

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 19, 2019

CLAIM NO. 201559860

CHARLES MEADE

PETITIONER

VS. **APPEAL FROM HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE**

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
and HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Charles Meade (“Meade”) appeals from the March 16, 2019 Opinion and Order, and the April 15, 2019 Order overruling his petition for reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge (“ALJ”). In the Opinion, the ALJ determined Meade did not sustain a work-related injury on October 26, 2015 and dismissed his claim. On appeal, Meade argues the

evidence compels a finding he sustained a permanent injury due to the October 26, 2015 work incident. We disagree and affirm.

Meade filed a Form 101 alleging he sustained multiple injuries on October 26, 2015 when he tripped in the mailroom of the government center and attempted to catch himself to prevent a fall. At the time, Meade worked part-time for the Lexington Fayette Urban County Government (“LFUCG”) as a bus driver transporting senior citizens. The Form 104 indicates Meade began working for LFUCG in May 2007.

Meade testified by deposition on January 13, 2017, and at the final hearing held January 16, 2019. Meade was born in September 1947, and resides in Lexington, Kentucky. Meade completed one year of college without obtaining a degree. He also served in the Army for approximately two years from 1969 to 1970, and received training in surveying, IBM equipment and programming, and artillery. Meade worked as a car inspector in the railroad industry from 1966 to 1991, when he retired due to wear and tear on his left knee and due to a low back injury.

Meade did not return to any employment until he began working for LFUCG in 2007 or 2008 as a part-time bus driver. He also performed other tasks, including picking up the mail at the government center. Meade testified that on October 26, 2015, he went to the mailroom, picked up the mail, and placed it into his bag. As he was leaving, he slipped on a stack of chair mats causing him to twist and jerk. He was able to regain his balance without grabbing or holding on to anything and did not fall. At his deposition, Meade stated he initially experienced pain in his left shoulder, arm, and knee. At the hearing, Meade testified he did not initially

experience much pain. As he continued his workday, he began experiencing soreness and pain from the center of his throat and into his left shoulder and arm, collarbone, and neck. Meade did not testify regarding any left knee symptoms at the hearing.

Meade's symptoms continued to worsen and he eventually sought treatment at the Veterans Administration Medical Center ("VA"). He also treated with his family physician, Dr. George Chaney and Dr. Schneider (first name unknown). Meade has undergone a course of conservative treatment and takes Tramadol and Valium. He also underwent several diagnostic tests and a nerve conduction study. Meade testified his symptoms have worsened and remain consistent despite his treatment. Meade last worked for LFUCG a day or two after the work incident, and he has not returned to any employment since.

Meade testified that prior to and including the October 26, 2015 work incident, he was taking Tramadol for low back pain and for "my joints." Meade denied experiencing neck, shoulder, or arm problems prior to October 26, 2015.

The parties filed treatment records from the VA and Dr. Chaney subsequent to the October 26, 2015 work incident. On October 28, 2015, two days after the incident, Meade telephoned the VA and spoke with Brittany Wright, an RN. He complained of fatigue and weakness of two months duration. Meade reported his bus-driving job as stressful at times, and that he may need some authorized time off work. This record does not mention the October 26, 2015 work incident or any associated complaints. Meade treated with Dr. Joseph Cecil at the VA on November 2, 2015, and reported worsening neck pain for nearly six days after

slipping on a stack of chair mats. Dr. Cecil noted Meade's medical history consisted of diabetes and degenerative disease involving multiple joints for which he is prescribed Metformin and Tramadol. He diagnosed recent cervicalgia, primarily trapezius and neck muscle on the left. He recommended physical therapy, prescribed Baclofen, and restricted Meade from working for one week with no lifting.

The record indicates Meade began treating with Dr. Chaney on November 12, 2015, and continued to see him on a regular basis through December 2016. Dr. Chaney's initial note reflects complaints of neck, left shoulder, and upper back pain, as well as left arm numbness after a near fall at work on October 26, 2015. Cervical, thoracic, and left shoulder x-rays were performed. The shoulder x-ray was read as negative while the others demonstrated thoracic degenerative changes and cervical degenerative joint disease. A subsequent November 23, 2015 left shoulder MRI demonstrated degenerative changes of the AC joint. Dr. Chaney consistently diagnosed Meade with cervicalgia, and pain in the left shoulder and thoracic spine. Dr. Chaney treated Meade with medication, and referred him to a psychiatrist and neurologist.

X-rays performed on November 23, 2015 demonstrated degenerative changes in the left shoulder, thoracic, and cervical spine. A cervical MRI dated March 31, 2016 demonstrated spondylotic changes with mild broad-based protrusions at C4-5 and C6-7 without stenosis. A December 6, 2018 NCV/EMG study indicated bilateral carpal tunnel syndrome with no evidence of focal nerve pathology, proximal nerve, plexus or nerve root pathology, polyneuropathy, myopathy, or motor neuron pathology.

LFUCG filed pre-injury records from the VA, as well as Dr. Chaney, spanning 2000 through 2015 for various complaints and maladies. Those records document regular treatment for unrelated low back pain, GERD, wrist complaints related to carpal tunnel syndrome, and reflux. Meade complained of left neck and shoulder pain on several occasions in 2001, and bilateral shoulder and knee pain in 2002. The VA treated Meade conservatively with medication and physical therapy. A 2002 EMG/NCV study was normal for both upper extremities and the VA referred Meade to a pain clinic. Meade continued to complain of bilateral shoulder, neck and diffuse joint pain in 2003 for which medication was prescribed. Meade returned to the VA in 2006 and 2007 with low back and neck complaints. The VA continued to treat Meade for chronic low back pain and degenerative joint disease in the hands and left knee in 2009 and 2010, and Tramadol was prescribed. Meade complained of neck, bilateral shoulder, and arm pain in 2012 and 2013. Meade was diagnosed with diabetes in 2014.

On June 26, 2015, Dr. William McGrady examined Meade and completed a thoracolumbar disability benefits questionnaire. Dr. McGrady concluded Meade's thoracolumbar spine condition affects his ability to work. He restricted Meade from lifting, bending, or twisting at the waist over twenty-five pounds, or sitting over thirty minutes without a stretch break.

LFUCG filed Dr. James Farrage's November 9, 2016 medical records review report. He reviewed records from 2012 through 2015. Based on his review of the records, Dr. Farrage concluded there is no objective evidence that the October 26, 2015 work injury resulted in any identifiable acute traumatic pathology. Dr.

Farrage noted Meade did not reference the work event or symptomology two days after the work accident. Dr. Farrage noted Meade's prior history of similar neck and back complaints with radiation into the shoulders. He also noted diagnostic studies were consistent with chronic, pre-morbid degenerative changes. Dr. Farrage found Meade's pain complaints primarily myofascial in origin and is consistent with his pre-injury status, which can present with periods of exacerbation. Dr. Farrage opined the treatment provided is not compensable since no temporal relationship to a specific work-related mechanism of injury had been established.

Meade filed Dr. James Owen's January 19, 2017 report. Dr. Owen also testified by deposition on July 6, 2017. Dr. Owen noted the work accident and Meade's complaints of pain in his neck, arm, shoulder, left knee, and low back. He noted Meade reported no prior problems with either shoulder, and did not miss any work throughout his employment with LFUCG. Dr. Owen reviewed only records post-dating the work injury, and performed an examination. Dr. Owen noted the examination and description given of the injury did not match the severity of the problem presented by Meade. Dr. Owen diagnosed, "persistent pain that appears to be severe and neurogenic with allodynia but no other evidence for RSD [reflex sympathetic dystrophy] in the left shoulder and clavicular area." He noted RSD had not been definitively diagnosed and he recommended an EMG/NCV. Dr. Owen noted his examination demonstrated significant peripheral neuropathy involving both hands, which he suspected is associated with diabetes but did not explain the severity of neck and shoulder pain.

Dr. Owen assessed a combined 11% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, consisting of 8% for range of motion and an additional 3% for pain. Dr. Owen opined the October 26, 2015 work event caused the impairment, and he found Meade had no pre-existing, active condition.

Dr. Owen opined Meade “is certainly not at maximum medical improvement (“MMI”) and this impairment rating is clearly premature.” He emphasized the need for an EMG, which he opined is work-related. Dr. Owen opined Meade does not retain the physical capacity to return to work as a bus driver and restricted him from activity which causes exacerbation of his pain.

Dr. Owen’s deposition testimony is largely consistent with his report. He confirmed he obtained a medical history through Meade and did not review any pre-injury records. After counsel for LFUCG provided a short summary of the pre-injury medical records, Dr. Owen acknowledged the possibility of some pre-existing, dormant, non-disabling conditions, but could not state whether they were active. In light of the prior records, Dr. Owen found the 3% impairment rating for pain inappropriate, and assigned an 8% impairment rating.

LFUCG filed the April 13, 2017 report by Dr. Gregory Snider who noted the October 26, 2015 work incident and alleged injuries to Meade’s left shoulder, arm, and knee. He reviewed Meade’s prior treatment history and records from 2000 through 2015, as well as the records post-dating the work incident. Dr. Snider noted Meade continued to complain of neck, left shoulder, and left arm pain with numbness in the ulnar aspect of his hand, as well as pain of the proximal

clavicle. Dr. Snider performed an examination and diagnosed left clavicle, left arm, and left knee pain, and chronic back pain. Dr. Snider concluded as follows:

All in all, I have a hard time identifying a specific anatomic change from this incident in question. The record suggests that he has made efforts to have his activities restricted, even prior to this incident, and for complaints not related to his incident, including fatigue, weakness, stress, etc. In short, I cannot identify a specific anatomic deficit attributable to this incident in question.

Dr. Snider recommended no further treatment for the work incident. He also stated, "I do not see a reason to believe that, even with a sprain or strain injury, he could not have continued working with accommodation had he not seen Dr. Chaney to be placed off work." Dr. Snider again opined there is no defined anatomic deficit attributable to mechanism of injury and declined to assess an impairment rating.

In a May 22, 2017 addendum, Dr. Snider opined there was no indication for an EMG/NCV study as recommended by Dr. Owen. He found Meade did not fit any of the criteria for RSD. In a January 14, 2019 addendum, Dr. Snider noted he had reviewed additional medical records and stated his opinions remain unchanged. He also stated, "I am under the assumption that Mr. Meade may have suffered a sprain or strain, transient in nature, relative to the 10/26/15 injury." Assuming a transient sprain or strain occurred, Dr. Snider opined Meade reached MMI within approximately ninety days of the work injury. Again, Dr. Snider found no impairment or permanent restrictions attributable to the work incident.

A Benefit Review Conference was held on December 12, 2019. The following were identified as contested issues: work-related injury/causation, benefits per KRS 342.730, average weekly wage, temporary total disability (“TTD”) benefits, ability to return to work, exclusion for pre-existing impairment, unpaid or contested medical expenses, and MMI as it relates to TTD.

The ALJ concluded Meade did not sustain a work-related injury on October 26, 2015. The ALJ provided the following analysis:

Injury is statutorily defined in KRS 342.0011(1) as a work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment, which proximately causes a harmful change in the human organism evidenced by objective medical findings.

In Gibbs v. Premier Scale Company, 50 S.W. 3d 754 (Ky. 2001), the Kentucky Supreme Court held that a diagnosis of a harmful change may comply with the requirements of KRS 342.0011(1) and (33) if it is based upon symptoms which are documented by means of direct observation and/or testing applying objective or standardized methods. See also, Staples, Inc. v. Konvelski, 56 S.W. 3d 412, 416 (Ky. 2001), in which the Court held that while objective medical evidence must support a harmful change diagnosis, it is unnecessary to prove causation of an injury through objective medical findings.

The ALJ does not believe that Mr. Meade sustained a work-related injury on October 26, 2015 while working for Defendant. There are factual inconsistencies from Mr. Meade’s testimony and what he told his medical providers, and independent medical examiners that are very divergent on key facts. First, Mr. Meade has an extensive history of left shoulder, right shoulder, bilateral upper extremity pain, shoulder pain, back pain, knee pain, joint pain, and left hand pain extending back to at least the year 2000 in varying degrees of complaints. Dr. Owen did not review any medical records prior to October 26, 2015 in preparing his report.

Mr. Meade specifically stated that he “almost fell” and that he did not grab onto, or hold, anything when the incident occurred with the floor mat on October 26, 2015. Yet, Dr. Owen’s report and deposition clearly state that Mr. Meade told him that while he did not fall completely, he grabbed onto and held something with his left arm. This is clearly not what Mr. Meade stated in his testimony. At page 37 of his deposition he stated “Right. There was nothing to grab. I had the mail bag in my hand.”

Dr. Owen then noted parenthetically “Certainly the physical examination and description given do not match the severity of the problem he is presenting today to me.” It is apparent to the ALJ that Dr. Owen was puzzled by Mr. Meade’s presentation. The difficulty the ALJ has with Dr. Owen’s opinions are that Mr. Meade provided an incorrect history. Mr. Meade testified that he did not hit anything, nor grab and hold onto anything when this incident occurred. Mr. Meade stated [sic] his hearing testimony regarding whether he grabbed and held onto anything. When asked if he caught a desk, grabbed a desk or a pole or anything similar, Mr. Meade stated, “Don’t, I can’t, to say yeah, I can’t say yes to that.” It appears to the ALJ that Dr. Owen’s opinions are premised upon the mistaken fact that Mr. Meade grabbed and held onto something when he slipped and almost fell.

Medical opinions that are based upon inaccurate or incomplete information furnished by the claimant during the independent medical examination do not constitute substantial evidence to support a finding of work-related causations. Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004).

The most concerning facts are those surrounding the October 28, 2015 nurse notes from the VA records. Mr. Meade had a 20 minute telephone conversation with Nurse Brittany Wright during which time he apparently never mention[sic] a fall, or slip, at work on the 26th, just two days prior. Yet, Mr. Meade told her that he had simply felt tired lately and driving a bus for senior citizens can be stressful and that he needed authorized time off until he felt better. During this call, the records indicate that he provided a negative response to

numbness in the arm, hand, leg or foot and to any weakness in his arm, hand [sic] foot or leg from anything sudden. This conversation casts serious doubt on the events that Mr. Meade described occurring, and his description of the onset of physical complaints he attributes to events of October 26, 2015.

Dr. Farrage stated that he did not believe any objective evidence was presented showing an injury from the events described occurring on October 26, 2015. Dr. Snider could not identify a specific anatomic deficit attributable to the incident Mr. Meade described. He also noted that the medical records indicate that Mr. Meade made efforts to have his activities restricted prior to October 26, 2015.

The ALJ finds that Mr. Meade has not met his burden to prove that he sustained a work-related injury, to any part of his body, as a result of what he stated occurred on October 26, 2015.

Meade filed a petition for reconsideration pointing out he was working under no restrictions at the time of the work injury, and he received no complaints from LFUCG regarding his job performance. Meade asserts Dr. Snider opined that, at a minimum, he sustained a temporary injury due to the October 26, 2015 work event. Meade requested additional findings addressing whether he suffered from a pre-existing, active condition.

In overruling the petition, the ALJ found it unnecessary to address whether Meade suffered from a prior active condition since he had found Meade did not sustain a work-related injury on October 26, 2015.

On appeal, Meade argues the ALJ's determination is contrary to the evidence and is not in conformity with the Act. He also argues the decision is arbitrary or capricious, and amounts to an abuse of discretion. Meade argues the overwhelming evidence establishes he sustained a work injury on October 26, 2015.

In support of his argument, Meade points to his own testimony of the work incident and the fact he was not working under any restrictions at the time he was injured. He also notes Dr. Owen found he sustained a work-related injury. Meade again asserts Dr. Snider opined he could have had no less than a temporary injury; LFUCG failed to prove he suffered from a pre-existing, active condition; the ALJ failed to summarize and properly weigh the evidence; and the evidence clearly supports a finding of a permanent injury.

As the claimant in a workers' compensation proceeding, Meade had the burden of proving each of the essential elements of his claim, including work-relatedness/causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Meade was unsuccessful in his 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 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 with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Meade requests this Board to re-weigh the evidence and substitute its judgement for that of the ALJ. This we cannot do. The ALJ acted squarely within his discretion in relying upon the opinions of Dr. Snider and Dr. Farrage instead of that of Dr. Owen in dismissing Meade's claim. As noted by the ALJ, Dr. Farrage did not believe any objective evidence was presented showing the October 26, 2015 work event resulted in an injury. Dr. Snider could not identify a specific anatomic deficit attributable to the incident. He also noted that Meade made efforts to have his activities restricted prior to October 26, 2015. The ALJ also found troubling the

fact that Meade did not mention the work accident or its associated symptoms when he reported fatigue and weakness two days after October 26, 2015. Finally, the ALJ explained why he did not find Dr. Owen's opinions persuasive, noting he did not review Meade's prior medical records in forming his opinion. The ALJ summarized the evidence and understood the issues before him. The opinions of Dr. Farrage and Dr. Snider, alone or in conjunction with the additional medical records considered by the ALJ, constitute substantial evidence supporting his determination that Meade did not sustain a work-related injury on October 26, 2015.

We note Meade mischaracterized Dr. Snider's opinion in alleging he concluded Meade could have had no less than a temporary injury. In the April 13, 2017 opinion, Dr. Snider diagnosed left clavicle, left arm, left knee, and chronic back pain. He could not identify any specific anatomic change attributable to the work incident. In a subsequent report, Dr. Snider noted his opinions have remained unchanged. He also stated, "I am under the assumption that Mr. Meade may have suffered a sprain or strain, transient in nature, relative to the 10/26/15 injury." Under this assumption, Dr. Snider estimated Meade reached MMI within nine months. In light of the two reports, the ALJ was not compelled to find Meade sustained a temporary injury and acted within his discretion in finding Meade did not sustain a work-related injury on October 26, 2015.

We also agree the ALJ was not required to address the issue of a pre-existing, active condition since he found Meade did not sustain *any* work-related injury on October 26, 2015.

Accordingly, the March 16, 2019 Opinion and Order, and the April 15, 2019 Order on petition for reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge, are hereby **AFFIRMED**.

RECHTER, MEMBER, CONCURS.

STIVERS, MEMBER, NOT SITTING.

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