

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 22, 2020

CLAIM NO. 201900423

DARRELL HILL

PETITIONER

VS.

APPEAL FROM HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE

WEBASTO AND
HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Darrell Hill (“Hill”) appeals from the February 14, 2020 Opinion and Order rendered by Hon. W. Greg Harvey, Administrative Law Judge (“ALJ”). The ALJ dismissed Hill’s claim for a left wrist injury he allegedly sustained while working for Webasto. Neither party filed a petition for reconsideration.

On appeal, Hill argues the information contained in the accident/incident report documenting his April 25, 2018 injury is the most credible evidence

of record, and compels a finding he sustained a compensable work-related injury. Because substantial evidence supports the ALJ's decision and a contrary result is not compelled, we affirm.

Hill filed a Form 101 on April 9, 2019 alleging he sustained a work-related injury to his left hand and wrist on March 31, 2018 while employed by Webasto. The Form 104 employment history filed in support of his claim indicates his work experience includes working for various employers as a manufacturing laborer, primarily through temporary agencies. He also worked for Rupp Arena for a couple of years setting up and tearing down structures needed for events.

Hill testified by deposition on July 24, 2019, and at the final hearing held December 18, 2019. Hill was born on July 31, 1969, and he resides in Lexington, Kentucky. He testified he is unmarried, and has three children, ages 30, 29, and 16. At the hearing, he testified his children are 16 and 17 years old. He is right hand dominant. He testified he graduated from Lafayette High School in 1988. He worked performing various miscellaneous jobs through temporary agencies from 1988 to 2000. He then worked for various manufacturing facilities through temporary services until 2008. In 2008, he began working for Green Metals in Georgetown, Kentucky. He worked there for two years. He was terminated from that employment due to a wage dispute. That job involved recycling materials from the Toyota plant.

Hill began working for Webasto in 2014. He testified Webasto manufactures automobile sunroofs. His job was to form the frames for sunroofs by assembling metal rails. His job required him to wear gloves and long sleeves. He

worked on the Mercedes line. At his deposition, Hill denied the accident occurred on April 25, 2018, because he believed he was terminated from his job on April 4, 2018. At the hearing, he testified he could not remember the exact injury date. On the date of the accident, a co-worker was standing in his path impeding his ability to perform his job. As he attempted to flip the frame assembly for the sunroof, it slipped out of his hand, cutting his left arm. He stated the cut was to the left wrist just above the thumb. He estimated the cut was one-half inch wide. He notified his supervisor and then went to the restroom to clean the wound, and apply a Band-Aid. A co-worker accompanied him. Because there were no Band-Aids in the first-aid kit, he went to the front of the facility. A supervisor assisted with using a gauze pad and tape to secure the wound. Hill attempted to return to his job, but could not do it because of the onset of left hand numbness. He signed the incident report prepared by his supervisor, and then went home. He returned to work the next day, and attempted to do right-hand only work, but left early due to his inability to perform the job. He has not worked nor has he attempted to return to work since that date.

Hill first sought treatment at Concentra in Lexington. He believed this was a couple of days after the incident. He denied advising the physician at Concentra that his accident occurred at home while playing with his children. He treated at Concentra on only one occasion, April 27, 2018. At the hearing, he testified all of the information contained in the Concentra record was incorrect. He specifically stated everything contained in that report is a “lie”. He next sought treatment at the University of Kentucky (“UK”) on June 18, 2018. Hill drew unemployment benefits for six months after he was terminated. He received over

three-hundred dollars per month in unemployment benefits. Hill ultimately underwent left wrist surgery at UK, which he testified did not help. He testified he continues to have problems with his left wrist, and thumb, index finger, and middle finger of his left hand. He also testified his pain goes into his neck. He testified he has difficulty driving, and can only use one hand. He continues to wear a wrist brace.

In support of his claim, Hill filed multiple records from UK, where multiple physicians saw him. On June 18, 2018, Hill presented with a left distal forearm injury. He reported he sealed the small laceration with a Band-Aid, and it began swelling after two days. He complained of paresthesias over the dorsum of the left hand in a radial sensory distribution, and a burning sensation. Hill was released to return to right hand duty only. On August 13, 2018, he continued to complain of symptoms, and an EMG was ordered for left hand numbness. An August 7, 2018 EMG/NCS revealed a left radial nerve injury/neuropathy. The report from that date indicates Hill sustained a work-related injury in June 2018. Despite his ongoing complaints, Hill retained full left hand range of motion. Hill followed up with UK on September 5, 2018, and surgery was scheduled. Hill underwent surgery on October 10, 2018. The report reflects two neuromas were excised on that date. On November 14, 2018, Hill continued to complain of left thumb numbness, shooting pain, and pain with light touch or tapping over the incision. On December 19, 2018, nerve conduction studies were ordered. On February 6, 2019, Hill continued to report pain, and stated he believed he was disabled. Hill also expressed he was displeased with his treatment. On March 13, 2019, Hill continued to complain of left

hand and wrist numbness. An EMG showed a persistent lack of innervation of the superficial branch of the left radial nerve. Hill was diagnosed with complex regional pain syndrome II (“CRPS”). He was also seen by UK Interventional Pain Associates where he was prescribed over-the-counter Aspercreme, nerve blocks, and occupational therapy.

Hill later filed additional records from UK for three treatment dates from April 10, 2019 through September 20, 2019. In the September 20, 2019 note, Dr. Ruth Stanton indicated Hill’s problems began in September 2018 when a heavy piece of equipment fell on his wrist. She noted nerve blocks had not helped. The UK notes reflect Hill had CRPS, neuropathic pain, and a radial nerve injury.

Dr. Frank Burke evaluated Hill at his attorney’s request on August 12, 2019. Dr. Burke stated Hill sustained a work-related injury in late March 2018 when he abraded or cut the dorsal aspect of his left forearm on a frame edge. He noted Hill had undergone left wrist surgery. He diagnosed Hill with radial mononeuropathy due to the work-related injury. He assessed a 4% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Dr. Burke did not believe Hill has CRPS. He recommended restrictions of no work requiring the use of two hands, climbing, crawling, reaching with the left upper extremity, nor exposure to cold or hot objects.

Webasto filed the April 27, 2018 office note of Dr. Richard Ramirez with Concentra. It was his first treatment after the alleged injury, and he sought no additional treatment until he went to UK in June 2018. Dr. Ramirez reported Hill had contusions of multiple sites of the left hand and wrist, and he had a brachial

plexus neuropathy of the left upper extremity. He noted Hill reported he had hit his left arm on a pole while chasing his kids at home, cutting his arm and experiencing numbness in the left hand. Dr. Ramirez stated the injury resulted from a direct blow to the left wrist, and he had some numbness due to the trauma. He additionally noted the blow occurred from striking the bedpost at his home.

Dr. Ronald Burgess evaluated Hill at Webasto's request on July 11, 2019. Dr. Burges noted the incident report indicated the accident occurred on April 25, 2018. He also noted the Concentra records reflected the left wrist injury occurred at Hill's home while chasing his "kids". Dr. Burgess diagnosed Hill as status post repair of the lacerated radial nerve of the left wrist. He noted Hill's grip strength testing was invalid based upon his inconsistent effort. He stated that, based upon Concentra's records, the injury occurred at home, and is not work-related. He found Hill had reached maximum medical improvement and no additional medical treatment is required. He reiterated Hill did not sustain a work-related injury. He assessed a 2% impairment rating based upon the AMA Guides, which he again stated was not due to a work injury.

On September 16, 2019, Webasto filed a supplemental report from Dr. Burgess. He state he had reviewed, and disagreed with Dr. Burke's findings and report. He again stated Hill's condition is not work-related based upon the notation in the Concentra report.

A Benefit Review Conference was held on November 12, 2019. The issues preserved included whether Hill sustained an injury as defined by the Kentucky Workers' Compensation Act, causation, benefits and multiplier per KRS

342.730, TTD benefits, unpaid/uncontested medical expenses, and entitlement to future medical benefits. At the hearing, it was noted Hill is a high school graduate, and the injury date was amended to April 25, 2018. Additionally, credit for unemployment benefits was listed as an issue.

The ALJ issued the Opinion and Order dismissing Hill's claim on February 14, 2020. The ALJ specifically found as follows:

In this claim, there is a great deal of dispute as to whether Hill's left wrist condition was caused by an incident at work. Complicating things is Hill's testimony that he was fired on April 4, 2018 and the alleged injury is said to have occurred on April 25, 2018. That is the date the Webasto report says it happened. The first treatment occurred on April 27, 2018 at Concentra where the history was that of trauma to the left wrist resulting from striking it on a pole while chasing kids.

Hill is adamant he hurt himself at work. The ALJ does believe he suffered a scrape/cut to the left wrist as that is confirmed in the Defendant's own report. The question is whether that incident caused his documented left wrist nerve injury. Further complicating the claim is Hill's hearing testimony that his children are 16 and 17 when compared with the deposition testimony that says he has three children, ages 30, 29 and 16. The history in the note at Concentra is very specific but Hill claims it is incorrect. There are multiple other histories given that include a September 20, 2019 note that records a history of "pain developed after a heavy piece of work equipment fell on his wrist in September of 2018"; a history of left upper extremity trauma in March 2018 when a metal object struck the radial aspect of the left wrist; an August 7, 2018 note reflects a history of a March 2018 work injury "with a metal slab falling onto the distal dorsal aspect of his left forearm..."

There are a myriad of inconsistencies in the testimony and different histories recorded by providers. These are considered in determining whether Hill suffered a lacerated superficial radial nerve at work on April 25, 2018. Consistent with the opinion of Dr. Burgess, the

ALJ is not persuaded from the totality of the evidence that Hill's injury, which is quite real, was caused by a cut at work. The fact that there are multiple different histories given to providers with respect to date and mechanism of injury is a key distinction.

Based on the facts and findings summarized herein, and in reliance upon Dr. Burgess's opinion, the ALJ finds the Plaintiff has failed to persuade the ALJ that his current left wrist condition was caused by the cut he suffered at work. As a result, the ALJ has no choice but to dismiss Hill's claim.

Neither party filed a petition for reconsideration.

On appeal, Hill argues the ALJ erred in dismissing his claim. Hill argues the accident/incident information report clearly documents the April 25, 2018 injury, and compels a finding that he sustained a work-related injury on that date.

As the claimant in a workers' compensation proceeding, Hill 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 Hill 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 note that no petition for reconsideration was filed. In the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is any substantial evidence in the record to support the ALJ's conclusion. Stated otherwise, where no petition for reconsideration was filed prior to the Board's review, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial

evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, our sole task on appeal is to determine whether substantial evidence supports the ALJ's decision. We conclude it does.

The ALJ clearly relied upon the history reported to Dr. Ramirez at Concentra, along with Dr. Burgess' opinions in dismissing the claim. He additionally noted the multiple inconsistencies in Hill's testimony. We conclude the Concentra report and Dr. Burgess' opinions constitute substantial evidence supporting the ALJ's determination and a contrary result is not compelled. While Dr. Ramirez may not have had the incident report, he noted the history Hill provided to him. Dr. Burgess indicated he had reviewed the incident report, along with all of the other medical evidence of record. As noted above, substantial evidence supports the ALJ's decision, and a contrary result is not compelled; therefore, we affirm.

Accordingly, the February 14, 2020 Opinion and Order rendered by Hon. W. Greg Harvey, Administrative Law Judge, dismissing Hill's claim is **AFFIRMED**.

ALL CONCUR.

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