

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 20, 2019

CLAIM NO. 201900072

JEFFREY TURNER

PETITIONER

VS.

APPEAL FROM HON. JEFF V. LAYSON,
ADMINISTRATIVE LAW JUDGE

TRANSFORCE, INC. and
HON. JEFF V. LAYSON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Jeffrey Turner (“Turner”) appeals from the August 25, 2019 Opinion, Award and Order rendered by Hon. Jeff V. Layson, III, Administrative Law Judge (“ALJ”). The ALJ found Turner sustained a temporary injury while working for Transforce, Inc. (“Transforce”) rendering him unable to work from September 6, 2018 until he reached maximum medical improvement (“MMI”) on December 15, 2018. The ALJ awarded temporary total disability (“TTD”) benefits

from September 7, 2018 until December 15, 2018, and medical benefits. On September 16, 2019, the ALJ entered an order denying Turner's petition for reconsideration.

On appeal, Turner argues the ALJ erred in dismissing his claim. He argues the ALJ's decision is not supported by substantial evidence, and a contrary result is compelled. We determine the ALJ appropriately considered the evidence presented, and did not err in dismissing Turner's claim. Therefore, we affirm.

Turner filed a Form 101 on January 25, 2019 alleging he injured his lumbar and/or sacral vertebrae from cumulative trauma he sustained while working as a truck driver. In his Form 104, Turner indicated he began working as a truck driver in 1987, and his last job was driving for Transforce from April 19, 2018 until September 6, 2018.

Turner testified by deposition on May 24, 2019, and again at the hearing held on June 25, 2019. Turner was born on August 9, 1966. He is a resident of Manchester, Kentucky. Turner is a high school graduate with no specialized or vocational training. Turner held a commercial driver's license ("CDL) for many years. He did not have a CDL from 2013 until 2016 because he was diagnosed with diabetes, and was unable to get his sugar level under control. He re-qualified for a CDL in 2016, and drove a truck for a few months until the job ended. He did not work again until he began working for Transforce in April 2019, in order to recuperate from ongoing back difficulty.

Turner testified that approximately fifteen years before his work injury, he injured his right low back when he fell from a semi-trailer. He missed a few

weeks of work after that incident, and continued to have flare-ups afterward. He testified he had to have one to two cortisone shots per year in his low back afterward. Turner testified he continued to take Ibuprofen and Gabapentin for his low back prior to this 2018 work injury, in addition to insulin and Metformin for his diabetes. Turner testified that prior to working for Transforce, he drove trucks with sleeper cabs. He stated those trucks were more roomy and better accommodated his larger frame.

Turner testified that he drove approximately 640 miles per day, five to six days per week for Transforce, delivering automobile parts to a Honda plant near Tuscaloosa, Alabama. He picked up his load at a location in Corbin, Kentucky. When he returned to Corbin on September 6, 2018, he stopped to refuel his truck. When he attempted to exit the truck, his right leg was numb. He did not report this to Transforce. He went home, and on Sunday, he called Transforce to advise he would be unable to drive on Monday. He was advised to tell them when he could return to work. Turner later went by ambulance to the emergency room at a hospital in Manchester. He received a Morphine shot, and was then sent home. He later followed up with his family physician, St. Joseph Hospital of London, Kentucky, and eventually treated at the University of Kentucky spine center. Turner testified he advised Dr. Jared Madden, his evaluating physician, that he had previously sustained a low back injury, and that he was off work for two years prior to working for Transforce, recuperating from his ongoing low back condition.

Turner testified that he had received no TTD benefits, and Transforce did not pay for his medical treatment. He also testified he first experienced low back

pain while working for Transforce in July 2018, which he attributed to the small cab of the truck he was driving. Turner has not returned to work for Transforce since September 6, 2018, and has not applied for work elsewhere.

In support of his claim, Turner filed the report of Dr. Chad E. Morgan, D.C., who evaluated him at the request of his attorney on January 7, 2019. Dr. Morgan determined Turner sustained a low back injury caused by his job activities. He stated that continuing to work in that job would adversely affect Turner's health. He stated Turner's job activities aroused his non-disabling low back condition, caused by cumulative trauma, into disabling reality. He stated Turner had no impairment prior to September 6, 2018. Dr. Morgan did not reference Turner's previous low back injury, his previous lumbar treatment, or his taking of medication for low back pain prior to September 6, 2018. Dr. Morgan diagnosed Turner with muscle spasm in the back, thoracic spine pain, thoracic segmental/somatic dysfunction, lumbar radiculopathy, lumbar segmental/somatic dysfunction, hypertension, and emotional stress.

Dr. Madden evaluated Turner at his attorney's request on March 8, 2019. Dr. Madden noted Turner's thirty-year truck driving history, with the onset of pain on September 6, 2018. Turner reported his back pain gradually worsened beginning in May 2018. Dr. Madden did not note Turner's previous low back injury, prior cortisone injections, flare-ups, or treatment with medication prior to September 6, 2018. Dr. Madden diagnosed chronic low back pain, lumbar radiculopathy secondary to a herniated nucleus pulposus at L3-S1 with stenosis, lumbar degenerative disc disease, chronic thoracic back pain, chronic shoulder pain, and

degenerative joint disease. Dr. Madden stated all of those conditions were caused by the workplace trauma Turner had experienced for over thirty years.

Dr. Madden determined Turner reached MMI on March 8, 2019. He assessed a 13% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Dr. Madden opined Turner does not retain the capacity to return to the type of work he performed prior to his injury. He recommended Turner not engage in lifting greater than ten pounds, nor push or pull with the upper extremity, and avoid repetitive motion or overhead work. He also advised Turner to avoid bending, twisting, climbing, crouching, kneeling, and prolonged standing or sitting. He also advised Turner to elevate his legs as needed.

Turner also filed the November 28, 2018 records from the University of Kentucky Healthcare. The records reflect Turner’s history of Diabetes Mellitus, hypertension, degenerative disc disease, chronic back pain, hyperlipidemia, and sciatica, in addition to chronic treatment with Gabapentin. The records from November 16, 2018 and December 11, 2018 also note Turner has lumbar stenosis/spondylosis.

Transforce filed the University of Kentucky Healthcare record of March 8, 2019 noting nerve conduction studies of the left leg were normal. The record also confirms a radicular injury. A notation indicates that stocking loss to pinprick just above the ankle is consistent with diabetic neuropathy.

Dr. Henry Tutt evaluated Turner at Transforce’s request on May 8, 2019. Dr. Tutt noted the report of a September 6, 2018 work injury. Turner reported

he drove 630 miles per day, five days per week for Transforce, in a tight cab. Dr. Tutt noted that fifteen years prior, Turner fell off a trailer, landing on his side. Turner also reported his back “gave out” once per year afterward. He also noted Turner was taking Tylenol and Gabapentin prior to his injury. Dr. Tutt diagnosed Turner with longstanding lumbar spondylosis with variable degrees of lateral recess and neuroforaminal narrowing at L3-L4, and L4-L5. Dr. Tutt determined Turner’s condition was not caused by cumulative trauma. He noted Turner has a well-established long standing pre-existing active lumbar condition unaltered by his work with Transforce. He stated Turner reached MMI for his flare-up on December 15, 2018. Dr. Tutt determined Turner has a 10-13% impairment rating pursuant to the AMA Guides, all of which is prior and active, unrelated to his work with Transforce.

Cami Boards (“Boards”), the operations manager for Transforce, testified by deposition on June 24, 2019. She has worked for Transforce for over nine years, and on September 6, 2018, she was Turner’s supervisor. Transforce hired Turner on April 18, 2018 as a CDL-A tractor-trailer driver. Although Transforce requires employees to report injuries at the time of the accident, Turner did not do so on September 6, 2018. On September 11, 2018, Turner called to report he dislocated his right hip as he was getting out of bed. No work injury was reported. Boards spoke with Turner on September 12, 2018, and he repeated that he had injured his right hip while getting out of bed. She again spoke with him on September 17, 2018, and he advised he would be unable to return to work until after September 27, 2018. On October 18, 2018, Turner called to advise he was out of the hospital. He did not mention a low back injury. On October 25, 2018, Turner called again to obtain

workers' compensation insurance information. She did not hear from him afterward. She did not know when a physician advised Turner his condition was work-related. She also testified Transforce uses day cabs because the job does not require overnight stays. She never received complaints from drivers regarding the size of the cabs.

A Benefit Review Conference was held on June 13, 2019. The issues preserved included work-relatedness/causation, notice, statute of limitations, benefits per KRS 342.730, average weekly wage, TTD benefits, ability to return to work, exclusion for pre-existing active impairment, contested medical bills, proper use of the AMA Guides, and whether Turner sustained an injury pursuant to the Act.

In his decision rendered August 25, 2019, the ALJ indicated he relied upon Dr. Tutt's opinion in determining Turner sustained a temporary injury, entitling him to TTD benefits from September 7, 2018 until he reached MMI on December 15, 2018. The ALJ determined Turner did not sustain a permanent work injury, and was only entitled to temporary medical benefits during the period he was entitled to TTD benefits.

Turner filed a Petition for Reconsideration on September 6, 2019, arguing the ALJ failed to provide essential findings of fact. He argues the ALJ erred in relying upon Dr. Tutt's opinions in light of the other medical evidence of record. Turner requested the ALJ to provide additional findings to support his determination. Turner also requested the ALJ to reconsider his determination regarding causation. The petition was denied by order issued September 16, 2019.

We initially note that as the claimant in a workers' compensation proceeding, Turner had 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 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 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001). 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 that 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 discretion to determine all reasonable inferences 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

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 that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

We find substantial evidence supports the ALJ's determination Turner did not sustain a permanent work-related low back injury while working for Transforce. When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts, and an ALJ is not justified in disregarding the medical evidence. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184 (Ky. App. 1981).

The evidence establishes Turner had suffered from a low back condition for years prior to working for Transforce. Turner testified that he treated numerous times with cortisone injections, and was taking Ibuprofen and Gabapentin prior to his alleged injury. The ALJ noted Turner's longstanding low back condition, and that both Drs. Morgan and Madden omitted any reference to those pre-existing problems. Dr. Tutt, as noted by the ALJ, specifically determined that while Turner may have sustained a temporary exacerbation of his low back condition for which he was entitled to TTD and medical benefits, he did not sustain a permanent work-related injury.

Turner essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ, which we cannot do. Whittaker v. Rowland, supra. It was the ALJ's prerogative to rely upon Dr. Tutt's opinion in determining Turner did not sustain a permanent low back injury while working for Transforce. Turner merely points to conflicting evidence supporting a more favorable outcome, which is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra. Because substantial evidence supports the ALJ's determination and a contrary result is not compelled, his decision shall remain undisturbed.

For the foregoing reasons, the August 25, 2019 decision, and the September 16, 2019 Order on Petition for Reconsideration rendered by Hon. Jeff V. Layson, III, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON MCKINNLEY MORGAN
921 SOUTH MAIN STREET
LONDON, KY 40741

COUNSEL FOR RESPONDENT:

LMS

HON RODNEY J MAYER
600 EAST MAIN ST, STE 100
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

LMS

HON JEFF V LAYSON
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3RD FLOOR
FRANKFORT, KY 40601