

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 15. 2015

CLAIM NO. 201358135

MICHAEL ADKINS

PETITIONER

VS.

APPEAL FROM HON. GRANT ROARK,  
ADMINISTRATIVE LAW JUDGE

R & D RAILROAD CONSTRUCTION, INC.  
and HON. GRANT ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

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

**STIVERS, Member.** Michael Adkins ("Adkins") seeks review of the November 17, 2014, Opinion, Order, and Award of Hon. Grant Roark, Administrative Law Judge ("ALJ") awarding him temporary total disability ("TTD") benefits from December 6, 2013, to June 19, 2014, and medical benefits for the effects of a work-related right arm parasthesia extending from December 5, 2013, to June 19, 2014. The ALJ dismissed

Adkins' claim for income benefits and future medical benefits against R & D Railroad Construction, Inc. ("R & D"). Adkins also appeals from the January 9, 2015, Order denying his petition for reconsideration.

On appeal, Adkins argues the ALJ erroneously relied upon the opinions of Dr. David Muffly since his opinions cannot constitute substantial evidence. Adkins charges Dr. Muffly provided no explanation for his opinions other than to say Adkins had experienced temporary symptoms.

Adkins alleged an injury to his right arm and hand while driving railroad spikes with a sledge hammer on December 5, 2013.

Adkins' May 9, 2014, deposition was introduced. Adkins testified he began work with R & D in 2013 as a laborer. His job required him, along with other employees, to lift ties weighing 300 pounds. He would also lift buckets and kegs of spikes which weighed approximately 100 pounds. Adkins denied experiencing any prior right shoulder or arm injuries. However, he had begun experiencing intermittent problems with his right forearm, hand, and elbow a couple of weeks before the injury. At the time of his deposition, Adkins was receiving TTD benefits and had not worked since December 2013. On

December 5, 2013, he had been hammering with a sledge hammer for approximately an hour. Adkins explained when he "slung the sledge hammer to drive a plate in," he felt a sharp pain up his right arm and his arm went numb. The numbness extended from his hand to his elbow. He reported the injury to his foreman and went to the emergency room at Marcum and Wallace Hospital, in Estill County. He was x-rayed and sent to Dr. Tabitha Culver. Dr. Culver put Adkins on Neurontin and referred him to Dr. Joseph Bajorek who saw him three times. Dr. Bajorek referred Adkins to Dr. Laura Reese for treatment of his shoulder.

Adkins explained he began experiencing swelling in his right hand extending up the forearm to the elbow approximately a week after the injury. The top of his hand turned black and split open due to infection. Two surgeries were performed at King's Daughters Medical Center ("King's Daughters") to remedy the infection. Adkins was questioned about a hospital note which showed he had experienced a spider bite. He denied having any knowledge of a spider bite or having any breakage of skin on December 5, 2013. At the time of his deposition, he had no swelling of the right arm and was taking no medication for an arm problem. Adkins had experienced a heart attack two years

prior and was taking medication for his heart problem which included a blood thinner.

Adkins also saw Dr. Mohamad Abul-Khoud in December 2013 because a blood clot went to his lung.<sup>1</sup> As a result he takes Coumadin. He still has numbness in his hand and forearm and continued pain in his shoulder. Adkins testified after the surgery he developed throbbing pain in his shoulder. He is able to lift his arm to shoulder level but not above the shoulder.

During the proceedings, R & D filed a medical fee dispute concerning the treatment provided by King's Daughters and Dr. Abul-Khoud and the related bills along with motions to join the doctor and King's Daughters. R & D also filed a motion to join Dr. Reese contesting her treatment and bill. By separate orders, the ALJ granted the motions and joined Dr. Reese and Dr. Abul-Khoud as parties. No order was entered joining King's Daughters.

At the September 18, 2014, hearing, Adkins testified when he swung the hammer on December 5, 2013, he felt an electric shock up his arm and his arm went numb. On December 22, 2013, his hand was swollen, and when he

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<sup>1</sup> R & D spells the doctor's name as listed herein. However, King's Daughters' records spell his name two ways; Dr. Abul-Khoud and Dr. Abul-Khoudoud. We will refer to him as Dr. Abul-Khoud.

"closed his arm" the skin on the top of his right hand split and pus ran out. Adkins went to the hospital where two surgeries were performed. He later developed a blood clot. His arm still goes numb and he experiences pain daily. He does no heavy lifting and estimated he can only lift twenty pounds with his right hand and arm. He is unable to perform any overhead work. Adkins acknowledged that approximately two weeks earlier he began experiencing intermittent numbness from his elbow to his hand. He now experiences this numbness daily. He had no splits or breakage of the skin prior to December 22, 2013. Adkins testified he no longer has problems with his right shoulder. The last time he experienced pain or a problem with his shoulder was in July 2015.

Adkins testified he was referred to Dr. Reese for his hand, not his shoulder. His current symptoms extend from the elbow to his hand. Adkins has not treated with Dr. Bajorek after he referred Adkins to Dr. Reese. Although he was unable to provide the year, Adkins testified he had experienced a blot clot prior to the work injury, for which he took Coumadin. He had also experienced a prior pulmonary embolism and had two stents implanted due to a heart condition. Adkins has not experienced another abscess since undergoing the surgeries

to address the abscess which occurred on December 22, 2013. Adkins acknowledged telling the emergency room personnel that he did not know what caused the abscess.

Adkins introduced the independent medical evaluation ("IME") report of Dr. Bruce Guberman, the records of Dr. Bajorek, and the Marcum and Wallace Hospital note of December 5, 2013.

R & D introduced the records of King's Daughters and Dr. Reese, and the IME reports of Dr. Muffly and Dr. David Jenkinson.

After summarizing the evidence, the ALJ entered the following analysis, findings of fact, and conclusions of law:

**Causation/Work-Relatedness/Prior Active  
Condition/Injury Under the Act**

As a threshold issue, the employer disputes that plaintiff's work activities on December 5, 2013 caused any permanent injuries. It argues the events of that day may have caused a temporary right arm parasthesias per Dr. Muffly, but that subsequent right hand infection requiring surgery and the pulmonary embolism are wholly unrelated and not compensable.

Having reviewed the evidence of record, the Administrative Law Judge notes that plaintiff's own treating physician, Dr. Bajorek, indicated it was unknown what the mechanism of plaintiff's injury was initially. Moreover, plaintiff's expert, Dr.

Guberman, was apparently unaware that plaintiff had sought treatment for similar right arm parasthesia just days before December 5, 2013 and that the initial ER records that day show that plaintiff reported that he woke up with that pain and numbness and did not recall any specific injury. Given these facts, the Administrative Law Judge is ultimately persuaded by the opinion of Dr. Muffly that plaintiff did not suffer any work-related permanent injury. Dr. Muffly reviewed records and was aware of plaintiff's prior history and performed an examination. Although Dr. Bajorek indicated plaintiff's EMG/NCV showed severe carpal tunnel syndrome, he indicated the cause of his injury was unknown. Moreover, Dr. Bajorek indicated the EMG/NCV showed bilateral CTS, whereas plaintiff's complaints were only in the right arm. Thus, the positive EMG/NCV findings, in the face of plaintiff's clinical examinations with Dr. Bajorek and Dr. Muffly, lead the ALJ to place little importance on those diagnostic studies. Instead, Dr. Muffly's opinion is found to most accurately take into account plaintiff's complaints, the history provided at the ER on December 5, 2013 and his prior history. As such, it is determined plaintiff did not suffer any permanent injury on December 5, 2013.

Moreover, based on the medical records in general and Dr. Olash in particular, it is determined plaintiff's right hand infection and subsequent surgeries and pulmonary embolism are wholly unrelated to any work event and, as such, the expenses for such treatment are not compensable.

Concerning Adkins' entitlement to TTD benefits and medical benefits, the ALJ found and concluded as follows:

**TTD**

On the issue of temporary, total disability, the Administrative Law Judge is again persuaded by the opinion of Dr. Muffly. As indicated above, he concluded plaintiff did not suffer any permanent injury. However, he also opined the December 5, 2013 incident caused a temporary right arm parasthesia which had resolved as of the time of his examination on June 19, 2014. While plaintiff suffered the effects of this parasthesia, he was unable to perform his regular work of replacing railroad ties as it required heavy use of his right arm. Even though Dr. Jenkinson concluded plaintiff reached MMI as of his examination in April, 2014, the Administrative Law Judge is not convinced Dr. Jenkinson took into account the same right arm parasthesia which Dr. Muffly concluded had affected plaintiff. Accordingly, it is determined plaintiff did not reach MMI from his temporary right arm parasthesia until determined so by Dr. Muffly on June 19, 2014. Plaintiff is therefore entitled to TTD benefits from December 5, 2013 until June 19, 2014 at the rate of \$345.14 per week.

**Medical Expenses/MFD**

Based on the foregoing findings it is determined the defendant employer is responsible for payment of medical expenses associated with plaintiff's right arm parasthesia up to June 19, 2014. As Dr. Muffly concluded no

additional treatment was required thereafter, no medical expenses are payable after June 19, 2014.

Adkins filed a petition for reconsideration taking issue with the ALJ's reliance upon Dr. Muffly's opinions. He asserted that although Dr. Muffly stated his parasthesia was temporary, he offered no explanation for his opinion. Adkins observed the records establish he continues to experience the same problems. In addition, even though Dr. Muffly concluded the right hand abscess and pulmonary embolism are not related to the work injury, he provided no explanation for his opinion. Adkins requested the ALJ reconsider his decision. In the alternative, he requested a specific finding as to why Dr. Muffly is more credible as well as additional findings explaining why the record as a whole does not support a finding of a specific injury.

Concluding Adkins' petition for reconsideration was a re-argument of the merits and did not point to a patent error within the decision, the ALJ denied the petition for reconsideration by order dated January 9, 2015.

Adkins first observes even Dr. Muffly noted in his report that as of June 19, 2014, Adkins still had numbness in his right arm when he uses it. In addition,

Adkins testified he experienced numbness when using his arm for a short period of time. Adkins complains Dr. Muffly did not provide an explanation for his opinion that Adkins only had temporary symptoms which had resolved without impairment. He contends no physician indicated he no longer had symptoms or numbness in his right arm. Therefore, since Dr. Muffly noted Adkins was still having complaints when he examined him, his opinions cannot constitute substantial evidence.

Adkins observes Dr. Muffly did not provide an explanation for his conclusion the right hand abscess and pulmonary embolism were not related to the December 5, 2013, injury. He argues since Dr. Muffly's opinions have no basis and are inconsistent, the evidence is uncontradicted that he sustained parasthesia on December 5, 2013, for which he still has complaints. Therefore, Dr. Muffly's opinions are not substantial evidence and do not support the ALJ's decision. Adkins seeks reversal.

As the claimant in a workers' compensation proceeding, Adkins had the burden of proving each of the essential elements of his cause of action including entitlement to permanent income and medical benefits. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Adkins 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 function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

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 that would have supported 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 Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (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).

We first observe Adkins does not argue Dr. Bart Olash's opinions are not substantial evidence in support of the ALJ's determination his right hand infection, subsequent surgeries, and pulmonary embolism are unrelated to the work event. Rather, Adkins attacks Dr. Muffly's opinions with respect to the ALJ's determination on this issue. The ALJ did not rely on Dr. Muffly's opinion in determining the right hand infection, subsequent surgeries, and pulmonary embolism are not work-related. He specifically noted he was relying on Dr. Olash's opinions and "the medical records in general" in resolving this issue.

In his February 6, 2014, report, Dr. Olash noted Adkins was seen at King's Daughters' emergency room on January 23, 2014, and diagnosed with acute pulmonary emboli. With respect to the right hand infection and subsequent surgeries, Dr. Olash did not believe the soft tissue infection (cellulitis/abscess) was in any way related to the work injury. Dr. Olash noted the work injury did not result in a skin tear. He did not believe the work injury resulted in a lack of feeling which could predispose Adkins to traumatizing the right forearm without knowing an injury had occurred. Dr. Olash noted there was documentation that Adkins may have sustained a bug bite or a scratch from one of his pets resulting in the infection. Dr. Olash concluded it was apparent "the infection started around December 19<sup>th</sup>." Dr. Olash did not believe Adkins was working on that date. Dr. Olash concluded any treatment for the abscess/cellulitis of the right upper extremity cannot be considered work-related. In addition, the hospitalization at King's Daughters, the antibiotic treatment, and the subsequent complication of pulmonary emboli could not be considered work-related.

Since Adkins does not contend the opinions of Dr. Olash do not constitute substantial evidence in support of the ALJ's determination that his hand infection, subsequent

surgeries, and the pulmonary embolism are unrelated to the work event, the ALJ's determination the infection, subsequent surgeries, and the pulmonary embolism are non-compensable must be affirmed.

We also note the medical records do not overwhelmingly support a finding Adkins sustained a work-related injury. The medical record from Marcum Wallace Hospital, attached to Adkins' Form 101, reveals he presented at the emergency room with numbness from the right forearm and elbow down to the hand. Adkins indicated this had been happening on and off for two weeks and he woke up that morning with numbness but no pain to the arm. The record reveals the following: "no definitive injury, works driving spikes, but no incident causing problem. No neck or elbow pain but thought he may have pulled something." Similarly, the triage assessment contains the hand written notation "patient came in with numbness from elbow to fingertips - no known injury."

In the same vein, when Dr. Bajorek first saw Adkins on January 2, 2014, he received a history from Adkins that he was driving railroad spikes into ties when he developed pain shooting down his arm and lost feeling from the region below the forearm including all his fingers. Adkins developed swelling and pain which started

over the dorsum of the hand and it became blackened. It cracked and expressed pus. This required debridement and IV antibiotic treatment for several weeks which he was still undergoing at that time. Dr. Bajorek noted Adkins had weakness in the hand both in extension and flexion and still has numbness from the forearm to the fingers. Dr. Bajorek noted the question is raised of "either radicular local or brachial plexopathy etiology for his symptoms." Significantly, his impression was "right arm distal weakness and numbness possibly associated with a right brachial plexopathy vs. local injury as the 2 mostly likely etiologies." Thus, it appears Dr. Bajorek was unclear as to the cause of Adkins' arm problems.

Similarly, in her note of April 10, 2014, Dr. Reese summarized the records from Dr. Bajorek and his findings. She noted the Marshall University medical records reflect Adkins injured his hand at work and was referred to neurology for an EMG and nerve conduction studies, but in the meantime he received a spider bite to the dorsum of his right hand and developed some draining pus. As a result, Adkins was admitted after "superficial I & D" in the emergency department.

The records of Marcum and Wallace Hospital and Dr. Bajorek do not unequivocally support Adkins' claim of

an injury on December 5, 2013. Further, Dr. Reese's medical record reveals the right hand infection necessitating the subsequent surgeries was due to a spider bite.

We note that only Dr. Guberman expressed a definite opinion Adkins sustained a work-injury to his arm on December 5, 2013. Similarly, Dr. Guberman was the only physician to express the opinion the right forearm abscess, numbness in the right hand, deep vein thrombophlebitis, and pulmonary embolism were attributable to the work injury.

All of the above aside, we find no merit in Adkins' argument the report of Dr. Muffly does not constitute substantial evidence in support of the ALJ's decision. In his report of June 19, 2014, Dr. Muffly noted Dr. Bajorek, who provided neurological treatment, diagnosed right arm weakness with numbness but could not find a mechanism of injury. Dr. Muffly noted the EMG/NCV testing was performed noting severe bilateral carpal tunnel syndrome which he thought was non-work-related. Significantly, he noted Dr. Reese performed two treatments on the right arm and shoulder. Adkins had slight decrease in right hand sensation not specific for carpal tunnel syndrome. Dr. Reese noted the carpal tunnel syndrome was in existence prior to December 5, 2013. Adkins did not

complain of right hand numbness. Adkins did not have pain but at times would get numbness sensation when for example he used a weed eater. Adkins stated he could not use a hammer because it would cause onset of symptoms. He gets relief using over-the-counter medications or upon exercising his hand.

Dr. Muffly reviewed various imaging studies and the medical records of Marcum Wallace Hospital emergency room, Dr. Culver, Dr. Bajorek, Dr. Reese, Grayson Family Urgent Clinic Care, KDMC (Marshall University), and Dr. Olash. His assessment was "paresthesia's of the right hand which were temporary symptoms described from the December 5, 2013, injury from using a sledge hammer." He noted Adkins had prior active treatment before the alleged work injury. In Dr. Muffly's opinion, there was no specific injury which was confirmed by multiple treating medical providers. Similarly, the right hand abscess and subsequent development of a pulmonary embolism were not work-related. Dr. Muffly considered the paresthesia described on December 5, 2013, to be temporary and resolved as of the date he saw Adkins. Dr. Muffly stated Adkins was at maximum medical improvement. He assessed no impairment related to the alleged work injury and concluded Adkins did not need any additional medical treatment.

A review of his report indicates Dr. Muffly fully explained the basis for his decisions. He noted his opinions were confirmed by multiple treating medical providers. Dr. Muffly provided the medical records and opinions of the physicians upon whom he relied.

Contrary to Adkins' assertions, the opinions of Dr. Muffly and Dr. Olash constitute substantial evidence upon which the ALJ was free to rely in reaching a decision on the merits. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940) (citing American Rolling Mill Co. v. Pack et al., 278 Ky. 175, 128 S.W. 2d 187, 190 (Ky. App. 1939)). Moreover, in line with Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), we believe the ALJ could reasonably conclude from that evidence that the injury of December 5, 2013, produced only temporary harmful changes involving Adkins' right arm that were transient in duration, and that fully resolved by June 19, 2014, the date of Dr. Muffly's examination thereby resulting in no permanent impairment or disability or the need for future medical treatment.

The ALJ's discussion of the findings of Drs. Bajorek and Muffly sufficiently apprised the parties of the basis for his decision. Moreover, as previously noted, Adkins does not take issue with the ALJ's reliance on Dr.

Olash's opinions in resolving the work-relatedness of the right hand infection, subsequent surgeries, and the pulmonary embolism. The ALJ is not required to set out the minute details of his reasoning in reaching his conclusion. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973); Shields v. Pittsburgh & Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chaffins, supra.

The report of Dr. Jenkinson also supports the ALJ's decision in this claim. Dr. Jenkinson's report alludes to a number of the medical records. In his summary and conclusion, Dr. Jenkinson stated Adkins had reported an injury occurring on December 5, 2013. Although he complained of numbness with electric shock sensation in his right arm, Dr. Jenkinson noted the initial emergency room records indicate no specific injury. That record also indicates Adkins woke up with numbness in the right arm and retrospectively attributed his symptoms to driving a railroad spike even though there was no history of a specific injury. Dr. Jenkinson noted Adkins later developed an abscess on the right hand probably due to a

bite. As a result, Adkins required debridement with Wound Vac and the open wound is now healed with minimal residual abnormality. At the time of his evaluation, Dr. Jenkinson noted Adkins complained of vague numbness on the dorsum of his right arm and hand but there is no objective neurologic deficit. Adkins had normal motor function and normal reflexes and complained of decreased sensation in a non-dermatomal distribution, but apart from the healed scar there is no objective abnormality on physical examination. Consequently, Dr. Jenkinson expressed the opinion there was no objective basis for a specific diagnosis and concluded there was no evidence Adkins sustained a specific work injury on December 5, 2013. In addition, the only objective finding is a healed scar on the dorsum of Adkins' right hand.

Although Adkins contends he continues to have symptoms, the ALJ may choose not to believe the claimant's testimony regarding the existence of present symptoms. Further, within his discretion, the ALJ may also choose to conclude the cause of Adkins' current problems is not work-related. The ALJ's determination Adkins did not suffer a permanent work injury but instead suffered a temporary right arm paresthesia is amply supported by substantial evidence. Adkins' testimony established he had a blood

clot prior to the injury for which he had taken Coumadin. He also acknowledged having sustained a pulmonary embolism prior to the work injury of December 5, 2013. In light of the evidence as recited herein we believe a different result is not compelled. Because the outcome selected by the ALJ is supported by substantial evidence, we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

We feel compelled to address R & D's assertion that since the notice of appeal failed to name the medical providers joined in the medical fee dispute, the appeal must be dismissed. First, we point out that even though Dr. Abul-Khoud was joined as a party, King's Daughters was not joined as a party. King's Daughters was a medical provider in this claim, not Dr. Abul-Khoud. Dr. Abul-Khoud was merely an employee of the medical provider and failure to name him as a party to the appeal is not fatal to the appeal.

Further, Dr. Reese's report of April 10, 2014, reveals she saw Adkins for right shoulder problems and carpal tunnel syndrome. In her report, she indicated Adkins needed to be evaluated for physical therapy, anti-inflammatories, and possible approval for a subacromial injection in the right shoulder. Dr. Reese believed the

carpal tunnel syndrome was present before the December 5, 2013, injury. Since the carpal tunnel syndrome predated the injury and Adkins made no claim it was work-related, Dr. Reese was not an indispensable party to the appeal. Concerning her treatment of Adkins' right shoulder, Adkins testified at the hearing he no longer experiences shoulder problems. Consistent with his testimony, on appeal Adkins does not argue the ALJ failed to award benefits for a shoulder injury. In fact, Adkins' brief does not assert he sustained a shoulder injury. Thus, the failure to name the medical providers, joined as parties during the proceedings, in the notice of appeal is not cause to dismiss Adkins' appeal.

Accordingly, the November 17, 2014, Opinion, Order, and Award and the January 9, 2015, Order overruling the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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