he was required to perform a lot of typing while constructing lesson plans for his classes. However, a review of the medical evidence indicates the plaintiff's first complaints of numbness and tingling in his hands and arms occurred in November of 2010. At that time, the plaintiff visited Dr. Yonts for this condition as he was being seen for complications of a rear-

end collision. He followed up in March of 2011 for aching and swelling in his hands. The diagnosis on both occasions was neck pain, but no mention of the plaintiff's work duties was made. The plaintiff then complained of bilateral hand pain on August 7, 2012 which is a time period at the end of the summer break. Shortly after his return to the school year, the plaintiff returned on September 12, 2012 and thereafter, over the next two months the plaintiff's complaints increased to the point he was complaining of pain on a 10 out of 10 on a scale of 1 to 10 scale [sic]. The defendant pointed out that on the return to the school year in August of 2012, the plaintiff's typing duty should have declined as the school system had been taken over by the state leading him to perform lesson plans for the reading lab only. The plaintiff was sent to a well renowned hand physician, Dr. Favetto. Dr. Favetto noted the absence of electrodiagnostic evidence of the condition, but his physical exam did show what appeared to be bilateral carpal tunnel syndrome. However, Dr. Favetto did not feel this condition was related to the plaintiff's job duties, but instead felt his condition was idiopathic or personal to the plaintiff. He pointed out the plaintiff was on a lot of medications from his prior automobile accidents which will tend to increase symptomology in the upper extremities.

An employee has the burden of proof and the risk of non-persuasion to convince the trier of fact of every element of his workers' compensation claim. *Snawder v. Stice* 576 S.W. 2d. 276 (Ky. App. 1979). In this particular instance, after reviewing the entirety of the evidence multiple times, I simply must find the plaintiff

cannot meet his burden of showing his condition is related to his work as a teacher with the defendant. While there is evidence which may support an award of benefits, I am simply more convinced by the evidence indicating the plaintiff's condition is not related to his work. In particular, I am most convinced by the opinion of Dr. Favetto that the plaintiff's condition is not related to his job duties. Therefore, his claim for medical and income benefits must be dismissed.

Pence filed a petition for reconsideration, which was denied by order dated January 7, 2014. The ALJ indicated he had weighed the evidence carefully and was simply more convinced by Dr. Favetto's opinion Pence's condition was not related to his job duties. He acknowledged the record contained evidence supporting Pence's position. However, the ALJ reiterated that he found the opinions of Dr. Favetto and Dr. Burgess more persuasive.

On appeal, Pence argues the ALJ misapplied the evidence and erred in relying on the opinion of Dr. Favetto regarding causation. He notes three other doctors, including two treating physicians, all completed medical records or reports which constitute objective medical findings and are substantial evidence. Pence argues the decision of the ALJ "is against the great weight of the evidence" and is therefore unreasonable and clearly

erroneous. He further asserts the ALJ did not provide sufficient findings of fact to apprise the parties of the basis of his decision. Accordingly, he requests that the matter be vacated and remanded for further proceedings.

As the claimant in a workers' compensation proceeding, Pence had the burden of proving each of the essential elements of his cause of action, including causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he was unsuccessful in that burden, 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). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. Reo Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

While Pence has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. The opinions of Drs. Favetto and Burgess are substantial evidence supporting the ALJ's decision. As such, the ALJ acted within his discretion in determining which evidence to rely upon, and it cannot be said the ALJ's conclusions are so unreasonable as to compel

a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Certainly Pence is correct that evidence from Drs. Yonts and Sharma would support a finding in his favor. An ALJ is not precluded from considering that a treating physician may be in a better position to evaluate the patient's condition. However, nothing in Chapter 342 mandates greater weight be given to a treating physician's testimony. Wells v. Morris, 698 S.W.2d 321 (Ky. App. 1985); Sweeney v. King's Daughters Medical Center, 260 S.W.3d 829, 830 (Ky. 2008). Their opinions are nothing more than conflicting evidence compelling no particular result. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (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).

Although the ALJ may not have referred to evidence from Dr. McEldowney or Dr. Sharma in his analysis, he summarized that evidence, including more than two pages devoted to discussion of Dr. McEldowney's reports. Further, the ALJ stated he reviewed all of the evidence multiple times in reaching his decision. We are satisfied

the ALJ fully considered the entire record in reaching his determination.

The ALJ's analysis set forth above was more than sufficient to apprise the parties of the basis of his decision. Dr. Favetto unequivocally stated Pence's condition was not related to his work for Perry County. The ALJ, as was his prerogative, found Dr. Favetto's opinion more persuasive. Because the record contains substantial evidence supporting the ALJ's decision, it cannot be said the evidence compelled a finding in Pence's favor.

Accordingly, the November 20, 2013 Opinion and Order and the January 7, 2014 Order (reissued February 11, 2014) rendered by Hon. John B. Coleman, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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