

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 1, 2016

CLAIM NO. 201501163 & 201501162

PAUL HOLBROOK

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

FOREST PRODUCTS
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
& REMANDING

* * * * *

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

ALVEY, Chairman. Paul Holbrook ("Holbrook") seeks review of the Opinion and Order rendered April 4, 2016, by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"), dismissing his claim for multiple injuries allegedly sustained while working for Forest Products, Inc. ("Forest Products"), and awarding medical benefits only for a

hearing loss claim. No petition for reconsideration was filed.

On appeal, Holbrook argues the ALJ's decision is not in conformity with the Kentucky Workers' Compensation Act, is arbitrary or capricious, constitutes an abuse, and is an unwarranted exercise of discretion. He argues, "The credible evidence is so overwhelming in his favor that no reasonable person could reach the same conclusion as the ALJ." We disagree and affirm because the ALJ's determination is supported by substantial evidence, is not arbitrary and capricious, and a contrary result is not compelled. We remand for entry of an order severing Holbrook's coal workers' pneumoconiosis ("CWP") claim.

Holbrook filed a Form 101 on July 27, 2015 alleging cumulative trauma injuries to his left knee and back due to repetitive use while working for Forest Products. On the same date, he filed a Form 103-HL alleging work-related hearing loss due to "prolonged and repetitive exposure to loud noise in the workplace." These claims were consolidated by order dated September 24, 2015. The claim was later amended to include allegations of specific traumatic injuries to the left knee, cumulative trauma injuries to both the left and right hip, and a

safety violation by Forest Products pursuant to KRS 342.165.

Holbrook later filed a CWP claim against a previous employer, Bates Contracting and Construction, Inc. This claim was consolidated with the claims against Forest Products by order dated January 4, 2016. The hearing loss and injury claims were bifurcated as "ripe for final adjudication". The order indicated the CWP claim would remain in abeyance.

The Form 101 indicated Holbrook completed the ninth grade, and has no GED. Holbrook later testified he completed the sixth grade, and at the hearing testified he completed the eighth grade. He has no specialized or vocational training or certifications, other than for coal mining. Holbrook alleged he worked as a loader driver for Forest Products. He also indicated he had a previous claim for a low back injury in 2010. This is consistent with the information contained in the Form 103. Because this appeal pertains solely to the dismissal of Holbrook's injury claim, only the medical information pertinent to those conditions will be discussed further.

Holbrook testified by deposition on September 14, 2015, and at the hearing held February 4, 2016. Additionally, Holbrook's deposition taken on February 14,

2011 for a previous claim (2010-78449 & 2009-04050) was filed into the record by Forest Products.

Holbrook was born on February 9, 1966. He is a resident of Ages, Kentucky. He last worked for Forest Products in August 2014, in Whitley County, Kentucky. Holbrook previously worked for Forest Products for several years beginning in the 1990s. He left his employment there to work for other employers for better pay and benefits. He worked for Harlan Cumberland Coal and Bates Contracting as a rock duster and scoop operator. He was laid off from the mines when work ran out, and he returned to work for Forest Products in December 2013. He continued to work there until August 29, 2014, when he was laid off. In addition to his mining work and operating an end loader for Forest Products, he has operated a rock hauler and end loader at a concrete block manufacturing facility.

While working for Harlan Cumberland Coal, Holbrook stated he shoveled coal, rock dusted, greased equipment and operated a scoop. On July 9, 2009, a rock rolled out and struck him. He was knocked down and the rock landed on top of him. He received medical treatment, including physical therapy and medications. He testified at his deposition he began treating with Lortab and Ultracet for his back pain which he continued to take as of

July 2014. At the hearing, he denied taking pain medication from 2009 to 2014. He missed some time from work due to his injury, then resumed his normal job. He continued to work until August 31, 2010 when a metal spill board was knocked over and fell on him. He received treatment for a sprained left hand, broken toe on his right foot, low back pain, right hip pain, and left hip pain. He continued to receive medication, and had some physical therapy. He received temporary total disability benefits until January 31, 2011. As of February 14, 2011, Holbrook testified he continued to have low back pain, right leg numbness and hip pain.

In addition to the previous deposition, the Form 107-I prepared by Dr. Robert Hoskins on September 20, 2010 was also filed. Dr. Hoskins diagnosed Holbrook with a lumbosacral sprain/strain, right lumbosacral radiculitis, lumbar spondylosis, L4-5 disc protrusion, and L5-S1 disc displacement. He assessed a 7% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Hoskins also recommended restrictions of no lifting greater than forty pounds, no lifting greater than twenty pounds below waist level, no prolonged or repetitive overhead work, no continuous sitting greater than ninety

minutes, no continuous standing or walking greater than sixty minutes, no prolonged or repetitive stooping or crouching, no heavy pushing, pulling or carrying, no prolonged or repetitive use of equipment that subjects the spinal column to vibration, no activities involving sustained posturing of the lumbosacral spine at extremes of motion or repetitive movements into the extremes of lumbosacral motion.

The Form 110-I settlement agreement from the 2009 and 2010 injuries was also filed. The claim was settled for a lump sum of \$9,000.00 for a complete dismissal.

In his deposition taken September 14, 2015, Holbrook testified he had been taking pain medications, Lortab or Hydrocodone, since 2009. He admitted as of July 11, 2014, he was still taking medication for chronic back pain.

Holbrook stated his job with Forest Products consisted of using an end loader to place logs onto a machine. On August 14, 2014, he was climbing down a ladder located on the end loader. The ladder broke causing him to land on his knees and back. He claimed his left knee got caught in the ladder. He testified the ladder had been repaired numerous times, and he had previously advised his supervisor of the need for additional repair.

After the accident, he completed his shift and did not seek medical treatment until a week later. He continued to work until August 29, 2014 when he was laid off. He has treated for various complaints since August 29, 2014. He stated he had knee injections after the accident, but those did not help. He complained of continued low back, left hip and left knee pain. He stated sitting or walking for long periods bother him. He experiences left knee pain with walking, and uses a cane. He testified he does not believe he can return to the work performed at the time he was injured.

Tony Cook ("Cook"), Holbrook's supervisor with Forest Products, testified by deposition on October 14, 2015. Holbrook worked on the second shift from December 2013 through August 2014. He was laid off when the entire second shift was eliminated due to lack of work. Cook stated Holbrook climbed three steps to enter the cab of the end loader he operated at work. Cook stated employees are trained to report all accidents. Holbrook did not report an accident occurring on August 14, 2014. He stated no one reported a broken ladder or any other requests for repairs for accessing end loaders on August 14, 2014. Subsequent to his deposition, Cook provided maintenance records for August 2014 which did not include any notation or work

order to repair a broken ladder or stairs for an end loader.

In support of his claim, Holbrook filed the November 20, 2014 report of Chad Morgan, D.C., who stated the back and left knee problems were caused in whole or in part by his job activities at Forest Products. He stated the job aroused into disabling reality the cumulative traumas which had been going on for a number of years. Dr. Morgan additionally stated Holbrook had no active impairment. Dr. Morgan diagnosed Holbrook with enthesopathy, thoracic sprain/strain, lumbar strain/sprain, cervical subluxation, thoracic subluxation and lumbar subluxation. He stated these conditions were due to Holbrook's history of a job related injury, and physical trauma from heavy equipment operation.

Dr. Arthur L. Hughes evaluated Holbrook on September 23, 2015, and completed a Form 107-I report. He diagnosed Holbrook with low back pain, right hip pain, left hip pain, right knee pain, left knee pain and obesity. He stated all of Holbrook's complaints were caused by his work-related injury. He assessed a 4% impairment rating for the left hip pursuant to the AMA Guides. Dr. Hughes stated Holbrook had not reached maximum medical improvement ("MMI"). However, he stated if Holbrook did not have any

additional treatment, then he would have reached MMI on September 23, 2015. He determined Holbrook does not have the capacity to return to the work performed on the date of injury. Dr. Hughes recommended restrictions regarding kneeling, squatting, crawling, using stairs, bending, and twisting of the back.

Dr. Rick Lyons examined Holbrook at the request of Forest Products on October 29, 2015. He noted Holbrook was 5'10" and weighed three-hundred and forty-five pounds. He diagnosed myofascial lumbar pain, myofascial cervical pain and bilateral patellofemoral arthritis. He stated the medical records clearly establish Holbrook had an ongoing low back problem for which he was actively treating at the time of the alleged work accident. He determined Holbrook did not sustain a new injury to his lumbar or cervical spine due to a fall in August 2014. He assessed a 0% impairment rating. He stated Holbrook had a category II level impairment after the 2009 and 2010 injuries, which had not changed.

Dr. Lyons also determined Holbrook's knee pain is unrelated to the alleged work event. He noted on August 22, 2014, Holbrook saw Dr. Jackson (no first name provided) and described a back injury occurring in a mine years before. There was no mention of a new back injury, a knee

injury or neck problem. Dr. Lyon stated there is no evidence Holbrook sustained a back or knee injury while working for Forest Products. He would not impose any restrictions or an impairment rating for the alleged August 14, 2014 work event. He also stated there are no objective findings supporting disqualification of Holbrook from performing regular work.

In a supplemental note dated December 13, 2015, Dr. Lyon stated he had reviewed Dr. Hughes' report. He disagreed with the assessment of a 4% impairment rating for the loss of range of motion in the left hip. He noted Holbrook has an ongoing previous chronic hip pain unrelated to an August 2014 work injury. He found no objective basis to support the imposition of any work restriction due to an injury while working for Forest Products.

A Benefit Review Conference ("BRC") was held on January 20, 2016. The BRC order and memorandum noted an alleged work injury occurring on August 29, 2014. The issues preserved for determination included capacity to return to the work performed on the date of injury, benefits per KRS 342.730 and KRS 342.7305, work-relatedness/causation, notice, unpaid/contested medical expenses, and safety violation. Subsequent to the BRC, the additional issues of exclusion for a pre-existing

disability or impairment and credit for overpayment for mileage were supplemented.

In his decision rendered April 4, 2016, the ALJ determined Holbrook did not sufficiently prove he sustained work-related injuries while working for Forest Products, and dismissed the claim. He also found Holbrook was entitled to medical benefits only for his hearing loss claim. No petition for reconsideration was filed.

As the claimant in a workers' compensation proceeding, Holbrook had 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). Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Holbrook was unsuccessful before the ALJ regarding his injury claim, the question on appeal is whether the evidence compels a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence 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).

In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may

draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than 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 function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings are so unreasonable they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). 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 79 (Ky. 1999).

As noted above, Holbrook did not file a petition for reconsideration. When no petition for reconsideration is filed, the ALJ's award or order is conclusive and binding as to all questions of fact. KRS 342.285(1).

Absent a petition for reconsideration, questions of fact, including the adequacy of the ALJ's findings of fact, are not preserved for appellate review. Brasch-Barry General Contractors v. Jones, 175 S.W.3d 81, 83 (Ky. 2005). See also Hornback v. Hardin Memorial Hospital, 411 S.W.3d 220, 223 (Ky. 2013). The issue is narrowed to whether the ALJ's decision is supported by substantial evidence in the record. Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

That said, even if a petition for reconsideration had been filed, the outcome would be no different. Here, the ALJ set forth a clear review and understanding of the evidence. Holbrook complains the ALJ's decision is not in conformity with the Kentucky Workers' Compensation Act, is arbitrary or capricious, and is an abuse and unwarranted exercise of discretion. Contrary to the assertions set forth in Holbrook's brief, the ALJ clearly reviewed and summarized the evidence of record. While Holbrook filed evidence supporting his position, this merely constitutes an opposing point of view. The ALJ's decision is supported by substantial evidence, and a contrary result is not compelled.

Holbrook essentially requests this Board to reweigh the evidence, and substitute its opinion for that of

the ALJ which we cannot do. Whittaker v. Rowland, supra. It was the ALJ's prerogative to rely upon those portions of the evidence outlined in his decision. Holbrook merely points to conflicting evidence supporting a more favorable outcome, which is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra.

Holbrook's assertion the ALJ's decision is arbitrary, capricious and not in compliance with the Kentucky Workers' Compensation Act rings hollow. We note an ALJ is not required to provide a detailed summary of the evidence, nor include the minute detail of his reasoning in reaching his determination. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). However, in this instance, the ALJ demonstrated his awareness of all the evidence of record, and we believe he made it sufficiently clear to the parties that which he found to be most probative and upon which his determinations rest. Again, we find the ALJ committed no error, and his decision shall remain undisturbed.

That said, we note the ALJ issued an order on January 4, 2016 consolidating Holbrook's injury and hearing loss claims with claim number 2015-01750, an unrelated CWP claim against a different employer. We must therefore remand this claim to the ALJ to issue an order de-

consolidating that claim, and to conduct any necessary proceedings required for resolution of the CWP claim.

Accordingly, the decision rendered April 4, 2016 by Hon. Grant S. Roark, Administrative Law Judge, is hereby **AFFIRMED**. This claim is **REMANDED** for an order severing the CWP claim and for additional proceedings as set forth above.

ALL CONCUR.

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