Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 19, 2014

CLAIM NO. 201365682

JOSEPH WOOSLEY (PRO SE) PETITIONER

VS. **APPEAL FROM HON. J. GREGORY ALLEN, ADMINISTRATIVE LAW JUDGE**

AMAZON.COM,
HON. JO ALICE VAN NAGELL,
and HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
AND ORDER

* * * * * *

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

ALVEY, Chairman. Joseph Woosley ("Woosley"), *pro se*[1], seeks review of the Opinion and Order rendered May 16, 2014 by Hon. J. Gregory Allen, Administrative Law Judge ("ALJ")

[1] Woosley was represented by counsel throughout the litigation of his claim. He subsequently appealed to the Board *pro se.*

dismissing his cumulative trauma claim against Amazon.com, Inc. ("Amazon") after finding his employment did not cause an injury as defined by the Act. No petition for reconsideration was filed.

On appeal, Woosley essentially argues Dr. Timothy Kriss' opinion cannot constitute substantial evidence, and the remaining evidence of record compels a contrary result in his favor. We disagree and affirm.

Woosley filed a Form 101 on October 17, 2013 alleging cumulative trauma injuries to his "left shoulder, bilateral wrists, finger joints, bilateral elbows, both knees, back" with a manifestation date of June 20, 2013. In support of his claim, Woosley attached the June 20, 2013 office note of Jill DeLair, a physician's assistant at Redpoint Medical. Woosley reported bilateral wrist, shoulder and knee pain, low back pain, a popping sensation of the left shoulder and grip weakness beginning approximately two months prior. The note reflects Woosley worked two years as a warehouse associate which requires repetitive pulling, pushing, bending, squatting, gripping, lifting, and arm extension. Woosley was diagnosed with generalized joint pain, recommended over-the-counter anti-inflammatories, referred to his primary care physician, and returned to regular duty.

Woosley testified by deposition on December 19, 2013 and at the hearing held March 26, 2014. At the time of the hearing, Woosley was thirty-five years old. He is a high school graduate with one semester of college. Woosley's work history includes working as a grocery bagger, performing general maintenance on residential gas meters, assembly line work for printer toner cartridges, and as a machine operator. He worked for Hewlett Packard for approximately ten years performing office work and then customer service. From August 2011 to May 2012, Woosley worked for Integrity Staffing, an employment agency, where he was placed at Amazon as a printer operator. In May 2012, Amazon hired him as a full-time employee. He continued operating printers for approximately two years. In August or September 2013, he was moved to binding and finalizing, which he continues to do for Amazon.

Woosley testified he worked in the "Make on Demand" department as a printer operator. He primarily operated black and white laser printers. Each printer was the size of a small truck. The department contained two banks of printers, with six to seven printers on each side. He loaded the printers with paper, removed the book blocks from the printer, refilled the toner, and performed various maintenance tasks such as changing belts and clearing paper

jams. Woosley indicated he frequently operated twelve to thirteen printers at a time. Other times, he operated one bank of printers and performed “flow” duties, which entailed removing trash from the binders. He also operated a manual jack to move over twenty pallets, each holding at least fifteen hundred pounds of paper, per shift. Woosley described the job of printer operator as “fairly physically demanding,” particularly when he had to operate both banks of printers. Woosley testified the heaviest item he lifted was a part weighing forty to forty-five pounds, and he engaged in frequent pushing and pulling. Woosley also estimated on a hard day he did “about 70 to 80 squats with weight per 10 to 12 minutes for 10 to 12 hours a shift.”

Throughout the nine months he worked at Amazon through Integrity Staffing as a printer operator, Woosley experienced no problems or symptoms while working. Woosley began experiencing symptoms two to four months after he was hired by Amazon in May 2012, and still working as a printer operator. At the hearing, Woosley stated he began involuntarily dropping paper, and later “it was my knees, and my back began to bother me.” As he continued working, his condition worsened and he experienced new symptoms. He had low back and excruciating knee pain, numbness in his hand, and continued to drop things. Later, he experienced

spasms in his hands, pain in both wrists, and strain in his fingers. At his deposition, Woosley stated he experienced bilateral shoulder pain, a popping sensation in his left shoulder, and soreness in both elbows.

Woosley indicated by June 20, 2013, his low back, knees, fingers and shoulder symptoms were debilitating, making it difficult to perform his job. He testified he reported his problems to the manager, and was sent to AmCare, an on-site treatment facility. He was eventually referred to Redpoint Medical where ice therapy was recommended. He was neither prescribed medication nor restricted from work. Woosley also treated with Dr. Owen on several occasions. None of his treating physicians recommended surgical intervention. Woosley stated prior to working at Amazon, he did not experience any of the above referenced symptoms. At the hearing, Woosley indicated he currently receives no medical treatment and is not restricted from work. He takes over-the-counter Advil and pain medication prescribed by his doctor. Woosley missed a few days of work to attend doctors' appointments.

Woosley continues to work at Amazon, and "mostly will do finalize or binding, although lately I have been rotating back to printers a little bit toward the end of the shift . . ." He stated binding is a much easier job and he

only experiences numbness in his hands when picking up heavy books.

In support of his claim, Woosley filed the November 5, 2013 report of Dr. Jerry Morris, an osteopathic physician, who also testified by deposition on January 15, 2014. In his report, Dr. Morris noted he did not review any medical records. Dr. Morris noted Woosley had been suffering from repetitive stress condition from operating and maintaining a fifteen foot long printer, fourteen times an hour over ten hours shifts, four times a week for over two years. He also noted Woosley's job involved squatting and lifting sixty to eighty times an hour. Dr. Morris diagnosed 1) repetitive stress disorder, affecting both the left shoulder, upper extremities, elbows and wrists, both knees and lumbar spine, culminating in overt injury as of 06/20/12; 2) aggravation of lumbar spine by repetitive stress disorder and 3) probable osteochondritis dissecans of both knees, right greater than left. Dr. Morris opined Woosley's current symptoms are a direct result of his work-related injury culminating on June 20, 2013. Dr. Morris explained:

> The forces involved in the repetitive activity in the intense fashion and for the protracted length of time superimposed on early degenerative changes in his low back and affecting

> his upper and lower extremities were, altogether, of sufficient magnitude and duration to cause this harm to his human organism.

Dr. Morris opined Woosley had reached maximum medical improvement ("MMI"), but would need ongoing medical management to control his pain. Dr. Morris assessed a 24% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition, ("AMA Guides") and opined Woosley is unable to perform his previous job in a competitive work environment.

At his deposition, Dr. Morris testified he did not review any medical records in connection with the examination, and he confirmed Woosley provided all of the information contained in his report. Dr. Morris also explained his assessment of impairment found in his report. Dr. Morris restricted Woosley from repetitive bending, stooping, climbing, lifting, reaching, kneeling and crawling and opined he could not return to the position held prior to the accident.

Amazon filed the report of Dr. Kriss, a neurosurgeon, who examined Woosley on March 5, 2014. Dr. Kriss also testified by deposition on March 18, 2014. The report reflects Woosley stated he ran seven to fourteen

printers at a time which required him to perform squats every fifteen to twenty minutes in order to load paper, with each ream weighing five to twenty pounds. He complained of bilateral knee pain, low back pain, dropping items with both hands, a popping sensation in his left shoulder, bilateral symmetric wrist pain and bilateral symmetric elbow pain. Dr. Kriss reviewed medical records and performed an examination. Dr. Kriss diagnosed Woosley with mild osteo-arthritis throughout the joints of his body, including the hands, elbows, shoulders, low back and knees. Pursuant to the AMA Guides, Dr. Kriss assessed a 0% impairment rating.

Regarding causation, Dr. Kriss noted degenerative processes severe enough to cause permanent harmful change will at some point manifest as new symptoms. He stated symptom onset at work does not necessarily mean the cause is work-related. Dr. Kriss stated Woosley's symptomatology is far too widespread to assign to any specific work activity. Rather, it makes more medical sense to assign the symptoms to a diffuse systemic process such as osteoarthritis, an aging process present in all humans. Dr. Kriss also notes there are no published scientific studies or literature demonstrating Woosley's work activities cause or aggravate permanent medical harmful change, independent of natural processes, to the elbows, knees, wrists, shoulders, and

lumbar spine, much less pain in all these different body regions. The vast majority of spinal and bony joint condition patients do not develop symptoms as a consequence of trauma, discrete or cumulative. Rather, they develop spinal presentations spontaneously, atraumatically, and naturally as a consequence of degenerative conditions of aging, genetics, and developmental factors. In support of his conclusion Woosley's osteoarthritic condition is not work-related, Dr. Kriss noted he was only thirty-five, and he ran the printing presses for only one or two years.

Dr. Kriss opined Woosley's osteoarthritis is mild, undetectable on physical examination or x-rays, and should be treated only with non-steroidal anti-inflammatories. Dr. Kriss stated Woosley reached MMI on September 5, 2013. Dr. Kriss opined since there is no permanent work-related physical harmful change, Woosley can return to operating presses and there is no need to assign permanent restrictions.

At his deposition, Dr. Kriss confirmed he diagnosed Woosley with "arthritis, specifically osteoarthritis, inflammation of the joints, that is causing him some discomfort in ten or 11 different major joints in the body . . ." Dr. Kriss explained all of Woosley's joint symptoms are the result of osteoarthritis, a common

degenerative condition which is a function of age and genetics. He classified Woosley's osteoarthritis as mild since he did not present with the classic structural changes of the condition upon examination. Dr. Kriss states there is no evidence, either in the medical records or scientific literature, establishing Woosley's osteoarthritis was proximately caused by his occupation. He likewise opined there is no objective evidence establishing Woosley's work activity aroused a previously dormant asymptomatic degenerative condition.

Dr. Kriss stated as follows when asked what kind of objective medical evidence would be needed to attribute any of Woosley's osteoarthritic condition to his occupation:

> Well, the particular case in Mr. Woosley, he is so extreme in terms of his distribution of symptoms, the number of joints involved, the claim that they're debili- -- that the symptoms are debilitating - - in other words, permanently impairing - - as well as his youthful age and his gender, okay, all of these things say he is very low risk of osteoarthritis because of his age and gender. Instead, he's complaining of a lot of things.
>
> So if there were - - if there was an occupational component to this in Mr. Woosley after only one year - - his symptoms started after doing this job for one year. He worked the job for two years, but his complaints for which he's litigating started after only roughly one year. So if one year of

> occupational exposure could cause work-related permanent aggravation of arthritis in a 35-year-old, what does that portend for our ability to detect the same process in other humans.

Dr. Kriss explained he "steadily saw people just like Mr. Woosley who had run printing presses, only they had run them for ten, 20, 30 years." He stated there is no "evidence that these people with a much higher exposure than Mr. Woosley to this occupation have osteoarthritis that cannot be explained by age and . . . genetics." Therefore, Dr. Kriss concluded as follows:

> So because Mr. Woosley doesn't have any evidence in his own records that it's occupational - - there's no long track record of symptoms at work, there's no long - - it's just a couple of visits with Owen when he says, ah, I think it's probably related to your work. So we don't have it in his records. There's no - - there's a dearth of diagnostic studies, there's a dearth of records. We really can't prove it, based on Woosley's own records. The only way you can prove work-relatedness for Mr. Woosley is if you say, a-ha, he's got something that we've shown in other humans in large groups and big studies that's convincing. That's not the case. We don't have those studies.

Dr. Kriss critiqued the opinions of Dr. Morris regarding gait derangement and his assessment of impairment pursuant to the AMA Guides. Finally, Dr. Kriss concluded by stating Woosley has mild arthritis which does not show up on

examination or on x-rays, and which he controls with over-the-counter medication. Although Woosley has mild symptoms, they are not impairing and are caused by the aging process and genetics.

In the May 16, 2014 opinion, the ALJ determined Woosley's degenerative changes were neither aroused nor accelerated by his work at Amazon, ultimately relying upon Dr. Kriss' opinion. The ALJ specifically rejected the opinion of Dr. Morris noting he "seemingly ties all of the plaintiff's subjective complaints to working for approximately two years and only 2-4 months with the defendant." The ALJ found such a short period of alleged cumulative trauma was not of the same quality or duration contemplated to be found compensable under Haycraft v. Corhart Refractories, Co., 544 S.W.2d 222 (Ky. 1976) and its progeny. The ALJ also referred to Woosley's deposition testimony reflecting a total work history of sixteen years, a majority of which were light duty jobs. He then began working at Amazon through Integrity Staffing in August 2011 as a printer operator until he was hired full time by Amazon in May 2012 in the same job. The ALJ noted Woosley did not experience any symptoms for nearly a year while doing the same printing job with Integrity Staffing at Amazon. However, two or three months after he was hired on by

Amazon, Woosley began to notice pain in his knees. At the hearing, Woosley stated he experienced the onset of pain within three to four months after starting with Amazon. Relying upon case law, Dr. Kriss' opinion and testimony, and Woosley's testimony, the ALJ found the employment with Amazon did not result in a permanent, harmful change to the human organism and dismissed the claim for indemnity and medical benefits.

On appeal, Woosley essentially argues Dr. Kriss' opinion cannot constitute substantial evidence, and the remaining evidence on record compels a contrary result in his favor. Woosley argues Dr. Kriss, in discussing his experience with patients holding similar working positions, erroneously compared the job of a printing press operator to his position of printer operator. Woosley states his job as printer operator is much more physically demanding. He also points to the fact Dr. Kriss did not mention his flow duties which he performed while simultaneously running one bank of printers. Woosley insists Dr. Kriss' statements are misleading and fraudulent.

Woosley points to his lack of medical history prior to working for Amazon. He also argues Dr. Kriss was not provided with medical records from AmCare, the on-site treatment facility at Amazon, which demonstrate the

progression of and treatment for his symptoms. He states his deposition testimony demonstrates his symptoms occurred gradually, and he insisted on seeing a physician as his condition worsened. Woosley repeatedly explained the physically demanding aspects of his job as printer operator. He also outlined what he perceived to be incorrect findings by the ALJ.

Because Woosley is proceeding *pro se*, we will attempt to explain the fundamental legal principles controlling how this Board must decide an appeal. In the Kentucky's workers' compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as the "fact-finder." As fact-finder, the ALJ reviews the evidence submitted by the parties and decides which testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as judge, then applies the law to the facts as he determines them to be true. As a matter of law, the facts as decided by the ALJ cannot be disturbed on appeal by this Board so long as there is substantial evidence of record to support the ALJ's decision. *See* KRS 342.285(1); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Although we understand Woosley is frustrated regarding the dismissal of his claim, we also recognize the ALJ's job as fact-finder is difficult. As a rule, in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning those matters at issue. It is for this very reason in cases where the evidence is conflicting, the facts concerning an issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

Authority establishes Woosley, as the claimant in a workers' compensation case, bore the burden of proving each of the essential elements of his cause of action before the ALJ, including causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Woosley was unsuccessful in his burden of proving his case, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

"Compelling evidence" is defined as evidence 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 fact-finder, the ALJ has the sole authority to determine the weight, credibility and

substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may 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. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, supra.

Here, the record contains substantial evidence supporting the ALJ's dismissal of Woosley's claim. In making his determination, the ALJ relied upon both lay and medical testimony, in particular Dr. Kriss' report. In his opinion, the ALJ summarized the evidence presented, provided a detailed analysis explaining why he found Dr. Kriss' opinion more persuasive than Dr. Morris', and referenced portions of the medical and lay testimony upon which he

relied in finding Woosley's condition is not the result of cumulative trauma due to his work activities with Amazon. This constitutes substantial evidence supporting the ALJ's dismissal, and a contrary result is not compelled. We recognize the ALJ could have reached a different result by relying upon conflicting evidence urged by Woosley. However, this is not an adequate reason to reverse on appeal. It is not the Board's role to re-weigh the evidence. When the ALJ's findings are supported by substantial evidence, the Board may not disturb those findings. Because the ALJ properly considered all evidence of record, weighed that evidence, and reached a decision supported by substantial evidence and in conformity with the law, we affirm.

Finally, Woosley indicated he would be open to oral arguments if the Board would find them helpful. After having reviewed the record, it is determined an oral argument is unnecessary in arriving at a decision, and therefore the indirect request is **DENIED**.

Accordingly, the May 16, 2014 Opinion and Oder rendered by Hon. Gregory Allen, Administrative Law Judge, is hereby **AFFIRMED.**

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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