Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 9, 2013

CLAIM NO. 201200993

RONEY DEERING PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

KENTUCKY AUTOMOTIVE CENTER OF GRAYSON
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Roney Deering ("Deering") appeals from the April 30, 2013, opinion, award, and order, the May 1, 2013, "Amended Opinion, Award and Order," and the May 29, 2013, order ruling on Deering's petition for reconsideration of Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"). In the April 30, 2013, opinion, award,

and order, the ALJ awarded permanent partial disability benefits and medical benefits.

On appeal, Deering asserts the ALJ erred in finding his left finger injury had resolved. Deering also argues the ALJ erred by finding he did not sustain a low back injury. Finally, Deering asserts the ALJ erred by failing to conduct an analysis and finding he is permanently totally disabled.

The Form 101 alleges on June 19, 2010, Deering sustained the following injuries in the following manner:

> Claimant sustained work related injury [sic] to his Back, Right Knee, and Left Hand (4th Finger) when a 2,000-3000 pound tool box fell on/struck him. Mr. Deering also developed symptoms in his Hips and Left Lower Extremity. Claimant suffered a permanent work related injury as defined by Kentucky's Workers' Compensation Act (KRS 342), resulting in a permanent impairment rating pursuant to the 5th Edition of the *AMA Guides*.

The December 5, 2012, benefit review conference order and memorandum ("BRC order") lists the following contested issues: benefits per KRS 342.730; unpaid or contested medical expenses [handwritten: "future for L finger & Lumbar Spine"], injury as defined by the ACT [handwritten: "L finger & Lumbar Spine"]; exclusion for pre-existing disability/impairment [handwritten: "Lumbar

Spine]"; and vocational rehabilitation. Also handwritten under "other" is "proper rating under the guides."

In workers' compensation cases, the claimant bears the burden of proof and risk of nonpersuasion regarding every element of his or her claim. Durham v. Peabody Coal Co., 272 S.W.3d 192, 195 (Ky. 2008). In order to sustain that burden, a claimant must put forth substantial evidence, evidence sufficient to convince reasonable people, in support of each element. Id. This evidence has been likened to evidence that would survive a defendant's motion for a directed verdict. Id.

Kentucky law holds that when the party with the burden of proof before the ALJ was unsuccessful, the sole issue on appeal is whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). The Court of Appeals stated:

> The claimant bears the burden of proof and risk of persuasion before the board. If he succeeds in his burden and an adverse party appeals to the circuit court, the question before the court is whether the decision of the board is supported by substantial evidence. On the other hand, if the claimant is unsuccessful before the board, and he himself appeals to the circuit court, the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor.

Wolf Creek Collieries at 735.

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). So long as any evidence of substance supports the ALJ's opinion, it cannot be said the evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Concerning the alleged injuries to the left finger and low back, the ALJ determined as follows:

> In so finding regarding the left finger, the ALJ relies on Dr. Ballard who reviewed all the evidence and found no permanent harmful change to the left finger. Additionally, the evidence of record, also relied upon, shows that while Plaintiff continued to make complaints concerning the left finger, there is no convincing evidence that the left finger injury has not completely resolved and no evidence of anything he would not be able to do as a result of the temporary injury to the left ring finger. His initial diagnosis was a sprain only with no fracture. Two months after the work injury, he completed treatment with Dr. Novotny who recommended nothing more than he continue to work on range of motion.
>
> Regarding the low back, the ALJ relies on the records in evidence where Plaintiff has had a history of low back pain. Furthermore, the record contains MRI studies from several years before and soon after the accident that allowed a comparison and contributed to

> Dr. Ballard’s medical findings of no harmful change as a result of the June 19, 2010 work injury.

This Board is unable to conclude that the evidence compels a different result than what was reached by the ALJ on the issues of Deering's alleged left finger and low back injuries. A review of Dr. Ellen Ballard's November 6, 2012, report reveals the following "impression":

> 1. History of left ring finger, low back pain and right knee pain status post work injury.
> 2. Previous history of low back pain with MRI report indicating no change in MRI findings.
> 3. Multiple medical records indicating current treatment for COPD, depression, thoracic pain, chest pain and breathing difficulty.
> 4. Status post right knee partial medial meniscectomy.

Dr. Ballard opined as follows: "Based on objective medical findings, the only abnormality that caused a harmful change to the human organism is that to his right knee.” Dr. Ballard assigned a 1% impairment rating for a medial meniscectomy.

The July 1, 2010, record of Dr. Steven Novotny indicates the following impression: "Sprain PIP joint left ring finger." Dr. Novotny's recommendations were as follows:

> Edema sleeve for swelling. Extension splint at nighttime. Buddy tape ring and long fingers during the daytime. Work on range of motion. Continue anti-inflammatories. We will see him back in 3 weeks for a repeat evaluation. X-rays of the left finger will be obtained at that time. He may return to work.

An August 26, 2010, record of Dr. Novotny indicates as follows: "Mr. Deering returns for evaluation of his left hand. He has some soreness around the PIP joint of the left ring finger but after cortisone injection the other aches and pains have essentially gone away." Dr. Novotny further opined as follows:

> Examination shows collateral ligaments are stable at the DIP, PIP, and MP joints. He is stable to radial and ulnar deviation at 0 and 30 degrees of flexion. Actively, he has a range of motion of approximately 7 degrees of flexion to 95 degrees of flexion. Passively, we can straighten him toward 0. There is no evidence of stenosing tenosynovitis with triggering, locking, or tenderness at the A1 pulley. No evidence of significant swelling.

Dr. Ballard's and Dr. Novotny's reports constitute substantial evidence in support of the ALJ's determination regarding the alleged injuries to Deering's left finger and lower back, and we cannot disturb this determination.

Deering's final argument on appeal is the ALJ erred by not performing an analysis and finding he is

permanently totally disabled. In the May 29, 2013, order ruling on Deering's petition for reconsideration, in response to his request for additional findings on the issue of permanent total disability, the ALJ stated as follows:

> Regarding a final issue of permanent total disability, Plaintiff requests a finding in his favor. Beginning on page 15 of the Opinion and continuing through the section on vocational rehabilitation, the ALJ discusses in detail that she does not believe Plaintiff is able to return to the job he performed at the time of the injury but that there are numerous jobs for which he has experience which he could return to performing.

In the May 1, 2013, "Amended Opinion, Award and Order," in the section pertaining to vocational rehabilitation benefits, the ALJ made findings regarding Deering's ability to perform work other than the type of work he was performing at the time of the injury. The ALJ stated as follows:

> While the ALJ does not agree Plaintiff could return to his former job and disagrees with that portion of Dr. Crystals' report, the report is convincing that there are many jobs Plaintiff could perform if he wanted to return to work. He attended school through the 11th grade, obtained a GED, attended several years of college and is still quite young, 45 years old. He also has obtained several certifications. There may be other

> factors that keep Plaintiff from returning to work such as COPD, factors that are completely separate from the work injury.

We acknowledge the ALJ failed to directly address Deering's request for a finding of permanent total disability in a stand-alone section devoted entirely to the subject. However, the ALJ provided an analysis regarding Deering's ability to work in that portion of her opinion regarding his entitlement to vocational rehabilitation benefits. It is clear the ALJ believes Deering is capable of performing some type of work "if he wanted to return to work." In this analysis, the ALJ discusses various factors that support her opinion Deering could return to work if he wanted to, such as Deering's age and schooling. The ALJ also relied upon the November 29, 2012, "Vocational Analysis and Employability Evaluation" report by Ralph Crystal, Vocational Consultant, in which Crystal opines as follows: "Considering the physical work assessment as indicated, Mr. Deering has the ability to enter a wide range of jobs at present and is not disabled from employment based on the injury of 06/19/10." While an ALJ is not required to rely upon the vocational opinions of physicians or vocational experts in arriving at a decision with regard to permanent total disability, in her

discretion as fact-finder she may accept and rely on such opinions when and if she so chooses. *See* Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Seventh Street Road Tobacco Warehouse v. Stillwell, Ky., 550 S.W.2d 469 (1976). Thus, while this section in the April 30, 2013, "Amended Opinion, Award and Order" does not directly indicate it is an analysis of Deering's entitlement to permanent total disability benefits, it clearly explains her conclusion and the basis for her conclusion Deering is not permanently totally disabled.

The ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The ALJ is merely required to adequately lay out the basic facts drawn from the evidence upon which her ultimate conclusions were based so that all parties are reasonably apprised of the basis for the decision. Big Sandy Community Action Program vs. Chafins, 502 S.W.2d 526 (Ky. 1973); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). The ALJ has done so, and her determination will not be disturbed.

Accordingly, the April 30, 2013, opinion, award, and order, the April 30, 2013, "Amended Opinion, Award and

Order," and the May 29, 2013, order ruling on Deering's petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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