

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 21, 2019

CLAIM NO. 201760987

JOHN J. BUCKLAND, JR.

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESERVES NETWORK,
And HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. John J. Buckland, Jr. ("Buckland") appeals from the January 28, 2019 Opinion and Order and the February 21, 2019 Order rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"), awarding a period of temporary benefits but dismissing his claims for permanent income and medical benefits. On

appeal, Buckland argues the ALJ erred in finding he suffered no permanent injury. Because substantial evidence supports the ALJ's findings, we affirm.

Buckland was employed by The Reserves Network, a temporary agency. Beginning on October 1, 2017, he worked as a machine operator loading and unloading small metal parts at Konsei. Buckland alleged injury to his low back on October 13, 2017 when he was bending to pick up a small item. He felt a sharp pain in his mid-lower spine with tingling and numbness down both legs.

Prior to this incident, Buckland had received medical treatment for his back following a motor vehicle accident in 2013. He also acknowledged that he had a lumbar MRI in May 2017 after an incident where he lifted a picnic table in his back yard. He received a cortisone shot and returned to full time work after three days. Nonetheless, Buckland stated he was not actively treating for his back until the incident at work in October 2017. Buckland has not received medical treatment since January 2018.

Buckland visited Dr. Christopher Shields on January 25, 2018 for a neurosurgical consultation. He reported being hit by a metal cage at work on October 13, 2017. Buckland complained of low back pain radiating to his left lower extremity, and numbness in his left lower extremity and left hand. Buckland indicated he was asymptomatic prior to the injury. Consistent with a lumbar MRI performed on May 12, 2017, Dr. Shields diagnosed lumbar disc herniation at L5-S1 on the left, and a diffuse midline disc bulge at L3-4 with mild spinal canal stenosis.

Dr. Stacie Grossfeld performed an independent medical evaluation ("IME") on March 29, 2018. Buckland complained of back pain and bilateral

radiculopathy. Dr. Grossfeld recorded a history of chronic lower back pain since at least December 2010, and additional follow-ups in 2015 and 2017. Lumbar x-rays were performed several times during this period. In May 2017, Buckland sought treatment at Jewish Hospital Health Center, reporting recurrent low back pain radiating down his left buttocks and into the left thigh. The May 10, 2017 lumbar MRI showed mild degenerative changes at L5-S1, with a left paracentral disc extrusion extending inferiorly with the effacement of the left lateral recess. Buckland returned in October 2017 with complaints of lower back pain.

Dr. Grossfeld diagnosed a lumbar strain that has resolved with no permanent impairment. She noted Buckland had a longstanding history of chronic low back pain and his current symptoms directly relate to pre-existing degenerative joint disease of the lumbar spine. Dr. Grossfeld noted a January 12, 2018 lumbar MRI showed a left paracentral disc extrusion at L5-S1, similar to that shown on the 2017 MRI. Dr. Grossfeld opined the current symptoms were unrelated to the alleged work incident. Rather, based on her examination and review of records, Dr. Grossfeld opined Buckland's symptomatology is the result of his pre-existing low back condition. His continued lumbar complaints are a return to his baseline of chronic lumbar pain that existed prior to the temporary exacerbation from the work injury. Dr. Grossfeld concluded Buckland reached maximum medical improvement ("MMI") on January 12, 2018 and requires no further treatment related to the work injury.

Dr. Henry Tutt performed an IME on September 21, 2018. Buckland denied a prior history of back or leg symptoms. However, Dr. Tutt noted a lumbar

MRI was performed on May 10, 2017 due to severe low back pain and sciatic symptoms. Dr. Tutt also reviewed a May 4, 2017 note from Jewish Hospital Health Center referencing a prior emergency room visit on April 4, 2017 for back pain that caused Buckland to wake up screaming in pain. He concluded the findings from the 2017 MRI were identical to findings seen on a January 12, 2018 MRI. In his examination, Dr. Tutt noted Buckland exhibited numerous positive Waddell's signs and no neurological deficits. He diagnosed a lumbar strain/sprain and concluded Buckland's continuing complaints were not related to the work injury. Dr. Tutt further stated Buckland reached MMI four to six weeks following the alleged work incident and he did not develop any permanent condition warranting assignment of an impairment rating, nor did he require any restrictions related to the alleged work injury.

Dr. Alan Roth performed an IME on June 22, 2018. Dr. Roth did not review records of treatment prior to the 2017 work incident. He diagnosed a lumbar spine strain, extruded lumbar disc at L5/S1, and radiculopathy of both lower extremities secondary to the extruded disc. Dr. Roth did not provide an opinion as to causation of claimant's low back condition. He further indicated he had requested additional medical records regarding Buckland's spine history and he would not discuss apportionment until the records were received.

The ALJ's findings relevant to this appeal are as follows:

Having reviewed the evidence of record, and bearing in mind that the plaintiff bears the burden of proving every essential element of his claim, the Administrative Law Judge is not persuaded plaintiff has carried his burden of proving he suffered any permanent, work-related lumbar injury. In reaching this conclusion, the ALJ does not find

Dr. Roth's opinions especially credible in establishing a permanent, work-related lumbar injury. Dr. Roth did not have the same records and diagnostic studies of plaintiff's lower back complaints from 2010 through early 2017. As such, Dr. Roth could not offer an informed opinion on whether plaintiff's current lower back complaints were due to the work injury alleged or were simply a continuation of prior, chronic lower back symptoms in effect before October, 2017.

Conversely, Dr. Grossfeld reviewed such records and performed her own examination and concluded plaintiff suffered only a temporary lumbar strain at work on October 13, 2017; that this temporary exacerbation resolved and returned to baseline as of January 12, 2018; and that plaintiff's current and ongoing lower back complaints are due to plaintiff's pre-existing and active lumbar condition. She also noted the postinjury lumbar MRI showed no real changes as compared to that performed in May, 2017, further corroborating that plaintiff suffered no new, permanent lumbar condition. Although plaintiff argues there is no evidence that his lumbar condition was symptomatic and impairment ratable immediately prior to October 13, 2017, that argument goes to whether any portion of his impairment rating should be carved out as pre-existing and active. It does not apply to the issue of causation and whether any permanent injury was caused by the work event. Those are essential elements of plaintiff's claim, which he must establish[] by competent, persuasive proof. As just explained, Dr. Roth's opinions are not found credible because he did not have the opportunity to review all of plaintiff's prior treatment records and diagnostic studies.

Based on Dr. Grossfeld's credible explanations and opinions, it is determined plaintiff suffered only a temporary lumbar strain which resolved and returned to baseline as of January 12, 2018. As such, it is determined plaintiff did not suffer a permanent, work-related lumbar injury. Accordingly, his claim for permanent income and medical benefits must be dismissed.

Buckland filed a petition for reconsideration requesting additional findings regarding whether the ALJ found a pre-existing active impairment, whether

Buckland was asymptomatic as of January 12, 2018, what his baseline condition was prior to the injury, whether he has an impairment rating after the injury, and whether he was credible, and if not, in what matter he was not credible. The Reserves Network also filed a petition for reconsideration to correct typographic errors and to remove references to Dr. Roth's supplemental report, which had been withdrawn.

The ALJ's order on reconsideration provided in relevant part as follows:

Having reviewed the parties' petitions, and being otherwise sufficiently advised, it is first determined that plaintiff has failed to point out any patent errors to justify the additional findings he seeks. The opinion and order set forth sufficient findings to explain why it was determined plaintiff failed to carry his burden of proving he suffered any permanent lumbar injury. Additional findings that go to the issue of any pre-existing, active impairment are not necessary and do not go to the issues of causation and injury under the act upon which the dismissal was based. For these reasons, plaintiff's petition for reconsideration is overruled.

On appeal, Buckland argues the ALJ erred in determining the low back condition was active prior to the work injury, and in determining there is no permanent injury resulting from the work incident. Buckland asserts that his low back condition was asymptomatic immediately prior to October 13, 2017. Buckland notes he was working full-time under no restrictions, was not treating with a medical provider, and had no impairment ratable condition. Rather, he insists the degenerative changes in his lower back are not pre-existing active, but are changes made active by his injury.

As the claimant in a workers' compensation proceeding, Buckland bore 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 that 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

The evidence falls far short of compelling a finding that Buckland sustained a permanent injury. Dr. Grossfeld and Dr. Tutt diagnosed only a temporary work-related lumbar sprain. Neither physician related Buckland’s extruded lumbar disc to the work-related injury, nor did either state the lumbar strain exacerbated or aroused the extruded lumbar disc. There is no medical opinion stating the lumbar sprain/strain exacerbated or aroused a pre-existing or degenerative condition. Dr. Grossfeld stated the alleged work incident did not produce a change in the underlying condition of Buckland’s discs. Dr. Grossfeld’s opinions constitute substantial evidence there was no permanent injury. It is possible for a claimant to prove a temporary injury for which temporary income and medical benefits may be awarded, yet fail to prove a permanent harmful change to the human organism for which permanent indemnity and medical benefits are appropriate. Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). That is precisely what the ALJ determined in this case.

The ALJ weighed the evidence and found Dr. Roth’s opinion unpersuasive. Dr. Roth diagnosed an extruded disc at L5/S1 and radiculopathy of

the lower extremities secondary to the extruded disc but did not provide a medical opinion relating his diagnoses to the work incident. He did not review any prior medical records at the time of his June 22, 2018 report, specifically noting prior medical records were required before he could address apportionment. Likewise, he did not provide an opinion as to whether the work incident aroused or exacerbated the extruded disc at L5/S1. In contrast, Dr. Tutt and Dr. Grossfeld reviewed pertinent medical records concerning Buckland's condition prior to the work injury and concluded the work incident produced only a temporary strain. Neither believed the work incident caused injury to Buckland's discs. These medical opinions constitute substantial evidence supporting an award for a temporary work-related injury. The ALJ was well within his discretion as a fact-finder in relying on their opinions, and it cannot be said his conclusions are so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the January 28, 2019 Opinion and Order and the February 21, 2019 Order rendered by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

HON. JAMES D. HOWES
5438 NEW CUT ROAD, SUITE 201
LOUISVILLE, KY 40214

LMS

COUNSEL FOR RESPONDENT:

HON. RODNEY J. MAYER
U'SELLIS, MAYER & ASSOCIATES
600 EAST MAIN STREET, SUITE 100
LOUISVILLE, KY 40202

LMS

ADMINISTRATIVE LAW JUDGE:

HON. GRANT S. ROARK
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601

LMS