

OPINION ENTERED: November 21, 2012

CLAIM NO. 201100680 & 201091274

MARTIN COUNTY COAL CORP.

PETITIONER

VS.

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

LARRY MUNCIE
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

STIVERS, Member. Martin County Coal Corp. ("Martin County") appeals from the May 25, 2012, opinion, award, and order, and the June 24, 2012, order denying its petition for reconsideration of Hon. John B. Coleman, Administrative Law Judge ("ALJ").

The Form 101 alleges on August 4, 2009, Larry Muncie ("Muncie") was injured in the following manner:

"While climbing down from the top of a crusher, the ladder fell over, plaintiff fell four to six feet, hitting the wall with his left shoulder and landing on a steel floor." Muncie alleged injuries to his back, neck, left shoulder, and an emotional component. As the appeal exclusively concerns Muncie's psychological injury, this opinion will only discuss the issues relevant to that injury.

The February 9, 2012, benefit review conference ("BRC") order lists the following contested issues:

benefits per KRS 342.730 [handwritten "7305"], work-relatedness/causation [handwritten "all factors"], unpaid or contested medical expenses [handwritten "(HL)"], injury as defined by the ACT, credit for [handwritten "salary continuation"], exclusion for pre-existing disability/impairment, and TTD.

Regarding Muncie's alleged psychological injury, in the May 25, 2012, opinion, award, and order, the ALJ made the following findings:

7. Dr. Eric Johnson performed a psychological evaluation on the plaintiff on December 22, 2010. He felt the plaintiff suffered from major depressive disorder related to the effects of his injury noting it was due to limited activities and pain. His prognosis of the plaintiff was fair with proper treatment which would include counseling and medication. He assessed an impairment of 17%, but felt it could be reduced with proper treatment. He opined that the

plaintiff did not have a prior active psychological impairment prior to the event of August 4, 2009. He further noted that if the major depression was not relieved, it would affect the plaintiff's ability to work on a consistent basis.

...

11. Dr. Douglas Ruth conducted a psychiatric evaluation of the plaintiff on July 20, 2011 and his report was filed as evidence. Dr. Ruth diagnosed the plaintiff with major depression, single episode due to pain and physical functional limitations. He noted the psychiatric condition was more likely than not the result of pain and subsequent physical functional limitations including loss of employment. He also felt the plaintiff's symptoms could improve with proper treatment. He declined to assess an impairment noting the plaintiff was not yet at maximum medical improvement. Dr. Ruth completed a supplemental report on August 29, 2011 after reviewing additional medical records. He declined to offer an opinion on causation noting that it was beyond the scope of his evaluation to determine the source of the plaintiff's pain. However, he acknowledged, based upon the report of Dr. Tutt, the pain would not be related to any work incident.

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Dr. Lisa Tate also conducted an evaluation for the West Virginia Disability Determination Board and diagnosed the plaintiff with major depressive disorder.

The ALJ then made the following conclusions of law regarding the psychological injury:

3. The defendant argues the major depressive disorder for which the plaintiff has been diagnosed is not related to the effects of the work injury. In making this argument, the defendant points to the opinion of Dr. Ruth who indicated that if the plaintiff did not have [sic] impairment or injury attributable to the August 4, 2009 event, then his mental health symptoms must be related to the prior active conditions. Again, this overlooks the fact that the plaintiff was working regularly without mental health symptoms prior to his work injury of August 4, 2009 as well as the subsequent development of cervical spine pain to the point he was no longer able to continue his regular employment. Dr. Johnson did give the opinion the plaintiff's major depressive disorder was related to his work injury. The plaintiff testified that he now feels ashamed that he is unable to work. In fact, he continues to read coal preparation manuals although he is now on disability and apparently will never return to that work setting. As a general rule, all of the injurious consequences that flow from a work related physical injury and that are not attributable to an unrelated cause are compensable. *Beech Creek Coal Company v. Cox*, 237 S.W.2d 56 (Ky., 1951). Here, the evidence does not point to the plaintiff suffering a 17% impairment immediately prior to the event of August 4, 2009. Instead, the evidence clearly demonstrates the development of that condition since the work related event. How then can it be argued that the mental health condition is related to a

condition which pre-existed the injury? Therefore, I find the plaintiff's mental health impairment and disability is directly attributable to the work event of August 4, 2009.

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5. I am convinced from the evidence the plaintiff has a 17% impairment attributable to his mental health condition and an 8% impairment attributable to his work related cervical spine condition. These impairments combined for a whole person impairment of 24% by utilizing the Combined Values Chart set forth on Pages 604 and 605 of the *AMA Guides*.

Martin County filed a petition for reconsideration asserting the ALJ erred by awarding income benefits for Muncie's psychological injury claim. Martin County asserted as follows:

In the claim *sub judice*, the two psychological/psychiatric experts who have provided testimony were in agreement that no permanent impairment rating could be given because the plaintiff had not reached MMI. Dr. Johnson, upon whom the ALJ relies, specifically stated that his impairment rating was 'estimated...permanent impairment cannot be estimated until Mr. Muncie has had psychiatric intervention as discussed...he should be re-evaluated for permanent impairment in 9-12 months.'

In an undated order, the ALJ denied Martin County's petition for reconsideration stating as follows:

This matter is before the ALJ on Petition for Reconsideration filed by the defendant. The defendant argues the ALJ erred by finding the plaintiff had a permanent impairment for his mental health condition since both Dr. Johnson and Dr. Ruth indicated the plaintiff had not reached maximum medical improvement from a mental health standpoint. However, Dr. Johnson did assess a permanent impairment simply indicating the plaintiff's impairment could improve with proper treatment. This is an indication that Dr. Johnson did believe the plaintiff was ratable but there was a possibility that the impairment could be improved. Therefore, the defendant's remedy is to reopen the claim once the plaintiff is provided proper treatment. The alternative is place the plaintiff on temporary total disability benefits during this period of time. Therefore, the Petition for Reconsideration is **DENIED**.

On appeal, Martin County asserts two arguments. First, Martin County asserts there is no "definitive statement by which causation can be said to be the direct result of the physical injury of August 4, 2009." The second argument is the same argument asserted in Martin County's petition for reconsideration.

As fact-finder, the ALJ has the sole authority to determine the quality, character and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). The ALJ has the sole authority to determine

the weight to be afforded the evidence and the inferences to be drawn from that evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997). 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). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence to support the ALJ's decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Additionally, it is well-established causation is a factual issue to be determined within the sound discretion of an ALJ as fact-finder. Dravo Lime Co., Inc. v. Eakins, 156 S.W.3d 283 (Ky. 2005); Union Underwear Co. v. Searce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969).

Attached to Muncie's Form 101 is a report, dated December 22, 2010, by Dr. Eric Johnson in which Dr. Johnson set forth the following diagnostic impressions:

Axis I: 1) Major Depressive Disorder,
single episode, mild

2) R/O Pain Disorder, with Psychological Factors and medical conditions

Axis II: 1) No Diagnosis

Axis III: 1) Medical conditions as noted

Axis IV: 1) Stresses due to medical conditions, limited income, restricted activities

Axis V: 1) Current GAF: 59

Regarding an impairment rating, Dr. Johnson opined as follows:

Impairment is estimated using criteria from the AMA Guides to the Evaluation of Permanent Impairment, 5th Ed., Chapter 14, and 2nd Edition, Chapter 12. Permanent impairment cannot be estimated until Mr. Muncie has had psychiatric intervention as discussed. His current impairment is estimated to be seventeen (17) percent. This level of impairment should be reduced with treatment, and he should be reevaluated for permanent impairment in nine to twelve months.

Also attached to the Form 101 is a Form 107 completed by Dr. Johnson in which he assesses a 17% impairment rating due to a Class II impairment pursuant to Chapter 14 of the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") and page 220, Chapter 12, Table 1, of the 2nd Edition of the AMA Guides. The Form 107

contains the following language under "explanation of causal relationship": "No prior hx of psychiatric illness. Injury → pain, restricted activities → depression."

In a report dated July 26, 2011, Dr. Douglas Ruth opined as follows regarding whether Muncie has reached maximum medical improvement ("MMI"):

No. As noted above, Mr. Muncie has not undergone treatment that would be considered usual in regards to his diagnosis and the psychiatric symptoms that he describes. Usual standards of psychiatric care would entail trials of other antidepressant medications, including those possessing different modes of action, supplementation with other medications if needed, as well as psychotherapy.

Concerning causation, Dr. Ruth opined as follows:

Mr. Muncie's psychiatric condition more likely than not is a result of the pain and subsequent physical functional limitations, including loss of employment. Mr. Muncie relates this pain to the injury of 8/4/09. Medical records reveal that he has pre-existing degenerative disc disease that could be the cause of, or a contributor to, his complaints. Further, according to the report of the examination conducted by David Herr, D.O., he has congenital sacralization of L5 vertebra.

It is beyond the scope of a psychiatric examination to determine which of these, singularly or in combination, is the cause of his pain complaints. If it is concluded that the work injury is the cause, then his depression would be attributable to the work injury. If it

is concluded that the work injury is in part the cause of his pain, then that work injury would be considered in part the cause of his psychiatric condition in an equal proportion.

We find no merit in Martin County's argument there is no "definitive statement" of causation in the record. Dr. Johnson's opinions contained in the December 22, 2010, report and the Form 107 sufficiently establish a causal connection between the physical injury and the psychological injury. Dr. Johnson's statements are definitive. Further, even though Dr. Ruth stated it is beyond his scope to make a statement regarding causation, he did state "more likely than not," Muncie's condition "is a result of the pain and subsequent physical functional limitations, including loss of employment." Therefore, as substantial evidence supports the ALJ's decision, the ALJ's decision must be affirmed on this issue.

Martin County also asserts the ALJ erred by relying upon Dr. Johnson's impairment rating despite the fact no physician in the record opined Muncie was at MMI regarding his psychological injury, including Dr. Johnson. However, as noted by the ALJ in the order ruling on Martin County's petition for reconsideration, Dr. Johnson believed Muncie's psychological condition was impairment ratable, as

he assessed a 17% impairment rating. In stating Dr. Johnson believed "[Muncie] was ratable," the ALJ obviously concluded Dr. Johnson believed Muncie was at MMI at the time he saw him and assessed a 17% impairment. The fact Muncie's psychological condition may improve does not mean he had not attained MMI. While Dr. Johnson opined the condition meriting an impairment "should" improve with additional treatment, he offered no definitive statement Muncie's psychological condition will improve. Because we believe the ALJ's assessment of Dr. Johnson's findings and opinions is reasonable, we cannot disturb his decision on this issue.

As noted by the ALJ, should Muncie's psychological condition improve to the extent the psychological impairment is reduced, Martin County is free to file a motion to reopen pursuant to KRS 342.125(d) based on an improvement of impairment.

Accordingly, the May 25, 2012, opinion, award, and order and the June 24, 2012, order on petition for reconsideration are hereby **AFFIRMED**.

ALL CONCUR.

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