Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 11, 2013

CLAIM NO. 201073316

KY STATE REFORMATORY PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

CHARLES LYDIAN, III
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * * *

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

RECHTER, Member. Kentucky State Reformatory ("KSR") appeals from the April 30, 2013 Opinion and Order rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), and from the May 22, 2013 Opinion and Order on Reconsideration. The ALJ found Charles Lydian ("Lydian") permanently totally disabled and referred him to the Department of Vocational

Rehabilitation for a vocational evaluation. KSR argues the ALJ erred in failing to identify the specific injuries Lydian sustained, in finding permanent total disability against the substantial evidence of record, and in awarding vocational rehabilitation. For the reasons set forth herein, we vacate and remand.

Lydian, born April 19, 1975, has a high school education and completed two semesters of college, but received no degree and holds no licenses or certificates. His employment history includes work in various restaurants, as a construction laborer, and as a custodian. At the time of his work-related injury, he was employed as a correctional officer with KSR.

On October 17, 2010, Lydian was involved in an altercation while transferring a prisoner. An inmate fell, landing on Lydian's arm. He noticed his arm was swollen approximately ten minutes after the incident. He was unable to finish his shift and sought treatment at the Baptist Northeast Hospital emergency room. Lydian received conservative treatment for his wrist and elbow for six weeks and was referred for physical therapy.

Lydian testified he began to have pain in his right shoulder during therapy. He continues to have pain in his elbow radiating to his forearm and wrist. His

shoulder pops and cracks, and he sometimes experiences a burning sensation. He indicated the condition of his arm, by itself, prevents him from performing his duties at KSR.

Lydian began treatment with Dr. Amit Gupta on January 3, 2011. Dr. Gupta obtained an EMG/nerve conduction test which revealed right ulnar neuropathy of the right elbow consistent with cubital tunnel syndrome. He performed a cubital tunnel release on March 15, 2011 and, a month later, released Lydian for one-handed duty.

Beginning in October 2011, Lydian had increased symptoms in his right arm. Dr. Gupta ordered x-rays of the right elbow which revealed heterotopic ossification, digital nerve arthritis in the elbow and trauma to the tip of the olecranon. A CT scan showed hypertrophic bone and arthritis in the elbow, osteophytes and a tight capsule limiting his range of motion. Dr. Gupta performed a second surgery, on the elbow, on December 13, 2011.

Following the second surgery, Dr. Gupta placed Lydian at maximum medical improvement on March 29, 2012, and assigned a 2% impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). He also released Lydian to regular duty and instructed him to return as needed.

Dr. Jared Madden performed an independent medical examination on March 2, 2013 at Lydian's request. Based upon his examination and review of records, Dr. Madden diagnosed extensor carpi ulnaris instability with triangular fibrocartilage complex tear, chronic right arm pain due to trauma, and right ulnar neuropathy. Significantly, he found somatic dysfunction of the right upper extremity with compensatory changes in the cervical and thoracic spine. Dr. Madden opined, if Lydian's right shoulder was not directly injured during the fall, the current condition is most likely the result of secondary pathological changes due to the wrist and forearm problems. Within reasonable medical probability, he determined Lydian's injuries caused his complaints. Based upon significant loss of range of motion of the elbow and wrist secondary to the work injury, Dr. Madden assigned a 10% impairment rating pursuant to the AMA Guides. He further opined Lydian did not have an active impairment prior to the work injury. He also felt Lydian would be a good candidate for vocational rehabilitation, but stated it would be very difficult to find a position that would accommodate his restrictions.

Two vocational evaluations were conducted prior to the final hearing. William W. Ellis evaluated Lydian on

April 18, 2013 and concluded he was incapable of returning to his past work. If Lydian only has use of one hand, Ellis anticipated he would be limited to sedentary employment.

KSR submitted the April 22, 2013 vocational report of Ralph M. Crystal. Based upon his review of records, Mr. Crystal opined Lydian could perform a wide range of non-repetitive sedentary to medium work activities. Mr. Crystal indicated, based upon the assessment of Dr. Gupta, Lydian could perform his past work and did not have a loss of employability or earnings capacity.

The benefit review conference order listed benefits per KRS 342.730, vocational rehabilitation and proper assessment of impairment rating as contested issues. At the hearing, the parties agreed to add injury as defined by the Act with respect to the shoulder as a contested issue.

However, in the April 30, 2013 Opinion and Order, the ALJ did not address the injuries separately, instead making the general finding:

> I saw and heard the plaintiff Lydian testify at the Final Hearing. He was a credible and convincing witness. Based upon the totality of the evidence, including the plaintiff's sworn

> testimony, and the medical records and reports from Dr. Gupta and Dr. Madden, I make the factual determination that as a result of his work accident on October 17, 2010 Mr. Lydian sustained permanent injuries.

The ALJ determined Dr. Madden's permanent impairment rating was "persuasive and compelling." The ALJ then found as follows regarding the extent of disability:

> In the present case, I considered the severity of the plaintiff's work injuries, his age, his work history, his education, the sworn testimony of the plaintiff and Dr. Madden's current and specific opinions regarding Mr. Lydian's permanent impairment and occupational disability. Based on all of those factors, I make the factual determination that the plaintiff cannot find work consistently under regular work circumstances and work dependably. I, therefore, make the factual determination that the plaintiff is permanently and totally disabled.

After noting Dr. Madden had observed Lydian would be a good candidate for vocational rehabilitation, the ALJ stated he was persuaded Lydian should be afforded that opportunity and referred him to the Department of Vocational Rehabilitation for a vocational evaluation.

KSR filed a petition for reconsideration making the same arguments it now asserts on appeal. By order dated May 22, 2013, the ALJ denied the petition for reconsideration, indicating the Opinion and Order had

discussed all contested issues raised by the parties in the Benefit Review Conference Order.

On appeal, KSR advances three arguments. It first argues the ALJ erred in failing to make specific findings regarding which physical injuries were sustained in the work incident. According to KSR, the general finding Lydian "sustained permanent injuries" is inadequate. It notes Lydian's application did not list the right shoulder, cervical spine or thoracic spine as injuries. Further, KSR emphasizes that shoulder complaints were never voiced to Dr. Gupta. As such, KSR contends the issue of whether these conditions are work-related, or even injuries as defined by the Act, is not preserved. KSR requests this matter be remanded for a finding that "permanent injuries" referenced in the opinion is limited to the elbow and wrist.

Indeed, parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision and to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982). We are cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in

reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusions were drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Cmty. Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). We also find the holding of the Kentucky Supreme Court in New Directions Hous. Auth. v. Walker, 149 S.W.3d 354 (Ky. 2004), to be instructive. There the Court remanded the claim to the ALJ "for further consideration, for an exercise of discretion, and for an explanation that will permit a meaningful review." Id. at 358.

We agree the ALJ's finding Lydian sustained "permanent injuries" is insufficient to apprise the parties of the specific conditions the ALJ determined constituted compensable injuries due to the work accident. KSR acknowledges the wrist and elbow injuries, but argues those two areas were the sole compensable conditions. It is unclear whether the ALJ's reference to "permanent injuries" included the shoulder condition or the cervical and thoracic spine diagnosis contained in Dr. Madden's report. In light of the various diagnosis presented in this case, a general reference to "permanent injuries" does not adequately identify the ALJ's findings.

KSR next argues the evidence does not support a finding Lydian is permanently and totally disabled. Because the Opinion and Order is unclear as to what work-related injuries Lydian sustained, as detailed above, we cannot adequately address this argument. Stated otherwise, until the ALJ specifically finds which diagnoses comprise Lydian's work injury, we are unable to determine whether the finding of a permanent total disability was based only upon work-related conditions. For that reason, we must vacate the award of permanent total disability benefits pending determination of the specific injuries sustained in the work incident.

Lastly, KSR argues the ALJ erred in awarding vocational rehabilitation, particularly in light of the fact Dr. Gupta released Lydian without restrictions. Additionally, KSR asserts the ALJ failed to make the necessary finding that Lydian is unable to perform work for which he has previous training or experience. Should the Board affirm the ALJ's finding that Lydian "cannot find work under regular work circumstances and work dependably", KSR reasons any award of vocational rehabilitation would be in contradiction to the ALJ's finding.

KRS 342.710 states as follows:

> (1) One of the primary purposes of this chapter shall be restoration of the injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment. . .
>
> (3) . . . When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment.

In Haddock vs. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001), the Court noted, restoring a worker to "suitable employment" means "attempting to achieve a reasonable relationship between the worker's pre and post-injury earning capacity."

In his opinion, award, and order, the ALJ stated as follows:

> Plaintiff shall be referred to the Department of Vocational Rehabilitation for a vocational evaluation in accordance with the provisions of the aforementioned statute. The vocational rehabilitation shall be at the expense of the defendant and a determination as to the propriety of recommended training for the plaintiff shall be in accordance with the provisions of KRS 342.710.

If on remand the ALJ continues to find Lydian permanently totally disabled or permanently partially

disabled, he may again order a vocational evaluation. Implicit in the finding of a permanent total disability is the conclusion Lydian cannot perform work for which he has previous training or experience. However, as noted by KSR, Lydian has shown the ability to complete college level instruction. Thus, while Lydian's current level of education or training may not be sufficient to enable him to successfully compete for employment, it is possible additional education or training might enable him to secure suitable employment in the future. This is precisely the purpose of the vocational evaluation.

Moreover, no final decision has been made regarding entitlement to rehabilitation benefits. KSR will have an opportunity to respond to the evaluation prior to the ultimate determination of whether an award of vocational rehabilitation benefits is appropriate. If on remand the ALJ is not convinced Lydian is permanently totally disabled, the ALJ must make specific findings before ordering a vocational evaluation regarding whether, as a result of the work injury, Lydian is unable to perform work for which he has previous training or experience.

Accordingly, the April 30, 2013 Opinion and Order rendered by Hon. William J. Rudloff, Administrative Law

Judge, and the May 22, 2013 Opinion and Order on Reconsideration are **VACATED** and **REMANDED**.

ALL CONCUR.

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