

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: August 12, 2016

CLAIM NO. 201501721

LEXINGTON FAYETTE URBAN  
COUNTY GOVERNMENT

PETITIONER

VS.

APPEAL FROM HON. JOHN B. COLEMAN,  
ADMINISTRATIVE LAW JUDGE

DONNIE JENT and  
HON. JOHN B. COLEMAN,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Lexington Fayette Urban County Government ("LFUCG") seeks review of the Opinion and Award rendered May 5, 2016 by Hon. John B. Coleman, Administrative Law Judge ("ALJ") awarding Donnie Jent ("Jent") temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits for a work-related

low back injury on November 1, 2013, when he stepped from a truck he used in performing recycling activities. LFUCG also appeals from the May 27, 2016 order denying its petition for reconsideration.

On appeal, LFUCG argues the award of TTD and PPD benefits is not supported by substantial evidence. Because the ALJ's decision is supported by substantial evidence, we affirm.

Jent filed a Form 101 on October 28, 2015, alleging he injured his low back when he stepped out of a truck and experienced a pop in his left knee on November 1, 2015. The claim was subsequently amended to assert the injury actually occurred on November 1, 2013. Jent's work history indicates he has worked as a waste management route driver, concrete mixer driver, and as a lumber and building materials delivery driver.

Jent testified by deposition on January 26, 2016, and the hearing held on March 30, 2016. He is employed as a recycling truck driver for LFUCG. Jent is a resident of Winchester, Kentucky, and is a high school graduate with no specialized or vocational training.

On November 1, 2013, Jent stopped at a residence to pick up cardboard to put into the back of the recycling truck. As he stepped down, he experienced a pop and pain

in his left knee. He first treated with Dr. D'Angelo (no first name provided), at Bluegrass Orthopedics in Lexington, Kentucky. After Jent advised he also had pain in the low back going into his left leg, Dr. D'Angelo ordered an MRI. Jent was eventually referred for treatment to Dr. Harry Lockstadt, who also works for Bluegrass Orthopedics.

Jent continued to work for LFUCG, with assistance, until August 2015. He experienced an additional work event on August 14, 2015. On that morning he was advised he would no longer have an assistant for his route. He worked for approximately four hours, and stopped at a resident's house to dispose of four large cardboard boxes. He placed these into the back of the truck. When he got back into the driver's seat, he experienced pain from his back through the left leg which ran into his left big toe. He treated with Dr. Lockstadt and was taken off work. Dr. Lockstadt administered epidural injections and restricted Jent from work from August 15, 2015 through February 28, 2016. Dr. Lockstadt recommended low back surgery which Jent declined. He allowed Jent to return to full duty work on February 29, 2016, despite continued complaints of low back and left leg pain.

When Jent returned to work on February 29, 2016, he was provided an assistant. He stated the job is much easier to perform with a helper. His current problem consists of pain in the left hip to a few inches above the left knee. He takes only over-the-counter Aleve.

In support of his claim, Jent filed the Form 107-I report of Dr. James Owen who performed an examination on January 15, 2015. Dr. Owen incorrectly stated Jent had sustained a low back injury on November 1, 2014 when he felt something pop in his left leg and knee area. Dr. Owen diagnosed persistent L5-S1 non-verifiable radicular symptoms with a positive MRI caused by the work injury. He assessed a 10% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition ("AMA Guides"), despite determining Jent had not reached maximum medical improvement ("MMI"). He additionally stated Jent retains the capacity to return to the job performed on the date of injury. Finally, he restricted Jent from lifting, handling, or carrying greater than twenty pounds. He also stated Jent should avoid recurrent bending, squatting or stooping.

Dr. Owen testified by deposition on March 21, 2016. He saw Jent on only one occasion, the January 2015 examination. He stated he had assessed a category III

rather than II impairment because he did not believe the refusal of additional injections by the workers' compensation insurer was appropriate. He did not believe Jent had reached MMI at the time of his evaluation because of Dr. Lockstadt's recommended treatment. He stated Jent was working at the time of his examination. He was unaware of Jent's August 2015 incident.

Jent also filed Dr. Lockstadt's February 15, 2016 treatment record. Dr. Lockstadt noted Jent complained of SI joint pain, left buttock pain, and low back pain. He stated Jent was slowly recovering from an L5-S1 disk injury. Dr. Lockstadt stated Jent could return to regular duty work on December 29, 2016. The parties agreed this was a typographical error, and should have reflected February 29, 2016.

LFUCG filed the October 16, 2015 and November 10, 2015 reports of Dr. Henry Tutt. Dr. Tutt examined Jent at LFUCG's request on October 16, 2015. He noted Jent complained of left leg pain and tingling in both legs, left greater than right. He stated on August 13, 2015, Jent got out of his truck to pick up cardboard boxes, and loaded them for recycling. He experienced immediate low back pain shooting into his left leg which worsened throughout the day. Dr. Tutt noted Jent initially complained of left knee

pain, not low back and left leg pain. He stated he could not determine a diagnosis, but noted Jent's complaints were non-dermatomal. He stated the musculoskeletal and neurological examinations were normal.

On November 10, 2015, Dr. Tutt noted he had reviewed testing, and determined Jent had a transient lumbar myofascial injury with persisting complaints which are inexplicable and non-correlative with the imaging studies. He stated Jent did not sustain an injury on August 13, 2015. The MRI performed on October 20, 2015 was identical to the one performed on February 11, 2014. He stated Jent would have reached MMI six to eight weeks after the August 2015 event. He stated Jent did not qualify for an impairment rating.

Dr. Rick Lyon examined Jent at LFUCG's request on January 28, 2016. He diagnosed lumbar spine pain and a disk bulge at L5-S1. He stated there were no objective findings of radiculopathy, but Jent complained of radicular symptoms occurring up to three times per day. He stated Jent had reached MMI from the August 14, 2015 incident. He assessed a 5% impairment rating pursuant to the AMA Guides for the November 1, 2013 injury, with no additional impairment for the August 2015 incident. Dr. Lyon

recommended Jent return to medium duty work, and he should avoid repetitive bending, stooping or squatting.

A benefit review conference ("BRC") was held on March 9, 2016. The BRC order and memorandum reflects the issues to be decided included benefits per KRS 342.730 and TTD benefits. At the hearing the parties also agreed overpayment of TTD benefits was preserved as an issue.

The ALJ rendered a decision on May 5, 2016, finding Jent sustained a work injury on November 1, 2013. He awarded TTD benefits from August 14, 2015 through February 28, 2016 at the rate of \$431.48 per week. PPD benefits were awarded based upon the 5% impairment rating assessed by Dr. Lyon, which equated to a 3.25% disability after application of the statutory factors pursuant to KRS 342.730. The ALJ granted LFUCG credit for benefits paid, and awarded medical benefits pursuant to KRS 342.730.

LFUCG subsequently filed a petition for reconsideration arguing the ALJ should have dismissed the claim. It also argued February 29, 2016 could not be relied upon as the date Jent reached MMI. The ALJ denied the petition for reconsideration in an order issued May 27, 2016, explaining why he relied upon the 5% impairment rating assessed by Dr. Lyon, and why he determined February 29, 2016 was the appropriate MMI date.

On appeal, LFUCG argues the ALJ's award of TTD and PPD benefits is not supported by the evidence.

As the claimant in a workers' compensation proceeding, Jent had the burden of proving each of the essential elements of his cause of action. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Jent was successful in his burden, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

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 discretion to determine 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). Although a party may note evidence supporting a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The function of the Board in reviewing an ALJ's decision is limited to determining whether the findings made are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

Here, the ALJ provided a sufficient explanation for his reliance upon the impairment rating assessed by Dr. Lyon in finding Jent's injury resulted in a 5% impairment rating which he deemed appropriate. It is noted Dr. Lyon's

opinion was filed as evidence by LFUCG and clearly supports the ALJ's determination. The ALJ's reliance upon this impairment rating falls squarely within his discretion, and constitutes substantial evidence supporting his award of PPD benefits, and therefore, that determination will not be disturbed.

Regarding the award of TTD benefits, again we find no error. Since Dr. Lockstadt did not allow Jent to return to work until February 29, 2016, it was not unreasonable for the ALJ to conclude he did not reach MMI until that date. There is no question Jent was entitled to a period of TTD after the August 2015 incident. Dr. Tutt established Jent reached MMI six to eight weeks after the August 2015 incident. Dr. Lyon noted Jent had reached MMI by the time of his examination in January 2016. LFUCG even argues a period of TTD through November 16, 2015 was appropriate. The question is not if Jent is entitled to such award, but the duration of the benefit period. Again, it was reasonable for the ALJ to rely upon Dr. Lockstadt's opinion in determining February 29, 2016 as the date Jent reached MMI, and the end date for the payment of TTD benefits. Again, because the ALJ's determination regarding the appropriate period of TTD benefits is supported by the record, his decision will not be disturbed.

Accordingly, the opinion and award rendered May 5, 2016, and the May 27, 2016 order on reconsideration by Hon. John B. Coleman, Administrative Law Judge, are **AFFIRMED.**

ALL CONCUR.

**COUNSEL FOR PETITIONER:**

HON STEVEN D GOODRUM  
HON IAN M GODFREY  
771 CORPORATE DR, STE 101  
LEXINGTON, KY 40503

**COUNSEL FOR RESPONDENT:**

HON TANNER H SHULTZ  
333 WEST VINE ST, STE 1200  
LEXINGTON, KY 40507

**ADMINISTRATIVE LAW JUDGE:**

HON JOHN B COLEMAN  
PREVENTION PARK  
657 CHAMBERLIN AVENUE  
FRANKFORT, KY 40601