

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: March 11, 2022

CLAIM NO. 202071248

JASON SPARKS

PETITIONER

VS.

APPEAL FROM HON. PETER J. NAAKE,  
ADMINISTRATIVE LAW JUDGE

KEMPER HOME FURNISHINGS and  
HON. PETER J. NAAKE,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**MILLER, Member.** Jason Sparks (“Sparks”) appeals from the October 22, 2021 Opinion and Order and the November 16, 2021 Order denying his Petition for Reconsideration rendered by Hon. Peter J. Naake, Administrative Law Judge (“ALJ”). On appeal, Sparks argues the ALJ erred in dismissing his claim. Because the Opinion of the ALJ was supported by substantial evidence, we affirm.

Sparks worked for Kemper Home Furnishings (“Kemper”) since August 2017 in the warehouse and driving a delivery truck. On August 12, 2020, he was completing a delivery of tables and chairs towards the end of his workday. Sparks came out of a home and while walking to the truck, he felt pain and heard a pop in his right foot.

Sparks testified at his deposition of June 28, 2021:

Q: What type of shoes were you wearing, Jason?

A: I was wearing they’re an Asics type of shoe.

Q: Were they tennis shoes?

A: Yeah, something like that.

...

Q: And what were you walking on, Jason?

A: I was walking on their front porch. I think it was just like a poured concrete.

Q: But when you were walking and you felt and heard a pop, you were just on the flat portion of the front porch?

A: Yeah. I just stepped outside onto the front porch and walking and getting ready to go down the steps.

...

Q: So, this front porch as far as you can recall, Jason, was an even ground front porch, meaning that there wasn’t any bumps or anything wrong with the front porch? It was just a flat front porch that you were walking on and felt and heard this pop?

A: As far as I remember, yes.

At the final hearing of August 25, 2021, he again testified:

Q: So you just, essentially just no minding, just walked out the door, you didn’t fall, didn’t twist your ankle, you didn’t slip, nothing unusual, correct?

A: Nothing that I can really remember. Just stepped out onto the porch or on the porch walking there, yeah.

Q: Like I said, you didn't turn your ankle? Didn't have any weakness? Nothing happened at that time?

A: No. It just kind of gave out on me there.

Sparks went to Saint Joseph London Emergency Room the same day and X-rays were taken. The report states, "walking when felt/heard a pop."

Sparks returned to work performing light duty. He received temporary total disability ("TTD") benefits from September 19, 2020 through January 22, 2021. Medical expenses were paid during the first few months of treatment.

Sparks saw Dr. Collin E. Ball's office on August 14, 2020, when it was initially thought he had a plantar fasciitis exacerbation. The work event was documented. An MRI occurred on September 25, 2020 with a diagnosis of complete disruption of the distal peroneus longus tendon. During an October 13, 2020 visit, he was placed in an immobilizing boot and ordered to physical therapy. His last visit with Dr. Ball was on December 1, 2020. Options were discussed including conservative care versus surgery and getting a second opinion.

Sparks saw Dr. Jason S. Harrod at Bluegrass Orthopedics on January 6, 2021 for a second opinion. Dr. Harrod concluded, "This is a much more complex problem than a rupture of the peroneus tendon. He has an underlying foot structure with a cavus foot structure with varus rearfoot which sets him up for peroneal pathology."

Dr. Andrew Ryan evaluated Sparks on July 15, 2021. Dr. Ryan confirmed the diagnosis of the right peroneus longest rupture likely attritional. He

believed the origin of the peroneal tendinopathy most likely predated the work events of the day of onset. While he noted the tear occurred at work, he did not believe the employment accelerated his injury or was a major contributing factor other than happenstance.

A January 22, 2021 review by Dr. Daniel Wolens stated:

Mr. Sparks has a cavovarus foot. This is one in which the arch is high and foot is turned inwards. The problem with this structure is that with the outward bowing of the foot and ankle, this places stress on the peroneal tendons and the lateral ligaments. It is likely that the chronic stress upon the peroneal tendon due to this foot deformity is what is ultimately responsible for the non-traumatic peroneal tendon rupture.

### **ANALYSIS**

The Benefit Review Conference noted the contested issues of work-relatedness/causation, injury defined by the Act, unpaid or contested medical expenses and TTD. In **Other Matters**: Claim is bifurcated to determine the work-relatedness of injury on August 12, 2020, whether it was an idiopathic injury, and whether the Plaintiff should be paid additional periods of TTD.

KRS 342.0011 defines “Injury” as any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

As the claimant in a workers’ compensation proceeding, Sparks has the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Staples v. Konvelski, 56 S.W.3d 412 (Ky. 2001) explained the type of evidence required to show that a harmful change has occurred,

and further that KRS 342.0011(1) required objective medical findings of a harmful change, it does not require such evidence of causation.

In this claim, the injury was shown by objective medical evidence, that being the MRI showing a complete disruption of the distal peroneus longus tendon. The rupture of the tendon occurred in the course of Sparks' employment. The remaining issue is whether the injury arose out of the employment.

When the causal relationship between an injury and a medical condition is not apparent to a lay person, the issue of causation is solely within the province of a medical expert. Elizabethtown Sportswear v. Stice, 720 S.W.2d 732-733 (Ky. App. 1986); Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184 (Ky. 1981).

Based on the testimony of Sparks, there was nothing unusual that occurred when he was walking across an even concrete porch and felt the pop in his right foot. This claim is similar to the situations involving idiopathic injuries, albeit there was no fall in the current claim. The Kentucky Supreme Court discussed the analysis required citing to Professor Arthur Larson's treatise on workers' compensation when determining if a work injury arises out of the employment. There are three categories of risk. 1) risks distinctly associated with employment; 2) risks that are idiopathic or personal to the worker; 3) risks that are neutral). Vacuum Depositing v. Dever, 285 S.W.3d 730, (Ky. 2009).

The Court stated, "Unexplained falls divide ultimately into two categories 1) Those the employer has shown to result from a personal or idiopathic cause, but which may be compensable under the positional risk doctrine and 2)

Those that remain unexplained and entitled to a presumption of work-relatedness. At 734.”

A presumption exists that an unexplained injury is work-related. In order to prevail, the Employer must rebut the presumption. Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898, 900 (Ky. 1977). It is a rebuttable presumption which the Employer can overcome by presenting substantial evidence of a non-work-related cause for the claimant’s fall. Jefferson County Public Schools/Jefferson County Public Education v. Stephens, 208 S.W. 3d 862, 867 (Ky. 2006). If the cause of the unexplained fall is personal to the claimant, it can nevertheless be compensable if the work placed the individual in a position that increased its dangerous effects. Indian Leasing Company v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978).

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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003).

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 that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W. 3d 48 (Ky. 2000).

The medical evidence supports the ALJ's dismissal. The lay testimony does not establish any degree of causation attributable to the work. It is clear Sparks suffered from a pre-existing condition. Kemper produced evidence the injury was due to Sparks' pre-existing condition of a cavovarus foot deformity which caused the attritional tearing of the tendon. Dr. Wolens and Dr. Ryan established this medical condition caused the tendon to tear over time, and the fact that it ruptured while at work was mere happenstance. There is no countervailing medical evidence establishing what caused the tear to occur while at work. Sparks attached a questionnaire from Dr. Harrod to the Motion to Bifurcate. Even assuming it was properly placed into evidence, it does not explain why the work caused the rupture of the tendon. Regardless, it is not for this Board to reweigh the findings by the ALJ as long as substantial evidence supports his decision.

Sparks' testimony was consistent that he was walking on an even surface, not carrying anything when he felt and heard a pop in his right foot. There was no evidence that the work performed caused or accelerated the happening of the injury. The cause of the injury was explained, the pre-existing foot deformity. The work did not place him in a position where the effects of the injury were made worse.

Accordingly, the October 22, 2021 Opinion and Order and the November 16, 2021 Order on Petition for Reconsideration rendered by Hon. Peter J. Naake are **AFFIRMED**.

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

**LMS**

HON MCKINNLEY MORGAN  
921 SOUTH MAIN ST  
LONDON, KY 40741

**COUNSEL FOR RESPONDENT:**

**LMS**

HON LEE JONES  
PO BOX 1139  
PIKEVILLE, KY 41502

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON PETER J NAAKE  
MAYO-UNDERWOOD BLDG  
500 MERO ST, 3<sup>rd</sup> FLOOR  
FRANKFORT, KY 40601