

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 5, 2021

CLAIM NO. 202000886

ALLIANCE COAL, LLC

PETITIONER

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

JOHN COATES and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Alliance Coal (“Alliance”) appeals from the June 26, 2021 Opinion and Order and the July 21, 2021 Order on Petition for Reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ determined John Coates (“Coates”) sustained injuries to his knees and shoulders, and an injury to his low back caused by cumulative trauma. The ALJ awarded Coates permanent partial disability (“PPD”) and medical benefits.

On appeal, Alliance argues the ALJ erred in determining Coates sustained injuries caused by cumulative trauma. Alliance also argues the ALJ erred by enhancing the award of PPD benefits by the three-multiplier pursuant to KRS 342.730(1)(c)1. Because substantial evidence supports the ALJ's determination, we affirm.

Coates filed a Form 101 alleging injuries to his knees, shoulders, and back caused by cumulative trauma and provided September 4, 2018 as the date of injury, which is also the last day he worked for Alliance. He disclosed a prior workers' compensation claim stemming from a December 2011 work accident resulting in facial, vision, and hearing injuries.

Coates testified by deposition on September 21, 2020 and at the final hearing held April 29, 2021. Coates was born in July 1974 and resides in Nortonville, Kentucky. Coates testified he worked in underground coal mining for Alliance from 2006 to September 4, 2018. He initially worked as a pinner or roof bolter in areas with no more than 5-foot-high ceilings, which required him to work crouched down, bent over, or on his knees. He then worked as a mechanic with Alliance for ten years requiring him to crawl, bend, work on his knees, and lift up to 150 pounds. Coates testified he then moved to the "CO department" where he worked for the last ten months of his employment with Alliance. The CO job was physically easier. The CO department oversees all communications throughout the mine and monitors gas levels. In the CO job, Coates loaded rolls of cable for transport, unrolled the cables from spools, and hung cable from underground ceilings. Coates worked in areas with ceilings from 9 to 20 feet in height. He

hooked cables to the top of a pole, which he lifted to hang the cable on a hook in the ceiling.

At the deposition, Coates testified he stopped working for Alliance due to “stability.” At the hearing, Coates testified he stopped working for Alliance due to concerns of job security, “and then on top of that I had the opportunity to get out and go to an easier job before, you know, I was, I wasn’t able to do mining anymore.” At the time he left Alliance, Coates was 46 years old.

Coates then began working for Groves Electric in September 2018 as an electrical test technician. He performs electrical testing on various equipment using a computer. The Groves Electric job is less physically demanding and requires little lifting. Coates works full time for Groves Electric earning \$26.00 per hour.

Coates previously injured his face and head while working for Alliance in December 2011 when he was struck by a large piece of steel. He required surgery for his facial injuries and missed approximately five months of work. He also experienced left knee pain. A left knee MRI was normal. Coates attended physical therapy for a period of time for his left knee problems. Coates returned to work without restrictions.

Coates began experiencing symptoms in his knees, shoulders, and low back while working for Alliance “when I was pinning and then it’s just progressively moved from there.” Coates experiences pain in both shoulders. They constantly pop and grind, and his hands fall asleep when he is driving. Similarly, Coates experiences pain, popping, and grinding in both knees. Coates experiences low back pain and is constantly in a stooped position. His symptoms have remained the same

since he stopped working for Alliance and began working for Groves Electric. Coates has neither sought treatment nor is he taking any medication for his alleged injuries. Coates has not missed any work at either Alliance or Groves Electric due to his symptoms.

At the hearing, Coates testified as follows regarding his ability to return to his past job duties at Alliance:

Q: Okay. Now, regarding your past job at Alliance Coal, are there any job duties as you are today that you think you can't do anymore?

A: From what I was doing at the mines?

Q: Yeah?

A: Yes.

Q: You know, what would that be?

A: Well, just the maintenance side in general. I mean, the crawling and, you know, the constantly kneeling, the working off my knees like I did, I couldn't do all that again.

Q: Okay. And what about the CO job you were doing? You said it was a little bit easier but would you be able to do that?

A: It would be hard on my shoulders. I mean, if it comes down to it, that's what I had to do to support my family, you know, I would have to, you know, that's why I went back after the injury, because my family. . . . But would I want to, no, I don't want to go through it again.

In support of his claim, Coates filed Dr. James Rushing's, D.C., May 8, 2020 treatment note and answers to a questionnaire, and the September 24, 2020 Form 107-I report prepared by Dr. John Gilbert. Dr. Rushing examined Coates on

May 8, 2020. Coates reported performing mechanic work for thirteen years, requiring him to kneel, bend over, and perform strenuous work in tight and awkward places. Coates reported a gradual onset of symptoms with his shoulders, elbows, knees, neck, low back, feet, and between his shoulder blades. After performing an examination and taking x-rays, Dr. Rushing diagnosed, “lumbar DJD + OA”, bilateral knee DJD, and bilateral shoulder DJD.” In a questionnaire prepared the same day, Dr. Rushing opined Coates’ back, knees, and shoulders issues were caused by his job activities in the coal industry. Dr. Rushing opined continuing his job duties in the coal industry would adversely affect Coates’ health. Dr. Rushing opined Coates’ current job duties at Groves Electric are not contributing to his cumulative trauma injuries.

Dr. Gilbert examined Coates at the request of his attorney on September 24, 2020. He noted Coates is 46 years old with a 12-year history of heavy manual labor in underground coal mining and maintenance. Coates reported he stopped working in underground coal mining due to pain and weakness in his knees, shoulders, and back, and radiculopathy. Coates also complained of coldness in his feet and paresthesia and pain in the dermatomal myotomal type distribution. Dr. Gilbert also noted his current job is light duty and requires no heavy lifting. Dr. Gilbert diagnosed bilateral knee and shoulder degenerative joint disease and reproducible weakness, and degenerative joint disease with bilateral lumbar radiculopathy. Dr. Gilbert checked “yes” to the following question: “Do you believe the work event as described to you is the cause of the impairment found?” Dr. Gilbert assessed a 19% combined impairment for his bilateral knee condition,

13% for bilateral lumbar radiculopathy, and 10% for bilateral shoulder pain and weakness, for a combined 37%, pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Dr. Gilbert opined Coates attained maximum medical improvement on September 24, 2020, and does not retain the physical capacity to return to the type of work he previously performed. Dr. Gilbert restricted Coates to light duty and opined he should continue to perform his current job at Groves Electric.

Dr. Russell Travis evaluated Coates on September 23, 2020 at Alliance’s request. Dr. Travis noted Coates worked in the coal mining industry until 2018 and he is now working at Groves Electric as an electrical test technician without restrictions. Dr. Travis examined Coates’ lumbar spine, shoulders, and knees which were essentially normal. He found no evidence Coates sustained injuries to the lumbar spine, knees, or shoulders, acute or cumulative. Dr. Travis noted the 2011 left knee injury had completely resolved and Coates did not seek any additional treatment of his left knee until May 8, 2020. Dr. Travis noted Coates has not sought any treatment for his alleged bilateral shoulder or knee conditions. Dr. Travis advised Coates’ prognosis is excellent and requires no further treatment. Dr. Travis assigned no permanent restrictions, noting Coates stopped working for Alliance for reasons unrelated to his alleged symptoms. He opined Coates can return to the same job he was working when he quit in September 2018, without restrictions. Dr. Travis assessed a 0% impairment rating for the low back, right knee, and left shoulder. Dr. Travis assessed a 4% impairment rating for the left knee condition due to the 2011 work accident. He also assessed a 1% impairment rating

for Coates' right shoulder, but opined it is unrelated to cumulative trauma. Dr. Travis reiterated, "There is no evidence that Mr. Coates suffered any injury to his back, knees, or shoulders, other than the injury to his left knee in 2011, and certainly no evidence of cumulative trauma."

Alliance also filed the March 12, 2015 settlement agreement for the December 7, 2011 work injury. The agreement notes Coates sustained injuries to his head, face, hearing, vision, and eye. The parties settled for a total of \$200,000. Alliance also filed records from the Kentucky Department of Fish and Wildlife Resources.

The ALJ rendered an Opinion and Order on June 26, 2021. The ALJ found credible Coates' testimony, as well as the opinions of Drs. Gilbert and Rushing. The ALJ noted Coates testified he sought less strenuous work because he could no longer perform his duties at Alliance. The ALJ noted Dr. Gilbert similarly found the Plaintiff's symptoms gradually progressed until he could no longer perform his duties. Dr. Rushing opined that continuation of these job duties would have had adverse health consequences. The ALJ found persuasive Dr. Gilbert's opinion that Coates did not have a prior active impairment, and his symptoms progressed over the years of his employment. The ALJ found Dr. Travis' opinion unpersuasive since he assessed an impairment rating for the shoulder condition but refused to attribute it to Coates' strenuous history of coal mining work. The ALJ also noted Dr. Travis concluded Coates had a pre-existing impairment to the left knee from an injury occurring ten years ago while also noting his work history without restrictions. The ALJ noted Dr. Gilbert assessed a combined 37% impairment rating pursuant to the

AMA Guides, and opined Coates did not retain the physical capacity to return to the same type of work.

The ALJ found that based upon the above, “the nature and duration of the Plaintiff’s work aggravated a degenerative condition into an active physical impairment sooner than would have been the case had the work been less strenuous. Consequently, the ALJ finds that the Plaintiff sustained a 37% whole person impairment to the knees, shoulders, and low back, and that the mechanism of injury was cumulative trauma.” The ALJ further found Coates “does not retain the physical capacity to return to the same type of work, thus entitling him to the “three multiplier” per KRS 342.730(1)(c)1.” The ALJ awarded Coates PPD and medical benefits.

Alliance filed a Petition for Reconsideration raising the same arguments it now makes on appeal. The ALJ denied the Petition, providing the following additional findings of fact to support the application of the three-multiplier in an Amended Opinion and Order:

18. The ALJ finds that Dr. Gilbert was credible when he opined that the Plaintiff’s bilateral shoulder and knee pain along with general weakness would preclude him from returning to the heavy manual labor that he had performed for 12 years prior.

19. Dr. Gilbert recommended that the Plaintiff continue working on light duty only and this opinion is buttressed by the credible testimony of the Plaintiff who said that his symptoms stabilized after leaving his employment with the Defendant. The ALJ therefore finds that the Plaintiff does not retain the physical capacity to return to the same type of work, thus entitling him to the “three multiplier” per KRS 342.730(1)(c)1.

On appeal, Alliance argues the ALJ's determination Coates sustained injuries caused by cumulative trauma from his work was clearly erroneous. Alliance notes Coates has never treated for nor missed any work due to his alleged knee, shoulder, or low back conditions. Alliance notes Coates was 44 years old when he stopped working for Alliance. Alliance argues Dr. Gilbert's report does not constitute substantial evidence since he provided no explanation as to his causation opinion and the physical examination portion consisted of three substantive sentences. Alliance also notes Dr. Gilbert never considered the 2011 work injury to the left knee. Alliance notes Coates denied having radicular lumbar pain to Dr. Travis and never provided testimony addressing such pain. Alliance takes issue with the ALJ's statement Coates sought less physically demanding work because he could no longer perform his duties considering his deposition testimony he quit Alliance due to job stability.

Alliance also argues substantial evidence does not support the ALJ's determination the three-multiplier is applicable pursuant to KRS 342.730(1)(c)1. Alliance notes Coates voluntarily stopped working for it to go to Groves Electric due to job stability. Alliance notes Coates reported to Dr. Travis that his job at Groves Electric involves heavy lifting and walking. Therefore, the ALJ erred in his determination since Coates voluntarily left for Groves Electric, which does not appear to be light duty as noted by Dr. Gilbert. Alliance argues the ALJ did not consider Coates' deposition testimony about voluntarily leaving the mine in his determination regarding the three-multiplier.

As the claimant in a workers' compensation proceeding, Coates had the burden of proving each of the essential elements of his cause of action. *See* KRS 342.0011(1); Snowder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Coates was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). 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). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

The ALJ was confronted with conflicting evidence regarding whether Coates sustained injuries to his knees, shoulders, and low back caused by cumulative trauma. Dr. Rushing noted Coates performed mechanic work for thirteen years and he was required to kneel, bend over, and perform strenuous activity in tight and awkward places. Coates reported a gradual onset of symptoms with his shoulders, elbows, knees, neck, low back, feet, and between his shoulder blades. In his answers to the questionnaire, Dr. Rushing opined Coates' back, knees, and shoulders issues are due to his job activities in the coal industry. Dr. Gilbert noted Coates' 12-year history of heavy manual labor in underground coal mining and maintenance. Dr. Gilbert noted as follows regarding his examination of Coates:

Physical examination does show some spasm, tenderness, limited range of motion in the low back, and slight positive straight leg raise bilaterally. He has got reproducible 4+/5 weakness in his knees in flexion and extension. He has got reproducible 4+/5 weakness in the bilateral shoulders flexion, extension, internal and external rotation, abduction and adduction.

Dr. Gilbert diagnosed bilateral knee and bilateral shoulder degenerative joint disease and reproducible weakness, and degenerative joint disease

with bilateral lumbar radiculopathy. Dr. Gilbert indicated the work event as described caused Coates' impairment.

On the other hand, Dr. Travis opined Coates did not sustain injuries to his back, knees, or shoulders caused by cumulative trauma. The opinions of Drs. Gilbert and Rushing constitute substantial evidence supporting the determination Coates sustained injuries to his knees, shoulders, and low back caused by cumulative trauma. Alliance's critique of Dr. Gilbert's opinion and the fact Coates did not seek treatment for his injuries goes to the weight of the evidence. While the contrary opinion of Dr. Travis may have been articulated in greater detail, such opinions represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003).

We likewise determine substantial evidence supports the ALJ's determination Coates does not retain the physical capacity to return to the same type of work, thus entitling him to the three-multiplier per KRS 342.730(1)(c)1. We acknowledge Coates provided conflicting testimony concerning why he stopped working for Alliance. At the deposition, Coates testified he stopped working for Alliance due to "stability." However, at the hearing, Coates testified he stopped working for Alliance due to concerns of job security, "and then on top of that I had the opportunity to get out and go to an easier job before, you know, I was, I wasn't able to do mining anymore." At the hearing, he further testified he could not continue to perform the maintenance job at Alliance due to his knee condition. Likewise, he can no longer perform the CO job because it is "hard on my shoulders" and "I don't want to go through it again." Dr. Rushing opined continuing his job

duties in the coal industry would have an adverse health consequence. He further opined Coates' current employment with Groves Electric does not contribute to his injuries. Dr. Gilbert likewise opined Coates does not retain the physical capacity to return to the type of work he performed due to his bilateral shoulder, knee, and back conditions; however, he may continue working at his electrical testing job. In light of Drs. Gilbert's and Rushing's opinions and Coates' hearing testimony, we find the ALJ's determination outlined in the Opinion and Order on Petition for Reconsideration regarding the three-multiplier is supported by substantial evidence.

Accordingly, the June 26, 2021 Opinion and Order and the July 21, 2021 Order on Petition for Reconsideration by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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