

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 18, 2019

CLAIM NO. 201767561

LEONARD MCKENZIE

PETITIONER

VS.

**APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE**

DOT OFFICE OF GENERAL COUNSEL
And HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

RECHTER, Member. Leonard McKenzie appeals from the July 12, 2018 Opinion and Order and the September 4, 2018 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ dismissed McKenzie’s claim, finding he failed to establish a work-related injury. On appeal, McKenzie

challenges the ALJ's reliance upon the opinion of Dr. Phillip Corbett, and argues it is unreliable. There being substantial evidence supporting the ALJ's decision, we affirm.

McKenzie is employed by the Kentucky Department of Transportation as a superintendent. On July 14, 2017, he stepped in a hole obscured by grass and weeds. His right knee popped and he experienced immediate pain. Once he had limped out of the hole, McKenzie and his co-workers went to lunch. He completed his shift that day, which consisted entirely of paperwork at a desk. This incident occurred on a Friday, and McKenzie was not called into work over the weekend.

McKenzie testified he visited Dr. Steven Carawan the following week. The records of this office visit were not submitted into evidence. According to McKenzie, Dr. Carawan took x-rays of the knee and suspected arthritis. An MRI was requested, and Dr. Carawan prescribed Mobic.

McKenzie testified he was at his son's house about a week later when his right knee started to bother him. He leaned against a 4-wheeler to take some weight off his leg. When he raised his leg up to rest it on the 4-wheeler, he heard a loud pop and went to the ground. McKenzie was unable to stand or walk, and his son helped him get back to his house.

McKenzie returned to Dr. Carawan the following week, on August 4, 2017. He reported increased pain and swelling since the incident at his son's house. Dr. Carawan diagnosed right knee effusion and suspected an acute meniscal tear. He requested an MRI, which was denied by the worker's compensation insurance carrier.

McKenzie returned to Dr. Carawan again on October 5, 2017, with continued right knee pain and swelling. Dr. Carawan's notes indicate his prior request for an MRI was declined because the insurer "state[s] that this is a new injury although my last note clearly states he did not reinjure his knee just by trying to step up on a 4 wheeler to sit down and rest his knee." He again diagnosed an acute medial meniscus tear of the right knee based on the fact conservative treatment had not relieved McKenzie's pain or swelling. Dr. Carawan stated an MRI was no longer necessary, and recommended a diagnostic arthroscopy debridement of chondromalacia and possible meniscectomy.

Dr. James Owen performed an independent medical evaluation ("IME") on November 8, 2017. Dr. Owen indicated he reviewed some medical records from Dr. Carawan. While McKenzie testified he visited Dr. Carawan after the work accident but before the incident at his son's house, Dr. Owen's report does not reference a medical record from this time period. He agreed an MRI was necessary to rule out an ACL tear, and also suspected a medial meniscus condition. Dr. Owen stated, "The popping certainly could have easily been just that meniscus that had been torn, catching a bit, and being exacerbated by the movement to get weight off it, getting onto the 4-wheeler seat." Dr. Owen did not feel McKenzie had reached maximum medical improvement for the knee, but assigned a 7% impairment rating for antalgic gait pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition.

Dr. Phillip F. Corbett conducted an IME on January 3, 2018. McKenzie provided a history of the July 14, 2017 work injury and the subsequent

event at his son's house. Dr. Corbett performed a physical examination, and reviewed diagnostic studies and medical records, including notes from Dr. Carawan beginning on July 20, 2017. He summarized Dr. Carawan's July 20, 2017 office notes as follows:

Medical care notes include...the report of the x-rays of this injury of the right knee on 7/20/17, describing degenerative patellar osteophytes and a small suprapatellar joint effusion with no fracture or dislocation and findings of "patella osteoarthritis." Medical care notes from the office of KBMS Orthopaedics beginning with evaluation on 7/20/17 by Dr. Carawan were reviewed. Dr. Carawan felt that complaints were consistent with evidence of exacerbation of underlying osteoarthritis in the knee. The possibility of a posterior horn tear of the medial meniscus was considered.

Dr. Corbett diagnosed mild osteoarthritis of the right knee and a possible tear of the medial meniscus of the right knee. He did not believe McKenzie had reached maximum medical improvement and agreed he may need a partial meniscectomy. Turning to the issue of causation, Dr. Corbett noted the lack of an MRI immediately after the work injury made it difficult to pinpoint the exact origin of McKenzie's condition. Dr. Corbett conceded, "the changes attendant to the first injury of July 14, 2017, and the second injury two weeks later cannot be separated." However, he noted that there was no swelling and a trace of effusion identified on July 20, 2017, making it less than medically probable that the acute meniscal pathology resulted from trauma from the July 14, 2017 incident. Based upon Dr. Carawan's August 4, 2017 note, Dr. Corbett felt it was reasonable to assume that any meniscal pathology was definitely worsened by, but possibly originated with, the

subsequent event. McKenzie's examination after the incident at his son's house revealed an effusion for which an acute medial meniscal tear of the right knee was assessed. In addition, he noted McKenzie's age and weight increased the probability that degenerative factors caused his knee condition. Dr. Corbett concluded, "Therefore, it is reasonable to expect that a worsening of the condition and progression of pathology to include a tear of the meniscus would more likely be associated with the injury at home than the injury at work."

Eventually, a right knee MRI was approved and performed on February 22, 2018. It revealed a tear of the posterior horn medial meniscus with associated medial compartment osteoarthritis, chondromalacia patella with joint effusion, patellar tendinosis, and a Baker's cyst. McKenzie visited Dr. Carawan the following day. Dr. Carawan again recommended a right knee arthroscopy, and stated McKenzie's knee injury is "consistent with his on-the-job injury."

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

10. The ALJ is convinced by the opinion of Dr. Corbett who pointed out convincingly that he could not separate the first injury, of July 14, 2017, from the second two weeks later.

11. The ALJ finds that the evidence provided by the Plaintiff including the records of the examinations of Drs. Carawan and Owen are not sufficient to establish the presence of a work-related injury as the examinations were conducted after the established date of the admitted second injury. It is unclear and has yet to be conclusively established to the ALJ that the work incident caused any impairment because the Plaintiff continued to work and Dr. Corbett convincingly opined that there was little swelling and only a trace of effusion on July 20, 2017, making it less likely that the acute

meniscal pathology was related to trauma from the July 14, 2017, incident.

12. The ALJ further finds that Dr. Corbett's reluctance to pronounce a work-related injury is most consistent with the Plaintiff's explanation of events. The Plaintiff explained that following the initial incident at work, he went to lunch with his co-workers, returned to his office, and completed his work. The Plaintiff said that after the injury involving the four-wheeler, however, that he heard a loud "pop" and cried before having to be helped home.

13. The ALJ finds that Dr. Corbett was persuasive in his argument that the minimal symptoms that the Plaintiff had following the work incident which he noted as swelling with only a trace of effusion make it less likely that any acute meniscal pathology resulted from that event. This opinion has convinced the ALJ and the ALJ thus finds that the causal relationship found by Drs. Owen and Carawan, lacks a sufficient basis in objective medical evidence and does not rise to the level necessary to establish the occurrence of a work-related injury. As such, the ALJ finds that the Plaintiff failed to satisfy his burden and this matter must therefore be **DISMISSED**.

McKenzie filed a petition for reconsideration making essentially the same arguments he raises on appeal. The ALJ denied McKenzie's petition for reconsideration, stating the petition fails to point out any patent error appearing upon the face of the Opinion.

On appeal, McKenzie draws our attention to Dr. Carawan's initial examination on July 20, 2017, during which he suspected a possible posterior horn tear of the medial meniscus. An MRI subsequently substantiated the existence of the tear. According to McKenzie, the fact Dr. Carawan's initial impression was ultimately substantiated is conclusive proof the subsequent event at his son's house exacerbated an existing work-related injury. Furthermore, McKenzie contends Dr.

Corbett's opinion is unreliable because he disregarded Dr. Carawan's initial assessment of the work injury. Additionally, McKenzie asserts the ALJ erroneously believed no medical evaluation was performed prior to the second incident, and failed to explain his rationale as to why the pop in the second event supersedes the similar explanation of the work injury.

As the claimant in a workers' compensation proceeding, McKenzie 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).

Although Dr. Carawan's July 20, 2017 note is not filed in evidence, Dr. Corbett reviewed the note in the preparation of his IME report. He acknowledged Dr. Carawan suspected a possible meniscal tear at that time. Nonetheless, Dr. Corbett found it is less than medically probable that the acute meniscal pathology resulted from trauma from the July 14, 2017 incident. He offered an explanation for this opinion, noting the lack of swelling or effusion after the work incident and identifying degenerative factors as a possible cause. Because no MRI was performed immediately after the work incident, Dr. Corbett

acknowledged it is impossible to specifically identify the exact cause of McKenzie's condition.

Dr. Corbett's opinion constitutes substantial evidence upon which the ALJ could rely to conclude McKenzie had not proven the work incident caused his right knee condition. Though this medical opinion differed from Dr. Carawan's, the ALJ is afforded the discretion to choose what evidence is most compelling. Pruitt vs. Bugg Bros., 547 S.W.2d 123 (Ky. 1977).

McKenzie's arguments on appeal imply that Dr. Corbett offered insufficient evidence to establish the second incident caused his right knee condition. However, it is not the defendant's burden to establish causation. At a minimum, Dr. Corbett's report casts doubt as to whether the work incident caused McKenzie's condition. Therefore, his report constitutes evidence upon which the ALJ may rely to conclude McKenzie had not satisfied his burden of proof.

As McKenzie emphasizes, we acknowledge he testified to very different symptoms after the pop of his knee in the work event, when he was able to continue working, and the second event that immobilized him. While these circumstances are evidence upon which the ALJ could rely to find a work-related injury, there was substantial evidence presented to the contrary. Because the decision is supported by substantial evidence, it cannot be said it is arbitrary, capricious, or characterized by abuse of discretion. The ALJ acted within his discretion to determine which evidence to rely upon, and it cannot be said the ALJ's 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 July 12, 2018 Opinion and Order and the September 4, 2018 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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