

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: December 18, 2020

CLAIM NO. 201985911

JAMES STINES

PETITIONER

VS.                   **APPEAL FROM HON. JOHN B. COLEMAN,  
ADMINISTRATIVE LAW JUDGE**

CTA ACOUSTICS and its insurer STRATEGIC COMP/  
GREAT AMERICAN ALLIANCE INSURANCE; and  
HON. JOHN B. COLEMAN,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**BORDERS, Member.** James Stines (“Stines”) appeals from the August 3, 2020 Opinion, Order, and Award and the September 3, 2020 Order on Petition for Reconsideration rendered by Hon. John B. Coleman, Administrative Law Judge (“ALJ”). The ALJ determined Stines suffered a temporary lumbar spine injury on March 9, 2019 while employed by CTA Acoustics (“CTA”). The ALJ awarded

Stines a period of temporary total disability (“TTD”) benefits and temporary medical benefits. The ALJ determined Stines did not meet his burden of proving he suffered a permanent lumbar spine injury as a result of either a specific incident occurring on March 19, 2019, or as the result of a cumulative trauma injury manifesting on that date. As a result, Stines’ claim for permanent partial disability (“PPD”) benefits were dismissed.

Stines filed a Petition for Reconsideration arguing the ALJ failed to give proper weight to what he believes is unrebutted testimony from Dr. Robert Hoskins, who he argues confirmed he developed recurring low back pain caused by the cumulative trauma inherent in his twenty year history of heavy manual labor performed during his employment at CTA. On September 3, 2020, the ALJ overruled Stines’ Petition for Reconsideration finding no patent errors that required a different conclusion. For reasons set forth herein, we affirm.

Stines testified by deposition on February 19, 2019 and at the hearing held June 25, 2020. His work career is in the manufacturing industry. Prior to working for CTA, he worked as a machine operator for a plant that made guardrail posts. He described that job as being the most physically demanding he ever had, as he was required to perform frequent, repetitive heavy lifting. He began working for CTA in 2000, initially as a mold operator. During most of this employment, he worked on the assembly line making silicone forms or operating a forklift. He spent the last years at CTA in the maintenance department installing new motors, in addition to repairing and cleaning machinery.

On March 19, 2019, Stines was on his hands and knees cleaning up an oil spill when he felt a burn in his back. He reported the incident to a supervisor, Les Henson. Stines returned to work the next day and worked a few hours. He then sought treatment with Dr. William Lester and later presented to the Baptist Hospital emergency room. Stines further testified he treated with Dr. William Brooks and Dr. Robert Hoskins. He reported pain in his left leg and low back problems. He denied any prior low back issues. He testified he did not have any back pain during a February 25, 2019 Grace Health appointment and that he never had any prior left leg or lower back problems. When asked about treatment at Grace Health, and a February 25, 2019 report indicating “mild tenderness noted in the LR thoracic and lumbar area,” Stines indicated he was not telling the doctor he had pain in his spine, but in his kidney area. When asked about the Grace Health records that noted “chronic pain” and “chronic joint pain”, Stines testified it must be referring to his prior right shoulder surgery. He denied having any back pain or left leg problems during the February 25, 2019 Grace Health appointment.

Treatment records from Grace Health reflect Stines was evaluated on February 12, 2019. Stines complained of kidney pain but no other urinary symptoms. He had pain in the middle of his back bilaterally that had been present for two months but occurred rarely with no radiation of his pain. He denied any aggravating factors. He also complained of bilateral posterior neck pain. Stines was diagnosed with acute neck pain and persistent acute bilateral thoracic back pain. On February 25, 2019, Stines presented for follow-up lab work. A history of back pain beginning four months earlier that was stable and occurred intermittently was noted.

Stines had bilateral thoracic/lumbar spine pain aggravated by lifting, pushing, standing, and walking. Stines received Depo Medrol and a Toradol injection on February 12, 2019, which provided some improvement for two weeks.

CTA filed medical records from Dr. Lester. Dr. Lester initially saw Stines on March 20, 2019. His assessment was lumbar strain. In subsequent visits, Dr. Lester noted “lumbar disc” as the assessment. In an April 1, 2019 letter, Dr. Lester stated he reviewed an MRI and concluded Stines has degenerative disc disease at multiple levels with a developmental pre-existing component of central stenosis. He believed the mechanism of injury related by Stines does not support the signs and symptoms he currently exhibits.

Dr. Brooks saw Stines on July 31, 2019. He reviewed multiple objective studies, including lumbar X-rays, lumbar CT, lumbar MRI and a lumbar myelogram. Dr. Brooks stated, “If surgery is not a therapeutic option, I would recommend facet block or epidural steroid injection. I am hopeful he would show some improvement however certainly conceivable that he may not.” Stines’ EMG and NVC were normal. Stines provided a history of an injury at work on March 19, 2019, indicating back pain with radiation down the back of the left leg. Stines denied prior issues with back pain.

Stines saw Dr. Hoskins on August 29, 2019 and provided a history of the March 19, 2019 incident. Dr. Hoskins diagnosed an L5-S1 leftward disc herniation; L3-4 and L4-5 bilateral neuroforaminal stenosis; lumbar spondylosis; congenital lumbar central canal stenosis; and left lumbar radiculopathy. He related the diagnoses to the March 19, 2019 work injury. He felt Stines’ activity at the time

of the work event probably caused the lumbosacral spine injury. He noted that working for a prolonged period in a stooped or twisted posture subjected the lumbosacral spine to mechanical forces exceeding the threshold for safe loading and caused injury. He further noted Stines has an underlying congenital lumbar central canal stenosis, which was dormant and non-disabling at the time of the work event. Dr. Hoskins believed the events of March 19, 2019, at a bare minimum, aroused the condition into an active and disabling reality.

Dr. Hoskins assigned a 13% impairment rating pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, (“AMA Guides”). Dr. Hoskins assigned restrictions of no lifting greater than 25 pounds; no lifting greater than 10 pounds below waist level; no heavy pushing, pulling or carrying; no continuous sitting greater than 60 minutes with a 10 to 15 minute break to stand or walk after 60 minutes of continuous sitting; no continuous standing or walking greater than 60 minutes with a 10 to 15 minute break to sit after 60 minutes of continuous sitting; no activities that involve sustained posturing of the lumbosacral spine at extremes of motion or repetitive movements into extremes of motion in the lumbosacral motion; no prolonged or repetitive use of equipment that subjects the spinal column to vibration; no prolonged or repetitive stooping or crouching; and no prolonged or repetitive overhead work. Dr. Hoskins opined Stines does not retain the physical capacity to return to the type of work performed at the time of injury. Dr. Hoskins stated Stines had no active impairment prior to the injury.

Dr. Hoskins testified by deposition on April 6, 2020. He reviewed the March 2019 lumbar MRI report, which showed multilevel degenerative disc disease, left paracentral L5-S1 disc protrusion, L3-4 and L4-5 bilateral neuroforaminal stenosis and the probable development of central canal stenosis. He noted the disc protrusion and foraminal stenosis could be correlated with the decreased reflex at the ankle. He reviewed the records from Dr. Brooks, who felt the stenosis and spondylosis were congenital in nature. Dr. Hoskins did not think there is any relationship between the stenosis and the disc herniation and explained that he does not know what Stines' discs looked like prior to the work event. However, he felt the history and mechanism of injury was consistent and reasonable with a herniated disc. He believed Stines' description of working in an awkward position as well as his other movements on that day likely caused the symptoms.

Dr. Hoskins confirmed his prior assessment of a 13% whole person impairment under Table 15-3 of the AMA Guides. He placed Stines in Category III because his left leg symptoms correlated to the herniated disc diagnosed by Dr. Brooks at the correct level and on the correct side. He chose to place Stines at the high end of the category because Dr. Brooks is contemplating surgery. He did not feel Stines has any prior active impairment, as he was working regularly, had no prior similar symptoms, and has not previously been diagnosed with a herniated disc or radiculopathy. Dr. Hoskins testified studies show a correlation between lifting, pulling, pushing, and working in awkward positions with cumulative trauma that causes degenerative changes to the discs and possibly spondylosis. He reviewed

Stines' job description and opined there is a relationship between the job and Stines' multilevel degenerative disc disease within the best medical probability.

Dr. Timir Banerjee performed an Independent Medical Evaluation on February 14, 2020. Dr. Banerjee stated Stines did not sustain a harmful change to the human organism as a result of the work incident. He noted Stines complained of back pain, possibly from strain of erector spinae muscle. He determined Stines reached maximum medical improvement ("MMI") by April 1, 2019. The changes at L5-S1 are degenerative in nature and are not due to a traumatic event. Stines had a pre-existing active impairment of the back at least three or four weeks prior to the work episode. Dr. Banerjee stated Stines could return to his occupation without restrictions. Dr. Banerjee assigned a 5-8% impairment rating for the pre-existing active condition pursuant to the AMA Guides. He believed Stines is not a surgical candidate.

In an April 22, 2020 addendum, Dr. Banerjee indicated his review of additional records did not change his opinion. Dr. Banerjee stated Stines had an 8% impairment rating for a pre-existing active condition. Dr. Banerjee placed Stines in DRE Category II because he had bilateral thoraco-lumbar pain according to the examination at Grace Health with decreased mobility that had been fairly persistent for two months.

Dr. Robert Suss reviewed Stines' imaging studies and completed a report dated March 3, 2020. He reviewed lumbar X-rays from March 20, 2019, which showed developmental variations and degenerative findings. There was no X-ray evidence of acute or traumatic pathology, aggravation, or of anything attributable

to the events on a particular date. A lumbar MRI from that same date revealed chronic degenerative disc and facet disease on top of congenital stenosis causing moderate central and bilateral foraminal stenosis at L2-3, L3-4 and L4-5. Dr. Suss found no MRI evidence of acute or traumatic pathology, or of aggravation attributable within reasonable medical probability to the work event of March 19, 2019.

At the Benefit Review Conference, the parties stipulated the contested issues for determination by the ALJ included benefits per KRS 342.730, including multipliers, work relatedness/causation, unpaid or contested medical expenses, injury as defined by the Act, exclusion for pre-existing disability/impairment, TTD (rate and duration), and application of AMA Guides.

On August 3, 2020, after considering the evidence of record, the ALJ made the following findings that are related to this appeal, *verbatim*:

#### **ANALYSIS AND CONCLUSIONS**

This is an interesting case with some twists and turns, which have led me to be convinced the only benefits available to the plaintiff are temporary in nature under the principle set forth in Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). In that case, the court noted that a claimant is entitled to temporary income and medical benefits during a flare up of symptoms aggravating a non-work related condition. I find the plaintiff is entitled to TTD and medical benefits beginning on March 19, 2019 and continuing through August 29, 2019. Thereafter, I am persuaded by the defendant's arguments that the plaintiff has failed to prove a permanent work injury as required under Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979), for which permanent income and medical benefits are available.

The ALJ also made the following relevant findings of fact, *verbatim*:

The medical evidence from Dr. William Lester does support the diagnosis of a lumbar strain occurring on March 19, 2019. The notes reflect an onset of lower back pain while performing his job duties. While Dr. Lester ultimately concluded that the plaintiff's continuation of symptoms were not supported by diagnostic studies revealing developmental and pre-existing conditions, he does diagnose lumbar strain as occurring on March 19, 2019. The plaintiff was referred to Dr. Brooks, a neurosurgeon, who treated the lumbar condition. While the plaintiff testified to one thing, Dr. Brook's notes reflect that he did not find a surgical lesion during his evaluation and treatment of the plaintiff. Instead, he recommended injection therapy in July 2019. It was on August 29, 2019 when Dr. Hoskins evaluated the plaintiff and placed him at maximum medical improvement. As noted by Dr. Banerjee, Dr. Hoskins erroneously placed the plaintiff into a DRE category III for radiculopathy and a recommendation of surgery. Once Dr. Banerjee evaluated the plaintiff, he was able to ascertain the lack of radiculopathy. He confirmed the existence of a temporary muscular strain occurring on March 19, 2019.

As the result of the strain occurring in the course and scope of his employment on March 19, 2019, the plaintiff was unable to perform his usual job duties and had not reach maximum medical improvement until placed at maximum medical improvement by Dr. Hoskins on August 29, 2019. Therefore, the plaintiff is entitled to TTD and medical benefits during this period. Given his average weekly wage of \$758.11, the correct TTD rate is \$505.41. This rate multiplied by the 23.28 weeks of TTD equals the total amount of \$11,765.94. The parties agree the plaintiff was paid short-term disability benefits from an exclusively employer funded plan for \$2,542.86 during this period. The defendant is entitled to dollar-for-dollar credit for these STD payments leaving the net amount of TTD owing the plaintiff to be \$9,223.08, together with interest at the rate of 6% per annum.

Stines submitted a Petition for Reconsideration arguing the ALJ failed to give proper weight to Dr. Hoskins' opinions. Stines argues he submitted

unrebutted testimony from Dr. Hoskins confirming his recurring back pain was caused by cumulative trauma incurred during his twenty (20) year history of performing heavy labor for CTA. The petition was overruled by the ALJ who found no patent errors on in the Opinion, Award, and Order.

On appeal, Stines argues the ALJ misconstrued Dr. Hoskins' testimony as to a causal link between Stines' recurrent back pain and the cumulative trauma, reflected in the degenerative condition of his lower back as confirmed by the medical evidence. Stines argues the ALJ misapplied the law in failing to recognize the statutory and case law recognizing a dormant degenerative condition that itself constitutes a compensable injury. Specifically, Stines argues Dr. Hoskins' testimony drew a link between the physical demands of his job at CTA and the cumulative trauma that caused the degenerative changes found in his back. Stines argues Dr. Hoskins' testimony is unrebutted by any evidence in the record. Stines also took exception with the ALJ's determination that he believed Stines was less than forthright in revealing his prior back treatment and believed he did not want to disclose it. We disagree and affirm.

As the claimant in a workers' compensation proceeding, Stines had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Stines was not successful in his burden, we must determine whether substantial evidence of record supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce

conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than 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). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). In addition, causation is a factual issue that must be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scarce, 896

S.W.2d 7 (Ky. 1995). When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Medical causation must be proven by medical opinion within “reasonable medical probability.” Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980). While objective medical evidence must support a diagnosis of a harmful change, it is not necessary to prove causation of an injury through objective medical findings. Staples, Inc. v. Konvelski, 56 S.W.3d 412 (Ky. 2001).

Stines filed his original Application for Adjustment of Claim, Form 101, alleging a specific traumatic event occurring on March 19, 2019 causing injury to his lumbar spine, while he was on all fours cleaning up an oil spill. He also alleged a cumulative trauma injury to his lumbar spine caused by his twenty years of performing heavy manual labor while employed at CTA, manifesting on March 19, 2019. It therefore appears Stines is pursuing two alternative theories of recovery. He alleges a specific injury occurring on March 19, 2019, which, according to Dr. Hoskins, resulted in a herniated lumbar disk. This theory was rejected by the ALJ as he did not find Dr. Hoskins’ testimony persuasive. Stines alternatively argues he met his burden of proving the occurrence of a cumulative trauma injury to his lumbar spine, once again arguing Dr. Hoskins’ testimony clearly sets forth the occurrence of a cumulative trauma lumbar spine injury and that this opinion is un rebutted. The

ALJ likewise rejected this theory. Regarding his reasoning in rejecting Stines' first argument, the ALJ reasoned as follows:

The plaintiff initially alleged an acute injury occurring on March 19, 2019. The plaintiff supported this allegation with the Form 107 medical report and later the deposition testimony from Dr. Robert Hoskins who opined the event resulted in a herniated disc in the plaintiff's lumbar spine or at the very least the arousal of pre-existing degenerative and congenital conditions into disabling reality. However, when Dr. Hoskins penned his initial medical report assessing causation on that particular event he was clearly unaware of the plaintiff's two visits with Grace Health on February 12 and February 25 of 2019. Dr. Hoskins does not mention either of these office visits, which occurred the month preceding the alleged work event. Additionally, Dr. Hoskins notes the plaintiff denied any prior back pain in his history. When questioned regarding these two visits, the plaintiff's testimony was vague due to what he described as the length of time since the visits. He steadfastly testified that the visits were in relation to concern over a kidney infection. However, a review of the note from February 12, 2019 clearly indicates that the plaintiff stated he had a lot of kidney pain, but did not think he had a UTI. His second problem noted in addition to the kidney pain was back pain. He noted the pain's location to be in the middle of the back and bilateral. On the February 25, 2019 visit, the plaintiff continued to complain of pain in the middle back as well as the right and left thoracic and lumbar area. The symptoms were noted to be aggravated by lifting, pushing, standing and walking and were relieved by rest. Additionally, the plaintiff recorded on his 105 medical history that his office visits with Grace Health in February 2019 were for the flu and high blood pressure. There was no mention of either kidney pain or back pain in his sworn acknowledgment of medical treatment. To the undersigned, this leaves the inference that the plaintiff did not want to disclose a prior history of back pain when seeking treatment or evaluation for the alleged work injury. If a physician relies on an incorrect history, an ALJ may disregard his expert opinion that was based upon that history. Osborne v. PepsiCola, 816 SW2d 643 (Ky., 1991). Further, medical opinions that

are based upon inaccurate or incomplete information furnished by the claimant during the independent medical examination do not constitute substantial evidence to support a finding of work related causation. Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004). Here, Dr. Hoskins did not review these treatment notes and the plaintiff denied the history clearly reflected in those notes. Further, in the deposition, Dr. Hoskins was only questioned regarding prior kidney pain wherein these notes clearly reflect something more. Therefore, I do not find the opinion of Dr. Hoskins to be persuasive in regards to finding a permanent injury causally related to the event of March 19, 2019.

Regarding Stines' alternative theory of having suffered a cumulative trauma injury to his lumbar spine, the ALJ reasoned as follows in rejecting this argument:

The plaintiff also asserts that March 19, 2019, was simply the, "straw that broke the camel's back" or manifestation of disability from cumulative trauma. The plaintiff has clearly been engaged in manual labor work over the years for the defendant. He detailed his work activities and the undersigned acknowledges this type of heavy work can lead to the development of degenerative lumbar disc disease as noted by Dr. Hoskins in his deposition testimony. In Haycraft v. Corhart Refractories, 544 S.W.2d 222 (Ky. 1976), the court held that a cumulative trauma injury could be proven by showing the nature and duration of the work probably aggravated a degenerative disc condition to the degree that it culminated in an active physical impairment sooner than would have been the case had the work been less strenuous, and to that extent, the pre-existing condition is itself an injury. As the plaintiff openly acknowledged the complaints of lower back pain leading up to the March 19, 2019 event, perhaps cumulative trauma explanation will be a viable theory of injury as suggested by plaintiff's counsel. However, a reading of the deposition testimony of Dr. Hoskins does not indicate that is what he believed happened in this particular case. Dr. Hoskins discusses how such work activities can lead to the development of spondylosis or

a disk herniation, but he does not indicate that is what happened to this particular case. As such, the ALJ does not find persuasive medical evidence to support the plaintiff's allegation of impairment as the result of cumulative trauma.

The ALJ was confronted with conflicting medical evidence. Dr. Hoskins opined Stines suffered a herniated lumbar disc as a result of the specific work incident of March 19, 2019, for which he retained an impairment rating. Dr. Hoskins also, arguably, opined Stines' years of work for CTA resulted in a cumulative trauma lumbar spine injury. Dr. Banerjee opined Stines did not suffer a permanent injury as defined by the Act, either caused by a specific injury or cumulative trauma, and Dr. Lester opined Stines suffered a temporary lumbar sprain as a result of the specific work incident of March 19, 2019. The ALJ, when confronted with this conflicting evidence, chose to rely on the opinion of Dr. Lester and Dr. Banerjee, both who opined Stines suffered a temporary lumbar strain as a result of the specific work incident of March 19, 2019, from which he recovered and achieved MMI on August 29, 2019. This was a proper exercise of discretion by the ALJ and the opinions of Dr. Lester and Dr. Banerjee both constitute substantial evidence upon which the ALJ may rely.

Accordingly the August 3, 2020 Opinion, Award, and Order and the September 3, 2020 Order on Petition for Reconsideration, rendered by Hon. John B. Coleman, Administrative Law Judge are **AFFIRMED**.

ALL CONCUR

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