Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 3, 2016

CLAIM NO. 201500692

JOHNNY RAY FIELDS PETITIONER

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

EXCEL MINING/ALLIANCE COAL
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

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

RECHTER, Member. Johnny Ray Fields ("Fields") appeals the December 21, 2015 Opinion and Order and the January 27, 2016 Order on Petition for Reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"). The ALJ dismissed Fields' claim upon finding he did not suffer compensable injuries. Fields argues the evidence demonstrates he is permanently totally disabled as a result

of cumulative trauma injuries to his knees, hips and lower back. We affirm.

Fields testified by deposition on July 1, 2015 and at the hearing held October 20, 2015. Fields has worked in the mining industry for more than thirty-eight years, primarily as an electrician and repairman in underground mines. For the last twelve years, Fields worked for Excel Mining, LLC ("Excel") as a shuttle car operator with the exception of one year as a miner operator. He was laid off on August 2, 2013. Fields began receiving Social Security disability benefits in March 2014. Fields has no plans to return to the workforce.

As a shuttle car operator, Fields would drive the shuttle to the miner where the shuttle was loaded with coal. He would take the coal to the belt area where he would dump the coal on the feeder. He frequently would change his seat in the shuttle depending on the direction he was to travel. His work required him to lift miner cables and build brattices using solid cinder blocks and occasionally lift bags of rock dust. Approximately once every three weeks he had to help with a belt move. Once a week he would assist in maintenance or changing a tire on the shuttle. Fields indicated he was not working under any

restrictions nor was he missing work prior to being laid off. He noticed problems with his knees locking up "quite a few years" prior to the layoff, but he was able to perform his work. The condition worsened over the years. Fields would take Ibuprofen or Tylenol for pain "every now and then" prior to the layoff.

Mike Hurley, safety director for Excel, testified by deposition on September 22, 2015. He indicated operating a shuttle car was not a strenuous job and was the easiest job in the mines. A shuttle car operator would assist in hanging cable, but there would be four other workers to assist. Hurley could not think of any activity in the shuttle car job that would significantly impact the knees.

Dr. Bruce Guberman evaluated Fields on June 30, 2015. Dr. Guberman diagnosed post-traumatic arthropathy of the knees due to cumulative trauma at work, status post left total knee arthroplasty, and chronic post-traumatic strain of the lumbar spine due to cumulative trauma at work. Dr. Guberman assigned a 38% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Fields did not have a prior active impairment.

Dr. Guberman did not believe Fields retained the physical capacity to return to work and assigned restrictions of avoiding kneeling, crawling, squatting, walking on hard or uneven surfaces frequently, and changing positions often.

Dr. David Muffly performed an independent medical evaluation ("IME") on August 27, 2015. Dr. Muffly diagnosed bilateral knee osteoarthritis, left greater than right, and minimal degenerative changes of the lumbar spine without any sign of degenerative disc disease. He detected no cumulative trauma to the lumbar spine, hips, or knees. The bilateral knee arthritis is related to age, obesity and history of a prior left knee fracture. He assigned a 15% impairment rating for the left knee and 3% for the right pursuant to the AMA Guides, none of which is attributable to cumulative trauma disorder. Fields' work at Excel did not accelerate the osteoarthritis of the knees.

Dr. Muffly testified by deposition on September 30, 2015. He indicated the arthritis in Fields' knees could not be attributed to his employment but rather to age and obesity. The left knee arthritis is primarily related to a fracture that occurred at age thirteen. Fields had no evidence of a cumulative trauma injury to his lumbar spine or hips. The minimal degenerative changes to the lumbar

spine were not the type of findings that correlate with cumulative trauma. Fields' lumbar condition does not warrant an impairment rating pursuant to the AMA Guides.

Dr. David Jenkinson performed an IME on August 4, 2015. He diagnosed osteoarthritis in both knees. Dr. Jenkinson indicated there is no evidence Fields has a harmful change to his hips or back due to cumulative trauma. The osteoarthritis in the knees is not attributable to work. Dr. Jenkinson noted Fields did not describe any work activities that would be responsible for unusual stresses on the knees. None of Fields' impairment rating for the arthritis in the knees can be attributed to his work.

The ALJ held as follows:

> Having reviewed the evidence of record, the administrative law judge is simply not persuaded plaintiff has carried his burden of proving he suffered any work related injuries. Several factors lead to this conclusion. First, with respect to plaintiff's lower back and bilateral hip claim, the ALJ is more persuaded by Dr. Muffly's opinion that plaintiff has no abnormalities in his hips or lumbar spine. Quite simply, the ALJ is not persuaded plaintiff has any objective evidence of a permanent injury to his hips or lower back.
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> However, there is no dispute plaintiff had objective evidence of a

condition in both his knees, the left being worse than the right and necessitating the left total knee replacement he underwent after he was laid off. Instead, the issue with plaintiff's bilateral knee condition is one of causation. As Dr. Muffly made clear, plaintiff suffers from osteoarthritis in both knees, which he unequivocally indicated was due to age and obesity and not to the particular work activities plaintiff described or described in the deposition of Mike Hurley. Dr. Muffly noted plaintiff has only minimal arthritic changes in his right knee but much more significant changes in the left knee. He indicated the difference was due to the prior left leg/knee fracture plaintiff suffered when he was younger. Dr. Muffly's opinions in this regard are also found persuasive given that there is no evidence plaintiff ever treated for knee complaints while he was working for the defendant. Moreover, plaintiff worked for the defendant without restriction or any indication of knee problems up until he was laid off when the mine closed down in August, 2013. Finally, although a pre-existing degenerative condition may be dormant and aroused into symptomatic reality by a work injury, or even work activities, thus rendering the condition compensable, Dr. Muffly specifically concluded such is not the case for plaintiff here. He indicated plaintiff's osteoarthritis was not aroused or exacerbated made worse by his work activities. Moreover, Dr. Muffly indicated he knew of nothing particular about operating a shuttle car which would be known to cause special stress on the knees.

> For all these reasons, the opinions of Dr. Muffly are considered most persuasive in this instance and it is determined plaintiff did not suffer any compensable injuries to his knees, hips, lower back. As such, his claim must be dismissed.

Fields filed a petition for reconsideration making the same arguments he raises on appeal. By order dated January 27, 2016, the ALJ denied the petition for reconsideration as a re-argument of the merits of the claim.

On appeal, Fields argues the substantial evidence demonstrates he is permanently totally disabled as a result of cumulative trauma injuries to his knees, hips, and lower back. Fields notes Dr. Guberman clearly stated the years of work in the mining industry caused cumulative trauma to Fields' knees and lumbar spine. Further, Dr. Guberman recommended physical restrictions that accurately reflect symptomatology and physical limitations, and he opined Fields does not retain the physical capacity to return to the type of work performed at the time of injury.

Fields' arguments on appeal are essentially a request for this Board to reweigh the evidence and direct a finding in his favor, which we are not permitted to do. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). As the

claimant in a workers' compensation proceeding, Fields had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Fields was unsuccessful in carrying the burden of proof, the only question on appeal is whether the totality of the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

Conflicting evidence was presented which did not compel any particular result. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). On appeal, Fields merely identifies evidence that might support a finding in his favor. He offers no argument as to why the opinions of Drs. Muffly and Jenkinson do not constitute substantial evidence. They indicated Fields had no evidence of impairment to his back, knees, or hips as a result of his work activities. Dr. Muffly attributed Fields' conditions to non-work-related causes, including age, obesity, and a prior fracture. Dr. Jenkinson indicated Fields did not describe any work activity that would be responsible for any unusual stress on the knees or produce a cumulative trauma injury. He clearly stated Fields did not have any findings consistent with cumulative trauma. The opinions

of Drs. Muffly and Jenkinson constitute substantial evidence supporting the ALJ's conclusion. There being substantial evidence in the record supporting the ALJ's finding, it cannot be said the evidence compels a finding in Fields' favor. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Therefore, the December 21, 2015 Opinion and Order and the January 27, 2016 Order denying Fields' petition for reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

STIVERS, MEMBER, NOT SITTING.

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