Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 23, 2014

CLAIM NO. 201300435

ROBERT BROWN PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

IMAGE ENTRY, INC. (SOURCECORP)
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

* * * * * *

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

ALVEY, Chairman. Robert S. Brown ("Brown"), *pro se*[1], seeks review of the decision rendered February 14, 2014 by Hon. Stephen G. Bolton, Administrative Law Judge ("ALJ"),

[1] Brown was represented by counsel throughout the litigation of his claim and subsequently filed this appeal to the Board *pro se*.

dismissing his claim for injuries he allegedly sustained on January 10, 2013. No petition for reconsideration was filed.

On appeal, Brown essentially argues the ALJ's dismissal of his claim was erroneous, and not supported by substantial evidence. Because we determine the ALJ's determination is supported by substantial evidence, and a contrary result is not compelled, we disagree and affirm. However, as noted by Brown, pages twenty through twenty-four of the ALJ's decision contain information which does not pertain to this claim, and which was not included in the ALJ's analysis of the claim. Therefore, that portion of the decision is vacated, and on remand the ALJ shall issue an amended decision with the information pertaining to another claim deleted.

Brown filed a Form 101 on March 25, 2013 alleging he injured his back, neck, head and left leg when he tripped over a chair while working for Image Entry, Inc. ("Sourcecorp") where he worked as a general clerk. Brown's previous work history includes working as a cook, soldier, casino worker, and picture framer.

Brown testified by deposition on July 9, 2013, and again at the hearing held December 16, 2013. He is a resident of Mt. Vernon, Kentucky, and was born on November

22, 1962. He did not graduate from high school, but subsequently received his GED. He then completed over sixty hours of courses at Northern Kentucky University. He later joined the United States Army where he stated he served a total of twelve years. He testified he took leadership courses while in the Army, and his Form 101 reflects he attended the Army War College, although he later clarified these were actually correspondence courses published by that organization.

After leaving the Army, he had sporadic employment. He worked a couple of years for a family casino in Las Vegas. He worked approximately five months as a cook at the Cracker Barrel in Berea, Kentucky in 2005. He did not work again at a regular job until he began working in the deli at the Wal-Mart in London, Kentucky in 2008. He only worked there briefly until he sustained work-related injuries on April 17, 2008. At his deposition, Brown stated the injuries he sustained in 2008 consisted of back, left knee, and left shoulder. He ultimately settled that claim (Claim No. 2008-00938), based upon a 6% impairment rating for a lump sum of $8,500.00. The Form 110-I settlement agreement was approved by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, on January 9, 2009. Attached to the hearing transcript is a questionnaire completed by Brown

on August 9, 2008, indicating he could not cut his grass, carry heavy items, stand for long periods of time, or lift on his left side. He also noted his pain was worse early and later in the day, all due to the 2008 injury. Those complaints are similar to those he has alleged resulted from his injury at Sourcecorp.

He began working for Sourcecorp in late November 2012. He was terminated from his job on January 14, 2013. He has neither worked nor sought employment since that date. He stated he was never properly trained to do his job. He stated he was required to perform many work duties including lifting boxes, unloading trucks, and moving furniture, rather than the clerical work for which he was hired.

On the date of the accident, he escorted a vendor through the worksite. As he was returning to his work station, he stated he became distracted, and hung his foot in a metal chair. He stumbled, but did not completely fall. He testified he notified Anna Pointer ("Pointer"), his direct supervisor of the accident on the date it occurred. However, no accident report was completed on that date. He stated he continued to work, but he was in pain afterward. He stated he does not believe he has the physical ability to return to his job at Sourcecorp. He stated he has back pain going into his left leg, which prevents him from doing

housework such as making the bed, vacuuming or cleaning, and doing yard work.

After his termination, Brown walked to the hospital, and was treated in the emergency room. After that treatment, he saw his family physician on only one occasion, and he has had no other treatment for his alleged work injuries. He stated he treats with over-the-counter medication, a heating pad, and a TENS unit he purchased over the internet.

Pointer testified by deposition on September 3, 2013. She stated Brown was hired as a general clerk, and she was his supervisor. She did not recall him reporting an accident or injury to her on January 10, 2013. She first learned of this allegation on January 14, 2013 when he was terminated. She then outlined the procedure followed when a work injury is reported.

Jeannean Thomas testified by deposition on September 3, 2013. She is the Human Resources Manager for Sourcecorp. She also outlined the proper procedure for reporting a workers' compensation claim. Brown was hired to prepare Veteran's Administration documents for scanning. This entailed sorting the files, and removing staples, paper clips, sticky notes, etc. He had difficulty performing the job, and was assigned other tasks. She stated Brown was

terminated due to his inability to perform the job duties for which he was hired. She stated he was unable to meet the quality standards. She investigated Brown's allegation of the work injury, and stated she found nothing to corroborate his allegations.

In support of the Form 101, Brown filed the January 14, 2013 record from the Rockcastle Regional Hospital. Brown reported tripping over a chair at work the previous week. He stated he initially experienced some dizziness, but it had resolved. He complained of left hip, low back and neck pain. He was given medications, and x-rays of the low back and the cervical spine were ordered.

Brown also filed the April 24, 2013 report of Dr. James Owen who evaluated him at his attorney's request. Dr. Owen noted the injury occurred on January 12, 2013, when Brown caught his foot in a chair at work. He noted Brown complained of an immediate onset of low back and left leg pain. Brown reported his previous injury at Wal-Mart was to his upper back, and it had resolved. Dr. Owen diagnosed persistent low back pain with non-verifiable radicular symptomatology with findings of slightly positive straight leg raising on the left, sensory abnormality in the fifth toe on the left, diminished ankle reflex, and reduced strength. He stated Brown may have had a pre-existing

dormant condition aroused into disabling reality by the work episode. He assessed a 12% impairment rating pursuant to the American Medical Association, Guides to Evaluation of Permanent Impairment, Fifth Edition ("AMA Guides"). He opined Brown should do no lifting, handling or carrying of objects greater than twenty pounds, and should avoid repetitive squatting or stooping.

Dr. Gregory Snider evaluated Brown on July 31, 2013 at Sourcecorp's request. He noted Brown worked there for approximately two months, and caught his foot in a chair on January 10, 2013. Brown reported he avoided falling, but experienced low back pain. Dr. Snider stated he had reviewed the note from the Rockcastle Regional Hospital and from Brown's one visit with Dr. Bullock, his family physician. Although originally complaining of a neck injury, Brown stated this had resolved.

Dr. Snider noted Brown had seen Dr. Robert Hoskins for his 2008 injuries. He stated Dr. Hoskins had diagnosed low back pain, left leg numbness, neck pain weakness, left arm pain, thoracic problems, left shoulder weakness, and numerous limitations. Dr. Hoskins had assigned restrictions, noted Brown could not return to work at his job at Wal-Mart, and assigned a 6% impairment rating for low back pain based upon the AMA Guides.

On examination, Dr. Snider noted Brown's lumbar range of motion was normal, he had no limp, and his straight leg raising was normal. Dr. Snider diagnosed low back pain with sciatica, resolved neck pain, and prior low back pain with settlement based upon a 6% impairment rating. He found no evidence of radiculopathy, and stated Brown exaggerated his symptoms. He stated Brown may have sustained a strain which had resolved. Dr. Snider did not anticipate the need for any permanent restrictions, and stated the impairment rating would not increase from the 6% imposed by Dr. Hoskins. He stated there is simply no evidence of an anatomic change from the work injury in question.

A benefit review conference ("BRC") was held on August 14, 2013. The BRC order and memorandum reflects the issues preserved were benefits per KRS 342.730; work-relatedness/causation; notice; average weekly wage; unpaid/ contested medicals; injury as defined by the Act; exclusion for pre-existing active disability/impairment; temporary total disability benefits; and extent and duration. The hearing was held on December 16, 2013, at which time the parties stipulated to $424.11 as the correct average weekly wage.

The ALJ rendered his decision dismissing Brown's claim on February 14, 2014. The ALJ cited to numerous

inconsistencies in Brown's testimony regarding how the accident allegedly occurred, and the subsequent reporting of the occurrence. The ALJ found Brown's testimony lacking in credibility, and provided his reasons for doing so. The ALJ additionally outlined why he found Dr. Owen's opinions lacked credibility. The ALJ determined as follows:

> Therefore, the Plaintiff has failed to bear his burden of proof to show that he was injured during the course and scope of his employment, that he suffered an injury as defined by the Act of that he timely reported and injury to the Defendant/employer.

No petition for reconsideration was filed by either party.

Brown, *pro se*, filed a hand-written document outlining what he perceived to be incorrect findings, and alleged improprieties by the ALJ. This Board accepted the tendered document as a notice of appeal. Brown subsequently filed a brief. Because Brown is proceeding *pro se*, we will attempt to explain the fundamental legal principles controlling how this Board must decide an appeal.

In the Kentucky's workers' compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as the "fact-finder." As fact-finder, the ALJ reviews the evidence submitted by the parties and decides which

testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as judge, then applies the law to the facts as he determines them to be true. As a matter of law, the facts as decided by the ALJ cannot be disturbed on appeal by this Board so long as there is substantial evidence of record to support the ALJ's decision. *See* KRS 342.285(1); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Although we understand Brown is frustrated regarding the dismissal of his claim, we also recognize the ALJ's job as fact-finder is difficult. As a rule, in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning those matters at issue. It is for this very reason in cases where the evidence is conflicting, the facts concerning an issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

Authority establishes Brown, as the claimant in a workers' compensation case, bore the burden of proving each of the essential elements of his cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Brown was unsuccessful in his burden of proving his case, the question on appeal is whether the evidence is so

overwhelming, upon consideration of the record as a whole, as to compel 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). 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); 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, supra.

Here, the record contains substantial evidence supporting the ALJ's dismissal of Brown's claim. In making his determination, the ALJ relied upon both lay and medical testimony, in particular Dr. Snider's report. This constitutes substantial evidence supporting the ALJ's dismissal, and a contrary result is not compelled. The ALJ properly considered all evidence of record, weighed that evidence, and reached a decision supported by substantial evidence and in conformity with the law. Thus, we are without authority to direct a different result.

That said, we note on pages 20 – 24 the ALJ cited to evidence apparently from another claim. However, in providing his determination, and his analysis in support, he made no reference to that documentation. On remand, the ALJ is directed to remove those references from his decision which do not pertain to this claim.

Accordingly, the February 14, 2014 Opinion and Order rendered by Hon. Steven G. Bolton, Administrative Law Judge, is hereby **AFFIRMED IN PART, VACATED IN PART,** and the claim is **REMANDED** for entry of a decision without references to evidence from another claim.

ALL CONCUR.

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