

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 28, 2022

CLAIM NO. 202088735, 202000738, & 202000735

CHARLES MADDOX

PETITIONER

VS. **APPEAL FROM HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE**

OFFICE OF MINE SAFETY & LICENSING and
HON. TONYA M. CLEMONS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Charles Maddox (“Maddox”) appeals from the August 20, 2021 Opinion, Award and Order rendered by Hon. Tonya M. Clemons, Administrative Law Judge (“ALJ”). The ALJ awarded permanent partial disability (“PPD”) benefits without the application of the three-multiplier and medical benefits for Maddox’s cervical injury caused by cumulative trauma. The ALJ also awarded medical benefits for an occupational hearing loss. The ALJ dismissed Maddox’s

claim for alleged low back and bilateral knee injuries, also allegedly caused by cumulative trauma, and his coal workers' pneumoconiosis ("CWP") claim. Maddox also appeals from the September 17, 2021 Order overruling his Petition for Reconsideration.

On appeal, Maddox argues the ALJ erred in finding he retains the physical capacity to return to his former job. Maddox also argues the ALJ erred in finding he did not sustain compensable injuries to his lumbar spine and knees caused by cumulative trauma. Because substantial evidence supports the ALJ's determination, and a contrary result is not compelled, we affirm.

On May 29, 2020, Maddox filed a Form 101. Maddox stated he worked as a mine specialist for the Office of Mine Safety and Licensing ("OMSL") from October 2008 through December 31, 2019. Maddox alleged he sustained injuries to his neck, low back, and bilateral knees caused by cumulative trauma he sustained at work. He identified January 1, 2020 as the injury date. The Form 104 indicates Maddox worked as a coal miner for multiple companies from 1973 to 2008. In support of the Form 101, Maddox filed the February 5, 2020 treatment note and questionnaire completed by Dr. James Rushing, D.C.

Maddox also filed claims for occupational hearing loss and CWP. The ALJ consolidated Maddox's claims. The ALJ ultimately dismissed Maddox's CWP claim and awarded medical benefits for the occupational hearing loss. We will not discuss the evidence regarding the CWP and hearing loss since the decision in those claims are not the subject of this appeal.

Maddox testified by deposition on July 17, 2020 and at the final hearing held June 23, 2021. Maddox was born in July 1952 and resides in Central City, Kentucky. Maddox completed high school and then began his career as a coal miner. Over the course of his coal mining career, he earned papers for mine foreman, electrical, inspector, and mine rescue. Maddox worked for multiple coal companies from 1973 to 2008, predominately operating a continuous miner. He also operated a roof bolter and drove a shuttle car. He also examined belts and rock dusted. He additionally worked as a face boss and mechanic. He retired from coal mining in September 2008.

Maddox began working for OMSL on October 1, 2008. He initially worked as an analyst for several months before becoming an inspector, which he described as physically demanding. He inspected units, equipment, roofs, ribs, and rock dust. He also talked to miners about safety. Maddox testified the most demanding aspect of his job was inspecting the belt line, which could take days to complete depending on the mine. He was required to walk, crawl on his hands and knees, duck walk while bent over, and ride on mantrips over rough terrain. He carried equipment weighing more than 10 pounds while performing his job duties.

At the hearing, Maddox testified he experiences constant neck pain and low back pain radiating into his left leg. He also stated his knees bother him. Maddox explained when he bent over to duck walk or crawl, he frequently hit his head on overhead supports. He also slipped and fell many times when the belt lines were slick with mud and water. Maddox attributed the deterioration of his neck, low back, and knees to his job activities as inspector with OMSL. Maddox worked full

time without restrictions until he retired on December 31, 2019 at age 67. He missed no work due to his alleged work injuries. At the time of the hearing, Maddox had not actively sought treatment for either condition. Maddox uses rubs, creams, and a heating pad to relieve his symptoms. He experienced those problems before he retired. His primary care provider is Cheri Fogle (“Ms. Fogle”), a nurse practitioner. She has not rendered treatment for his low back, neck, or bilateral knee complaints. Maddox does not believe he is able to work as an inspector in his current condition.

Maddox owns 12 acres of land consisting of his home and woods. At the deposition, Maddox indicated he had “12 acres of woods to play in every day, to work in, and get to watch my animals every day.” Maddox stated he hunted turkeys in the spring of 2020. At the June 2021 hearing, Maddox testified he had not hunted the previous fall or spring. He stated, “I have come to a point in time, I can’t walk and that’s hard for me to say. Because I loved my job ... I hurt every day and now I’m paying the price. I wore my body out because I worked hard.”

In support of his Form 101, Maddox attached the February 5, 2020 treatment note and medical questionnaire completed by Dr. Rushing. Dr. Rushing noted Maddox’s work history and his complaints of pain in his back, neck, and knees. Dr. Rushing examined Maddox and diagnosed a lumbar disc bulge, cervical degenerative joint disease, and bilateral knee degenerative joint disease. Dr. Rushing opined Maddox’s neck, back, and bilateral knee issues were caused either wholly or in part by his job activities in the coal mines and that continuation of his job duties would adversely affect his health.

Maddox also filed Dr. James Farrage's September 10, 2020 report. Dr. Farrage noted Maddox reported his symptoms occurred gradually and culminated in a significant decline of functional capacity and chronic pain in his neck, low back, and bilateral knees. Dr. Farrage diagnosed cumulative trauma/repetitive use disorder involving the cervical spine, lumbar spine, and bilateral knees resulting in accelerated degenerative changes which have brought the underlying diagnoses of cervical degenerative disc disease, lumbar spondylosis, and osteoarthritis of the bilateral knees into disabling reality resulting in chronic pain, restricted range of motion, decreased strength, and impaired functional capacity. Dr. Farrage opined Maddox's clinical presentation and historical account are consistent with the mechanism of injury and he noted the absence of predisposing factors. Dr. Farrage recommended Maddox continue conservative management and to follow up with his primary provider. Dr. Farrage assessed impairment ratings of 5% for the cervical spine, 5% for the lumbar spine, 2% for the left knee, and 2% for the right knee pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, yielding a combined 14% impairment rating. Dr. Farrage assigned restrictions and opined Maddox does not have the physical capacity to return to his previous job.

OMSL filed some of Ms. Fogle's treatment notes. On November 1, 2012, Ms. Fogle noted Maddox had complained of bilateral low back pain since Monday as he was working on floors at home. Maddox was diagnosed with back pain, prescribed Lortab, and referred to a neurosurgeon. Poor copies of imaging studies from November 1, 2012 were also filed but are mostly illegible. Maddox

returned on December 3, 2018 for an annual wellness check, and he was diagnosed with hypertension and hyperlipidemia. Maddox reported he was working full time and was considering retirement. Maddox returned on December 17, 2019 for a wellness visit. He was diagnosed with hyperlipidemia and hypertension. He reported he was retiring at the end of the month.

OMSL filed Dr. Charles Barlow's August 31, 2020 report. He noted Maddox's work history as a coal miner, and his work for the OMSL from October 2008 to January 2020, when he retired. Dr. Barlow reviewed the medical records and performed an examination. He diagnosed cervicalgia, lumbago, and bilateral knee arthralgias secondary to the natural aging process, none of which were secondary to work-related acute or cumulative trauma. Dr. Barlow assessed a 0% impairment rating for the cervical and lumbar spine. He opined Maddox did not qualify for a permanent impairment for either knee since he could not detect any pathology and they were within normal ranges of motion. Dr. Barlow opined Maddox needs no restrictions, permanent or temporary, noting he had retired. Dr. Barlow also opined Maddox is physically capable of performing the job duties as inspector. Dr. Barlow found no further treatment was necessary and disagreed with Dr. Rushing's opinions. In an undated supplement, Dr. Barlow also disagreed with Dr. Farrage's opinions. He emphasized Dr. Farrage ignored the fact Maddox worked his normal job until he retired without restrictions.

The ALJ rendered her Opinion on August 20, 2021, determining Maddox met his burden of proving a work-related cervical condition caused by cumulative trauma. In reaching this determination, the ALJ relied upon Dr.

Farrage's opinion. However, the ALJ determined Maddox failed to prove work-related injuries to his low back and knees caused by cumulative trauma, stating as follows *verbatim*:

With respect to the allegations associated with his lumbar spine and bilateral knees, the ALJ finds Plaintiff has failed to meet his burden to prove work-related cumulative trauma injuries. In reaching this finding, the ALJ relies on the opinions of Dr. Barlow who diagnosed lumbago due to the natural aging process and not any work-related acute or cumulative trauma.

Consistent with the records from Baptist Health, Dr. Barlow noted Plaintiff had bilateral low back pain associated with abdominal pain beginning in November 2012 that was not related to any work activities, but to working on floors at home. Further, Dr. Barlow explained that diagnostic studies at the time reflected minimal spurring throughout the lumbar spine, which he felt was due to the natural aging process. Otherwise, Dr. Barlow noted a normal physical and neurological examination to the lumbar spine.

With respect to Plaintiff's bilateral knee complaints, the ALJ finds the opinions of Dr. Barlow to be the most credible and persuasive as the physical examination reflects essentially normal findings with no significant findings of osteoarthritis. Dr. Barlow diagnosed bilateral knee arthralgias secondary to the natural aging process and not any work-related acute or cumulative trauma.

The ALJ dismissed Maddox's claim for low back and bilateral knee injuries caused by cumulative trauma. The ALJ adopted the 5% impairment rating assessed by Dr. Farrage for Maddox's work-related cervical spine condition. The ALJ stated as follows regarding permanent total disability ("PTD") and entitlement to the three-multiplier, *verbatim*:

As the ALJ has already determined that Plaintiff suffered work-related occupational disease resulting in a 5% impairment rating, which translates to a 3.25%

permanent disability rating, the only Stumbo factors left to consider are whether Plaintiff is unable to perform any type of work and whether the disability is the result of the work injury.

In determining whether Plaintiff is unable to perform any type of work, the ALJ must consider several factors including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. See Ira A. Watson Department Store v. Hamilton, 34 S.W. 3d 48 (Ky. 2000); see also KRS §342.0011(34).

Having weighed the relevant factors, the ALJ finds Plaintiff has not met his burden to prove that his work-related cumulative trauma injury to his cervical spine has left him unable to perform any type of work. Dr. Barlow found that Plaintiff had no restrictions—either temporary or permanent—and was physically perfectly capable of performing the duties when he retired. He noted that Plaintiff retired after planning to do so for one year, which is consistent with the medical records from Baptist Health Medical Group Family Medicine, and is fully able to perform the position he held at the time of his retirement. Even Dr. Farrage, Plaintiff's medical expert, indicates Plaintiff satisfies the Department of Labor Guidelines for "light" occupation.

Plaintiff is 69 years-old with a high school education. He has worked for Defendant for more than ten years with his most recent position being a mine inspector. There is no dispute that Plaintiff voluntarily retired from his position with Defendant and was not under restrictions at the time of his retirement. Thus, the ALJ finds that Plaintiff is not permanently and totally disabled.

The ALJ must also determine whether the provisions of KRS §342.730 (1)(c) 1 or 2 apply to the plaintiff's permanent partial disability award. Essentially, it must be determined whether the injury has permanently altered the worker's ability to earn an income. Adams v. NHC Healthcare, 199 S.W. 3d 163 (Ky. 2006).

In Trane Commercial Systems v. Tipton, 467 S.W. 3d 249 (Ky. 2016), the court cited to Ford Motor Company

v. Forman, 142 S.W. 3d 141 (Ky. 2004) reiterating that in determining whether an injured employee is capable of returning to the type of work performed at the time of the injury, the ALJ must consider whether the employee is capable of performing the actual jobs that the individual performed.

In this matter, Dr. Barlow did not believe Plaintiff required any restrictions due to any work-related conditions. Further, as stated, there is no evidence that Plaintiff was under restrictions at the time of his voluntary retirement. Moreover, in contradiction to the recommended restrictions of Dr. Farrage, Plaintiff testified that since his retirement, he has twelve-acres of land that he walks in and hunts wildlife in every day.

Based upon the foregoing, the ALJ finds Plaintiff does retain the physical capacity to return to his pre-injury work. The multipliers under KRS 342.730(1)(c) are not applicable.

The ALJ also determined Maddox is entitled to medical benefits for his occupational hearing loss and dismissed his claim for CWP benefits.

Maddox filed a Petition for Reconsideration making the same arguments he now raises on appeal. In an Order rendered September 17, 2021, the ALJ overruled the petition, stating as follows, *verbatim*:

This matter is before the Administrative Law Judge on a September 1, 2021 Petition of Reconsideration by Plaintiff asserting patent errors on the face of the August 20, 2021 Opinion, Award and Order with respect to failure to find cumulative trauma injuries to the low back and bilateral knees. Further, Plaintiff alleged patent error for failure to find permanent total disability or, alternatively, failure to award the statutory multiplier under KRS 342.730(1)(c)1 to his permanent partial disability award. Defendant has responded to the Petition arguing Plaintiff merely re-argues the merits of the claim and does not point to patent error.

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The ALJ does not believe Plaintiff points to patent errors. In the Opinion, it was found that Plaintiff met his burden to prove a cumulative trauma injury to his cervical spine based upon the opinions of Dr. Farrage and retained the physical capacity to return to his prior employment. The Opinion went on to hold that Plaintiff had not met his burden to prove work-related cumulative trauma to his lumbar spine and bilateral knees. Further, it was found that Plaintiff was neither permanently and totally occupationally disabled nor met the statutory definition for application of the multiplier under KRS 342.730(1)(c)1 to his award for permanent partial disability.

The Opinion indicates that all evidence was fully considered in determining Plaintiff had failed to meet his burden to prove cumulative trauma injuries to his lumbar spine and bilateral knees. The Opinion identifies evidence including records from Baptist Health/Ms. Cheri Fogle, APRN and Plaintiff's testimony which led to the finding that the opinions of Dr. Barlow were the most credible and persuasive on this issue.

Moreover, consistent with the Kentucky Supreme Court's decision in City of Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015), the Opinion identifies evidence relied upon that led to the finding that Plaintiff was not permanently and totally occupationally disabled. The evidence including records of Baptist Health, the opinions of Dr. Barlow, the opinions of Dr. Farrage, and Plaintiff's testimony led to that finding.

Finally, consistent with relevant and applicable law, the Opinion again sets out the evidence relied upon in reaching the decision that Plaintiff did not meet the statutory definition for application of the multiplier under KRS 342.730(1)(c)1 to his permanent partial disability award. The evidence including the opinions of Dr. Barlow, as well as Plaintiff testimony as to his continued activity level following his voluntary retirement from employment with Defendant, led to the finding that Plaintiff retained the physical capacity to return to his prior employment.

The Opinion sets out the reasoning behind the finding that Plaintiff failed to meet his burden of proof to

establish he suffered cumulative trauma injuries to his lumbar spine and bilateral knees. Further, the Opinion explains the rationale behind the findings that Plaintiff does not meet the definition of permanent total disability or, alternatively, entitlement to application of the statutory multiplier under KRS 342.730(1)(c)1 to his permanent partial disability award. Plaintiff's Petition is a re-argument of the merits of the claim. Accordingly, Plaintiff's Petition is overruled.

On appeal, Maddox argues the ALJ erred in declining to increase his benefits by the three-multiplier. Maddox asserts the ALJ erred in misinterpreted his testimony and adopting Dr. Barlow's opinion. Maddox asserts the ALJ's statement that he walks and hunts wildlife every day on his property is erroneous. He notes he testified at the hearing that it is hard for him to walk and he had not hunted the past spring or fall. Maddox asserts, "Therefore, the ALJ's reliance upon Dr. Barlow was similarly misguided as this fact was not supported by the record." Maddox argues there was no evidence to support the determination he was not entitled to PTD benefits, or in the alternative, PPD benefits increased by the three-multiplier.

Maddox argues the ALJ erred in finding he did not qualify for income or medical benefits for his lumbar spine and bilateral knee injuries. Maddox points our attention to Dr. Farrage's opinions. He also noted, "As argued above, the ALJ erroneously relied upon facts not supported by the record, including the erroneously "daily hunting" fact-finding, which was a basis for the erroneous reliance on Dr. Barlow."

As the claimant in a workers' compensation proceeding, Maddox had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Maddox was unsuccessful in his burden regarding entitlement to benefits for his alleged lumbar and bilateral injuries and the

three-multiplier pursuant to KRS 342.730(1)(c)1, 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 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 an ALJ’s decision is limited to a determination of whether the findings 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).

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 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, supra. As long as the ALJ's ruling regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Substantial evidence supports the ALJ's determination Maddox failed to prove he sustained low back and bilateral knee injuries caused by cumulative trauma. The ALJ relied upon Dr. Barlow's opinion in making this determination. Dr. Barlow reviewed the available medical records and performed an examination. His examination of the lumbar spine demonstrated no spasms and was nontender to palpation. He also noted straight leg raising was positive only for low back pain with no radicular symptoms. He further noted the neurological examination of the lower extremities was normal. The supplemental report noted normal range of lumbar motion. He diagnosed lumbago secondary to the natural aging process and felt the condition warranted a 0% impairment rating. Likewise, the examination of both knees was normal. He diagnosed bilateral knee arthralgias secondary to the aging process and opined the condition did not warrant an impairment rating. Contrary to Maddox's blanket assertion, Dr. Barlow's opinions constitute substantial evidence supporting the ALJ's determination, and a contrary result is not compelled.

We also determine substantial evidence supports the ALJ's determination Maddox retains the physical capacity to return to his previous work and a contrary result is not compelled. KRS 342.730(1)(c)1 states as follows:

If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three

(3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments.

The ALJ relied upon the lack of restrictions imposed by Dr. Barlow and the fact Maddox worked unrestricted until he voluntarily retired in December 2019. Dr. Barlow opined restrictions were unnecessary, and Maddox retains the physical capacity to return to his former job. Maddox testified he worked full-time and unrestricted until he retired. He further testified he missed no work due to his alleged work injuries. The above alone constitutes substantial evidence supporting the ALJ's determination the three multiplier is not applicable. Therefore, a contrary result is not compelled.

Maddox takes issue with the ALJ's statement, "Plaintiff testified that since his retirement, he has twelve acres of land that he walks in and hunts wildlife in every day." At the deposition, Maddox testified "I have 12 acres of woods to play in every day, to work in, and get to watch my animals every day." He further agreed he hunts on his property, which contains deer, turkeys, squirrels, and coons. Later, Maddox confirmed he had hunted in the spring of 2020. Maddox's testimony at the hearing differed from his deposition testimony. Maddox testified he had difficulty walking and did not hunt the past fall of 2020 or spring of 2021. Considering the testimony from both the deposition and hearing, we do not believe the ALJ misconstrued Maddox's testimony and find no error in her statement.

Although not directly argued by Maddox, we find the ALJ conducted the appropriate analysis pursuant to City of Ashland v. Stumbo, 461 S.W.3d 392 (Ky. 2015) and Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky.

2000) in determining Maddox is not permanently totally disabled. We determine substantial evidence supports her determination, and again a contrary result is not compelled.

Accordingly, the August 20, 2021 Opinion, Award and Order and the September 17, 2021 Order on Petition for Reconsideration rendered by Hon. Tonya M. Clemons, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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