Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 18, 2015

CLAIM NO. 201260793

MARK ANTHONY MYERS PETITIONER

VS. **APPEAL FROM HON. OTTO DANIEL WOLFF, IV**
ADMINISTRATIVE LAW JUDGE

COX INTERIOR, INC.
and HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

RECHTER, Member. Mark Anthony Myers ("Myers") appeals from the April 24, 2015 Opinion and Order and the June 1, 2015 Order on Reconsideration rendered by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ"). The ALJ dismissed Myers' claim for benefits, determining there was insufficient proof his left shoulder and neck injuries are causally related to his work activities. Myers now

appeals, arguing this conclusion is against the weight of the evidence. For the reasons set forth herein, we affirm.

Myers began working for Cox Interior, Inc. as a machine operator in 2004. After a period of time working in the IT department, Myers moved to the special mill as a door sander. The position involved lifting doors which weighed between fifty and seventy pounds. It also required constant use of his hands.

Myers testified that on November 17, 2012, he spent the entire day wrapping doors in bubble wrap and sending them through a bander. He experienced intermittent pain shooting from his left shoulder throughout the day. Once home, the pain worsened and he called Ann Moss, the safety director at Cox Interiors. Per her instructions, Myers visited Urgent Care that evening and was diagnosed with a pulled muscle.

Myers remained off work the following week, but his pain continued. Ann Moss then directed Myers to visit Dr. Jerome Dixon, the company doctor. Dr. Dixon ordered a cervical MRI, then referred him to Dr. John Guarnaschelli. Dr. Guarnaschelli diagnosed left cervical radiculopathy with objective findings of a left C6 impingement, including atrophy weakness of biceps [and] reflex changes. He performed fusion surgery on March 4, 2013. Myers returned

to light duty work in April 2013 until July 7, 2014. At that point, his left shoulder "hurt so bad [he couldn't] do anything with it." Myers returned to Dr. Gaurnaschelli, who ordered physical therapy and epidural blocks. He was terminated from his employment in October 10, 2014 for reasons not explained at the hearing.

Causation was strongly contested at the hearing, and is the sole subject of this appeal. Therefore, our review of the medical evidence will be limited to this issue. Dr. Guarnaschelli's office notes indicate Myers provided a history of the onset of pain at work on November 14, 2012, as opposed to November 17, 2012. Dr. Guarnaschelli provided no specific medical opinion as to the causation of Myers' condition.

Dr. James Farrage conducted an independent medical evaluation ("IME") at Myers' request on November 11, 2014. Dr. Farrage diagnosed a post-anterior cervicial discectomy and fusion at the C4-5 level due to acute herniated nucleus pulposus with residual neck and left shoulder pain. Referencing the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. Farrage assigned a 26% impairment rating which he attributed solely to Myers' work activities.

At Cox Interiors' request, Myers was evaluated by Dr. Gregory Gleis on December 23, 2014. Dr. Gleis conducted a physical exam and reviewed Myers' medical records dating back to December, 2010. He assigned a 16% impairment rating for Myers' cervical spine condition, but attributed the condition to the natural aging process, not a work injury. On February 16, 2015, Dr. Gleis answered a supplemental question regarding Myers' left shoulder condition. Dr. Gleis declined to assign an impairment rating for the left shoulder, explaining it displayed normal range of motion and any left shoulder symptoms are referred from the cervical spine.

Cox Interiors submitted a physician review report by Dr. Bart Olash. Dr. Olash was asked to provide a medical opinion concerning Myers' left shoulder symptoms in July, 2014. Dr. Olash concluded, "there is nothing about the work injury or treatment of the work injury, which would result in a recurrence of shoulder pain almost two years after the work injury."

Cox Interiors also submitted records from Dr. Stephen Shaw, a chiropractor. Dr. Shaw treated Myers on February 3, 2012, March 23, 2012 and November 14, 2012. Myers complained of neck pain and ringing in his ears and, later, of right shoulder pain. At the November 14, 2012

visit, Myers complained of pain in his neck and both shoulders.

The ALJ ultimately concluded Myers failed to establish his left shoulder and neck conditions are causally related to his work activities. He first noted he did not find Myers to be a credible witness, and cited Myers' testimony with respect to his November 14, 2012 office visit with Dr. Shaw. As explained in the ALJ's summary of the evidence, Myers denied having chiropractic treatment in November 2012 and could not recall whether he visited Dr. Shaw for neck and shoulder pain. For this reason, the ALJ rejected Myers' testimony regarding a traumatic work event on November 17, 2012.

The ALJ also relied upon Dr. Gleis, who opined Myers' condition is due to the natural aging process, as opposed to his work activities. The ALJ also explained he was unconvinced by Dr. Farrage's report because Dr. Farrage did not indicate he reviewed Dr. Shaw's records. Finally, the ALJ noted Dr. Guaranschelli did not provide an opinion as to medical causation.

Myers filed a petition for reconsideration, which was summarily denied. On appeal, Myers argues the ALJ's decision goes against the overwhelming weight of the evidence. As the claimant in a workers' compensation

proceeding, Myers 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 medical proof in this claim regarding the issue of causation was conflicting. Dr. Gleis opined Myers' condition is age-related; Dr. Farrage disagreed. As fact-finder, the ALJ has discretion to determine which evidence is most credible. Although a party may note evidence supporting a different outcome than reached by an ALJ, such is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Dr. Gleis' opinion constitutes the requisite substantial evidence to support the ALJ's decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

We also disagree with Myers that the ALJ misconstrued the evidence. While Dr. Guarnaschelli noted Myers' stated history of a work incident and noted his

cooperation in getting workers' compensation approval, the ALJ is correct, he offered no express medical opinion as to the causation of Myers' cervical or shoulder condition. Also, contrary to Myers' assertion on appeal, the ALJ provided a specific reason why he did not find Myers' testimony credible. The ALJ pointed to Myers' testimony that he could not recall his visit to Dr. Shaw, which occurred three days before the alleged work injury.

Finally, Myers asserts the ALJ incorrectly stated Dr. Farrage "did not indicate he had available for review Dr. Shaw's records." Dr. Farrage's report states "Myers did have some intermittent cervical symptoms for which he sought chiropractic care prior to his work injury…" We do not find the ALJ's statement wholly inaccurate; Dr. Farrage did not indicate he reviewed Dr. Shaw's medical records, though Dr. Farrage was generally aware of the chiropractic treatment. Any inaccuracy or imprecision in the ALJ's statement is minor, and certainly harmless. The ALJ's opinion, when read as a whole, reveals his reliance on Dr. Gleis' medical report and the fact he found Myers' testimony non-credible.

While Myers had identified evidence which would support a different outcome, such would require this Board to impermissibly reweigh the evidence. Whittaker v.

Rowland, 998 S.W.2d 479, 481 (Ky. 1999). Therefore, the April 24, 2015 Opinion and Order and the June 1, 2015 Order on Reconsideration rendered by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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