

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: September 28, 2018

CLAIM NO. 201791312

GREGORY GROCE

PETITIONER

VS.

**APPEAL FROM HON. TANYA PULLIN,  
ADMINISTRATIVE LAW JUDGE**

NEMAK USA, INC.  
And HON. TANYA PULLIN,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

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

**RECHTER, Member.** Gregory Groce appeals from the April 29, 2018 Opinion, Award and Order and the May 29, 2018 Order on Reconsideration rendered by Hon. Tanya Pullin, Administrative Law Judge (“ALJ”). The ALJ determined Groce suffered a temporary injury as a result of a fall at work, and awarded temporary total

disability benefits and medical benefits. On appeal, Groce argues the evidence compels a determination he suffered a permanent injury warranting an award of permanent partial disability benefits and future medical benefits. For the reasons set forth herein, we affirm.

Groce described himself as a “working foreman” for Nematik USA, which entailed maintaining machinery and supervising other technicians. On March 6, 2017, he tripped while stepping from behind a machine and became wedged. He was removed by co-workers and taken to the emergency room.

Records from TJ Samson Community Hospital indicate a CT scan of the lumbar was taken, which revealed disc bulges at L4-5 and L5-S1 with no fracture. A CT of the thoracic spine showed mild, multi-level disc space narrowing and spondylosis with no fracture. Groce was treated for contusions, and prescribed pain medications and muscle relaxers.

Groce followed-up with TJ Samson Urgent Care and was placed on modified duty. Groce testified that, about a month after the March 6, 2017 incident, he went to pick up a dropped screwdriver while at work. His low back pain increased significantly after this incident, and his right leg would go numb. Groce testified he returned to TJ Samson Urgent Care after this incident.

Eventually, a lumbar MRI was obtained on April 20, 2017, which showed lumbar degenerative changes. The MRI exhibited severe canal stenosis at L4-5, and central disc protrusion at L3-4. On May 13, 2017, he was given injections for his back pain. Groce returned to TJ Samson Urgent Care on May 16, 2017, and

reported he had fallen a few days earlier in his kitchen when his leg “gave out”. He was given another injection and referred to Dr. Thad Jackson, a neurosurgeon.

On May 18, 2017, Dr. Jackson evaluated Groce for complaints of low back and right leg pain. Dr. Jackson and a physician’s assistant reviewed the MRI and recommended physical therapy and core strengthening. Groce returned on June 6, 2017, and reported the physical therapy had worsened his pain. He also reported the onset of some bladder dysfunction. A second lumbar and thoracic MRI was ordered, and Groce was taken off work. The results of this second MRI do not appear in the medical records that were submitted into evidence in this claim.

Groce returned to Dr. Jackson on September 6, 2017. The office notes from this visit indicate he had received two of three lumbar steroid injections, but his pain continued. Groce returned a week later to discuss surgical options. Dr. Jackson performed a laminectomy at L4-5 on November 17, 2017.

Dr. Thomas O’Brien conducted an independent medical evaluation on June 19, 2017. He performed a physical examination and reviewed pertinent medical records. Though the results of a June 9, 2017 MRI are not in the record before this Board, it appears Dr. O’Brien was provided a copy of this MRI report. Dr. O’Brien noted a June 9, 2017 lumbar MRI revealed disc desiccation at L3-4 and disc protrusion at L3-4. According to Dr. O’Brien, the radiologist’s interpretation is “mild/moderate degenerative disc disease most pronounced at L3-4 and L4-5.”

Dr. O’Brien diagnosed multilevel lumbar degenerative disc disease, and concluded Groce did not sustain an injury to his spine as a result of the March 6, 2017 work accident. Rather, Dr. O’Brien opined Groce has chronic low back pain

“secondary to an active, progressive, multilevel, degenerative disc disease.” He attributed the condition to a combination of factors including Groce’s age, tobacco use, and obesity. Dr. O’Brien concluded the work accident did not cause “any type of temporary or permanent aggravation, acceleration or precipitation of this progressive, pre-existing condition above and beyond the natural history of progression.” He recommended a dedicated musculoskeletal maintenance regime and weight loss.

Groce’s claim was bifurcated to first decide the issue of whether he sustained an injury as defined by KRS Chapter 342. The ALJ relied on Dr. O’Brien’s opinion to conclude Groce did not sustain an injury to his spine as a result of the March 6, 2017 work accident. She also pointed to the CT scan taken on the day of the injury, as well as the April 20, 2017 MRI. Both of these imaging studies confirmed degenerative disease with no acute injury. Nonetheless, the ALJ relied upon the emergency room records to conclude Groce suffered contusions and a muscle strain as a result of the work accident. She awarded a period of temporary total disability benefits and medical benefits.

Groce petitioned for reconsideration, arguing the undisputed medical evidence compels a finding he suffered an injury to his lumbar spine as a result of the work accident. The ALJ denied the petition, reiterating her reliance on Dr. O’Brien’s opinion. She also emphasized that Dr. Jackson’s medical records record a fall at work, but do not clearly establish a work-related cause for Groce’s lumbar spine condition.

Groce appeals, again arguing the evidence compels a finding he suffered a spinal injury as a result of the March 6, 2017 work accident. As the claimant in a workers' compensation proceeding, Groce bore 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. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Groce argues the record is devoid of evidence that his herniated disc, confirmed by imaging studies, pre-dated the fall at work. However, this statement does not accurately reflect the burden of proof. The burden rested with Groce is to prove that the herniated disc was caused by the work accident. It was not the employer's burden to establish the herniated disc pre-dated the accident.

Groce also argues the ALJ improperly applied Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007) in concluding he suffered a pre-existing, active condition. We disagree, because it is clear the ALJ did not conclude Groce's accident aroused a previously dormant condition into disabling reality. Rather, the ALJ relied upon Dr. O'Brien's opinion to conclude the work accident

caused no injury whatsoever to Groce's spine, and that his current lumbar condition is wholly attributable to degenerative disease. As such, the ALJ was not required to apportion any part of Groce's condition to the work accident.

The ALJ thoroughly reviewed the evidence and articulated the basis of her decision. Dr. O'Brien opined Groce's work accident caused no injury to his spine, and did not accelerate any underlying condition. The ALJ relied upon this opinion, as well as the imaging studies, to conclude Groce suffered no spinal injury as a result of the work accident. The ALJ also emphasized that Dr. Jackson provided no definitive statement as to the cause of Groce's lumbar condition. This proof constitutes substantial evidence to support the ALJ's conclusions. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). As such, the ALJ's decision must be affirmed.

For the foregoing reasons, the April 29, 2018 Opinion, Award and Order and the May 29, 2018 Order on Reconsideration rendered by Hon. Tanya Pullin, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

**DISTRIBUTION:**

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