

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 19, 2016

CLAIM NO. 201500695 & 201500694

RANDY LANE ADAMS

PETITIONER

VS. APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

CUMBERLAND RIVER COAL COMPANY
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
* * * * *

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

STIVERS, Member. Randy Lane Adams ("Adams") seeks review of the March 4, 2016, Opinion and Award of Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") awarding income and medical benefits for a work-related hearing loss but dismissing his claims against Cumberland River Coal Company ("Cumberland River") for work-related cervical and lumbar spine injuries as well as bilateral carpal tunnel syndrome.

Adams also appeals from the April 25, 2016, Order overruling his petition for reconsideration.

On appeal, Adams challenges the ALJ's decision on five grounds. First, Adams asserts the ALJ erred in citing his continued employment as contraindication of impairment. Second, he argues the ALJ erred in finding that because he had age-related changes in his lumbar and cervical spine, he did not sustain an injury. Third, Adams argues the ALJ erred in giving blanket credence to the biased opinions of Dr. Daniel Primm. Fourth, Adams argues the ALJ erred in giving credence to Dr. Primm's opinion he had no lumbar or cervical impairment due to a lack of objective evidence. Fifth, Adams contends the ALJ erred in agreeing with Dr. Primm's opinion he had no impairment due to carpal tunnel syndrome.

Adams' Form 101 alleges on July 19, 2014, he sustained work-related cervical and lumbar spine injuries, and carpal tunnel syndrome as a result of his repetitive work activities for Cumberland River.

The parties introduced Adams' medical records concerning his treatment before and after July 19, 2014, his last day of employment with Cumberland River. Adams submitted the reports of Dr. Jeffrey Uzzle who assessed a 16% impairment rating for the cervical spine injury, a 6%

impairment rating for the lumbar spine injury, and for the bilateral carpal tunnel syndrome, a 6% whole person impairment rating for the left upper extremity, and a 3% whole person impairment rating for the right upper extremity. This resulted in a combined impairment rating of 28%. Cumberland River relied upon the report and deposition of Dr. Primm who assessed a zero impairment rating for each of Adams' alleged injuries.

Cumberland River introduced the August 6, 2015, deposition of Adams and he testified at the January 7, 2016, hearing. At the time of his deposition, Adams was 54 years old and a high school graduate with two years of vocational training. Adams has been a licensed electrician since 1994. He estimated he has approximately twenty-three or twenty-four years in coal mining employment, 95% of which was underground. Adams has worked primarily as a repairman and electrician in the coal mining industry.

Adams worked for Cumberland River twice, the last time being from 2011 through January 19, 2014. Adams testified he sustained three neck injuries during this last period of employment with Cumberland River, none of which caused him to miss any work. He estimated the first injury occurred in December 2011, the second a year after the first, and the last injury two or three months before the

mine shut down. Adams' last day of work was July 19, 2014, when Cumberland River closed the mine. Adams testified his back "took the brunt of his work;" however, he missed no work because of his back condition nor did he see a doctor for it. Adams acknowledged he had never been written up by Cumberland River because of an inability to perform his work. He estimated he worked between fifty and sixty hours a week before the mine shutdown. The only reason he stopped working was due to the mine shut down. Adams missed no work due to any of the alleged injuries. After the mine shutdown, Adams sought work elsewhere as an electrician/repairman.

Adams had seen Dr. April Hall, his family physician, for neck symptoms prior to the mine shutting down. Adams testified that other than receiving pain shots, Dr. Hall did not provide ongoing treatment for his back or neck complaints. He estimated his neck symptoms began approximately three or four years ago. His neck symptoms originate between the shoulder blades and extend to the base of his skull. The pain generated from his neck injury moves from side to side and is sometimes in both shoulders. His back pain extends from his beltline to his tailbone into both hips. Adams testified he has had low back problems since he injured his back in 2011 at work

when a rock hit him in the back. He believes his carpal tunnel syndrome is due to daily repetitive use of his hands. Even though he does not perform a lot of work at home, his symptoms have worsened since he stopped working.

At the June 7, 2016, hearing, Adams testified that when he last worked he had symptoms in his neck, lower back, shoulders, and arms. He estimated his neck symptoms began in 2011 and the symptoms in his arms, hands, fingers, and wrists began in 2010. All his symptoms have worsened over time. Adams' work as a repairman and electrician entailed changing tires, working on equipment, changing defective and damaged parts, and installing high line, power boxes, and head drives. He worked ten hour shifts six days a week. The area in the mine in which he worked required him to either work bent over or on his knees. Adams estimated his tool belt loaded with tools weighed approximately 75 pounds. His tool bag containing the bigger tools weighed approximately 100 pounds. He estimated the heaviest item he lifted weighed 100 pounds. Adams testified that after the mine closure he intended to work somewhere else.

Currently, Dr. Hall treats Adams' problems. His neck symptoms include stiffness, popping, and cracking. He experiences pain between his shoulders, which at times

extends into one or both shoulders. His back pain extends from the lower back into his hips and down his legs, and he experiences numbness in his feet and toes. Adams also experiences numbness in his arms and hands. While at work he was constantly flexing his neck and back, and he would also flex his arms and fingers each night.

Adams' work as an electrician required him to constantly bend, pull, tug, and lift. Adams did not miss work after being hit in the back by a rock two or three years before he stopped working because the pain subsided to the extent he could work after two days. In 2013, he sought treatment for his back condition. When the pain radiates into his hips and legs he is unable to walk, sit, or sleep. He believes he is unable to work at Cumberland River because he cannot pass the physical examination. Because he refuses to take narcotic medication, Adams has taken Aleve 200 mg twice a day for six or seven years.

Adams missed no work for health reasons and performed his job as an electrician and repairman daily. He admitted the first notation of neck problems in the medical records of Dr. Hall, with Mountain Comprehensive Health Corporation, appears in the November 27, 2013, record. When seen by Dr. Hall on August 6, 2014, he complained of neck pain but did not mention pain in his

back, shoulder, arm, hip, or hands. Adams testified that "around [the] time" he saw Dr. Uzzle, he started complaining of these problems. When he saw Dr. Hall on September 11, 2014, he complained of neck problems but again did not complain of pain in his back, shoulders, and arms. He agreed the first mention of back pain is contained in Dr. Hall's December 31, 2014, note. However, there is still no mention of problems in his hips, legs, shoulders, arms, hands, and even in his neck. After he was laid off, Adams actively sought employment elsewhere.

As the claimant in a workers' compensation proceeding, Adams 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). Since Adams 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 find no merit in Adams' first argument the ALJ erred in citing his continued employment as conraindicating the existence of impairment. In rejecting Dr. Uzzle's opinion, the ALJ concluded his restrictions were not in concert with Adams' testimony regarding his physical capabilities at the time he was laid off by Cumberland River. Dr. Uzzle's restrictions do not correspond with Adams' assessment of his physical abilities, as Adams believed he was capable of working and actively sought employment as an electrician and repairman. In addition, Adams testified it was his plan to work for at least another year. Since Dr. Uzzle's assessment of Adams' physical condition was not in accordance with Adams' actual physical capabilities, as is his prerogative, the ALJ rejected Dr. Uzzle's assessment of Adams' impairment.

We disagree with Adams' assertion that Dr. Primm and the ALJ confused the concept of impairment and disability since they believed Adams' full-time employment was evidence of a lack of impairment. Within his discretion, the ALJ can and did consider the fact Adams did not miss any work and fully performed all of his duties

prior to being laid off in determining the presence and extent of physical impairment. The ALJ determines the weight to be accorded the evidence and he could consider Adams' work history in determining whether Adams sustained work-related cervical and lumbar injuries and carpal tunnel syndrome. Adams' work history and his statement he planned on working after the layoff may be considered by the ALJ in assessing the credibility of Dr. Uzzle and Adams regarding Adam's physical problems and limitations. Thus, we find no error in the ALJ disregarding Dr. Uzzle's opinions in light of Adams' ongoing employment and intent to continue working.

Adams' second argument is the ALJ erred in relying upon Dr. Primm's opinion Adams had only age-related degenerative changes in the spine and he did not sustain lumbar and cervical spine injuries. Adams points to Dr. Uzzle's opinion that the arthritic changes in the cervical and lumbar spine were dormant for years and only became symptomatic and impactful the last few years he worked. Thus, the ALJ should have determined whether Adams' arthritic changes were aroused into an impairing state by his work and, as a result, were transformed into a compensable injury. Adams notes Dr. Uzzle concluded the degenerative changes in Adams' spine were more advanced

than would be expected of a man his age and were exacerbated by the heavy manual labor he performed in the coal industry.

In his July 21, 2015, report, Dr. Primm set forth the medical records he reviewed and his interpretation of the MRI scans which he reviewed. After setting forth the results of his examination, Dr. Primm's impression was multiple musculoskeletal findings with no objective findings except for typical age-related degenerative changes. He suspected there was some degree of symptom magnification and/or secondary gain. Dr. Primm had no explanation regarding why so many musculoskeletal symptoms, including neck and back pain, have not improved and in fact had actually worsened since Adams has not been working. He believed Adams' history is "inconsistent with his work as a factor in either causing or aggravating these symptoms." After reviewing the MRI scans, Dr. Primm concluded they were unremarkable and normal, and typical of individuals in Adams' age group regardless of occupation. Dr. Primm concluded none of the x-ray reports or MRI scans reported any changes which would be excessive or unusual for a man of his age regardless of occupation. Had he not been laid off, Dr. Primm believed Adams could have continued to work as he was doing with no specific physical restrictions.

From any objective standpoint, based on his examination, Dr. Primm could not find evidence Adams sustained any type of work-related injury or retains any type of physical impairment.

Concerning Adams' cervical spine complaints, in his September 4, 2015, deposition, Dr. Primm provided the following testimony:

Q: Now, Doctor, your examination of Mr. Adams - let's first go to the cervical spine - did you note any abnormalities on your physical exam relative to his complaints?

A: Well, he was subjectively tender over the trapezius muscles. He didn't have any tenderness over the cervical spine itself.

His range of motion actually was fine. He had full flexion and extension. He reported that he felt pain with extension only.

The Lhermitte's testing and Spurling's testing, which are both tests to try to provoke nerve root radicular symptoms, were negative both for neck and extremity pain.

And then I didn't find any diminished sensation or any muscle atrophy or any strength loss in the upper extremities.

Concerning Adams' lumbar spine complaints, Dr.

Primm testified:

Q: Now, Doctor, relative to his complaints of the lumbar spine, did you note any abnormalities which you felt

were consistent with his subjective complaints?

A: No. Again, he reported tenderness over the mid and lower back muscles, but none over the buttocks or sacroiliac joint.

He did show some mildly diminished range of motion, but nothing that would be remarkable for people in this age group.

The straight leg raising was negative for back or leg pain, and he didn't even flinch with that maneuver, so that would be negative for radicular symptoms.

And also neurologically he was normal. His reflexes, strength, sensation were normal, although he did give way in both legs, which is a finding that does suggest some subjective overlay or perhaps his symptoms - symptom exaggeration.

He didn't report any diminished sensation in either leg and there was no measurable atrophy in the leg, so basically there was no objective sign of any type of neurological abnormality relative to his lumbar spine.

Dr. Primm compared the MRI scans he personally reviewed with his physical findings and opined as follows:

Q: Now, Doctor, in taking your physical findings and your review of the MRI of the cervical spine and lumbar spine, how did the objective test on the MRIs correlate with your physical findings?

A: Well, his lumbar MRI scan was basically what we call unremarkable. It was a normal scan for a man in his age group.

Sure it showed some degenerative changes, which when I looked at it was a very small posterior bulge at L3-4 and L5-S1, some very slight disc desiccation at L5, but then when you looked at the axial views, looking down through the spinal cord itself, and looking through the spinal canal you couldn't see bulging into the canal or any displaced discs, any significant osteophytes, so it was basically an unremarkable scan for a 54-year-old man.

Q: And how about the MRI of the cervical spine?

A: It was very similar. Again, the disc spaces - except for C6-7 - were all normal. There was some mild narrowing at that level, but that was - again, that's the first level where you see the narrowing with age. I'm sorry; that was C5-6.

And there were some posterior spurs and disc bulges at C5-6 and C6-7, as well as the disc desiccation, on the T2 views, but again, these changes were not advanced or profound at all and they were at the typical levels where they first begin and are typically seen in patients over 40 years old.

Q: And would they be - your physical findings and the findings on the MRI, would they be consistent with Mr. Adams' functional abilities in that he was able to work at full duty without restrictions or limitations until he was laid off?

A: Well, yes. Again, the findings on his scans and his physical examination were what we would basically refer to as unremarkable. They really weren't suggestive of any type of truly

abnormal condition or unusual condition in people in this age group.

Addressing Dr. Uzzle's findings regarding the cervical and lumbar spine, Dr. Primm provided the following testimony:

Q: Now, Dr. Uzzle assessed a 16 percent impairment rating relative to the cervical spine.

What would you have to find and document in order to rate someone at 16 percent in a nonsurgical back?

A: Well, I mean, actually, that would fall under the DRE category III, which would include several disc herniations with surgery or evidence of ongoing radiculopathy, neurological deficits, that type of thing, and I could not find anything that would have been consistent with Dr. Uzzle's conclusions in any of the other records I reviewed, including his treatment by the surgeon who examined his cervical spine, nor by my findings.

Q: Now, based on your evaluation, your review of the medical records and imaging studies of the lumbar spine, what impairment rating, if any, would you assess based upon the Fifth Edition of the AMA Guides?

A: Well, I think it would be zero again because he would also be in DRE category I for the lumbar spine.

You know, there was no objective evidence of an injury. He had no evidence of any type of radicular or neurological deficit. There were no signs of any type of instability in the spine and he had not undergone any

surgery, so he really didn't fall into any of the categories DRE I or above.

Q: Now, Dr. Uzzle assessed a six percent impairment rating.

Can you tell the Administrative Law Judge why you disagree with that assessment?

A: Well, a six percent would place you in DRE category III, which would indicate that you have to find some objective signs of any injury, and there just wasn't anything there in this case that documented an injury.

You know, his MRI scans didn't show any type of specific traumatic changes, only age-related changes. His examination didn't show any objective signs of injury.

And in fact, I couldn't find anything in the records I'd reviewed that documented he had ever had a lumbar injury.

The opinions Dr. Primm expressed in his report and deposition qualify as substantial evidence sufficient to support the ALJ's finding Adams sustained no injury of the cervical and lumbar spine justifying an impairment rating. Dr. Primm's report and testimony amply identifies the objective medical evidence which supports his conclusions. Thus, an assessment of no impairment rating for the alleged lumbar or cervical injuries by Dr. Primm is supported by medical evidence in the record.

Here, Dr. Primm found no objective evidence of cervical or lumbar conditions capable of being aroused into a state warranting an impairment rating. Similarly, Dr. Primm testified his examination and the MRI scans did not reveal objective signs of an injury to or abnormalities in the cervical and lumbar spine. In light of Dr. Primm's findings and opinions, the ALJ was not required to determine whether a dormant pre-existing cervical and lumbar condition had been aroused into a state warranting an impairment rating.

Even though the record contains conflicting medical evidence contrary to the ALJ's findings, that fact does not compel a different result. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). As fact-finder, the ALJ is vested with the authority to weigh the medical evidence, and if "the physicians in a case genuinely express medically sound, but differing, opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). Since substantial evidence supports the ALJ's decision, we have no authority to set aside his determination Adams did not sustain work-related lumbar and cervical cumulative trauma injuries.

In the same vein, we find no merit in Adams' argument the ALJ erred in giving blanket credence to Dr. Primm's opinions since he was, as asserted by Adams, biased. Adams contends Dr. Primm is not reliable because he openly defied the admonitions of the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") forbidding evaluators to react subjectively and personally to the person being evaluated. Obviously, the ALJ gave no credence to this assertion. We note Dr. Primm indicated in both his report and deposition that there appeared to be symptom magnification. After reviewing the medical records and conducting an examination, Dr. Primm must assess the credibility of the individual whose condition or conditions he is evaluating. Moreover, a determination of whether the complaints of the individual are borne out by the objective testing and examination is necessary in every case. During his deposition, Dr. Primm adequately explained the basis for his finding that Adams did not sustain work-related cervical or lumbar injuries, which included an assessment of Adams' credibility concerning his symptoms and physical limitations.

The holding of the Court of Appeals in Tokico (USA), Inc. v. Kelly, 2007-CA-002342-WC, rendered June 13,

2008, Designated Not To Be Published, although not squarely on point, is insightful.

Tokico's sole reason for challenging Dr. Kriss's impairment rating is the rating's noncompliance with the *Guides*. However, the workers' compensation statutes do not require a doctor's medical diagnosis to comport with the *Guides*. Rather, KRS [footnote omitted] 342.0011(35) only requires a doctor's permanent impairment rating to comport with the *Guides*. Thus, the fact that Dr. Kriss's diagnosis did not comply with the *Guides*' criteria for diagnosing CRPS did not invalidate the impairment rating, which he assigned in conformity with the *Guides*. The ALJ therefore did not err by relying upon Dr. Kriss's impairment rating, and the Board did not err by affirming the ALJ's opinion in that regard.

Slip Op. at 2.

Assuming, *arguendo*, Dr. Primm engaged in a personal attack upon Adams in violation of the AMA Guides, that fact does not negate Dr. Primm's opinion that Adams did not sustain cervical and lumbar spine cumulative trauma injuries. The fact Dr. Primm may have had some perceived bias goes to the weight to be accorded his opinions. As evidenced by his findings, the ALJ did not believe Dr. Primm was biased and believed his opinions more accurately detailed Adams' condition than the opinions of Dr. Uzzle. Adams raised this issue in his petition for

reconsideration, and the ALJ choose to overrule it as a re-argument of the merits.

We also find no merit in Adams' argument the ALJ erred in giving credence to Dr. Primm's opinion that Adams had no lumbar or cervical impairment due to a lack of objective evidence. Adams argues Table 15-3 of the AMA Guides provides a DRE Category II lumbar impairment rating of five to eight may be assessed for "[c]linical history and examination findings are compatible with a specific injury." He notes Dr. Uzzle assessed a 6% impairment rating for the lumbar spine injury based on an asymmetric loss of range of motion. He also notes the EMG/NCV studies performed at East Tennessee Brain and Spine showed chronic C6 cervical radiculopathy. Adams further contends that in Dr. Primm's summary of the records, he did not indicate he had reviewed the EMG/NCV studies ordered by Dr. Hall in 2013 and conducted on January 20, 2015, by Dr. Sujata Gutti. Adams also relies upon the EMG/NCV studies performed at East Tennessee Brain and Spine revealing chronic C6 cervical radiculopathy. Adams argues the AMA Guides permit assessment of an impairment based upon signs of radiculopathy. Further, the AMA Guides state electrodiagnostic studies may verify neurologic impairment.

Dr. Primm's July 21, 2015, report specifically addresses the results of "EMGs and NCVs of both upper extremities." Consequently, the ALJ could reasonably conclude Dr. Primm reviewed and considered all medical records before formulating his opinions. That aside, the fact Dr. Primm may not have reviewed the studies performed by Dr. Gutti does not cause his report to be less than substantial. Rather, the failure to consider certain medical studies bears on the weight to be accorded Dr. Primm's opinions. Further, Adams did not raise this issue in his petition for reconsideration, thereby allowing the ALJ to address this issue. Dr. Primm adequately explained the basis for his finding that Adams did not have a cervical or lumbar impairment, and the ALJ was free to rely upon Dr. Primm's opinions in determining whether Adams sustained cumulative trauma lumbar and cervical injuries in the course of his employment with Cumberland River.

Finally, we find no merit in Adams' argument the ALJ erred in agreeing with Dr. Primm that Adams had no impairment for carpal tunnel syndrome. Adams argues that when comparing Dr. Primm's examination and testing of Adams' upper extremities with the requirements of the AMA Guides, it is evident Dr. Primm's evaluation was deficient. He argues it is significant Dr. Primm excluded one of the

most meaningful measures of carpal tunnel syndrome, the Phalen's test. Adams further argues Dr. Uzzle's examination and testing was much more extensive. Adams surmises it is not surprising Dr. Primm did not find an impairment rating for carpal tunnel syndrome since he performed too few of the clinical tests required by the AMA Guides.

Concerning the presence of carpal tunnel syndrome, Dr. Primm provided the following deposition testimony explaining why he concluded Adams did not have carpal tunnel syndrome in either extremity:

Q: Now, Doctor, based upon your examination, your review of the records and your testing, did you find any impairment that was ratable under the Fifth Edition of the AMA Guides relative to the right carpal tunnel and/or left carpal tunnel?

A: No. I don't think that's an appropriate diagnosis in this case because when I performed the test for carpal tunnel, just like I think Dr. Steven -

Q: Carawan.

A: -- Carawan did, you know, those tests were negative.

Tinel's testing was negative. He didn't show any signs of median nerve muscle atrophy in either hand. He didn't have swelling in the wrists. His range of motion of the wrists and all the fingers and thumbs was normal.

His strength was normal too, so there just wasn't any clinical findings to suggest that he had a carpal tunnel.

And even if you have changes in EMG/NCVs that say there is slowing across the median nerve, even though the person looking at those studies would say, oh, it's carpal tunnel, it's not.

Carpal tunnel, again, is like a disc herniation; you've got to have clinical findings of that to make the diagnosis.

It says in the AMA Guides that EMG and NCV findings are not sufficient to make a diagnosis of carpal tunnel. You've got to have corroborating physical findings.

The holding of the Court of Appeals in Tokico (USA), Inc. v. Kelly, supra, previously cited herein, is dispositive of this final argument. The Court of Appeals explained the workers' compensation statutes do not require a doctor's medical diagnosis to comport with the AMA Guides. Therefore, even if Dr. Primm's testing for carpal tunnel syndrome did not comply with the requirements of the AMA Guides, that fact does not invalidate the impairment rating which Dr. Primm assessed in conformity with the AMA Guides.

In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003), the Kentucky Supreme Court instructed that the proper interpretation of the AMA Guides

is a medical question solely within the province of the medical experts. Consequently, while an ALJ may elect to consult the AMA Guides in assessing the weight and credibility to be accorded an expert's impairment assessment, as the trier of fact the ALJ is never required to do so. Dr. Primm explained why he concluded Adams did not suffer from carpal tunnel syndrome in either upper extremity, referencing the AMA Guides in support of his opinion. Thus, we find no error in the ALJ's reliance upon Dr. Primm's opinions in dismissing Adam's claim for work-related carpal tunnel syndrome in both upper extremities.

Concerning the ALJ's dismissal of Adams' claims for work-related cervical and lumbar spine injuries as well as carpal tunnel syndrome, this Board has repeatedly held that the ALJ, as fact-finder, has the authority to pick and choose whom and what to believe. The AMA Guides is clear that its purpose is to provide objective standards for the "estimating" of permanent impairment ratings by physicians. Because Dr. Primm is a licensed medical doctor, the ALJ could appropriately assume his expertise in utilizing the AMA Guides was comparable or superior to any other expert medical witnesses of record. The ALJ is not required to look behind an impairment rating and meticulously sift through the AMA Guides to determine whether an impairment

assessment harmonizes with that treatise's underlying criteria. Except under compelling circumstances, where it is obvious even to a lay person that a gross misapplication of the AMA Guides has occurred, the issue of which physician's AMA rating is most credible is a matter of discretion for the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). Hence, we find no error in the ALJ's reliance upon Dr. Primm's opinion in dismissing Adams' claim for work-related injuries to the cervical and lumbar spine and bilateral carpal tunnel syndrome.

Accordingly, the March 4, 2016, Opinion and Award and the April 25, 2016, Order overruling the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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