OPINION ENTERED: April 9, 2012

CLAIM NO. 201001405

MARTIN CO. COAL CORPORATION PETITIONER

VS. **APPEAL FROM HON. DOUGLAS W. GOTT, ADMINISTRATIVE LAW JUDGE**

WILLIAM GOBLE
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AFFIRMING

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

ALVEY, Chairman. Martin Co. Coal Corp. ("Martin County") seeks review of the opinion, order and award rendered December 1, 2011, by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ") finding William Goble ("Goble") sustained a work-related low back injury on August 3, 2009. The ALJ awarded temporary total disability ("TTD") benefits,

permanent partial disability ("PPD") benefits and medical benefits for the low back injury, and for a psychological condition stemming from that injury. The ALJ also awarded medical benefits for his hearing loss claim, but did not award income benefits because Goble did not satisfy the threshold requirements set forth in KRS 342.7305. Martin County also appeals from the order on its petition for reconsideration entered December 28, 2011. On appeal, Martin County argues Goble did not meet his burden of proof for an award based on a psychiatric injury. We affirm.

Goble testified by deposition on March 10, 2011, and again at the hearing held October 26, 2011. He is a resident of Tomahawk, Kentucky who was born on September 19, 1955. Goble is a high school graduate with no specialized or vocational training.

Goble began working in the coal mining industry in 1977 as a shuttle car driver. Between 1977 and 2009, he also worked in the underground coal mining industry as a roof bolter, rock duster, belt examiner and fire boss. He previously strained his low back in 2007 while pulling on a cable, which resolved without any residuals. On August 3, 2009, he twisted his back while picking up a section of chain link fence which was stuck in the mud. He was stooped and bent at the time of the accident. He immediately

reported the accident, and was transported to the hospital. He has not returned to work. His course of treatment has consisted of medication, injections and physical therapy.

Since no other issues were raised on appeal, a review of the evidence is limited to only that which concerns the psychological component of the claim.

Goble filed the report of Dr. Eric Johnson, Ph.D., a psychologist who evaluated him on November 9, 2010. Dr. Johnson noted Goble had complaints of lumbar pain radiating into the right leg and foot, as well as depressed mood. He noted Goble's affect was subdued, but appropriate for depressed mood. Dr. Johnson diagnosed pain disorder associated with psychological factors and back pain. Dr. Johnson noted the symptoms were mild to moderate, and were a direct result of the work-related injury. He stated Goble had not reached maximum medical improvement ("MMI"), and indicated he may benefit from psychiatric consultation and treatment. He assessed a 5% impairment rating pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 2nd Edition ("AMA Guides").

Dr. Douglas Ruth, a psychiatrist, evaluated Goble on March 2, 2011, and prepared a report dated March 7, 2011 which was submitted into evidence. Dr. Ruth diagnosed a depressive disorder, not otherwise specified, and indicated

mood disorder due to obstructive sleep apnea and hypothyroidism should be explored and ruled out. Dr. Ruth stated, "[f]or that reason, a more specific diagnosis than 'depressive disorder, NOS' is not possible until that is accomplished." Dr. Ruth stated if sleep apnea and thyroid dysfunction were ruled out, the depressive disorder would be due to the work-related injury. Dr. Ruth indicated Goble had not reached MMI because he has not had treatment for his psychiatric complaints.

The ALJ awarded benefits based upon the low back injury, along with the psychological component to the claim. In awarding psychological benefits based upon a 5% impairment rating, the ALJ stated the following:

> The ALJ deliberated at length over Goble's claim of a companion psychological injury. Goble did not offer strong testimony in support of it. Perhaps that was because the condition is mild, as noted by his evaluator, Dr. Johnson, whose opinion on impairment was found to be stated with sufficient foundation although the rating of 5% was less than enthusiastically assigned. However, the report of the Defendant's psychiatric evaluator, Dr. Ruth, was so flimsy that the ALJ took very little away from it. The ALJ does not find Dr. Ruth's opinion on a lack of maximum medical improvement to credibly support Goble's argument that an interlocutory award of TTD should be entered. The ALJ relies on Dr. Johnson to find that Goble has additional impairment of 5% for his work related depression.

On reconsideration, Martin County argued, as it does on appeal, it was error for the ALJ to award PPD benefits for a psychiatric injury based upon the evidence submitted. In the order denying the petition for reconsideration, December 28, 2011, the ALJ stated:

> Defendant's petition for reconsideration of the ALJ's inclusion of psychiatric impairment in the December 1, 2011 Opinion, Award and Order is overruled. Defendant reargues the merits of the case, inconsistent with KRS 342.281. As stated, the ALJ did not find the Defendant's evidence from Dr. Ruth resisting the psychological claim to offer any firm opinion contrary to the evidence offered by the Plaintiff.

The question on appeal is whether the ALJ's decision regarding an award based upon psychological impairment was supported by substantial evidence. 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 sole authority to judge

all reasonable inferences to be drawn from the 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). Although a party may note evidence supporting a different outcome than reached by the ALJ, that is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). 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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Martin County's assertion Goble did not meet his burden of proof is simply not true. Obviously the ALJ was persuaded Goble sustained a psychological component to his injury, and was entitled to an award of benefits. Determinations related to MMI and impairment ratings are solely within the purview of the ALJ. On those issues, this Board is not permitted to substitute its judgment for that of the ALJ. Substantial evidence exists to support

the ALJ's determination Goble sustained a psychological component to his claim for which he was entitled to benefits. It is clear from the evidence Goble was not afforded any psychological treatment, without which both experts conclude his condition will not improve. Martin County apparently believes care can be withheld without ramification. Both experts concluded Goble's condition may improve with care. A reasonable inference is that without care he will get no better. Likewise, without such care, the ALJ could reasonably infer based upon Dr. Johnson's report, Goble qualified for an award based upon a 5% impairment rating. We believe this determination is appropriate, and supported by substantial evidence. Therefore, we affirm the ALJ's decision.

Accordingly, the decision dated December 1, 2011 finding Goble sustained a psychological component to his claim for which PPD benefits and medical benefits were awarded, and the order ruling on the petition for reconsideration dated December 28, 2011, rendered by Hon. Douglas W. Gott, are hereby **AFFIRMED**.

ALL CONCUR.

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