

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 15, 2019

CLAIM NO. 201677085

ELLIOTT COUNTY FISCAL COURT

PETITIONER

VS.

APPEAL FROM HON. TANYA PULLIN,
ADMINISTRATIVE LAW JUDGE

RODNEY WAGONER and
HON. TANYA PULLIN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Elliot County Fiscal Court (“Elliott County”) appeals from the November 19, 2018 Opinion, Award and Order rendered by Hon. Tanya Pullin, Administrative Law Judge (“ALJ”). The ALJ determined Rodney Wagoner (“Wagoner”) sustained a work-related injury to his left lower extremity from operating a mower/tractor for Elliott County. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits (enhanced

pursuant to KRS 342.730(1)(c)1), and medical benefits. Elliott County also appeals from the December 20, 2018 order denying its petition for reconsideration.

On appeal, Elliott County argues substantial evidence does not support the ALJ's determination that Wagoner sustained a work-related injury. We disagree, and affirm.

Wagoner filed a Form 101 on October 19, 2017, alleging he injured his left lower extremity from driving a roadside mowing tractor with a seat that was too high, over the course of a few weeks, requiring medical treatment on June 23, 2016. He alleged the dangling of his left leg caused the left lower extremity to become painful, bruised and extremely swollen, eventually requiring surgery.

Wagoner testified by deposition on January 30, 2018, and at the hearing held September 27, 2018. Wagoner was born on August 14, 1975, and is a resident of Olive Hill, Kentucky. He completed the tenth grade, and has a welding certification. In addition to the jobs listed on the Form 104, Wagoner has also worked as a mason, a hod carrier, and a welder.

Wagoner testified he was hired by Elliott County to operate a road grader. In May 2016, he was told to operate a tractor to mow highway right-of-ways, which he did from May 15, 2016 through June 23, 2016. He also operated the road grader briefly during this period. The tractor to which he was assigned had a defective seat. He is only five-foot, six inches tall, and the seat was set too high for him to operate the pedals. He had to lean excessively to the right to reach the pedals with this right foot, which caused his left leg to dangle. He testified his left foot was eight to twelve inches from the floor, and he had nothing to rest it on. He stated this

caused left leg swelling and numbness, and he began having problems on the first evening after operating that tractor. He still experiences these problems, and his left leg is much larger than the right due to swelling. He reported his condition to his supervisor, and continued to complain about it daily. He and a mechanic for the county worked on the seat, but it was rusted in place and could not be repaired. He inquired about the purchase of a new seat, but this request was denied.

Wagoner first sought treatment on June 23, 2016 due to left leg pain and swelling. He has not worked since that date. He treated with Dr. Catrinia Druen, and now sees Dr. Amanda Ramey. He eventually had surgery on his left lower extremity by Dr. Mohammad Marashdeh on October 12, 2016. He subsequently developed infection and cellulitis at the surgical site, and was hospitalized several months later. In addition to the surgery, Wagoner has had physical therapy, occupational therapy, and treats with medication, including Mobic for pain relief. He continues to experience left foot swelling, and he daily uses a vascular pump to compress his left leg. He testified he had no left leg problems or swelling before mowing for Elliott County.

Darren Fannin ("Fannin"), Wagoner's supervisor, testified by deposition on March 21, 2018. Fannin is the Assistant County Judge, and road supervisor for Elliott County. He stated Wagoner was hired as a grader operator, but was subject to being assigned to other jobs. He stated Wagoner was assigned to mowing duties in the summer of 2016. Wagoner advised that the seat on the tractor he was assigned to was too high for him. Wagoner and a co-worker attempted to repair the seat, but it was still too high. Wagoner asked for the seat to be replaced,

but it was denied. The seat was later replaced after Wagoner last worked, but Fannin testified he could not tell that this made any difference. Fannin stated he had operated the tractor in question prior to Wagoner, and had no problems. Fannin also testified he is six-foot, one inch in height, several inches taller than Wagoner.

Fannin admitted Wagoner reported that operating the tractor bothered his legs. He stated Wagoner did not report an injury, but left work to have a test for sleep apnea. Fannin testified Wagoner was terminated after June 23, 2016. The letter sent to Wagoner indicates he was terminated due to being late to work on numerous dates, and failure to return to work on June 28, 2016. When asked about the difficulty Wagoner reported in using the tractor because of the seat height, Fannin testified, "I don't think he was lying, no."

In support of his claim, Wagoner filed records from the Morehead Medical Specialists for treatment on December 5, 2016; January 4, 2017; and July 5, 2017. Those records reflect treatment with Pamela Copher, Alisha A. Perry, and Dr. Marashdeh for treatment of Wagoner's venous insufficiency, including pain and swelling of the left leg. On July 5, 2017, Ms. Perry stated that prolonged sitting on equipment caused Wagoner's problems. The note also reflects Dr. Marashdeh indicated that although he could not state that prolonged sitting solely caused Wagoner's problem, it could have contributed. He outlined Wagoner's numerous risk factors for developing the condition.

On August 25, 2017, Dr. Druen checked the box on a form presented to her, indicating Wagoner's injury was work-related. She also stated he had not yet reached maximum medical improvement ("MMI"), and he was temporarily totally

disabled from June 23, 2016 through at least September 21, 2017. Dr. Druen indicated Wagoner has a 37.5% impairment rating. Although she did not indicate this was pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition (“AMA Guides”), she also assessed restrictions of no lifting over twenty pounds on a maximum occasional basis, nor over ten pounds frequently.

Wagoner also filed records from the St. Claire Regional Medical Center for treatment on June 23, 2016; June 27, 2016; July 25, 2016; August 8, 2016; November 18, 2016, December 7, 2016; and December 18, 2016. Those treatments and tests included x-rays, ultrasounds, MRI, CT-scan, and emergency room notes. On December 7, 2016, Wagoner sought emergency room treatment for redness, swelling, and cellulitis of the left lower extremity.

Wagoner filed records from St. Claire Family Medicine for treatment on 19 occasions between June 23, 2016 and January 27, 2017 for treatment administered for venous insufficiency, acute left foot pain, swelling, edema, and low back pain. He also submitted records from Cave Run Surgical Specialists Occupational Therapy for treatment on 23 occasions between January 9, 2017 and August 13, 2017 for treatment of his left lower extremity pain, cellulitis, edema, redness, discomfort and swelling.

Wagoner also filed Dr. Eric Endean’s February 1, 2018 note. He noted Wagoner’s complaints of left leg swelling, and that he had undergone venous surgery on October 11, 2016. He diagnosed Wagoner with venous insufficiency,

GSV enlargement with reflux at the saphenofemoral junction, post procedural cellulitis, and saphenous vein ablation.

Elliott County filed Dr. Gregory Snider's report from his March 6, 2018 evaluation. He noted Wagoner reported developing left lower extremity problems from mowing right-of-ways on a tractor for three weeks while sitting on a seat he could not adjust. Wagoner reported he developed leg swelling due to dangling his left leg while operating the tractor. Dr. Snider opined Wagoner's condition is not work-related, but opined the treatment has been reasonable and necessary. Dr. Snider found Wagoner has varicosity in the left lower extremity either idiopathic, or due to other conditions, including obesity. He stated there is insufficient evidence of work activity to find the condition causally work-related. He stated Wagoner reached MMI by February 18, 2017, or three months after his surgery. Although he determined Wagoner's condition is not work-related, Dr. Snider assessed a 9% impairment rating pursuant to the AMA Guides.

The Benefit Review Conference Order and Memorandum, dated September 11, 2018, reflects the issues to be determined included benefits per KRS 342.730; work-relatedness/causation; unpaid/contested medical expenses; and injury as defined by the Act. The order also reflects Elliott County did not stipulate that an injury occurred, and notes that whether Wagoner retains the physical capacity to return to the type of work performed at that time of the injury is at issue.

In her decision issued November 19, 2018, the ALJ found Wagoner sustained a work-related injury while working for Elliott County. She initially stated there is no doubt that Wagoner has a serious medical condition in his left leg, and

acknowledged there is little testimony regarding causation. She noted Dr. Druen specifically checked a box on a form indicating Wagoner sustained a work-related injury. She also noted that Dr. Marashdeh stated that while prolonged sitting and equipment operation did not solely cause Wagoner's problems, it could have contributed. She found Dr. Druen's indication of work-relatedness more persuasive than the opinion of Dr. Snider. She noted Dr. Druen was the treating physician, and stated that regarding causation, she was afforded more deference. However, the ALJ found Dr. Snider's assessment of the 9% impairment rating more appropriate, and awarded PPD benefits based upon this rating. The ALJ determined Wagoner lacks the ability to return to the job performed at Elliott County, and found the multiplier contained in KRS 342.730(1)(c)1 appropriate. After performing the appropriate analysis, the ALJ determined Wagoner was entitled to TTD benefits from June 23, 2016 through February 18, 2017, and he is not entitled to an award of permanent total disability benefits. The ALJ also awarded medical benefits pursuant to KRS 342.020.

Elliott County filed a petition for reconsideration, arguing, as it does on appeal, the evidence does not support a finding that Wagoner's condition is work-related. It argued there is no evidence that Dr. Druen or Dr. Marashdeh were apprised of Wagoner's alleged mechanism of injury. In her order of December 20, 2018 denying the petition for reconsideration, the ALJ specifically referenced Dr. Druen's June 23, 2016 record outlining Wagoner developing a swollen left leg after operating equipment at work.

On appeal, Elliott County argues the ALJ's determination that Wagoner sustained a work-related left leg injury is not supported by substantial evidence. We initially note that 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 supporting 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). 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, 708 S.W.2d 641, 643 (Ky. 1986).

Although, as noted by the ALJ, there is little evidence regarding the cause of Wagoner's problems, there is no issue that he does in fact have venous problems in his left leg. Also, as noted by the ALJ, Dr. Druen specifically indicated

on a form that Wagoner sustained a work-related left lower extremity injury. This notation is sufficient to support the ALJ's determination. While we acknowledge Dr. Snider indicated Wagoner's work activities did not cause his condition, this merely presents a contrary viewpoint upon which the ALJ could have relied had she so chosen. We note Dr. Druen was not cross-examined, and there is no evidence of record specifically criticizing her assessment or methodology in finding Wagoner sustained a work-related injury.

Based upon the foregoing, we determine the ALJ appropriately considered the evidence in finding Wagoner's condition is compensable. The ALJ's determination is supported by substantial evidence, and will not be disturbed.

Accordingly, the November 19, 2018 Opinion, Award and Order, and the December 18, 2018 order on reconsideration rendered by Hon. Tanya Pullin, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

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