

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 7, 2020

CLAIM NO. 201680856

DENNIS M. COCHRAN

PETITIONER

VS.                   **APPEAL FROM HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE**

FORD MOTOR CO.  
and HON. STEPHANIE L. KINNEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**STIVERS, Member.** Dennis M. Cochran (“Cochran”) appeals from the June 12, 2019 Opinion, Award and Order, and the July 8, 2019 and July 12, 2019 Orders on Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). Cochran argues the ALJ erred in dismissing his claim for an injury to his left elbow, and in concluding he is not permanently totally disabled. For the reasons set forth herein, we affirm.

## **BACKGROUND**

Cochran worked as an assembler at Ford. He holds a high school diploma and has completed two years of college. Prior to working at Ford, Cochran worked as a laborer, a restaurant manager, a tile installer, and a restaurant server. His work as an assembler involved repetitious and strenuous physical labor. He repeatedly used his forearms to affix bolts with air tools. Cochran testified his work involved more use of his left arm than his right.

On January 21, 2016, Cochran experienced a popping sensation in his left shoulder while attempting to lift a wheel liner above and slightly behind his shoulders. He notified his supervisors and, the next day, was sent to Ford Medical for treatment. At Ford Medical, he was treated with ice and heat, and pain medication. Eventually, he was referred to Dr. Frank Bonnarens.

Cochran first visited Dr. Bonnarens on March 24, 2016, and reported continued left shoulder pain and some hand numbness. Dr. Bonnarens obtained an MRI of the left shoulder, which revealed a SLAP tear. He performed surgery to repair the SLAP lesion and a labrum tear, as well as a torn left bicep, on June 8, 2016. Cochran's recovery progressed well, although he experienced some tendonitis. On December 12, 2016, Cochran was released to regular duty work.

However, on May 15, 2017, Cochran returned to Dr. Bonnarens with complaints of occasional numbness in his left hand. An EMG/NCS study indicated carpal tunnel syndrome. Dr. Bonnarens' office notes state, "[Cochran] understands this is unrelated to what is going on in the shoulder." In addition, Cochran's symptoms in his left shoulder persisted. This prompted Dr. Bonnarens to obtain a second MRI,

which revealed continued pathology in the left shoulder. A second surgical procedure was performed on Cochran's left shoulder on August 16, 2017.

Cochran returned to work under light duty restrictions on October 15, 2017. His symptoms in the left shoulder continued, and Dr. Bonnarens ordered a left shoulder EMG study. A left shoulder manipulation procedure was discussed, which Cochran ultimately declined. The February 12, 2018 EMG study showed moderate bilateral ulnar neuropathy at the elbows and bilateral cubital tunnel syndrome. An addendum to the report noted all muscles in the left arm showed ratchet weakness consistent with poor effort.

Cochran testified his duties during the period of light duty work consisted primarily of sweeping floors or sitting at a table. At other times he was inspecting vendor defects and discussing these defects with Ford mechanics. By May 3, 2018, Ford informed Cochran it had no work available within his restrictions, and he has not returned to work since that date. Cochran received temporary total disability benefits until July 1, 2018, when Dr. Bonnarens placed him at maximum medical improvement.

Dr. James Farrage conducted an independent medical evaluation ("IME") on August 10, 2016, following Cochran's first surgery. He provided supplemental reports dated January 2, 2017 and July 18, 2018, as Cochran's treatment continued. Dr. Farrage diagnosed status-post left SLAP repair, acromioplasty with subsequent capsular release. He assigned a 14% impairment rating pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). He restricted Cochran from lifting more than ten

pounds and overhead work. Dr. Farrage opined Cochran could not return to his pre-injury work.

Dr. Thomas Loeb conducted an IME on May 15, 2018. Dr. Loeb diagnosed a repaired SLAP tear with distal clavicle resection and postoperative capsulitis. He noted a loss of range of motion in the left shoulder, and cubital tunnel syndrome. However, Dr. Loeb stated the cubital tunnel syndrome is not work-related. He assigned a 14% impairment rating for the shoulder injury pursuant to the AMA Guides.

On July 17, 2018, Dr. Loeb provided an addendum report, and indicated he did not believe Cochran was at maximum medical improvement from the second surgery. He noted Cochran declined further treatment. Dr. Loeb again noted loss of left shoulder range of motion, and assessed a 9% impairment rating pursuant to the AMA Guides.

Dr. Farrage provided a supplemental report on December 13, 2018 to address the diagnosis of left cubital tunnel syndrome. Dr. Farrage indicated the February 12, 2018 EMG study confirmed the diagnosis of left cubital tunnel syndrome. He opined the cubital tunnel syndrome was caused by the left shoulder injury and repetitive work involving the left upper extremity.

On January 8, 2019, Dr. Loeb provided a supplemental IME report addressing the diagnosis of cubital tunnel syndrome. Dr. Loeb noted Dr. Bonnarens specifically found that the left cubital tunnel syndrome is not work-related. He also compared a May 9, 2017 EMG study with the February 12, 2018 EMG study. According to Dr. Loeb, the 2017 EMG study was consistent with carpal, not cubital,

tunnel syndrome. The 2018 study showed no signs of carpal tunnel, but did reveal moderate neuropathy at the cubital tunnel. However, Dr. Loeb opined there is no evidence to indicate Cochran's injury would cause an ulnar neuropathy two years after the work injury. He further explained cubital tunnel syndrome usually arises spontaneously. In a January 15, 2019 addendum, Dr. Loeb stated any diagnosis of cubital tunnel syndrome is not work-related. He further stated there is no evidence to support a mechanism of injury that would cause cubital tunnel syndrome, whether acute or cumulative.

The ALJ's findings as it relates to this appeal are as follows. She first relied on Dr. Loeb's opinion to conclude Cochran's left cubital tunnel syndrome is not work-related. She noted the onset of symptoms, as documented in Dr. Bonnarens' office notes, do not support a causal relationship with the work injury. The ALJ also specifically rejected the argument that Cochran's cubital tunnel syndrome is the result of cumulative trauma. She noted Cochran did not report symptoms consistent with cubital tunnel syndrome until his first visit with Dr. Bonnarens on March 24, 2016, and he never performed any repetitive work after January 21, 2016, the date of the initial injury.

The ALJ determined Cochran suffers a 14% permanent impairment rating as a result of the left shoulder injury. In considering the extent of disability, the ALJ first cited the required analysis set forth in Ira A. Watson Dep't Stores v. Hamilton, 34 S.W.3d 48 (Ky. 2000), to determine whether a claimant is permanently totally disabled. The ALJ ultimately concluded Cochran is not permanently totally disabled, explaining:

After considering Plaintiff's age, educational level, vocational skills, medical restrictions, and the likelihood Plaintiff can resume some type of work under normal employment conditions, this ALJ finds Plaintiff is not permanently and totally disabled. First, this ALJ notes Plaintiff is 46 years old. Plaintiff remains a fairly young man, and this factor does not support an award of permanent total disability. Secondly, Plaintiff has a 12th grade education with two years of college. Thus, Plaintiff's educational level does not support an award of permanent total disability. This ALJ has thoughtfully considered Plaintiff's vocational skills in tandem with his work restrictions to his non-dominant hand. This ALJ also notes the work injury required permanent restrictions as imposed by Plaintiff's treating physician, Dr. Bonnarens. However, this ALJ feels Plaintiff can obtain and perform work within Dr. Bonnarens' restrictions. Additionally, this ALJ feels there are positions with Defendant Plaintiff can perform. Thus, this ALJ feels Plaintiff has the capacity to obtain light duty work that is consistent with his employment prior to working for Defendant and within his work restrictions. As such, this ALJ determines Plaintiff is not permanently and totally disabled.

Cochran petitioned for reconsideration, raising the same issues now raised on appeal. The ALJ denied the petition as a re-argument of the merits. On appeal, Cochran first argues the ALJ failed to properly consider the allegation of work-related cubital tunnel syndrome. Cochran acknowledges the ALJ addressed the claim of cubital tunnel syndrome as caused by either the January, 2016 work incident, or cumulative trauma. However, he argues the ALJ failed to consider whether the cubital tunnel syndrome was caused by a combination of both the specific work incident and repetitive trauma. He cites the fact he had no elbow problems prior to the work incident, as well as the 2017 EMG study.

## ANALYSIS

As the claimant in a workers' compensation proceeding, Cochran had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he was unsuccessful in that 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. Hamilton, *id.*

We disagree that the ALJ failed to consider Cochran's claim for cubital tunnel syndrome caused by a combination of acute injury and cumulative trauma. We first emphasize that Cochran never advanced any theory of "combination" causation in his arguments before the ALJ. His brief makes one reference to the claim of work-related cubital tunnel syndrome, which he alleged was a result of "repetitious work duties." He therefore may not now complain the ALJ failed to address this theory of causation.

Furthermore, the ALJ adequately addressed Cochran's claim, and cited substantial evidence to support her determinations. Dr. Loeb, in his series of IME reports and supplements, addressed the diagnosis. He explained why he did not believe Cochran's left elbow condition is work-related under any theory. Dr. Bonnarens' office notes also indicate he did not believe the condition is work-related. The ALJ

specifically addressed both theories of causation in her opinion. By rejecting both theories of causation in her opinion, the ALJ has implicitly rejected any assertion that the injury was caused by a combination of acute trauma and cumulative trauma.

An ALJ must provide a sufficient basis to support her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). The ALJ articulated her reliance on Dr. Loeb's opinion, as well as her interpretation of Dr. Bonnarens' office notes, to support her decision. She made it abundantly clear to the parties why she did not conclude the cubital tunnel syndrome is work-related. There was no error.

Cochran next argues he is permanently totally disabled. As the ALJ accurately noted, permanent total disability is the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. KRS 342.0011(11)(c). Work is the act providing service to another in return for remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34). In determining whether a claimant is totally disabled, an 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. Hamilton, *id.*

The ALJ cited substantial evidence to support the conclusion Cochran is not permanently totally disabled. She noted his relatively young age, and his education which includes two years of college. The ALJ acknowledged the permanent

physical limitations Cochran retains in his left arm. However, she weighed this against his work history and demonstrated ability to complete higher education.

Cochran has essentially asked this Board to re-weigh the evidence and reach a conclusion in his favor. The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing our own appraisals as to the weight and credibility of the proof, or by noting other conclusions that could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). The ALJ articulated her considerations of the factors enunciated in Hamilton, and cited substantial proof in the record to support her findings. Therefore we are not at liberty to disturb her conclusions.

For the foregoing reasons, the June 12, 2019 Opinion, Award and Order, and the July 8, 2019 and July 12, 2019 Orders on Reconsideration rendered by Hon. Stephanie L. Kinney are **AFFIRMED**.

ALL CONCUR.

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