Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 15, 2014

CLAIM NO. 201281571

MICHAEL EVANS PETITIONER

VS. **APPEAL FROM HON. J. GREGORY ALLEN, ADMINISTRATIVE LAW JUDGE**

ALPHA NATURAL RESOURCES, INC.
and HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

RECHTER, Member. Michael Evans ("Evans") appeals from the April 8, 2014 Opinion, Order and Award rendered by Hon. J. Gregory Allen, Administrative Law Judge ("ALJ") awarding a temporary period of medical benefits. On appeal, Evans argues the ALJ erred in failing to award permanent medical benefits. We disagree and affirm.

Evans was employed as a mine clerk for Alpha Natural Resources, Inc. ("Alpha"). He injured his low back on May 30, 2012 while moving a chemical tote. He sought medical treatment the following morning, and returned to work with restrictions the next day.

A central inquiry in this case was whether the May 30, 2012 incident caused a permanent harmful change to the human organism, or temporarily exacerbated a pre-existing low back condition. Medical records from Dr. Jerry Banks and Dr. Galen Smith document treatment for Evans' back beginning in 2010 and continuing until two months prior to the work-related incident. Evans was evaluated by Dr. James Owen and Dr. Ira Potter, both of whom opined the work-related incident permanently aggravated his prior lumbar condition. However, Dr. Daniel Primm who evaluated Evans, disagreed. He agreed Evans had an active, pre-existing condition, but concluded the work incident resulted in merely a temporary exacerbation which had resolved completely within three months.

Relying upon Dr. Primm's report as well as the medical records documenting Evans' treatment for back pain prior to May 30, 2012, the ALJ concluded he sustained a temporary aggravation and exacerbation of his pre-existing condition. The ALJ further determined Evans reached

maximum medical improvement on December 12, 2012, which is the date identified by Dr. Potter, and awarded medical benefits through that date.

Evans did not file a petition for reconsideration. Therefore, the ALJ's factual determination that he did not suffer a permanent change to the human organism is conclusive and, for this reason, we do not summarize the evidence further. KRS 342.285(1). On appeal, Evans argues he is entitled to permanent medical benefits.

The ALJ applied the law correctly. An injured worker may establish a temporary injury for which temporary total disability and/or temporary medical benefits may be paid, yet fail in the burden of proving a permanent harmful change to the human organism for which permanent benefits are authorized. Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). In that circumstance, the claimant is entitled only to compensation for the medical expenses incurred in treating the temporary injury resulting from the work-related incident.

We disagree with Evans that Derr Const. Co. v. Bennett, 873 S.W.2d 824 (Ky. 1994), is factually analogous. Derr involved an injury caused by the effects of a cumulative trauma, where the claimant's work accelerated

his arthritic condition sooner than otherwise would have been the case. Ongoing cumulative trauma with Derr Construction contributed to the arthritic condition. Here, the work incident did not cause a worsening or progression of the pre-existing active condition. There is no evidence the prior active condition has any relation to Evans' work for Alpha. Once Evans recovered from the temporary effects of his work injury, his ongoing treatment was no longer necessitated by the work injury and his future medical care is not compensable.

To support his argument, Evans emphasizes in his testimony that his condition has worsened since the May 30, 2012 incident, and he now requires more medication for relief. To the extent he argues the evidence compelled a finding in his favor, we disagree. The ALJ was presented with conflicting medical opinions and was free to rely upon Dr. Primm's report. Again, because Evans did not file a petition for reconsideration, this factual determination is binding.

Accordingly, the April 8, 2014 Opinion Order and Award rendered by Hon. J. Gregory Allen, Administrative Law Judge is **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON DARRELL HALL
PO BOX 765
WHITESBURG, KY 41858

COUNSEL FOR RESPONDENT:

HON BONNIE HOSKINS
PO BOX 24564
LEXINGTON, KY 40524

ADMINISTRATIVE LAW JUDGE:

HON J. GREGORY ALLEN
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601