

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: July 26, 2019

CLAIM NO. 2018-94235 & 2018-01259

JAMES A. RHORER

PETITIONER

VS.           **APPEAL FROM HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE**

AMCOR RIGID PLASTICS USA, LLC and  
HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING IN PART,  
VACATING IN PART, AND REMANDING**

\* \* \* \* \*

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

**ALVEY, Chairman.** James A. Rhorer (“Rhorer”) appeals from the March 25, 2019 Opinion, Award and Order rendered by Hon. Jonathan Weatherby, Administrative Law Judge (“ALJ”). The ALJ found Rhorer sustained only a temporary exacerbation of his low back condition while working for Amcor Rigid Plastics USA, LLC (“Amcor”) for which he awarded temporary total disability (“TTD”) and

medical benefits. The ALJ dismissed Rhorer's claim for alleged left shoulder and neck injuries. Rhorer also appeals from the April 23, 2019 order ruling on the Petitions for Reconsideration filed by both parties.

On appeal, Rhorer argues the ALJ's dismissal of his claim for a left shoulder injury is clearly erroneous based upon the reliable, probative and material evidence contained in the record. We note the ALJ failed to address Rhorer's Petition for Reconsideration regarding the determination of the alleged left shoulder injury. Rhorer makes no argument pertaining to the ALJ's determination regarding his low back injury. We therefore affirm the ALJ's determination regarding Rhorer's low back injury. We vacate, in part, and remand to the ALJ for additional determinations regarding Rhorer's alleged left shoulder and neck injuries.

Rhorer filed two claims on August 24, 2018. In the Form 101 regarding Claim No. 2018-94235, Rhorer alleged he caught his foot in a ladder on October 8, 2017 while working for Amcor causing a low back injury. In the Form 101 for Claim No. 2018-01259, Rhorer alleged he injured his left shoulder and neck at work on January 23, 2018 when he fell into a mop sink while emptying a 55 gallon water barrel. In the Form 104 filed in support of each claim, Rhorer noted that his employment experience included working as a utility worker, box worker, and technician for a plastic fabrication company since 1993. Subsequent to the filing of the claims, Rhorer moved to bifurcate for determinations regarding entitlement to additional treatment. The ALJ later consolidated the claims for litigation purposes.

Since Rhorer has not appealed from the ALJ's determination regarding his low back injury, we will confine our analysis to the evidence concerning alleged left shoulder and neck injuries.

Rhorer testified by deposition on October 2, 2018, and at the hearing held January 24, 2019. He was born on July 18, 1955, and is a resident of Nicholasville, Kentucky. Rhorer completed the ninth grade, and obtained a GED. He has no specialized vocational training. He served as an infantryman with the U.S. Army for two years. He began working for Amcor, or its predecessors in 1993, and his job requires lifting up to fifty pounds at a time. He testified regarding his previous low back injuries, and a previous right shoulder injury requiring surgery. At the hearing, he testified he was a two-step technician, operating a blow-molding machine, which required frequent climbing and lifting over fifty pounds.

On January 23, 2018, there was a water leak at work. The water collected in a 55 gallon barrel which had to be dragged and dumped. He placed a drain hose in the barrel to allow it to drain into a sink. When he turned, his right leg "gave out" causing him to fall into a sink. He testified this caused him to experience left shoulder and neck pain. He reported this incident to his supervisor, and saw Dr. Benjamin Newman, a neurosurgeon, for treatment the following day. Dr. Newman imposed restrictions, and Amcor would not allow him to return to work as long as his activities were restricted. He last worked on January 23, 2018. At the hearing, he testified Amcor terminated his employment in January 2019.

Dr. Newman referred Rhorer to Dr. Kaveh Sajadi, an orthopedic surgeon, for treatment of the left shoulder. Rhorer testified his left shoulder aches

constantly, and he experiences occasional neck pain and hand numbness. Dr. Sajadi performed left shoulder surgery on December 12, 2018. Rhorer testified his health insurer paid for the surgery, except for those bills he paid out-of-pocket. He testified he has not fully recovered from his left shoulder surgery.

In support of his claim, Rhorer filed Dr. Newman's office note of March 9, 2018. He noted Rhorer's complaints of neck pain which began approximately one month prior. Rhorer reported a fall at work resulting in significant left shoulder and neck pain that did not radiate into his arms and hands. Dr. Newman was already treating Rhorer for his low back complaints. On February 20, 2018, Dr. Newman diagnosed Rhorer with left anterior shoulder pain, musculoskeletal neck pain, and numbness with associated tingling in both hands.

Rhorer also filed Dr. Sajadi's office notes in support of his claim. In the July 10, 2018 record, Dr. Sajadi diagnosed Rhorer with a left rotator cuff tear and left shoulder pain that began suddenly on January 23, 2018. He noted Rhorer complained of constant left shoulder pain, which worsened with motion. On June 19, 2018, Dr. Sajadi again noted Rhorer's left shoulder problem, and that he had been unable to return to work due to neck and back pain.

Rhorer additionally filed Dr. Sajadi's notes from October 16, 2018 and December 11, 2018. Those notes reflect Dr. Sajadi ordered an arthrogram. Based upon the arthrogram results and physical examination, Dr. Sajadi determined Rhorer had sustained a complete left rotator cuff tear. On December 21, 2018, Dr. Sajadi performed left arthroscopic rotator cuff repair surgery. On December 28, 2018, Dr.

Sajadi's physician's assistant, Greg L. Cowan, noted Rhorer's condition had improved.

Dr. David Jenkinson evaluated Rhorer at Amcor's request on April 9, 2018 for both of the alleged injuries. He noted Rhorer last worked on January 26, 2018. Rhorer complained of left shoulder pain in the anterior deltoid, increased by dangling his left arm. Dr. Jenkinson indicated he saw no left visible left shoulder abnormality with full range of motion, no focalized tenderness, or signs of impingement. Dr. Jenkinson specifically stated as follows:

Mr. Rhorer reported another incident when he slipped and fell on 01/23/18 and he complained of pain in the back of his left shoulder. There is no evidence he suffered any significant injury to the neck or the shoulder and it is my opinion that he requires no further investigation of treatment relating to the incident that is alleged to have occurred on 01/23/18.

Dr. Jenkinson testified by deposition on December 18, 2018. He found no neck abnormalities on physical examination. He testified Rhorer had full range of motion with no pain complaints, tenderness, or muscle spasm. He noted Rhorer complained of occasional dull aching and hand numbness, but those complaints were not demonstrated on physical examination. Dr. Jenkinson determined Rhorer did not sustain a permanent cervical injury. Rhorer also reported pain to the front of his left shoulder, but he had full range of motion. Rhorer did not demonstrate focal tenderness or impingement signs except for his complaints of pain. Dr. Jenkinson determined Rhorer had not sustained a permanent left shoulder injury.

Amcor also filed the September 16, 2018 record from the Baptist Medical Group. In addition to other complaints unrelated to the left shoulder and neck condition, this note reflects Rhorer's complaints of bilateral hand pain and stiffness while working, worse at the knuckles.

At the Benefit Review Conference held January 24, 2019, it was noted that Amcor had paid TTD benefits to Rhorer from January 26, 2018 through May 4, 2018 at the rate of \$835.04 per week. The issues preserved for determination by the ALJ included work-relatedness/causation, unpaid/contested medical bills, injury as defined by the ACT, exclusion for pre-existing disability/impairment, and TTD.

The ALJ rendered a decision on March 25, 2019. He awarded TTD benefits from October 8, 2017 through April 9, 2018, and from January 23, 2018 through April 9, 2019. The ALJ also awarded medical benefits for Rhorer's work injury. He dismissed Rhorer's claim for permanent income benefits for his low back injury, and completely dismissed the claims for neck and left shoulder injuries.

Both Rhorer and Amcor filed Petitions for Reconsideration. Rhorer argued the ALJ erred in dismissing the left shoulder claim. He noted his complaints of left shoulder pain, and the results of the June 27, 2018 MRI demonstrating some partial tearing. He also noted the December 21, 2018 left shoulder surgery to repair the partial left rotator cuff tear. Rhorer argued the ALJ failed to properly consider Dr. Sajadi's opinions in dismissing the claim. He argued the ALJ's reliance upon Dr. Jenkinson was misplaced based upon the objective evidence of a rotator cuff tear.

Amcor requested a reconsideration of the award of TTD benefits. It noted the ALJ awarded TTD benefits beginning October 8, 2017, but that he was not

taken off work until January 23, 2018, which Rhorer confirmed in his deposition testimony.

In the April 23, 2019 Order on the petitions, the ALJ amended the award of TTD benefits to a period from January 23, 2018 through April 9, 2019. The ALJ reiterated the award of medical benefits. However, he did not address Rhorer's Petition for Reconsideration.

We acknowledge that an ALJ has wide-ranging discretion in reaching his or her decision. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). KRS 342.285 designates the ALJ as the finder of fact. The ALJ has the sole discretion in determining the quality, character, and substance of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Likewise, the ALJ, as fact-finder, may choose whom and what to believe and, in doing so, 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 party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977); Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977).

However, such discretion is not unlimited. While authority generally establishes that an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. However, in reaching a determination, the ALJ must provide findings sufficient to inform the

parties of the basis for the decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

We note that Rhorer did not appeal from the ALJ's determination regarding his low back injury. Likewise, he did not appeal from the ALJ's amendment of the award of TTD benefits. Therefore, those determinations are affirmed. However, the ALJ failed to address Rhorer's Petition for Reconsideration regarding his alleged left shoulder injury. Therefore, we must vacate his decision in part, and remand for a consideration of the issues raised in that petition.

We make no determination regarding the validity of the arguments raised, nor whether Rhorer is entitled to an award for the alleged a left shoulder injury. We must vacate the ALJ's determinations regarding that alleged condition, and remand for consideration of the issues Rhorer raised in his Petition for Reconsideration. The ALJ may make any determination supported by the evidence. We do not direct any particular result. On remand, the ALJ may also consider whether it is appropriate to de-consolidate the claims since no appeal was taken from the low back injury, which is the subject of Claim No. 2018-94235.

For the foregoing reasons, the Opinion, Award, and Order rendered March 25, 2019, and the Order regarding the Petitions for Reconsideration issued April 5, 2019, by the Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED IN PART and VACATED IN PART**. The claim is

**REMANDED** for additional determinations in conformity with the views herein expressed.

ALL CONCUR.

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