

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: July 26, 2019

CLAIM NO. 201800463 & 201801160

ARMSTRONG COAL CO.

PETITIONER

VS.

APPEAL FROM HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RICHARD LOWTHER,  
And HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

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

**RECHTER, Member.** Armstrong Coal Company (“Armstrong”) appeals from the February 13, 2019 Opinion and Order, and the March 1, 2019 Order on Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). The ALJ determined Richard Lowther suffered a cumulative trauma injury

to his right wrist. Armstrong argues the ALJ's decision is not based on substantial evidence. For the reasons set forth herein, we affirm.

Lowther filed a Form 101 alleging cumulative trauma injuries to his neck, low back, bilateral knees, bilateral wrists, and right shoulder. Because the issue on appeal involves solely Lowther's right wrist injury, we will discuss only the evidence pertinent to that claim.

Lowther began working at Armstrong Coal Company in 2008 as a foreman, after previously working 29 years for other employers in the coal mining industry. He testified he had ongoing right wrist difficulty for decades which he attributed to his work. Though much of his work as a foreman was performed from a pick-up truck, Lowther testified the rough terrain made driving arduous and he was required to lift heavy buckets on a regular basis, some weighing up to 150 pounds. He was eventually laid off on July 30, 2017 and has not worked since.

Dr. John Gilbert conducted an independent medical evaluation ("IME") on October 24, 2018. Dr. Gilbert reviewed Lowther's medical records and obtained a work history of heavy manual labor as a surface miner for 42 years. Additionally, Dr. Gilbert noted Lowther underwent bilateral carpal tunnel surgery in the late 1980s, and a right wrist fusion/arthrodesis in January 2009. Upon physical examination, Dr. Gilbert noted significant decreased range of motion in Lowther's right wrist. He diagnosed carpal tunnel syndrome and surgery with residual symptoms including limited range of motion, weakness and pain. He attributed these conditions to Lowther's work history and assessed a 4% impairment rating for

“bilateral wrists” pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition (“AMA Guides”).

Dr. Thomas O’Brien conducted an IME on November 5, 2018. He noted Lowther’s work as a foreman since 2008. Upon physical examination, Dr. O’Brien noted a volar carpal tunnel in the right wrist with no atrophy. He additionally recorded full grip strength but decreased range of motion in the right wrist.

Dr. O’Brien reviewed the medical records concerning Lowther’s previous history of right wrist conditions. He noted Lowther suffered ongoing right wrist pain beginning in 2000, which eventually necessitated a fusion/arthrodesis in 2009. Post-operatively, he suffered ongoing pain and was diagnosed with right wrist osteoarthritis in 2009. Dr. O’Brien concluded Lowther suffered no work-related cumulative trauma injury to his right wrist. He noted objective findings in 2009 showed significant arthritis in the right wrist. According to Dr. O’Brien, Lowther’s current condition reflects the natural degeneration of this condition, and was not caused by his work at Armstrong. He assigned a 16% whole person impairment rating pursuant to the AMA Guides “as a result of his 2009 wrist fusion.”

The ALJ ultimately determined Lowther suffered a cumulative trauma injury to his right wrist. She noted Lowther had complained of right wrist pain for many years, and eventually underwent surgery for his condition. As early as 2009, Lowther suffered “significant arthritis” according to Dr. O’Brien, which had worsened since that time. The ALJ further explained:

[Lowther’s] development of right wrist symptoms and degenerative changes occurred after he began working for

[Armstrong]. It is clear from reviewing the record that [Lowther] has significant degenerative changes in his right wrist. The ALJ finds [Lowther's] work activities with [Armstrong] aggravated his right wrist degenerative changes into a symptomatic and disabling reality, which necessitated a right wrist fusion. Thus, this ALJ finds [Lowther] sustained a cumulative trauma injury to his right wrist as a result of his employment with [Armstrong]. In making this finding, the ALJ relies on Dr. Gilbert's opinions.

The ALJ relied on Dr. O'Brien's 16% impairment rating for Lowther's right wrist condition. Armstrong petitioned for reconsideration, arguing Dr. Gilbert's opinion was based on a faulty understanding of Lowther's job duties. In the Order on Reconsideration, the ALJ explained her conclusion Lowther "sustained a cumulative trauma injury to his right wrist based upon advanced degenerative findings and [his] right wrist fusion performed during his employment" at Armstrong. She acknowledged Lowther's work at Armstrong was not as arduous as his prior work in coal mines, but emphasized he was nonetheless required to perform repetitive job duties with his right hand on a daily basis, including driving a work truck on rough terrain and lifting up to 150 pounds.

On appeal, Armstrong argues Dr. Gilbert's medical opinion cannot constitute substantial evidence. According to Armstrong, Dr. Gilbert's report evinces a faulty understanding of Lowther's work, which he characterized as "heavy manual labor." As Dr. O'Brien emphasized, Dr. Gilbert is not an orthopedic specialist and offered no explanation as to causation other than a conclusory statement that Lowther's work caused the condition. Further, Armstrong draws our attention to Dr. Gilbert's understanding of Lowther's history of right wrist pain. While Dr. Gilbert noted Lowther's wrist surgery in 2009, he failed to discuss the fact this surgery was

precipitated by almost a decade of ongoing right pain which pre-dated his employment at Armstrong.

Lowther was successful in carrying his burden of establishing a work-related injury. Therefore, the question on appeal is whether substantial evidence supports the ALJ's decision. "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); Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such 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 determining whether the findings made are so unreasonable under 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). The Board, as an appellate tribunal, may not usurp the

ALJ's role as fact-finder by superimposing our own appraisals as to the weight and credibility of the proof, or by noting other conclusions that could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

The essence of Armstrong's argument on appeal is that Lowther did not have a sufficiently demanding position that would have worsened any right wrist condition or necessitated the 2009 surgery. For this reason, according to Armstrong, the nature and duration of Lowther's work did not aggravate a degenerative condition into an active impairment sooner than would be the case if the work was less strenuous. Haycraft v. Cohart Refractories Co., 544 S.W.2d 222 (Ky. 1976). Similarly, Armstrong argues Dr. Gilbert's opinion is faulty because he did not understand the true nature of Lowther's work activities.

In this claim, the reviewing physicians agree Lowther currently suffers a right wrist condition which is impairment ratable. Drs. O'Brien and Gilbert, however, disagreed as to the extent of the impairment and the cause. Under such circumstances, the ALJ is vested with the discretion to select which physician upon which she will rely. This Board is not at liberty to revisit this decision.

Armstrong has offered compelling arguments concerning the credibility of Dr. O'Brien's opinion, and has highlighted the thorough review and examination he conducted. It has also emphasized deficiencies in Dr. Gilbert's analysis. However, none of these arguments rise to the level at which Dr. Gilbert's opinion would be rendered unreliable. Dr. Gilbert did not specifically state Lowther's current job duties in detail; rather, he generally referenced heavy manual labor. The ALJ explained, in the Order on Reconsideration, her understanding of what constitutes

manual labor. She cited Lowther's testimony regarding the operation of his work truck on rough terrain and the regular lifting he was required to do. Though Dr. Gilbert's description of Lowther's job duties is certainly less detailed than Dr. O'Brien's, we cannot conclude it is wholly inaccurate.

Similarly, as Armstrong avers, Dr. O'Brien offered a more detailed explanation as to the cause of Lowther's wrist condition than Dr. Gilbert. Nonetheless, Dr. Gilbert stated in clear terms his medical opinion that Lowther's work caused his current right wrist condition. The fact that Dr. Gilbert did not elaborate on this conclusion goes to the weight to be afforded the opinion, but not its admissibility.

For these reasons, we conclude Dr. Gilbert's opinion constitutes the requisite substantial evidence to support the ALJ's conclusions. He conducted a medical records review, examined Lowther, recorded objective measurements of range of motion and grip strength, and applied his medical expertise. When the ALJ has relied on substantial evidence to reach a conclusion, this Board is not at liberty to evaluate the proof and direct an alternate conclusion.

Therefore, the February 13, 2019 Opinion and Order, and the March 1, 2019 Order on Reconsideration rendered by Hon. Stephanie L. Kinney are hereby

**AFFIRMED.**

ALL CONCUR.

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