OPINION ENTERED: SEPTEMBER 20, 2012

CLAIM NO. 200700714

JOHN W. CLARK OIL CO., INC. PETITIONER

VS. **APPEAL FROM HON. GRANT ROARK, ADMINISTRATIVE LAW JUDGE**

LARRY YAUNK
and HON. GRANT ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. John W. Clark Oil Co., Inc. ("Clark Oil") seeks review of a decision rendered April 30, 2012 by Hon. Grant Roark, Administrative Law Judge ("ALJ"), finding Larry Yaunk ("Yaunk") entitled to medical benefits for occipital neuralgia, post-concussive syndrome, post-traumatic headaches, post-traumatic stress disorder,

anxiety, depression and seizure disorder due to work-related injuries he sustained September 29, 2006. Clark Oil also appeals from the order issued June 6, 2012 overruling its petition for reconsideration.

On appeal, Clark Oil argues the ALJ's finding Yaunk suffers from post-traumatic stress disorder, depression, anxiety, occipital neuralgia, post-traumatic headaches, and a seizure disorder due to the work injuries he sustained September 29, 2006 is not supported by the evidence. We affirm.

Yaunk filed a Form 101 on May 24, 2007 alleging a work-related injury occurring September 29, 2006 when he was struck in the head with a tire iron during a robbery attempt at the service station where he was employed. As a result of the assault, Yaunk alleged he suffers from headaches, post-concussive syndrome, post-traumatic disequilibrium vertigo, post-traumatic stress disorder, diffuse extremity dysesthesias and paresthesias. Subsequently, Yaunk and Clark Oil entered a settlement regarding all issues except for the compensability of ongoing medical treatment. The Form 110-I settlement agreement was approved by the ALJ on October 13, 2011.

Yaunk testified by deposition on May 28, 2008, and again on July 14, 2010. He also testified at the

hearing held February 29, 2012. Yaunk resides in Inez, Kentucky, and was born on June 12, 1988. He was working for Clark Oil on September 29, 2010, where he pumped gas and operated the cash register. On that date, he was struck on the back of his head with a tire iron during a robbery attempt at the store. Yaunk never returned to work for Clark Oil after the assault because he stated he was afraid. Subsequent to the assault he worked briefly as a mechanic for a trucking company, but had to quit due to an increase in his headaches. He then worked for a period of time in his grandmother's store. He later worked for a month at the McDonald's in Inez, but again stated he had to quit due to an increase in his headaches. Yaunk also stated he took online computer courses, but was able to complete only one semester.

Prior to the assault, Yaunk stated he had no trouble with headaches, and denied any previous head or neck injuries. He also denied any previous work injuries or motor vehicle accidents. Subsequent to the assault Yaunk has undergone various treatments for headaches, seizures and the numerous maladies listed in the Form 101. Yaunk also stated he has developed sensitivity to light and noise. He stated he has daily headaches, which have not diminished since he left his employment with McDonald's.

His treatment has consisted of medication, injections and psychotherapy. He has been treated or evaluated by numerous neurologists, psychologists, and psychiatrists. The records, reports and testimony from those numerous providers and evaluators were adequately detailed by the ALJ in the opinion, award and order and will not be further summarized here.

At issue before the ALJ was the compensability of ongoing medical treatment. On April 30, 2012, the ALJ rendered a decision finding treatment for alleged brain trauma/injury or cognitive dysfunction to be non-compensable. The ALJ found compensable the treatment for occipital neuralgia, post-concussive syndrome, post-traumatic headaches, post-traumatic stress disorder, anxiety, depression, and seizure disorder. In his opinion, the ALJ stated the following:

> In this claim, the only remaining issue is the compensability of plaintiff's current treatment, including whether same is due to the work injury and whether it is also reasonable and necessary. The employer argues all objective testing shows plaintiff did not suffer any brain injury or cognitive damage and therefore no ongoing treatment is needed for brain trauma, seizure disorder, cognitive dysfunction, post-traumatic stress disorder, anxiety or depression.

Having reviewed the voluminous evidence of record, the Administrative Law Judge is persuaded by Dr. Granacher's testing and opinions that plaintiff has not suffered any brain injury or cognitive damage. As Dr. Granacher pointed out, all diagnostic testing performed is not consistent with a brain injury or cognitive dysfunction. Accordingly, any treatment provided for alleged brain trauma/injury or cognitive dysfunction is not work-related or reasonable and necessary and, as such, is not compensable.

However, the Administrative Law Judge is persuaded by the totality of evidence that plaintiff does suffer from occipital neuralgia, post-concussive syndrome and post-traumatic headaches due to the effects of the work injury. Even Dr. Granacher did not dispute these diagnoses and indicated his review and examinations were consistent with such diagnoses. Accordingly, any treatment directed at these conditions is compensable.

The Administrative Law Judge is persuaded by the opinions of the treating physicians, Dr. Houff and Dr. Kennedy that plaintiff's alleged post-traumatic stress disorder and anxiety and depression are supported by the clinical examinations and are causally related to the effects of the occipital neuralgia, post-concussive syndrome and post-traumatic headaches and/or the work injury itself due to the violent nature of the attack.

With respect to treatment rendered for apparent seizure disorder, the opinions of Dr. Tucker and Dr. Granacher persuade the Administrative Law Judge that plaintiff's alleged

> seizure disorder is not due to any brain trauma but, instead, are due to the other effects of plaintiff's occipital neuralgia, post-concussive syndrome and/or post-traumatic headaches. Accordingly, treatment rendered to alleviate plaintiff's episodes of loss of consciousness are[sic] compensable.

Clark Oil subsequently filed a petition for reconsideration arguing, as it does on appeal, a finding of work-relatedness of seizures and post-traumatic stress disorder is not supported by the record. The petition was overruled by the ALJ in an order entered June 6, 2012.

It is well established that a claimant in a workers' compensation claim bears the burden of proof and risk of non-persuasion before the ALJ, as fact-finder, with regard to each of the essential elements of his cause of action. Burton v. Foster Wheeler Corp., 72 S.W.3d 925, 928 (Ky. 2002). A finding favoring the party with the burden of proof on an issue in a workers' compensation proceeding must be based upon substantial evidence and, therefore, reasonable to survive on appeal. Brown-Forman Corp. v. Upchurch, 127 S.W.3d 615 (Ky. 2004).

Since Yaunk was successful before the ALJ regarding the issues raised by Clark Oil, the question on appeal is whether there was substantial evidence of record

to support 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). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be overturned. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may draw reasonable inferences from the evidence, 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. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Although a party may note evidence supporting a different outcome than that reached by the ALJ, such evidence is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). 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 reasonable inferences that otherwise could have been drawn from the evidence. 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).

Where the evidence concerning an issue is conflicting, the ALJ, as fact-finder, is free to pick and choose whom and what to believe. Copar, Inc. v. Rogers, 127 S.W.3d 554, 561 (Ky. 2003). For that reason, we cannot say the ALJ's determination Yaunk's medical treatment for occipital neuralgia, post-concussive syndrome, post-traumatic headaches, post-traumatic stress disorder, anxiety, depression and seizure disorder was unreasonable under the evidence. Speedway/Super America v. Elias, 285 S.W.3d 722, 730 (Ky. 2009).

Clark Oil argues the ALJ's determination regarding compensability of medical treatment for post-traumatic stress disorder, depression, anxiety, occipital neuralgia, post-traumatic headaches, and seizure disorder is not supported by substantial evidence. We disagree. It is without dispute that Yaunk was struck in the head by a

tire iron while working on September 29, 2006. Yaunk had no ongoing treatment for any condition concerning his head prior to the assault, but he has treated with multiple medical providers for numerous medical conditions since that date which the ALJ determined were compensable.

The medical evidence, especially that relied upon by the ALJ, supports the determination Yaunk sustained a work-related injury for which he receives ongoing medical treatment. It logically follows that being struck in the head by a tire iron resulted in conditions which require continued treatment.

Clark Oil takes issue with the ALJ's reliance upon certain medical opinions to support his award of medical benefits for certain conditions. Numerous medical providers, including those specifically noted by the ALJ in the opinion, order and award, support the determination of compensability of ongoing medical treatment. Specifically, Dr. Houff in the Form 107-I dated June 11, 2008, stated the occipital neuralgia, post-concussive syndrome and headaches were all caused by the trauma. This is consistent with the opinions of the numerous neurologists who treated Yaunk at the University of Kentucky. Likewise, Dr. Granacher, in his note dated July 27, 2009, noted after reviewing numerous medical records supplied by Clark Oil, stated

Yaunk's ongoing treatments "are consistent with posttraumatic headaches (probably occipital neuralgia) and an apparent posttraumatic seizure disorder."

Based upon the foregoing, and the evidence of record, we find no error in the ALJ's finding of compensability of ongoing medical treatment for post-traumatic stress disorder, depression, anxiety, occipital neuralgia, post-traumatic headaches, and seizure disorder. Accordingly, the decision rendered April 30, 2012, by Hon. Grant Roark, Administrative Law Judge, and the June 6, 2012 order overruling Clark Oil's petition for reconsideration, are hereby **AFFIRMED**.

ALL CONCUR.

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