Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 13, 2021

CLAIM NO. 201800312

JEFF MINYARD PETITIONER

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

KENTUCKY TRANSPORTATION CABINET and
HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

BORDERS, Member. Jeff Minyard ("Minyard") appeals from the May 20, 2021 Opinion and Order rendered by Hon. Peter J. Naake, Administrative Law Judge ("ALJ"). The ALJ determined Minyard failed to prove he suffered a cervical spine injury as defined by the Act while employed by the Kentucky Transportation Cabinet ("Cabinet") and dismissed his claim. No petition for reconsideration was filed. On

appeal, Minyard argues he met his burden of proof and the determination by the ALJ was in error and should be reversed. We disagree and affirm.

Minyard testified by deposition and at the final hearing. He was 48 years old on the date of the September 26, 2017 accident. He was employed by the Cabinet clearing highway right-of-ways, using sprayers, and performing other tasks. On September 26, 2017, he was spraying weeds from a four wheel drive truck. While doing so, he accidently drove the truck off of a headwall causing the truck to flip over and land on its top. He was restrained in the vehicle but alleges his head struck the top of the cab. He reported the incident and was taken to Greenview Hospital for treatment. He eventually came under the care of a neurosurgeon and underwent cervical surgery in March 2018.

Minyard admitted to having issues with his cervical spine prior to the accident. Dr. Oran Aaronson had previously recommended cervical surgery in March 2017. Minyard admitted to having neck pain and right hand numbness prior to the accident, but felt it accelerated and worsened his symptoms.

Medical records from Greenview Hospital ER reflect Minyard was treated, underwent CT scans, and was released. The records indicate he had a history of neck pain, and he had put off neck surgery in May 2017.

Dr. Aaronson's records indicate he began treating Minyard for neck problems in March 2017. A 2016 MRI indicated severe spinal stenosis for which surgery was recommended that Minyard declined to undergo. Minyard returned in November 2017 for an updated MRI. Dr. Aaronson opined the work accident exacerbated his symptoms. Surgery was again recommended and was performed on

April 9, 2018. Dr. Aaronson opined the work accident caused 20% of his impairment rating, and 80% was due to his prior active condition. He assessed a 6% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, resulting from the work injury. Dr. Aaronson responded to a questionnaire submitted by the Cabinet and indicated "no" when asked if Minyard suffered any permanent harmful change due to the work event of September 2017. He also checked "no" when asked if the work event caused or necessitated the cervical fusion surgery.

Dr. Russell Travis examined Minyard, received a history of the work incident of September 2017, and reviewed all medical records and diagnostic studies taken both before and after the work incident. Dr. Travis opined Minyard suffered from a soft tissue sprain superimposed on severe pre-existing congenital spinal stenosis. He opined the work incident did not cause any structural changes or increase his symptoms. He opined all of Minyard's cervical problems were pre-existing, active, and not due to the work incident.

Dr. Thomas O'Brien examined Minyard. He received a history of the work accident, reviewed medical records both before and after the work incident including diagnostic studies, and opined Minyard suffered a soft tissue injury that was minor. He noted Minyard suffered from pre-existing congenital spinal stenosis. He opined all of Minyard's neck problems were pre-existing and active, and were not due to the September 2017 work incident.

Dr. Robert Byrd examined Minyard in July 2020. He received a history of the September 2017 accident and treatment rendered. Dr. Byrd diagnosed

post-laminectomy syndrome of the cervical spine, chronic neck pain, chronic headaches, and parathesis involving the fourth and fifth fingers. Dr. Byrd attributed all of Minyard cervical problems to the work incident and assessed a 26% impairment rating as a result.

Based on the above evidence, the ALJ made the following findings of facts and conclusions of law relevant to this appeal, *verbatim*:

> The central issue disputed by the parties is whether Mr. Minyard suffered an injury within the meaning of the Workers' Compensation Act as a result of the September 26, 2017 incident. The parties do not dispute that an accident occurred on that date. The Administrative Law Judge must determine from the evidence whether the accident caused an injury.
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> The Plaintiff bears the burden of proving an injury as defined in KRS 342.0011(1). An injury is "any work-related traumatic event . . . 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." The term "objective medical findings" means clinical findings, observations, and other standardized testing performed as part of a physical examination as well as sophisticated diagnostic tests. *Gibbs v. Premier Scale Co. /Ind. Scale Co.*, 50 S.W.3d 754 (Ky. 2001).
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> The accident which occurred on September 26, 2017, when the truck the Plaintiff was driving rolled over from an embankment onto its roof, was a traumatic event. But an "injury" within the meaning of the Act must be proven to have caused a harmful change in the Plaintiff's body. Whether a traumatic event proximately caused a harmful change is a medical question, one which must be proven by the testimony of qualified medical experts. *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004). The central question of this case must be determined by the medical evidence, but in choosing which medical expert to believe, the Administrative Law Judge must necessarily consider all the evidence. This includes the Plaintiff's testimony, the

medical records of treatment, the timeline of events, and how they support or conflict with the opinions of the medical experts. It is well settled law that one form of proximate cause of an "injury" is the arousal of a dormant, non-disabling condition into disabling reality. If a previously dormant condition is made symptomatic by a traumatic event, the pre-existing condition is the harmful change required by the statute. *McNutt Construction/First General Services v. Scott,* 40 S.W.3d 854, 859 (Ky. 2001). A dormant condition is one which is asymptomatic and not ratable as an impairment under the A.M.A. Guides prior to an injury. An active pre-existing condition is one which is symptomatic and can be assigned an impairment under the A.M.A. Guides prior to a work-related injury. An active condition may be aggravated by a work-related injury, and in that case, any pre-existing impairment would be subtracted prior to an award of permanent partial disability benefits. *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007).

The Plaintiff had severe pre-existing cervical spondylosis and radicular symptoms from his condition before his injury. Dr. Aaronson's notes, particularly the note from an examination on March 28, 2017, discuss an MRI taken in December 2016 as showing severe spinal stenosis. Examination results show wasting of the Plaintiff's right arm muscles, weakness in grip strength bilaterally, and loss of reflexes in his lower extremities and right arm.

The Plaintiff testified that he did not have neck pain or headaches prior to his injury, but that statement is contradicted by the notes of Dr. Aaronson. The note of March 28, 2017, six months before his injury, reflect that his primary complaint was neck pain, headaches and a loss of dexterity and loss of sensation in his fingers. Dr. Aaronson recommended a C5-C6, C6-C7 discectomy and fusion, and at that time Mr. Minyard agreed to proceed.

The next note indicates that Mr. Minyard decided to ignore Dr. Aaronson's advice, not because he had improved, but because he was afraid of surgery. This medical note again contradicts Mr. Minyard's testimony that his cervical pain and headaches had

improved so he decided not to have surgery. Yet, in a letter to Dr. Kaul dated November 22, 2017, Dr. Aaronson also states that the symptoms were improving after March 2017. Dr. Aaronson states in that letter that Mr. Minyard was in an accident, and his condition "had a setback, with exacerbation again after that." While this statement could be interpreted as indicating that the accident caused the setback and exacerbation, it does not directly state the necessary causal nexus. To clarify, the Defendant sent a questionnaire to Dr. Aaronson, which he answered by signing and checking affirmative and negative answers. The report unequivocally shows that Dr. Aaronson did not believe the work event caused any permanent harmful change in Mr. Minyard's condition, and did not cause the need for the surgery he performed in March 2018.

The Plaintiff's sought immediate medical attention after the injury, but he continued to work after the injury just as he did before. He did not have surgery on his neck for another six months after the accident. These factors tend to show that Mr. Minyard's condition did not change because of the accident.

The Plaintiff's medical evidence in support of his claim is primarily the report of Dr. Byrd. Dr. Byrd assessed Mr. Minyard's condition as one which was previously dormant and asymptomatic, and aroused into disabling reality by the September 26, 2017 injury. In his report, he agreed that Mr. Minyard had a pre-existing condition in his cervical spine, but did not assess an impairment rating to the preexisting condition. Dr. Byrd could not state that the MRI studies taken before and after the accident showed any change. Yet he assessed the entire 26% impairment for the cervical fusion surgery to the injury, and stated that the pre-existing condition was not active because Mr. Minyard continued to work before the injury.

The Administrative Law Judge is not persuaded by Dr. Byrd's opinion. Mr. Minyard's cervical condition was symptomatic prior to his injury as indicated by the records of Dr. Aaronson, who had treated the condition and recommended surgery before the accident. He exhibited identifiable and severe radiculopathy which would qualify under the A.M.A.

Guides for a permanent impairment rating before the injury, as stated by Dr. O'Brien in his report, and also detailed by Dr. Travis in his report. Dr. Byrd's opinion contradicts the facts of Mr. Minyard's medical treatment and findings prior to the accident. Therefore his opinion does not prove that the work-related injury caused the need for surgery and impairment which came about after the Plaintiff's accident at work. Dr. O'Brien's opinion, given in his report dated June 13, 2019, is that Mr. Minyard's pre-existing condition was symptomatic before the accident on September 26, 2018, and was so severe that it needed to be surgically treated. He compared the pre-accident and post-accident MRI studies, CT Scans and x-rays and concluded that there was no objective change in Mr. Minyard's cervical spine between them. He assigned an impairment rating to the pre-existing condition. His opinion was that the accident had no effect on Mr. Minyard's cervical condition and did not exacerbate or aggravate it nor cause the need for surgical treatment. Dr. Travis examined the MRI reports in the course of his medical examination in 2018, and also concluded that the studies show the exact same severe spinal canal stenosis and disc osteophytes causing compression of the spinal cord both before and after the accident.

Dr. O'Brien's testimony agrees with the opinion of Mr. Minyard's treating doctor, and is supported by the opinions of Dr. O'Brien and Dr. Travis that there was no objective change in the MRI imaging of Mr. Minyard's cervical spine before and after the accident. The Administrative Law Judge is persuaded by Dr. O'Brien's report, supported by the questionnaire signed by Dr. Aaronson, and concludes that the Plaintiff did not suffer a harmful change or an injury within the meaning of KRS 342.0011(1) as a result of the accident on September 26, 2017.

All further issues raised by the parties are rendered moot by the foregoing decision, and therefore the Plaintiff's claim will be dismissed.

Minyard argues the ALJ erred in dismissing his claim as the evidence confirms he sustained a harmful change or an injury within the meaning of KRS 342.0011(1).

As the claimant in a workers' compensation proceeding, Minyard had the burden of proving each of the essential elements of his claim, including work-relatedness/causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Minyard was unsuccessful in his 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).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ 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 adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky.

2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. As long as the ALJ's ruling regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Minyard did not file a petition for reconsideration from the March 8, 2019 Opinion and Order dismissing his claim. In the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether substantial evidence in the record supports the ALJ's conclusion. Stated otherwise, where no petition for reconsideration was filed, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, on appeal, we must determine whether substantial evidence supports the ALJ's decision.

The ALJ was confronted with conflicting medical proof. Dr. Aaronson, Dr. Travis, and Dr. O'Brien all opined Minyard suffered from a pre-

existing active cervical spine condition before the September 2017 work incident. Fusion surgery had been recommended by Dr. Aaronson in May 2017. Additionally, all three doctors opined the MRIs taken before and after the September work incident were virtually the same. While Minyard testified his condition worsened after the September 2017 work event, the ALJ did not believe this testimony as the medical records from Dr. Aaronson indicate he had the same symptoms both before and after the accident. Clearly, this constitutes substantial evidence upon which the ALJ could rely in dismissing the claim. The ALJ also considered Dr. Byrd's testimony opining Minyard suffered a work-related injury. The ALJ was not persuaded by Dr. Byrd's testimony and adequately set forth his reasoning as to why.

We believe the decision of the ALJ is supported by substantial evidence and will not be disturbed on appeal. Minyard is asking this Board to second guess the ALJ and to substitute their judgment for that of the ALJ. This Board declines to do so.

Accordingly, the May 20, 2021 Opinion and Order rendered by the Hon. Peter Naake, Administrative Law Judge is **AFFIRMED**.

ALL CONCUR.

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