

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 30, 2021

CLAIM NO. 201800221

BOBBY TREADWAY

PETITIONER

VS.

APPEAL FROM HON. TONYA CLEMONS,
ADMINISTRATIVE LAW JUDGE

BATH COUNTY EMS AND
HON. TONYA CLEMONS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. Bobby Treadway (“Treadway”) appeals from the July 12, 2019 Interlocutory Opinion and Order and the August 6, 2019 Order rendered by Hon. Jeff V. Layson, III, Administrative Law Judge (“ALJ Layson”), dismissing his claim for psychological, psychiatric, or stress-related injuries. Treadway also appeals from the January 4, 2021 Order rendered by Hon. Tonya Clemons, Administrative

Law Judge (“ALJ”) dismissing his claim for specific injuries and adopting the previous dismissal of the psychiatric claim. On appeal, Treadway argues the ALJ, and ALJ Layson, erred as a matter of law in finding the psychological condition does not qualify as a compensable work-related injury. Finding no error, we affirm.

Treadway filed Claim No. 2015-69733 on February 8, 2018, alleging injuries to multiple body parts on September 7, 2015 due to a collapse from heat exhaustion. On that same date, Treadway filed Claim No. 2018-00221 alleging injury on October 31, 2016 in the form of post-traumatic stress disorder (“PTSD”) causing non-epileptic seizures. The claims were consolidated. By Order dated May 15, 2019, Claim No. 2018-00221 was bifurcated on the issue of whether Treadway sustained a work-related injury as defined by the Act. By Order dated July 8, 2019, ALJ Layson amended the previous order to reflect the bifurcated issue only pertains to the alleged psychological, psychiatric, and/or stress-related injury.

Following the rendering Interlocutory Order on the bifurcated issue in claim No. 2018-00221, that is the subject of this appeal, the parties filed a joint motion to dismiss Claim No. 2015-69733, stipulating that claim was barred by the statute of limitations and Treadway did not sustain physical bodily injury arising out of the September 7, 2015 work incident. The Joint Motion was sustained by Order dated January 4, 2021.

Treadway testified by deposition on March 27, 2018 and May 15, 2018. Treadway worked for Bath County EMS (“Bath County”) from 1999 to 2015, initially as an EMT, and later as a paramedic. During that time, he also performed the same job with other county EMT services. Treadway last worked on September

19, 2015. Treadway responded to the scene of a vehicle accident on September 7, 2015. He indicated he had no personal memory of the incident, but co-workers told him he entered an overturned vehicle and, when he emerged, he was apparently overheated and collapsed. Treadway was treated with fluids at a hospital and released. Treadway testified he experienced some type of seizure on November 9, 2015. Dr. (first name unknown) Gilliam at the UK Medical Center diagnosed non-epileptic seizures. Treadway began having seizures in 2013. He acknowledged an incident that occurred on Super Bowl Sunday in 2014, resulting in his being taken to the hospital after his “eyes rolled back in my head” and he experienced shaking and stiffness.

Tracy Treadway, Treadway’s wife, testified by deposition on May 15, 2018. She is a licensed EMT, and has worked as a home healthcare provider. She described the incident on Super Bowl Sunday as a coughing fit, but she acknowledged Treadway passed out and she took him to the hospital. His next episode occurred on November 9, 2015. Treadway was sitting on the side of the bed and was unable to speak. Treadway continued to have episodes that “progressed” and became “more aggressive.” Treadway began to have convulsive episodes. Dr. Gilliam informed them that Treadway had PTSD and referred him to Dr. Amy Taylor, a clinical psychologist.

Records of St. Clair Regional Medical Center show Treadway was treated on September 7, 2015, after fainting at work. Treadway was determined to have had a syncopal episode secondary to hypovolemia and dehydration. After rehydration with IV fluids, he was released.

Dr. James C. Owen reviewed medical records and performed an examination on June 9, 2017. Dr. Owen stated it appeared Treadway has some type of intermittent spells “that are not necessarily seizural in the sense that EEG has caught them as far as I can tell. These may or may not have begun after a CT myelogram that was being done because of recurrent neck pain secondary to a syncopal episode from dehydration.” Dr. Owen believed the episodes were apparently vasovagal, which is not unusual for diabetics.

Dr. Taylor began treating Treadway on October 31, 2016. She testified by deposition on June 14, 2018. Dr. Taylor first evaluated Treadway for complaints of seizures on October 31, 2016 on referral from the UK Neuroscience Institute. Dr. Taylor noted a video EEG had found no-abnormal electrical activity, which would indicate the seizures themselves “were not caused medically -- they were not epileptic.” She noted the seizures were considered psychologically caused. Dr. Taylor initially diagnosed Treadway with anxiety disorder unspecified, rule out conversion disorders. Dr. Taylor continued to see Treadway on a weekly basis. Dr. Taylor stated the conversion disorder and the anxiety disorder changed to a post-traumatic stress disorder, unspecified. She opined Treadway developed PTSD by witnessing extremely distressing events involving death and serious injury in his job as a paramedic. She indicated his seizures are a conversion disorder, which is a manifestation of the psychological stress arising from PTSD. Treadway had a history of flashbacks, nightmares and mental discomfort related to injuries, pain, suffering, and death affecting people he had observed during his years of work as an EMT and paramedic. Dr. Taylor stated someone with a conversion disorder

essentially converts or manifests psychological distress, with somatic symptoms. In Treadway's case, this included seizures or convulsions. Dr. Taylor stated the conversion disorder is the overarching diagnosis. Dr. Taylor found no history of physical injury to Treadway causally related to the PTSD.

Dr. Timothy Allen performed a psychiatric evaluation on June 11, 2018. Dr. Allen testified by deposition on November 19, 2018. Dr. Allen diagnosed conversion disorder, PTSD, and an unspecified depressive disorder that has been present since 2008. Treadway developed PTSD from witnessing numerous traumatic events as an EMT/paramedic since 2000. Dr. Allen suggested Treadway had a seizure-like event in February 2014, the source of which was never discovered. He began having additional seizure-like events in November 2015. The episodes did not respond to seizure medications and Dr. Gilliam determined they were psychogenic and not epileptic in nature. They increased in severity and frequency until he began psychotherapy with Dr. Taylor in October 2016, after which he reported some improvement. Dr. Allen stated the diagnoses of conversion disorder and post-traumatic stress disorder are unrelated to any physical injury to Treadway. Dr. Allen specifically asked Treadway about the September 7, 2015 event. Treadway reported really no concern about it, and he did not experience nightmares. Regarding the cause of the conversion disorder, Dr. Allen testified as follows:¹

Q: The conversion disorder, what in your opinion is the cause of the conversion disorder component of the diagnosis?

¹ Review of Dr. Allen's report makes it readily apparent the reference to a "sinkable" episode in the transcript refers to a syncopal episode.

A: It's some sort of internal conflict which we don't know what it is. But it's not an event. It's not one thing. And it's certainly not a sinkable episode. Conversion disorder, what happens is your body or your brain decides to create a physical symptom that relieves stress for you. Obviously it's not a constructive way to do that, it's not a healthy way to do that, but somehow it benefits your emotional distress level by having this disability. For some people it's paralysis, for some people it's numbness, and for some people it's--it's seizure like activities. So we don't really know what the stressor is for him but we do know that him being so sick, quote, unquote sick, by having these episodes has led to a total change in his life. And he's cared for, he's watched, he rarely leaves home. Again, it doesn't from the outside seem to be a very good life, but in some ways some part of his brain likes it better than the life he had before. We don't know why. We don't know the cause. But it wasn't 2015 for a few seconds. That's unrelated.

Q: Is his conversion disorder, as you have diagnosed it, is it--you said it's not, not in any way related to the September 7th incident?

A: Right.

Q: Is it in any way related to his prior, the prior physical injuries that he had sustained, the knee injury, the shoulder, neck?

A: To my knowledge, no. For two reasons, one is that he return to work after those and seemed to be productive and--and be able to function after those injuries. And secondly, conversion disorder isn't caused by a physical injury. It's, again, this subconscious emotional conflict. It's hard to, I'm not going to say anything is impossible from--from a psychological standpoint, people can contort things in their mind, but it's hard to come up with a narrative in which a knee injury causes you to start having these kinds of events. Or even a neck surgery where you recovered and were able to go back to work. It's usually because he passed out on September 7th, some sort of fear, some sort of trepidation about your, or confidence in your abilities, wanting to be cared for because of stress in the family, suddenly people rally around you, all these things are

possibilities I've seen in the past with people with conversion disorders, and so again, they're not caused by physical injuries specifically.

Q: So within reasonable psychiatric probability, it is your opinion the conversion disorder is not related to any physical injury that he may have sustained to himself?

A: True.

ALJ Layson's findings relevant to this appeal are as follows *verbatim*:

Mr. Treadway has credibly testified that sometime around 2013, he began having difficulties with dreams and nightmares related to emotionally distressful observations he had experienced over the years as part of his job as an EMT/paramedic. His treating physician, Dr. Gilliam, and his treating psychologist, Dr. Taylor, both concluded that Mr. Treadway has developed post-traumatic stress disorder (PTSD) as a result of having witnessed other individuals who have been affected by severe injuries, pain, suffering and death. This diagnosis is supported by the medical opinion of the Defendant/Employer's IME psychiatrist, Dr. Allen. The Administrative Law Judge finds the testimony from Dr. Taylor and Dr. Allen regarding the diagnosis of PTSD to be persuasive and credible and relies upon it in determining that Mr. Treadway has PTSD which was caused by years of witnessing emotionally distressful incidents at work.

The Administrative Law Judge further relies upon the testimony from Dr. Taylor and Dr. Allen in finding that Mr. Treadway has a "conversion disorder." Specifically, the seizures he has reported and for which he has been treated by Dr. Gilliam and Dr. Taylor are a conversion or manifestation of the PTSD.

The question then becomes whether the PTSD and associated seizures are "a direct result of a physical injury" which was caused by "traumatic event" at work. After reviewing all of the evidence and testimony submitted by the parties this case, the Administrative Law Judge finds that there is no connection between Mr. Treadway's PTSD and a physical work-related

injury. While the fainting incident at work on September 7, 2015 may well qualify as a “traumatic event,” it is not a causative factor with regard to the Plaintiff’s PTSD. The incident itself was due to dehydration and heat exhaustion and was not the result of a seizure. Mr. Treadway did not report any flashbacks, nightmares or other emotional distress associated with that event. Moreover, Mr. Treadway’s history of seizures pre-dates that incident, with the first report of such occurrence having taken place on Super Bowl Sunday in 2014. As the Defendant/Employer pointed out in its brief, exposure to physical trauma to others does not constitute a physically traumatic event as defined by the Act. *Kubajak v. LFUCG*, 180 S.W.3d 454 (Ky. 2005). Based on these facts, the Administrative Law Judge finds there is no causal relationship between the Plaintiff’s PTSD and associated seizures and the work-related incident on September 7, 2015.

Perhaps in recognition of the foregoing, the Plaintiff did not list PTSD or seizures in the Form 101 filed for the alleged September 7, 2015 injury. These conditions were raised as part of the second Form 101, which describes the cause of injury as “cumulative” with a manifestation date of October 31, 2016 (the date that Mr. Treadway began treating with Dr. Taylor). While the testimony from Dr. Taylor and Dr. Allen supports a finding that the Plaintiff’s PTSD was caused by the “cumulative” effects of years of exposure to trauma inflicted on other persons, the fact remains that the condition was not the result of a physically traumatic event inflicted on Mr. Treadway.

Based on the foregoing, the Administrative Law Judge finds that the Plaintiff’s psychological condition does qualify as a compensable work-related injury under the Act. Specifically, this ruling pertains to the PTSD and conversion disorder (non-epileptic seizures) for which the Plaintiff has been treated by Dr. Gilliam and Dr. Taylor. Accordingly, it is ordered that the claim for a cumulative injury resulting in PTSD and non-epileptic seizures (Claim No. 2018-00221) is dismissed in its entirety. It is further ordered that any claim for benefits related to PTSD and non-epileptic seizures asserted as part of the claim arising from the incident at work on September 7, 2015 (Claim No. 2015-69733) is also

dismissed. The foregoing dismissal of any claim for alleged psychological, psychiatric and/or mental claims does not extend to the claim for benefits arising from the September 7, 2015 incident insofar as that claim involves alleged physical injuries to the neck and shoulders.

Treadway filed a Petition for Reconsideration arguing his PTSD and conversion disorder are physical manifestations of mental trauma and thus he has a “mental-physical” claim that is compensable under the Act. Bath County filed a Petition for Reconsideration to correct a clerical error reflecting ALJ Layson found the psychological condition does not qualify as a compensable work-related injury under the Act. By Order dated July 19, 2019, ALJ Layson sustained Bath County’s Petition for Reconsideration.

In his August 6, 2019 Order ruling on Treadway’s Petition for Reconsideration, ALJ Layson provided additional findings, stating as follows, *verbatim*:

In his Petition, the Plaintiff asks the ALJ to reconsider the dismissal of one of the two consolidated claims (Claim No. 2018-00221) on the grounds that the alleged injury constituted a “psychological, psychiatric, or stress-related change in the human organism” that was not the direct result of a physical injury and, therefore, not a compensable work-related injury as defined by KRS 342.0011(1). In support of his position, the Plaintiff cites the case of *McCowan v. Matsushita Appliance Company*, 95 S.W.3d 30 (Ky. 2002) for the proposition that “mental-physical” claims are not excluded from the statutory definition of injury.

The *McCowan* case involved a clearly physical condition (heart attack) which was brought about by work-related emotional trauma. As the Defendant/Employer points out in its response to the Plaintiff’s Petition, this claim does not involve a physical injury which is the result of the work-related stress. Specifically, the Plaintiff’s treating physician (Dr.

Gilliam), the Plaintiff's treating psychologist (Dr. Taylor) and the Defendant/Employer's IME psychiatrist (Dr. Allen) all agree that the Plaintiff's diagnoses are PTSD and conversion disorder. Both of these diagnoses are "psychological, psychiatric or stress-related changes in the human organism." The Plaintiff can not be awarded workers' compensation benefits for PTSD and/or conversion disorder absent a preceding physically traumatic injury.

Based on the foregoing, the Plaintiff's Petition for Reconsideration is overruled in its entirety.

On appeal, Treadway argues the ALJ, and ALJ Layson, erred in dismissing his claim. Treadway argues his claim arises from a cumulative psychological trauma, which ultimately lead to PTSD, which manifested itself in the form of physical symptoms. Treadway believes McCowan v. Matsushita Appliance Company, 95 S.W.3d 30 (Ky. 2002) is on point and provides the most relevant guidance. There, the claimant suffered a heart attack after a heated argument at work. McCowan sustained no direct physical injury during the events leading to the heart attack. The Kentucky Supreme Court in McCowan stated the definition of injury permitted compensation if mental trauma or exertion caused a harmful physical change, and a harmful mental change directly resulted. In reaching their conclusion, the Kentucky Supreme Court noted, "although the trauma that the claimant experienced was emotional rather than physical in nature, the harmful changes for which she sought compensation included the heart attack and its consequences which are a physical manifestation of the emotional trauma." Treadway submits that although KRS 342.0011(1) requires harmful mental changes to result from a physically traumatic event in order to be compensable, it does not

require harmful physical changes to do so. Treadway argues that because the harmful change he suffered was physical, it was not "stress-related" for the purposes of KRS 342.0011(1), and the statute did not require that it directly result from a physically traumatic event. Treadway concludes his claim is not a "mental-mental" claim, but rather constitutes a "mental-physical" claim that is compensable under the Act.

As the claimant in a workers' compensation proceeding, Treadway had the burden of proving each of the essential elements of his case. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

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 inadequate 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 the 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, supra. As 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.

KRS 342.0011(1) defines injury as follows:

"Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, **but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury;** (Emphasis added).

In this instance, Treadway argues he sustained a physical manifestation of a condition caused by stress that he encountered in the workplace.

It is undisputed there was no physical injury at work. Apparently, the precipitating factor for his condition was viewing trauma to other people. While Treadway points to events that he believes resulted in his alleged injury, none involved an actual physical event. The ALJ, and ALJ Layson, determined Treadway's seizures are a conversion or manifestation of the PTSD. The ALJ specifically found "As the Defendant/ Employer points out in its response to the Plaintiff's Petition, this claim does not involve a physical injury which is the result of the work-related stress."

Treadway essentially requests a reversal of the determinations by the ALJ, and ALJ Layson, decision, and entry of a finding that a "psychological, psychiatric, or stress-related change in the human organism" may make a subsequent physical manifestation of the psychiatric condition compensable. In support of his contention, Treadway relies upon the holding in McCowan, where the Kentucky Supreme Court acknowledged that the definition of injury was amended in 1994 in an attempt to limit "mental-mental" claims, but determined the definition permitted "compensation if mental trauma or exertion caused a harmful physical change, and a harmful mental change directly resulted." Id. at 31. The Court noted the trauma sustained by McCowan was emotional rather than physical in nature, stating, "the harmful changes for which she sought compensation included the heart attack and its consequences."

The case *sub judice* is distinguishable from McCowan. Here, the opinions of Dr. Taylor and Dr. Allen constitute substantial evidence that, while Treadway experienced physical symptoms as a result of his psychological condition, he did not sustain a harmful physical change in the human organism but merely

physical symptoms in the way of seizures. Dr. Taylor noted a video EEG had found no abnormal electrical activity which would indicate the seizures themselves “were not caused medically” and were considered psychologically caused. She indicated his seizures are a conversion disorder, which is a manifestation of the psychological stress arising from PTSD. Dr. Allen stated, “Conversion disorder, what happens is your body or your brain decides to create a physical symptom that relieves stress for you.” Dr. Allen stated the diagnoses of conversion disorder and PTSD were not related to any physical injury that Treadway may have sustained. Dr. Allen noted Treadway did not respond to seizure medication. His seizures increased in severity and frequency until he began psychotherapy with Dr. Taylor in October 2016, after which he reported some improvement. In his report, Dr. Allen clearly stated the conversion disorder “is a mental illness in which a person develops subconsciously created neurological conditions in response to emotional distress.” The opinions of Dr. Taylor and Dr. Allen constitute substantial evidence supporting a conclusion that Treadway’s seizures are not a harmful physical change to the human organism, but rather a psychologically caused symptom of or reaction to stress. There is no evidence that a physical change is responsible for the non-epileptic seizures. Because the non-epileptic seizures are psychogenic, this is not a “mental-physical” claim as argued by Treadway. Treadway’s claim is a “mental-mental” claim and is thus not compensable. The determination by the ALJ, and ALJ Layson, are supported by substantial evidence, and it cannot be said they are so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the July 12, 2019 Interlocutory Opinion and Order and the August 6, 2019 Order rendered by Hon. Jeff V. Layson III, Administrative Law Judge, and the Order dated January 4, 2021 by the Hon. Tonya Clemons, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON JAMES R. MARTIN, II
333 WEST VINE ST, STE 1200
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

LMS

HON H. DOUGLAS JONES
334 BEECHWOOD RD, STE 403
FT. MITCHELL, KY 41017

ADMINISTRATIVE LAW JUDGE:

LMS

HON TONYA CLEMONS
MAYO-UNDERWOOD BLDG
500 MERO ST, 3rd FLOOR
FRANKFORT, KY 40601