

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 11, 2015

CLAIM NO. 201359119

VINCENT MATTEINI

PETITIONER

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

LEXINGTON/FAYETTE URBAN COUNTY GOVERNMENT and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
AND ORDER

* * * * *

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

ALVEY, Chairman. Vincent Matteini ("Matteini") seeks review of the Opinion and Order rendered November 24, 2014 by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"), dismissing his claim. The ALJ determined his bilateral carpal tunnel syndrome ("CTS") was not caused by his work activities as a police officer with the Lexington

Fayette Urban County Government ("LFUCG"). Matteini also seeks review of the January 22, 2015 order denying his petition for reconsideration.

On appeal, Matteini argues LFUCG had adequate notice of his bilateral CTS. Matteini also argues the opinion of Dr. Ronald Burgess should carry little to no weight. Matteini essentially argues the overwhelming evidence supports a finding of work-related CTS, and a contrary result is compelled. Because the ALJ's decision is supported by substantial evidence and a contrary result is not compelled, we affirm.

Matteini filed a Form 101 on April 10, 2014, alleging he developed bilateral CTS due to the repetitive nature of his job as a police officer with LFUCG, and provided September 27, 2013 as the date of injury. Matteini served in the United States Army from 1988 through 1996, and has been a police officer with LFUCG since 1997.

Matteini testified by deposition on June 24, 2014 and at the hearing held September 23, 2014. He is a high school graduate and completed some college course work. He has vocational training as a police officer. At the time of the hearing, Matteini was forty-three years old. Prior to becoming a police officer in 1997, Matteini served as an infantryman in the United States Army for six years. While

working as a police officer, Matteini also served in the Kentucky Army National Guard. Matteini took a leave of absence from LFUCG when he was deployed to Afghanistan from March 2008 through March 2009.

Matteini began experiencing symptoms in his upper extremities several years ago. At his deposition, Matteini stated he finally sought treatment at the VA Medical Center a few months after he returned from Afghanistan in March 2009. In July 2012, his treating physician ordered an EMG/NCV study to determine whether his underlying symptoms were due to cervical radiculopathy or CTS. The EMG/NCV was performed on August 17, 2012, and he was informed he had bilateral CTS. Matteini stated he did not report his diagnosis to LFUCG until September 2013 because his physician had not advised whether his condition was related to his military activities or policing duties. After a course of conservative treatment, Matteini underwent carpal tunnel releases in September 2013 and October 2013. He was released to full duty without restriction in December 2013. He is able to perform his job duties, but stated he still experiences some numbness in his left hand.

Matteini stated his military activities did not require repetitive use of his hands and he did not believe this contributed to the development of his CTS. Likewise,

he denied any specific injuries to his hands or wrists throughout his military service, including his most recent deployment to Afghanistan, although he experienced CTS symptoms while he was deployed from March 2008 to March 2009.

Matteini attributes his bilateral CTS to his job activities as a police officer for LFUCG, primarily driving and typing on a keyboard located in an awkward position in his cruiser. Matteini testified as a patrol officer, he worked ten hour shifts, which required driving his cruiser seven to eight hours. Matteini testified a mobile data computer was mounted inside his cruiser in early 2003, which he used with increasing frequency over the years as more information became digitized. Matteini explained the computer was mounted near the center console requiring him to turn his body to the right to type. There was no place to rest his elbows as he typed, and his wrists typically rested against the keyboard. Matteini testified he uses the computer frequently to conduct background checks, run license plates, complete citations, determine whether warrants have been issued, and to check a person's prior arrest history. He also uses the computer to type a variety of reports, including accident and "complaint and offense" reports. The reports are typically four pages long, and

require a narrative or summary of witness statements, if applicable. According to information available through the police department, Matteini testified he has completed nine hundred and twenty-seven (927) reports since 2003. Matteini stated he does "a lot" of continuous repetitive motions with his hands in the performance of his job duties as a police officer with LFUCG.

Subsequent to his August 2012 diagnosis of bilateral CTS, Matteini discussed his problems with his supervisor, and requested an ergonomic evaluation. An Ergonomic Evaluation report was completed on October 24, 2013, which made several recommendations. LFUCG complied with several of the recommendations, and now Matteini is able to type facing straight ahead. In March 2014, Matteini was moved to special operations as a neighborhood resource officer, and stated his duties are similar to those required as a patrolman.

Both parties filed records from the VA Medical Center. Matteini presented for an initial evaluation on June 3, 2009. Relevant to the appeal, Matteini complained his hands had been falling asleep for the past nine months, particularly while driving or playing the guitar. He also reported his police cruiser has a computer mounted off to his side requiring him to turn to type. Matteini was

diagnosed with paresthesias, likely CTS or thoracic outlet syndrome, and was prescribed wrist splints. Matteini was advised his symptoms could be the result of a pinched nerve from wearing his body armor during his military service.

In June and July 2012, Matteini was diagnosed with possible cervical radiculopathy versus CTS, and an EMG/NCV was ordered. The August 17, 2012 EMG/NCV report noted Matteini complained of "BUE hand numbness and tingling since his accident when in service few years ago." The study demonstrated bilateral moderate median nerve neuropathy at the wrist, and Matteini was referred to occupational therapy for bilateral CTS. The most recent note, dated June 25, 2013, reflects Matteini experiences symptoms in his hands especially while driving his police cruiser for extended periods of time, and typing on his laptop computer at work. Matteini reported his symptoms began six to seven years ago and progressively worsened. Carpal tunnel releases were recommended for both upper extremities. The operative reports of the carpal tunnel releases were not filed as evidence.

In support of his claim, Matteini filed the undated letter from his treating physician at the VA Medical Center, Dr. Robert Collins, an internist. After noting Matteini had carpal tunnel surgery on his right wrist on

September 27, 2013, and on his left wrist on October 25, 2013, Dr. Collins stated as follows regarding causation:

I do believe that Mr. Matteini's carpal tunnel syndrome is related to his employment with LFUCG. He frequently has to use the computer in his car to type reports and fulfill other obligations involved in his work. The position of the computer in his car places his wrists in a position that can over time lead to a repetitive use injury. He has had a 6-7 year history of progressive weakness, numbness, and tingling in his hands. It is my medical opinion that his carpal tunnel syndrome was directly related to the performance of his job as a police officer.

Matteini also filed the August 21, 2014 report of Dr. Frank Burke who reviewed Matteini's work activities as a police officer, including the fact he drives approximately six hours a day and types for approximately three hours a day. Matteini reported he developed numbness and tingling in his hands, particularly while driving and typing. Dr. Burke reviewed the treatment history and medical records of the VA Medical Center, and performed an examination. Dr. Burke stated, "the development of a work-related bilateral carpal tunnel syndrome, left greater than right on or about 9/27/13 at work. He underwent surgery in the fall of 2013 successfully and has returned to work with resumption of his full duties without compromise." Dr. Burke opined Matteini had attained maximum medical improvement ("MMI"), and

assessed a 3% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). He did not restrict Matteini's activities.

Matteini filed the October 24, 2013 Ergonomic Evaluation Report of Officer Matteini's workspace by Mike Skidmore, Manager - Safety & Loss Control, Division of Risk Management. The evaluation was completed on September 24, 2013. Mr. Skidmore noted Matteini reported discomfort and numbness in his hands. He noted Matteini's work requires moderate to heavy demands for use of the computer, up to three to four hours a day, and he has been a police officer for sixteen years. After observing the cruiser, Mr. Skidmore made several recommendations to help prevent cumulative trauma disorder and to alleviate discomfort and fatigue. He recommended the cruiser be equipped with a separate keyboard which can be used from the officer's lap position, as well as an adjustable armrest so the right arm can be supported when typing. He noted voice recognition technology is an option, and also suggested Matteini do significant typing from the passenger seat. Mr. Skidmore opined the current set-up of the computer, which requires constant right reach with the upper body, static body position of the arms and shoulders, and causes a direct

pressure point on the underside of the wrist against the edge of the computer, is "undesirable" in the realm of ergonomics.

LFUCG filed the records review report of Dr. Jennifer Jackson. She noted his military service and his position as a police officer. Dr. Jackson noted Matteini drives his police car for extensive periods of time and uses a computer for filing reports. She indicated the computer was issued in 2009.¹ Dr. Jackson reviewed the medical records, and ultimately concluded Matteini's bilateral CTS and surgical releases were not caused by his occupation as a police officer. She noted Matteini had symptoms for several years, which he stated began when he was injured while deployed with the National Guard. Dr. Jackson noted Matteini complained of symptoms in June 2009 after having returned from his deployment only a few weeks earlier. Matteini would not have been back at his job as a police officer for a sufficient amount of time for his symptoms to be considered work-related, and stated his symptoms began prior to his cruiser being issued a keyboard. Dr. Jackson stated there is insufficient epidemiological evidence to conclude computer work causes CTS, and stated low force or

¹Matteini disputes this, testifying he was issued the computer in 2003.

medium-low repetition on an intermittent basis such as keyboard use does not significantly raise the risk of CTS.

LFUCG also filed the August 14, 2014 report of Dr. Ronald Burgess. He reviewed the medical records from the VA Medical Center. He noted Matteini has been a police officer since 1997, and was on leave for a year from March 2008 through March 2009 when he worked as a combat engineer in Afghanistan. After performing an examination, Dr. Burgess stated Matteini has reached MMI following the bilateral carpal tunnel releases, and no further treatment is necessary. Dr. Burgess assessed a 4% impairment rating pursuant to the AMA Guides and declined to assign restrictions. Regarding causation, Dr. Burgess stated as follows:

I feel within a reasonable degree of medical probability that the patient had idiopathic carpal tunnel syndrome. The occasional use of an onboard laptop computer in the patient's cruiser is not felt to be an etiological factor in the patient's carpal tunnel symptomatology.

In the AMA *Guides* newsletter, May/June 2009, there is a review of the medical history concerning the use of keyboards and carpal tunnel syndrome. It was found that there is no relationship between the use of keyboard and a higher incidence of carpal tunnel, quoting four studies, with one of the studies finding a lower incidence of carpal tunnel with keyboard use.

In the November 24, 2014 opinion, the ALJ summarized the lay and medical evidence. The ALJ dismissed the claim based upon lack of causation, stating as follows:

11. The Plaintiff presents the independent medical examination of Dr. Frank Burke to establish the work relatedness of the Plaintiff's carpal tunnel syndrome. Dr. Burke opined that the Plaintiff sustained the development of a work-related bilateral carpal tunnel syndrome left greater than right on or about September 27, 2013 at work. This is based upon the history cited in his report and provided to him by the Plaintiff that list the development of numbness and tingling on or about September 27, 2013, in both hands at work. The Plaintiff also apparently said that he noticed the progression of these symptoms while driving and typing at work.

12. The Defendant has presented records from the VA Medical Center dated July 25, 2013, documenting that the Plaintiff's[sic] reported that his symptoms of bilateral numbness and tingling had existed for 6 to 7 years prior. The Defendant has also presented the independent medical examination of Dr. Burgess who had reviewed the Plaintiff's VA records and concluded that the Plaintiff had idiopathic carpal tunnel syndrome and further that the use of the keyboard in the Plaintiff's police cruiser was not thought to be an etiologic factor in the Plaintiff's symptomatology.

13. The ALJ is more convinced by the opinion issued by Dr. Burgess as it is based upon the more complete and accurate medical history of the Plaintiff. The ALJ therefore finds that

the Plaintiff's bilateral carpal tunnel syndrome is not causally work-related

Matteini filed a petition for reconsideration arguing the ALJ erred in finding Dr. Burgess more persuasive than his treating physician, Dr. Collins. He likewise argues the overwhelming evidence of Dr. Collins, Dr. Burke and Mr. Skidmore establishes a causal relationship between Matteini's work and bilateral CTS. Matteini specifically requested the ALJ explain why he found Dr. Burgess most persuasive, for a specific finding whether he in fact has CTS, why he determined it is not a work-related condition, and to reconsider his reliance upon Dr. Burgess. The ALJ denied Matteini's petition on January 22, 2015, stating he failed to assert patent errors.

On appeal, Matteini states he was diagnosed with bilateral CTS pursuant to an EMG/NCV study conducted by the VA Medical Center in August 2012. Matteini complains although the ALJ acknowledged his treating physician found his condition related to his work activities as a police officer, he "gave it no consideration or even discussion." Matteini argues there is no evidence linking his condition to his military service as advocated by LFUCG. Matteini asserts the ALJ failed to appreciate his circumstances and argued the opinions of Dr. Burgess are disingenuous.

Matteini argues Dr. Burgess' report made no mention of Dr. Collins' surgical notes or pre-surgical evaluations, or the October 24, 2013 Ergonomic Evaluation Report. Matteini asserts Dr. Burgess is a "well-known defense evaluator" and ignored the vast amount of medical evidence available in scientific publications. Matteini points to his testimony, the report of Dr. Collins, and the report of Dr. Burke and the Ergonomic Evaluation Report in support of his argument of work-related CTS. Matteini also argues he gave due and timely notice of his CTS to his employer.

As the claimant in a workers' compensation proceeding, Matteini had the burden of proving each of the essential elements of his cause of action, including causation/work-relatedness. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Matteini 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 based on the evidence 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 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, 708 S.W.2d 641 (Ky. 1986).

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 which

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, supra.

Despite Matteini's argument to the contrary, we find Dr. Burgess' opinion constitutes substantial evidence supporting the ALJ's determination his bilateral CTS condition is not casually related to his work activities as a police officer, and no contrary result is compelled. An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969).

In this instance, there were differing medical opinions in the record addressing the cause of Matteini's CTS. His treating physician, Dr. Collins, as well as Dr. Burke opined the condition was related to the performance of his job as a police officer. On the other hand, Drs. Jackson and Burgess opined the bilateral CTS is not related to Matteini's job activities. The ALJ, as fact-finder, has full discretion to determine the physician or physicians

upon which he relies. We acknowledge the differing medical opinions in the record. 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). Although Matteini advocates Dr. Collins' opinion is most persuasive as the treating physician, nothing in Chapter 342 mandates greater weight be given to a treating physician's testimony. Wells v. Morris, 698 S.W.2d 321 (Ky. App. 1985); Sweeney v. King's Daughters Medical Center, 260 S.W.3d 829, 830 (Ky. 2008). Where the evidence is conflicting, the ALJ, as fact-finder, has the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

Matteini's arguments discrediting the opinion of Dr. Burgess go to the weight of the evidence and do not serve to render his opinions unsubstantial. In this instance, the ALJ found Dr. Burgess' opinion most persuasive and his opinion constitutes substantial evidence supporting the ALJ's determination. Although contrary evidence exists in the record, this does not compel a different result.

In light of the above determination regarding causation, Matteini's remaining argument concerning notice is moot.

Finally, Matteini indicated oral argument would be appropriate if deemed necessary by the Board. After having reviewed the record, it is determined an oral argument is unnecessary in arriving at a decision, and therefore the indirect request is **DENIED**.

Accordingly, the November 24, 2014, Opinion and Order and the January 22, 2015 order denying the petition for reconsideration by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
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