

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: August 28, 2013

CLAIM NO. 201201092

JOSE' SANCHEZ SATEY

PETITIONER

VS.

APPEAL FROM HON. JONATHAN WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

TREE TECH LAWN & TREE SERVICE  
and HON. JONATHAN WEATHERBY  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
VACATING AND REMANDING

\* \* \* \* \*

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

**RECHTER, Member.** Jose' Sanchez Satey ("Satey") appeals from the March 27, 2013 Opinion and Order and the April 29, 2013 order denying his petition for reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"). The ALJ dismissed Satey's claim in its entirety, finding no injury as defined by the Act. Because the

evidence compels a finding of at least a temporary injury, we vacate and remand.

The essential facts of this claim are largely uncontested. Satey began working for Tree Tech Lawn & Tree Service ("Tree Tech") as a groundskeeper in March, 2006. On September 16, 2011, Satey was involved as a passenger in a work-related roll-over motor vehicle accident. Both Satey and the driver were unconscious for several minutes.

An ambulance arrived at the scene. According to Matthew Kelley ("Kelley"), the owner of Tree Tech, Satey advised ambulance personnel he was "okay" and refused further treatment. Satey, however, testified Kelley did not want to pay for him to be transported.

Satey sought treatment at Norton Audubon Hospital the following day because his condition had worsened overnight. Satey's admitting diagnosis on September 17, 2011 was "MVA/NECK & SHOULDER PAIN, HIT HEAD." A CT scan of the cervical spine revealed no significant abnormalities. Chest and femur x-rays were normal. A head CT revealed greater than expected cortical atrophy for the patient's age. X-rays of the lumbar spine revealed straightening of the normal curve which could be from positioning or spasm.

Satey missed two weeks of work following the accident. He asked for and received \$1,200.00 from Kelley

as payment for lost wages. Satey had no follow up treatment for seven months. He explained Kelley initially agreed to pay for additional medical treatment, but later recanted the offer. Satey testified he continued to work due to financial necessity, though he was in pain and felt his condition progressively worsened. He eventually sought care with a chiropractor instead of a physician because payment in advance of service was not required. On August 16, 2012, Satey filed the present claim.

Two independent medical evaluations ("IME") were performed. Following a July 11, 2012 examination, Dr. Jerry Morris diagnosed a motor vehicle related concussion with post-concussion syndrome, now resolved; chronic cervicalgia; recurrent tension headaches secondary to chronic cervicalgia; chronic left sacroiliitis; chronic lumbago; intermittent left lumbar radiculitis and intermittent left sciatica. Dr. Morris concluded Satey's complaints were the direct result of the motor vehicle accident. Dr. Morris stated Satey had not received sufficient treatment and therefore was not at maximum medical improvement ("MMI"). He restricted Satey to occasional lifting of no more than five pounds with no repetitive reaching, no climbing or crawling, and only limited bending and stooping. Dr. Morris

also indicated Satey should avoid prolonged sitting or standing.

Dr. Daniel Primm performed an IME on September 4, 2012 at the request of Tree Tech, and came to markedly different conclusions regarding the extent of Satey's injuries. Dr. Primm diagnosed soft tissue injuries to the cervical and lumbar spine. He believed these injuries had resolved and stated Satey had reached MMI six months after the work injury. Dr. Primm opined Satey required no restrictions, had returned to his pre-injury status, and required no further formal medical treatment for his soft tissue injuries. Dr. Primm further concluded Satey was capable of returning to the type of work performed at the time of the accident and had no permanent impairment pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition ("AMA Guides").

In a supplemental January 30, 2012 report, Dr. Morris indicated he had reviewed Dr. Primm's evaluation. Dr. Morris noted there was some improvement in neck motion, but Satey continued to have persistent symptoms and impairment. Dr. Morris assessed a combined 16% impairment for the cervical and lumbar conditions pursuant to the AMA Guides.

Tree Tech also presented the testimony of John Allen and Bryan Hester, both private investigators. Allen performed surveillance of Satey on October 1, 2012 and October 3, 2012. Hester surveilled Satey on October 4, 2012. Their surveillance videos depict Satey performing various strenuous activities, including riding a bicycle, kneeling, lifting tree limbs, bending at the waist, pushing a hand dolly, and using a chainsaw. These videos contradicted Satey's testimony as to his physical condition in 2012.

In the opinion rendered March 27, 2013, the ALJ ultimately concluded Satey had not sustained an injury as defined by KRS 342.0011(1). In reaching this conclusion, the ALJ first acknowledged the "undisputed" fact that Satey was involved in a work-related motor vehicle accident. The ALJ then found as follows:

13. Dr. Morris made a specific finding that the Plaintiff suffered a harmful change to the human organism as a result of the work injury while Dr. Primm found that the Plaintiff suffered a soft tissue injury that had completely resolved requiring no restrictions or additional treatment.

14. The video surveillance conducted by the insurance carrier depicts the Plaintiff performing a variety of activities without apparent pain or distress. This depiction appears to be consistent with the findings of Dr. Primm.

15. The ALJ therefore finds that the Plaintiff did not suffer an injury as defined by the Act.

16. All other issues are rendered moot by the foregoing.

Satey filed a petition for reconsideration seeking additional findings regarding past and future medical benefits and temporary total disability ("TTD") benefits. The petition was summarily denied by the ALJ on April 29, 2013. Satey appealed, arguing the medical evidence establishes he sustained severe injuries as a result of the accident and his claim is compensable notwithstanding Tree Tech's payment of \$1,200.00.

In workers' compensation cases, the claimant bears the burden of proof and risk of non-persuasion regarding every element of his or her claim. Durham v. Peabody Coal Co., 272 S.W.3d 192 (Ky. 2008). In order to sustain that burden, a claimant must put forth substantial evidence in support of each element, sufficient to convince reasonable people. Id. When the party with the burden of proof before the ALJ was unsuccessful, the sole issue on appeal is whether the evidence compels a different conclusion. 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). As long as any evidence of substance supports the ALJ's opinion, it cannot be said the evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The uncontradicted evidence in this case compels a finding Satey suffered an injury. "Injury" is defined as follows:

[A]ny work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. KRS 342.0011(1).

The above definition does not require a *permanent* injury. Temporarily disabling conditions, as defined in KRS 342.0011(11)(a), are still injuries pursuant to KRS 342.0011(1).

The medical opinions in this case came solely from Drs. Primm and Morris. Both doctors agreed Satey had suffered an injury as a result of the accident. Their opinions differed as to the extent and severity of those injuries. In fact, Dr. Primm clearly indicated Satey sustained temporary injuries which had resolved six months following the accident.

The ALJ's reliance on the surveillance videos is misplaced. The videos, taken over a year after the accident, certainly corroborate Dr. Primm's conclusion Satey suffered no *permanent* injury. However, the videos are wholly irrelevant to the issue of whether Satey suffered an injury on September 16, 2011.

Here, no TTD benefits were paid, although Tree Tech paid \$1,200.00 for lost wages, and some medical expenses were paid. Because the ALJ found no injury as defined by the Act, he made no findings regarding whether Satey sustained a temporary injury and the appropriate period of temporary benefits, if any, to which he was entitled. To be sure, it is possible for an injured worker to establish a temporary injury for which only TTD benefits and temporary medical benefits may be awarded, but not meet his other burden of proving a permanent harmful change to the human organism for which permanent benefits are authorized. Robertson v. United Parcel Service, 64 S.W.3d 284, 286 (Ky. 2001). Further, pursuant to FEI Installation inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the ALJ may award future medical benefits despite the lack of a permanent impairment rating after providing sufficient reasons for the award.

Because the uncontested medical evidence established Satey suffered at least a temporary injury as a result of the accident, we must vacate the March 27, 2013 Opinion and Order and the April 29, 2013 order as they relate to the dismissal of Satey's claim in its entirety. The claim must be remanded for additional findings as to Satey's entitlement to any period of TTD benefits and medical benefits.

Accordingly, the March 27, 2013 Opinion and Order and the April 29, 2013 order on reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are **VACATED** and this matter is **REMANDED** for additional findings consistent with the views expressed herein.

ALL CONCUR.

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