

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 15, 2019

CLAIM NO. 201578288

CURTIS EDWARD NALL

PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE**

HENDERSON CHEVROLET and
HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Curtis Edward Nall (“Nall”) appeals from the November 15, 2018 Opinion and Order rendered by Hon. Jane Rice Williams, Administrative Law Judge (“ALJ”), dismissing his claim. The ALJ determined a non-work-related stroke caused Nall to fall and injure his shoulder on June 23, 2015. Nall also appeals from the December 7, 2018 Order denying his petition for reconsideration.

On appeal, Nall argues the medical evidence compels a finding he suffered a work-related heat stroke due to high temperatures and dehydration on June 23, 2015. Nall argues he is entitled to a presumption of work-relatedness under the analysis set forth in Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898 (Ky. 1971) and Indian Leasing Co. v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978). Because the ALJ's decision is supported by substantial evidence and a contrary result is not compelled, we affirm.

Nall filed a Form 101 alleging he suffered a heat stroke and fell while tearing down a wooden structure for Henderson Chevrolet ("Henderson") on June 23, 2015. Nall alleged a rotator cuff injury and neurological damage due to the accident. At all relevant times, Nall performed maintenance duties for Henderson.

Nall testified by deposition on April 21, 2016, and later waived his right to a final hearing. Nall resides in Henderson, Kentucky and is fifty-one years old. Nall previously underwent low back surgery in 1994. Nall also has Type II diabetes for which he has taken medication for twelve years. In March 2015, Nall sustained a minor head injury and later developed a MRSA infection requiring surgery. At the time of the June 23, 2015 incident, Nall took insulin injections and medication for diabetes. He also took prescription medication for high blood pressure, high cholesterol, and the MRSA infection.

Nall began working for Henderson performing maintenance duties in January 2014. His responsibilities included lawn maintenance, painting, basic plumbing, general cleaning, and trash pickup. At the time of the work incident, Nall was also clearing out and tearing down a wooden storage building. Nall testified

that on June 23, 2015, he checked his sugar levels prior to work at around 5:00 a.m., and they were “fine.” He reported to work at approximately 6:00 a.m. He mowed the lawn with a push mower and weed-eated. He then walked the perimeter of the car lot to pick up trash. Nall then began tearing down the storage building with a saw. Nall testified he believed he experienced a heat stroke while performing this outside task, passed out, and fell to the ground. According to Nall, the temperature outside was approximately 90 degrees when this occurred. When he awoke, Nall had shoulder pain, he was also drenched in sweat and disoriented. He stumbled to the main Henderson building, where his son also worked. Nall was taken to the emergency room at Methodist Hospital. Nall was uncertain when the alleged heat stroke occurred or how long he remained unconscious, but noted he arrived at the hospital around 9:30 a.m. Within approximately forty-five minutes, Nall experienced slurred speech, facial drooping, and loss of some function on his right side. Nall believes this is when a “physical brain stroke” occurred. His family requested a transfer to Deaconess Hospital, where he underwent a course of in-patient rehabilitation. Nall testified he injured his shoulder due to the June 23, 2015 fall, and recently underwent surgery performed by Dr. Dennis Beck.

Both parties filed portions of records from Methodist Hospital and Deaconess Hospital following the June 23, 2015 incident. Methodist Hospital admitted Nall to the emergency room on June 23, 2015 at 9:31 a.m., with a diagnosis of heat exposure/fall. His temperature was recorded at 97.4 degrees Fahrenheit. His right arm was placed in a sling. While at the emergency room, Nall’s functioning

deteriorated and he experienced eye droop, slurred speech and numbness in his right leg.

The “History & Physical” section reflects the following history, supplied by Nall’s son:

According to his son, the patient does perform maintenance work and clocked in at 6:30 AM on 6/23/2015. He did some mowing and did some yard work, and roughly at about 8:15 AM felt “hot” and decided to do something different to “cool off.” He therefore started cutting wood with a chain saw and apparently at some point, he must have fallen. However, he does not recollect the particular circumstances or for how long. At about 9:00 AM he walked to his son’s desk, who works at the same facility and said that he “felt unwell” and he looked quite wobbly on his feet. He also had slurred speech. . . . [T]he patient was brought to the emergency department, where was found to have slurred speech, right facial asymmetry and right-sided weakness. Imaging studies were done. The patient was admitted to the Intensive Care Unit and referred to the Hospital service for management and evaluation.

An initial brain MRI taken on June 23, 2015, demonstrated no evidence of acute infarct, but showed old left posterior parietal white matter and cortical infarcts. A second MRI was performed the following day for worsening right hemiparesis and dysarthria. It demonstrated a subacute infarct in the left frontoparietal periventricular white matter measuring 26.x0.8 centimeters, and evidence of an old ischemic event in the left posteroparietal region seen on the initial MRI. A June 24, 2015 EEG was abnormal.

Nall was evaluated by Dr. Satish Shah, a neurologist, on June 24, 2015. After reviewing the history, performing an examination, and reviewing the

diagnostic studies, Dr. Shah diagnosed left subcortical stroke and right flaccid hemiparalysis. He recommended medication and rehabilitation.

Nall was discharged for transfer on June 25, 2015. The discharge diagnoses consisted of left middle cerebral artery subacute cerebrovascular accident, with right hemiparesis and dysarthria; uncontrolled Type 2 diabetes; heat exposure; dehydration/acute renal failure, resolved; hypertension; fall/right shoulder pain; and dyslipidemia. In discussing heat exposure, the discharging physician noted it was not clear what role working outside in the heat had to play in Nall's fall. He noted that on initial evaluation, Nall was mentating well, had a normal body temperature, and did not appear to suffer any adverse effects from his heat exposure other than some dehydration. He also noted Nall presented at the hospital with a blood glucose of 439, and a normal blood pressure. After performing an examination, the physician discharged Nall and authorized transfer to Deaconess Hospital.

Nall was admitted to the Deaconess Hospital rehabilitation department on June 29, 2015. Dr. Gregory Ennis diagnosed stroke/left middle cerebral artery infarct with right hemiparesis, right facial droop, slurred speech and expressive aphasia; history of old left posteroparietal ischemic event; recent fall with loss of consciousness; right rotator cuff tear/injury; numbness and tingling in right arm; hypertension; hyperlipidemia; type 2 diabetes; and compromised mobility with activities of daily living.

Nall was also evaluated by Dr. Beck, an orthopedic surgeon, at Deaconess Hospital on June 26, 2015 for right shoulder complaints. He reported, "Nall . . . was working outside and suffered a heat stroke sometime around

06/23/2015.” He lost consciousness and fell. Dr. Beck noted a shoulder MRI revealed a complete full thickness tear of his rotator cuff and supraspinatus muscle. Dr. Beck ultimately performed surgery on February 25, 2016, consisting of a repair of the right rotator cuff, and acromioplasty and subacromial decompression.

Nall submitted Dr. Beck’s April 11, 2016 affidavit. Nall reported to Dr. Beck that on June 23, 2105, “he was working outside and suffered a heat stroke, which caused him to fall and suffer a shoulder injury.” Dr. Beck outlined the course of care, including surgery, for the right shoulder. He opined Nall’s current right shoulder condition, including rotator cuff, is related to the initial injury he suffered in the course of his employment on June 23, 2015, and he is temporarily totally disabled from work.

Dr. Beck also testified by deposition on August 31, 2016. Dr. Beck stated his heat stroke diagnosis contained in his affidavit and June 26, 2015 note was based upon the history provided by Nall. Dr. Beck testified as follows regarding this diagnosis:

Q: The other symptoms that you described, not of the shoulder but of the slurred speech and those other symptoms, what would those be indicative of, based upon your training and experience? Would those be more consistent with a heat stroke?

A: Those symptoms in general are more consistent with a stroke related to blood flow changes in some way.

Q: Okay. And did you see anything in your examination of this patient that either - - that confirmed anything that would be suggestive of a heat stroke?

A: No.

Q: So would it be fair to state that the suggestion both in your note and in your affidavit are based upon a historical context only?

A: Yes.

Q: That being, as related to you by your patient?

A: Yes.

Q: Is it fair to state then that all other medical information that was available to you was suggestive that Mr. Nall experienced a stroke, a medical stroke?

A: Was suggestive of, yes.

Dr. Beck surgically repaired Nall's right shoulder on February 25, 2016 and found he reached maximum medical improvement on August 3, 2016. He did not believe the right shoulder condition warranted an impairment rating or permanent restrictions. Dr. Beck again acknowledged that Nall reported the fall, and resulting shoulder injury, was due to a heat stroke at work.

A: According to the history the patient provided me, the history of a heat stroke was directly related to his fall, which related to the shoulder injury.

Q: Now, he said it was a heat stroke.

A: Yes.

Q: Now, given the benefit of more accurate knowledge, would that be - - I'm going to butcher this. Would that be a blood flow stroke as opposed to a heat stroke?

A: The evidence, as you mentioned, the symptoms, the cluster of symptoms, are more commonly associated with a medical stroke, a blood flow-related stroke. I neither have the training or expertise to make that diagnosis without the MRI/CT scans for sure in front of me. However, as you mentioned, the medical facts, the symptoms, symptomatology, suggest a medical blood flow-related stroke. It would be the first thing I would

think of as a physician. I hope I'm answering your question.

Q: Okay. But certainly not suggestive of a heat stroke?

A: Yes. Correct.

Q: Certainly not suggestive of the heat stroke as at least was initially indicated in your affidavit?

A: Correct.

Q: So would you agree with me that it would be whatever caused him to fall at work?

A: Yes.

On cross-examination, Dr. Beck agreed working outside would place an individual at greater risk of an injury from falling. Dr. Beck agreed Nall exhibited signs of dehydration at the emergency room which is a factor in diagnosing heat stroke.

Henderson filed the September 14, 2016 neurologic evaluation by Dr. Dennis O'Keefe. He noted Nall was diagnosed with diabetes in 2001, which has generally been under poor control for thirteen years. Dr. O'Keefe noted the history of events preceding the fall on June 23, 2015, and that Nall's level of functioning became increasingly impaired over the next several hours in the emergency room. Dr. O'Keefe summarized the medical records, labs, and diagnostic studies performed at Methodist and Deaconess Hospital. He also reviewed the temperatures in Henderson, Kentucky on the morning of June 23, 2015 recorded by the national weather service, noting they ranged from 78 to 84 degrees Fahrenheit from 6:15 a.m. to 8:55 a.m. Dr. O'Keefe also noted Nall's body temperature was 97.5 degrees Fahrenheit when he initially presented at the emergency room, "which is well below

the temperature that would be associated with heat stroke caused by exposure to high temperatures in the environment.” Generally, a heat stroke diagnosis is made when an individual has a body temperature at or above 104 degrees Fahrenheit, evidence of rapid heart beat, and decreased blood pressure. Other symptoms include bizarre behavior, leg weakness, collapse and, in severe cases, coma. Dr. O’Keefe opined the course of Nall’s acute illness is most compatible with an ischemic cerebral infarction caused by occlusion of a blood vessel in the brain. Dr. O’Keefe also noted the abnormalities seen on an MRI usually take several hours to develop. Dr. O’Keefe stated Nall did not have evidence of an acute infarction on June 23, 2015, but did the following day on June 24, 2015, indicating he had a cerebral infarction in progress with the MRI changes following the clinical changes. Dr. O’Keefe also noted Nall had multiple risk factors for stroke, including excess weight, history of poorly controlled diabetes mellitus and high blood pressure, as well as evidence on a cardiac echocardiogram of some degree of heart failure. “All of these factors would make him a very high risk candidate for cerebral infarction.” Dr. O’Keefe answered the following questions:

1. . . ., what do you believe to be the diagnosis for Mr. Nall? What do you believe to be the cause of his syncopal episode suffered on June 23, 2015?”

It would be my opinion that [Nall] suffered an acute cerebral infarction due to an occlusion of vessel in the brain resulting in the development of lightheadedness, difficulty with speech and progressive weakness involving the right arm and right leg. [Nall] was at high risk for such a problem due to his weight, his long history of uncontrolled diabetes, his history of hypertension and the cardiac difficulties that he suffered. The cerebral infarction was not related to “heat stroke or

elevated environmental or physiologic symptoms related to exposure to elevated temperature.

Often early signs of stroke would include a feeling of lightheadedness or dizziness as the initial symptoms noted by the person suffering such an event.

2. Do you believe the fall [Nall] suffered on June 23, 2015, was caused by circumstances and conditions which were peculiar (unique) to him?

It is my opinion that [Nall] suffered an acute cerebral infarction which was related to his history of excess weight, poorly controlled diabetes, hypertension and heart problems, which led to the development of an occlusion of a blood vessel in the brain resulting in an ischemic cerebral infarction. Based upon the information of records available for my review and the patient's findings on examination, the signs and symptoms of a stroke which developed on June 23, 2015, were not related to heat stroke but rather to an acute cerebral infarction related to occlusion of a blood vessel in the brain.

A benefit review conference ("BRC") was held on March 12, 2018.

The parties identified benefits per KRS 342.730 and work-relatedness/causation as contested issues.

In the Opinion, the ALJ made the following analysis in dismissing

Nall's claim:

Medical causation must be proved to a reasonable medical probability with expert medical testimony . . . [however], [i]t is the quality and substance of a physician's testimony, not the use of particular "magic words," that determines whether it rises to the level of reasonable medical probability, *i.e.*, to the level necessary to prove a particular medical fact." *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004). The claimant bears the burden of proving causation.

In addressing the issue of causation an expert medical witness is not required to use any particular “magic words” including the words “reasonable medical probability.” The requirement of “reasonable probability” relates to the proponent’s burden of proof and an Administrative Law Judge must determine whether the evidence is of sufficient quality and substance to rise to the level necessary to prove causation. *Turner v. Commonwealth*, 5 SW 3d 119 (KY, 1999).

This claim has been practiced with a great deal of skill on both sides. Each attorney has carefully articulated and argued the proof. Curtis Nall presents as sincere and is clearly passionate about this claim. He believes the onset of his stroke correlates with poor working conditions that caused the work injury. After careful consideration and reviewing all the evidence, there is nothing in the record to indicate a heat stroke. Plaintiff bears the burden of proof on all aspects of his claim and particularly the threshold issue of work relatedness. He has not claimed an idiopathic fall that would shift the burden of proof, he claims a work related heat stroke caused him to fall. After careful review of the evidence, there is nothing found to verify that a heat stroke occurred from a medical prospective. All the references to heat stroke are the direct result of statements made by Plaintiff or some other nonmedical person. Much time has been spent in an effort to uncover anything in the record that would be considered concrete evidence that a heat stroke occurred. None has been found. Even Nall’s treating orthopedist, who provided a supporting affidavit on causation, admitted his opinion and statements regarding work relatedness were not his original thoughts but had been related to him. The opinion of Dr. O’Keefe is persuasive. He noted there is no record of the signs of heat stroke and, in fact, the evidence shows he had normal body temperature on presentation to the hospital. It is also clear that Nall was not in good health. His blood glucose levels were not well controlled. He regularly left work for checks of his levels and his blood glucose level on initial presentation was high. Dr. Beck and Dr. O’Keefe both found the event in line with a regular stroke but not a heat stroke.

Nall filed a petition for reconsideration asserting the ALJ did not address his shoulder injury, which occurred from the fall and during the course of his employment with Henderson. Nall requested the ALJ address past and future medical expenses, and temporary total disability benefits regarding his shoulder injury.

In the order denying the petition, the ALJ reiterated, “the evidence does support a finding that a stroke occurred, but it was not a heat stroke. The evidence supports a finding of a stroke from unrelated health conditions. The finding is that a stroke occurred causing the fall that led to the shoulder injury.” The ALJ found Henderson’s response to Nall’s petition persuasive. The ALJ concluded the evidence “supports the finding that the stroke was not work-related. The stroke caused the fall that led to the shoulder injury. Thus the shoulder injury was not work related.”

On appeal, Nall argues the ALJ’s finding that his condition on June 23, 2105, was caused by a medical stroke is not supported by the evidence. Nall points to portions of Dr. Beck’s testimony and the Methodist Hospital records. He also asserts the high temperature in Henderson on June 23, 2015 was 93 degrees Fahrenheit according to the national weather service. He argues there was no evidence of a stroke until the following day, on June 24, 2015. Nall argues the ALJ ignored Dr. Beck’s testimony on cross-examination.

Nall argues the evidence overwhelmingly supports the finding that he became dehydrated due to heat, suffered a heat stroke, and fell injuring his shoulder. Nall argues he is entitled to a presumption of work-relatedness under the analysis set

forth in Workman v. Wesley Manor Methodist Home, *supra*, and Indian Leasing Co. v. Turbyfill, *supra*. He further argues Henderson failed to negate this presumption.

On review, we find Nall's appeal to be nothing more than a re-argument of his case before the ALJ. Nall impermissibly requests this Board to engage in fact-finding and substitute its judgment, as to the weight and credibility of the evidence, for that of the ALJ. This is not the Board's function. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

As the claimant in a workers' compensation proceeding, Nall 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 Nall 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.

We find the ALJ summarized the evidence and understood the issues before her. The ALJ primarily relied upon Dr. O'Keefe's opinion, who opined the June 23, 2015 syncopal episode was caused by "an acute cerebral infarction due to an occlusion of vessel in the brain resulting in the development of lightheadedness, difficulty with speech and progressive weakness involving the right arm and right leg." Dr. O'Keefe specifically found the infarction was unrelated to heat stroke, elevated environmental or physiologic symptoms related to exposure to elevated temperature. He opined the acute cerebral infarction was due to Nall's history of

excess weight, poorly controlled diabetes, hypertension and heart problems. Dr. O'Keefe's opinion alone constitutes substantial evidence supporting the ALJ's determination regarding causation. The ALJ also noted Dr. Beck's deposition testimony where he agreed the medical evidence was more suggestive of a blood flow related stroke, and not a heat stroke. The ALJ acted well within her authority in relying upon this portion of Dr. Beck's testimony and on Dr. O'Keefe's opinion, and no contrary result is compelled.

Finally, we find the cases of Workman v. Wesley Manor Methodist Home, supra, and Indian Leasing Co. v. Turbyfill, supra, inapplicable. At no time during the litigation of this claim did the parties allege an unexplained or idiopathic fall. In fact, the parties did not raise the issue of an unexplained or idiopathic fall at the March 12, 2018 BRC. In addition, the ALJ relied upon Dr. O'Keefe's opinion who clearly stated the syncopal episode was due to an acute cerebral infarction. Again, Dr. O'Keefe's opinion constitutes substantial evidence supporting the ALJ's determination.

Accordingly, the November 15, 2018 Opinion and Order, and the December 7, 2018 Order on petition for reconsideration by Hon. Jane Rice Williams, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON RUSS WILKEY
HON STEVEN D WILSON
111 WEST SECOND STREET
OWENSBORO, KY 42303

COUNSEL FOR RESPONDENT:

LMS

HON SAMUEL J BACH
PO BOX 881
HENDERSON, KY 42419

ADMINISTRATIVE LAW JUDGE:

LMS

HON JANE RICE WILLIAMS
657 CHAMBERLIN AVE
FRANKFORT, KY 40601