Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 25, 2014

CLAIM NO. 201300642

KENNETH TRUETT PETITIONER

VS. **APPEAL FROM HON. JEANIE OWEN MILLER, ADMINISTRATIVE LAW JUDGE**

WAL-MART DISTRIBUTION CENTER
and HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Kenneth Truett appeals from the December 11, 2013 Opinion and Order of Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ") dismissing his claim. The ALJ determined the cumulative trauma injuries to Truett's low back, left shoulder and left hip were not work-related.

On appeal, Truett claims the ALJ based her decision on an inaccurate standard. We affirm.

Truett worked for Wal-Mart Distribution Center ("WDC") beginning in 1996, first as an order-filler and later as a quality assurance agent. In 2008, he was transferred to a fork-lift operator position, and fulfilled various duties in this position.

He began experiencing symptoms in his low back and left hip in 2011, which gradually worsened. He eventually sought treatment with his family physician, Dr. Dennis Ulrich. He was later referred to Dr. Munawar Siddiqui for pain management, who administered injections and prescribed painkillers.

Dr. Siddiqui referred Truett to Dr. James Bean, a neurosurgeon who recommended a course of physical therapy and chiropractic care. Truett then began to treat with Dr. Chad Morgan, a chiropractor. He continues his treatment with Dr. Morgan on a bi-weekly basis.

Dr. Morgan referred Truett to Lake Cumberland Neurosurgery Clinic, where he was examined by Dr. Magdy El-Kalliny and Dr. Amr El-Naggar. Dr. El-Naggar recommended muscle relaxants and anti-inflammatory medications. Dr. Morgan also referred Truett to Dr. Arden Acob, a neurosurgeon, who did not recommend surgery. Finally, Dr.

Morgan referred Truett to Dr. Gay Richardson for pain management.

To establish his conditions are work-related, Truett relied on Dr. Morgan's report, in which he stated Truett's low back problems were caused "either wholly or in part by his job activities." Truett also submitted the independent medical evaluation ("IME") report of Dr. Arthur Hughes, who opined his work activities led to the development of lower back pain, left hip pain and left shoulder pain through repetitive trauma. Dr. Hughes assessed a whole-person impairment rating of 18% pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

WDC submitted the IME reports of Dr. John Vaughn and Dr. Daniel Primm. Both physicians diagnosed mild to moderate degenerative changes, and neither believed the condition was due to any work-related trauma. Dr. Vaughn found a mild range of motion restriction, and assessed a 5% whole person impairment based on the AMA Guides. Dr. Primm found no permanent impairment.

The ALJ ultimately determined Truett had not sustained his burden of proof "regarding the causal relationship between the cumulative trauma averred and his

back condition." She specifically noted that none of Truett's treating physicians referenced his work activities in their records: "I find the absence of on-going treatment records discussing his work activities and their relationship to his back condition significant." Further, the ALJ explained she was not persuaded by the opinions of Drs. Morgan and Hughes, primarily because they were "hind-sight diagnosis" offered as "blanket statements" with little explanation or elaboration. The claim was therefore dismissed, and Truett did not file a petition for reconsideration.

As the claimant in a workers' compensation proceeding, Truett bore 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 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). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable

under the evidence they must be reversed as a matter of law. Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

The ALJ's conclusions are reasonable in light of the evidence presented, and the parties' conflicting proof did not compel a singular result. As the sole fact-finder, it is within the ALJ's discretion to believe or disbelieve the evidence presented. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). In this case, she was not convinced by the medical opinions of Drs. Morgan and Hughes, and articulated a credible explanation for her rejection of this proof. It is simply not true, as Truett alleges, the ALJ based her decision solely on the fact none of his treating physicians related his symptoms to his work activities. When read in context, it is clear the ALJ merely considered this fact as a component of her overall analysis. Her ultimate conclusion was neither arbitrary nor capricious.

For the foregoing reasons, the December 11, 2013 Opinion and Order of Hon. Jeanie Owen Miller is hereby **AFFIRMED**.

ALL CONCUR.

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