

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 16, 2018

CLAIM NO. 201691293

GARRY COX and
HON. JOHNNIE L. TURNER

PETITIONERS

VS. **APPEAL FROM HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE**

SOUTHERN COAL CORPORATION and
HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Garry Cox (“Cox”) appeals from the August 22, 2018 Opinion on Remand rendered by Hon. Christina D. Hajjar, Administrative Law Judge (“ALJ”). In the decision on remand, the ALJ dismissed Cox’s claim for a low back injury against Southern Coal Corporation (“Southern Coal”).

On appeal, Cox essentially argues the ALJ erred in dismissing his claim. Because the ALJ followed the direction provided in a previous decision from this Board, we affirm.

Cox filed a Form 101 on June 28, 2017, alleging he sustained a neck injury on March 7, 2016 while repairing a bulldozer. Although the Form 101 was never amended to include the allegation of a low back injury, the parties submitted evidence on this issue. The Benefit Review Conference Order and Memorandum dated November 16, 2017, reflects the alleged low back injury was disputed for many reasons.

The ALJ rendered a decision on February 12, 2018. She determined Cox sustained a neck injury on March 7, 2016 while repairing a bulldozer in the course and scope of his employment with Southern Coal. The ALJ determined Cox's low back condition was neither caused, nor exacerbated by the work incident. Regarding the neck injury, the ALJ awarded temporary total disability benefits from March 8, 2016 through July 3, 2017; permanent partial disability benefits based upon a 25% impairment rating; medical benefits; and, vocational rehabilitation benefits. Although the ALJ determined Cox did not sustain a low back injury or exacerbation, she did not specifically dismiss that portion of his claim.

Cox filed a petition for reconsideration arguing the ALJ erred in finding he did not sustain a low back injury, and in determining his low back condition is not work-related. The ALJ denied the petition for reconsideration as an impermissible re-argument of the claim.

Cox appealed the ALJ's decision to this Board. In an opinion issued June 22, 2016, this Board affirmed the ALJ's determination. We noted the ALJ found Cox did not sustain a low back injury or exacerbation. However, she did not specifically enter an order dismissing the low back claim. The ALJ's decision was remanded for entry of an order specifically dismissing the alleged low back injury. This Board stated as follows:

That said, we remand the claim to the ALJ for entry of an amended order properly dismissing Cox's lumbar spine injury. As the alleged lumbar spine injury was tried by consent, and as the ALJ determined Cox did not sustain a work-related lumbar spine injury on March 7, 2016, Cox's claim for an alleged lumbar injury must be formally dismissed.

No appeal was taken from that decision. The ALJ issued a decision on remand on August 22, 2018, stating as follows:

This matter is before the undersigned Administrative Law Judge upon remand from the Kentucky Workers' Compensation Board. On June 22, 2018, the Board remanded the claim with instructions to render an amended order properly dismissing Cox's lumbar spine injury. In accordance with the Board's instructions, and for the reasons set forth in the February 12, 2018 Opinion, Award, and Order, this ALJ finds that Plaintiff did not sustain a work related lumbar spine injury on March 7, 2016, and his claim for an alleged lumbar injury is DISMISSED.

Cox did not file a petition for reconsideration of the August 22, 2018 decision. Cox filed a notice of appeal on September 7, 2018, only listing the decision on remand dated August 22, 2018. In his brief, Cox references findings from the ALJ in her original decision rendered on February 12, 2018, and the March 19, 2018

order denying his petition for reconsideration; however, those decisions are not before this Board for review.

We first note the ALJ complied with the direction of this Board in her decision on remand issued August 22, 2018, and issued an order dismissing Cox's claim for a low back injury. We additionally note that all other issues upon which this Board previously affirmed, and which were not appealed, are now the law of the case, and any argument based upon the ALJ's previous determinations, and the prior decision from this Board, is impermissible.

In Inman v. Inman, 648 S.W.2d 847, 849 (Ky. 1982), the Supreme Court instructed as follows:

The law-of-the-case doctrine is a rule under which an appellate court, on a subsequent appeal, is bound by a prior decision on a former appeal in the same court and applies to the determination of questions of law and not questions of fact. "As the term 'law of the case' is most commonly used, and as used in the present discussion unless otherwise indicated, it designates the principle that if an appellate court has passed on a legal question and remanded the case to the court below for further proceedings, the legal questions thus determined by the appellate court will not be differently determined on a subsequent appeal in the same case. Thus, if, on a retrial after remand, there was no change in the issues or evidence, on a new appeal the questions are limited to whether the trial court properly construed and applied the mandate. The term 'law of the case' is also sometimes used more broadly to indicate the principle that a decision of the appellate court, unless properly set aside, is controlling at all subsequent stages of the litigation, which includes the rule that on remand the trial court must strictly follow the mandate of the appellate court." 5 Am. Jur. 2d, Appeal and Error, Sec. 744.

In McGuire v. Coal Ventures Holding Company, Inc., 2009-SC-000114-WC, rendered October 29, 2009, Designated Not To Be Published, the Kentucky Supreme Court described the law of the case doctrine as follows:

The law of the case doctrine concerns the preclusive effect of judicial determinations in the course of a single litigation before a final judgment. [footnote omitted] As applied to workers' compensation cases, a final decision of law by an appellate court [footnote omitted] or the Board [footnote omitted] establishes the law of the case and must be followed in all later proceedings in the same case.

Slip Op. at 6.

On June 22, 2018, this Board rendered a decision affirming the ALJ's decision, and remanding this claim for entry of a decision specifically dismissing Cox's allegation of a lumbar injury. No appeal was taken from that decision. Based upon the direction of this Board, the ALJ appropriately entered a decision dismissing Cox's claim for a low back injury. Because the ALJ's decision is in accordance with the directives of this Board, and was not erroneous, we affirm.

Accordingly, the August 22, 2018 Opinion on Remand issued by Hon. Christina D. Hajjar, Administrative Law Judge, is AFFIRMED.

ALL CONCUR.

DISTRIBUTION:

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