

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 6, 2022

CLAIM NO. 201774657

CONAGRA FOODS

PETITIONER

VS.

APPEAL FROM HON. GRANT ROARK,
ADMINISTRATIVE LAW JUDGE

JOHN WILLIAMS,
DR. FRANK BONNARENS, and
HON. GRANT ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

MILLER, Member. ConAgra Foods (“ConAgra”) appeals from the November 19, 2021 Opinion and Order and the December 20, 2021 Order denying its Petition for Reconsideration rendered by Hon. Grant Roark, Administrative Law Judge (“ALJ”). This matter concerns the reopening and post-settlement medical dispute wherein the ALJ found compensable a disputed left knee meniscectomy surgery

proposed by Dr. Frank Bonnarens. After a review of the evidence and arguments of the parties, we affirm.

John Williams, III (“Williams”) was born on April 28, 1965. He was injured on June 26, 2017 while employed at ConAgra. Williams started at ConAgra in February 2012 working as a forklift operator. He injured his left knee and thigh when he was getting out of his forklift and was hit by another forklift, pinning his left leg against an object. Treating surgeon, Dr. Frank Bonnarens performed a partial medial meniscectomy for a medial meniscus tear on October 29, 2017. Williams underwent a second left knee surgery, a partial medial meniscectomy, on April 11, 2018. In his April 2018 operative report, Dr. Bonnarens also noted an anterior cruciate ligament (“ACL”) tear. The ACL tear was not addressed, though he believed the surgeries would help the mechanical symptoms, but not the underlying arthritis or the ACL tear. The ACL was not reconstructed due to the amount of intra-articular damage. Williams was released on July 26, 2018 and continued to work as a forklift operator.

During the initial litigation, Williams introduced a report from Dr. Craig Roberts, who performed an evaluation on November 21, 2018. Dr. Roberts diagnosed residual left knee ACL instability and early post-traumatic arthrosis as a result of the work injury. He assigned a 13% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Dr. Roberts believed Williams would require future medical treatment including periodic visits, diagnostic imaging, and a left total knee replacement in the future.

ConAgra countered with a report from Dr. Andrew DeGruccio, who evaluated Williams on December 28, 2018. He noted Williams' ACL tear, medial meniscal root avulsion tear, and progressive post-traumatic arthritis with medial joint line failure were all related to the work injury on June 26, 2017. He opined that, ultimately, a knee replacement may be necessary, and it would be related to the work injury. He recommended annual checkups to monitor the progression of arthritis. Dr. DeGruccio assigned an 11% impairment rating pursuant to the AMA Guides.

During litigation, the parties reached settlement. Hon. Stephanie L. Kinney approved the Form 110 Agreement on May 9, 2019. The form stated the body part affected was the "left knee and thigh hematoma/seroma." It also noted two meniscectomies were performed and listed Dr. Frank Bonnarens as the first designated physician. In addition to the payment of underpaid temporary total disability benefits, ConAgra also agreed to pay permanent partial disability benefits. The settlement agreement specifically acknowledged Williams retained his rights to future medical benefits and to reopen his claim for future income benefits.

Williams returned to Dr. Bonnarens on September 29, 2020. He testified his symptoms had progressively worsened after he got up from a chair at his home and the pain in his knee flared up. Dr. Bonnarens ordered an MRI for February 11, 2021, which revealed "worsening of the arthritis, the chronic ACL tear, and looks like re-torn the posterior portion of the medial meniscus." Dr. Bonnarens requested authorization for an arthroscopy to address the meniscal pathology.

Dr. Ira Posner completed a Utilization Review on March 30, 2021. He opined the left knee surgery was not medically necessary or appropriate. No

MRIs or X-rays were available to review, and the peer-to-peer conference never occurred.

ConAgra introduced a report from Dr. Michael Best, who evaluated Williams on June 28, 2021. Dr. Best reviewed Williams' July 23, 2021 deposition and Dr. Bonnarens' September 29, 2020 office note. Dr. Best opined Mr. Williams has multiple problems causing his symptoms. These include end stage degenerative changes in the left knee, a chronically torn ACL, and a re-tear of the medial meniscus not by any specific event, repetitive trauma, or work incident. In his opinion, the proposed surgery is not work-related. He opined the incident at home caused the condition and the need for surgery. While Dr. Best recognizes Williams would be a candidate for a total knee replacement in 3-4 years, he believes it would not be work-related.

Dr. Bonnarens' records were also placed in evidence along with a May 24, 2021 letter addressed to the ALJ. These records included those designated as evidence from the initial claim and contained two MRI readings from August 2, 2017 and January 29, 2018, both of which referenced a radial tear in the far posterior horn of the medial meniscus and an ACL tear. The operative reports from October 25, 2017 and April 28, 2018 listed post-operative diagnoses of a left knee medial tear and the April 2018 report also diagnosed an ACL tear.

A letter dated May 24, 2021 from Dr. Bonnarens to the ALJ stated: "The patient has followed a predictable pattern in a patient with a now chronic tear of the anterior cruciate ligament in that the abnormal laxity and the arthritis have led to his re-tearing the posterior portion of the medial meniscus." Dr. Bonnarens

attributed the condition and need for surgery to an abnormally loose knee with an already torn meniscus that is continuing to tear due to the original, June 26, 2017 work injury. He stated the patient did well with arthroscopy in the past and hoped he will do well again. A total knee replacement may ultimately be needed to address the damage from the work injury, but he recognized that Williams is relatively young. Dr. Bonnarens acknowledged the surgery would not completely cure Williams' problem but would "buy him additional time." Dr. Bonnarens ended his letter: "This is clearly related to his work injury sustained at ConAgra."

Williams testified at his deposition of July 23, 2021. He has continued to work at ConAgra as a forklift operator, the same job he always performed. When asked if he had symptoms or pains between July 26, 2018 and September 29, 2020, he replied, "I always have pain in my left knee". Sometimes he had worse flareups, but it comes and goes. As for the incident at home, Williams stated he "stood up, walked, seemed like it flared up a little worsen." He did not have any new injuries between July 2018 and the visit to Dr. Bonnarens in September 2020. He desires to undergo the surgery proposed by Dr. Bonnarens.

ANALYSIS

In this reopening to resolve a medical dispute, ConAgra contends the proposed surgery is not related to the work injury. ConAgra believes an intervening event occurred at Williams' home when he stood up from a chair and was walking when the pain worsened. Alternatively, it argues the condition should be treated as a new cumulative trauma injury, presumably from getting off and on the forklift.

ConAgra does not contest the finding by the ALJ that the proposed surgery is reasonable and necessary.

The ALJ assigned the burden of proving work-relatedness to the injured worker. Addington Resources, Inc. v. Perkins, 947 S.W. 2d 421 (Ky. App. 1997).¹ The ALJ found the proposed surgery was due to the work-related injury and not a new injury. The ALJ found Williams' treating physician most credible, and this constitutes substantial evidence to support the ALJ's decision that the proposed surgery is compensable.

KRS 342.020 provides that the Employer "shall pay for the cure and relief from the effects of an injury" at the time of the injury and thereafter. This statutory provision has been construed by the Court to mean "cure and/or relief." National Pizza Co. v. Curry, 802 S.W.2d 949 (Ky. 1991). Again, the finding that the surgery is reasonable and necessary is not contested.

This appeal specifically revolves around conflicting medical opinions. The ALJ may pick and choose among conflicting medical opinions and has the sole authority to determine whom to believe. Pruitt v. Bugg Brothers, Ky. 547 S.W.2d 123 (1977); Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003). Here, the ALJ chose to believe the treating physician's opinion. The ALJ stated in his Opinion: "Dr.

¹ The Board notes, however, the Court of Appeals has since held the burden of proof regarding work-relatedness in a medical fee dispute is on the employer. C&T Hazard v. Stollings, 2012-SC-000834-WC, 2013 WL 5777066 (Ky. App. Oct. 24, 2013); Conifer Health v. Singleton, 2020-SC-0609-WC, 2020 WL 6819165 (Ky App Nov. 20, 2020). Because the ALJ found Williams successfully proved the surgery was work-related and that finding was supported by substantial evidence, the Board will not disturb the ALJ's findings. See Perry Cty. Bd. of Educ. v. Campbell, No. 2021-CA-0605-WC, 2022 WL 569216, at *3 (Ky. Ct. App. Feb. 25, 2022) (citing National Pizza Co. v. Curry, 802 S.W.2d 949, 951 (Ky. 1991) ("Regardless of the burden of proof, the ALJ's findings are supported by substantial evidence and neither the board nor this court may substitute its opinion otherwise.")).

Bonnarens unequivocally concluded the need for his proposed surgery was due to the work injury, and he reached this conclusion even after being provided the history that plaintiff's most recent increase in symptoms began when he sat up from a chair at home."

The ALJ found Dr. Bonnarens credibly explained why he recommended the proposed surgery, and no physician opined the surgery was unproductive or outside the type of treatment generally accepted by the medical community. The ALJ also noted that even Dr. DeGruccio's report from December 28, 2018 stated the claimant had developed degeneration in the left knee as a result of the work injury and would likely need continued treatment, possibly to the extent of a total knee replacement.

Finally, the ALJ was fully aware of ConAgra's position regarding causation of the proposed surgery and which party bore the burden of proof. The ALJ ruled the surgery compensable relying upon Dr. Bonnarens' opinion. In his Order on Petition for Reconsideration, the ALJ again noted ConAgra's position that Williams suffered an injury at home but chose to reject it.

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 discretion to determine 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). 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).

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 that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

The ALJ's decision was primarily based on his reliance of the treating physician's opinion. The ALJ's decision is supported by substantial evidence. ConAgra's belief that the evidence is overwhelming and compels a finding that the proposed surgery is not related to the work injury is not justified by the conflicting medical opinions.

Accordingly, the November 19, 2021 Opinion and Order and the December 20, 2021 Order on Petition for Reconsideration, rendered by Hon. Grant Roark, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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