Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 28, 2014

CLAIM NO. 201201069

ROY G. MORGAN PETITIONER

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

DIXIE FUEL CO., INC.
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Roy G. Morgan ("Morgan") appeals from the November 27, 2013, Opinion, Award, and Order of Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"). In the November 27, 2013, Opinion, Award, and Order, the ALJ dismissed Morgan's cumulative trauma injury claim, Claim No. 2012-01067, in which Morgan alleged cumulative trauma injuries to his back, both legs, and knees. The ALJ awarded

medical benefits for Morgan's hearing loss claim, Claim No. 2012-01069. No petition for reconsideration was filed.

On appeal, Morgan asserts the ALJ's decision is "clearly erroneous" and "the evidence as a whole is to [sic] overwhelming that no reasonable person could reach the same conclusion as the ALJ."

The Form 101, Claim No. 2012-01067, filed August 14, 2012, alleges on May 6, 2012, Morgan sustained cumulative trauma injuries to his back, both legs, and knees due to "repetitive use." At the time of his injuries he was working as a "blasting boss." The Form 103 asserting a hearing loss claim, Claim No. 2012-01069, was filed October 29, 2012.

By order dated December 17, 2012, the ALJ consolidated both claims.

The January 15, 2013, Benefit Review Conference Order lists the following contested issues: benefits per KRS 342.730 and 342.7305, work-relatedness/causation, notice, average weekly wage, unpaid or contested medical expenses, injury as defined by the Act, credit for U.I., exclusion for pre-existing disability/impairment, TTD, and extent and duration.

The November 7, 2012, Independent Medical Examination report of Dr. Gregory T. Snider contains the

following diagnosis: "1. Status post lay-off 5/07/2012. 2. Coronary artery disease. 3. Neck pain. 4. Back pain." Regarding an impairment rating, Dr. Snider stated as follows:

> I do not see any objective evidence of an anatomic change due to cumulative trauma or any other pathology that would warrant an impairment rating under the AMA Guides, 5th Edition- 0% WPI based on the information currently available.

Dr. Snider opined that Morgan could return to work as a blaster.

In the November 27, 2013, Opinion, Award, and Order, the ALJ clearly stated that he relied upon Dr. Snider's opinions, stating as follows:

> As between the medical opinions of Dr. Madden and Dr. Snider, I find that of Dr. Snider to be the more credible, compelling and persuasive evidence concerning plaintiff's claim for cumulative trauma to his back, both legs and knees.

The above-cited evidence by Dr. Snider comprises substantial evidence in support of the ALJ's determination to dismiss Morgan's claim for cumulative trauma to his back, both legs, and knees. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence is defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of

reasonable people. Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367, 369 (Ky. 1971). We acknowledge the differing medical opinions in the record by Dr. Jared Madden. However, 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). The fact there is contrary evidence in the record does not compel a different result. In his report, Dr. Snider specifically noted that his examination covered Morgan's low back and lower extremities, and the examination "revealed no obvious abnormality." After examining Morgan, Dr. Snider decisively ruled out "repetitive trauma to any specific part of Mr. Morgan's body." The ALJ is entitled to rely upon Dr. Snider's opinions, and the ALJ's dismissal of Morgan's cumulative trauma claim for alleged repetitive use injuries to Morgan's back, both legs, and knees will not be disturbed.

Morgan takes issue with certain "comments" made by the ALJ in the November 27, 2013, Opinion, Award, and Order. However, these comments relate to issues of fact that should have been raised in a petition for reconsideration, which was not filed. When no petition for

reconsideration is filed, the ALJ's order is conclusive and binding as to all questions of fact. KRS 342.285(1). Thus, this Board will not address the necessity, deficiency, or accuracy of these comments.

Lastly, Morgan asserts as follows:

> The ALJ also commented that neither Dr. Madden nor Dr. Snider had any diagnostic images made when they examined Morgan. (Id., p. 16). Then why was Dr. Snider's opinion more credible than Dr. Madden?

We are satisfied with the sufficiency of the findings of fact in the November 27, 2013, Opinion, Award, and Order. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, the ALJ is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Cmty. Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). As the 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). The ALJ found Dr. Snider's testimony to be "the more

credible, compelling and persuasive evidence concerning plaintiff's claim for cumulative trauma to his back, both legs and knees," and this is sufficient. Additionally, an alleged lack of findings of fact is an issue that should have been addressed in a petition for reconsideration which Morgan did not file.

Accordingly, the November 27, 2013, Opinion, Award, and Order is **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON MCKINNLEY MORGAN
921 S MAIN ST
LONDON KY 40741

COUNSEL FOR RESPONDENT:

HON JEFFREY D DAMRON
P O BOX 351
PIKEVILLE KY 41502

ADMINISTRATIVE LAW JUDGE:

HON STEVEN G BOLTON
657 CHAMBERLIN AVE
FRANKFORT KY 40601