

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 19, 2022

CLAIM NO. 202101079

MICHAEL LYNN

PETITIONER

VS. **APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE**

WEBSTER COUNTY COAL, LLC AND
HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

MILLER, Member. Michael Lynn (“Lynn”) appeals from the April 25, 2022 Opinion and Order and the May 31, 2022 Order on Petition for Reconsideration rendered by Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”). The ALJ dismissed his claim for alleged injuries caused by cumulative trauma to his neck, shoulder, knees, and elbows.

BACKGROUND

Michael Lynn testified by deposition on September 20, 2021 and at the February 23, 2022 final hearing. He is 54 years old and has a GED. Lynn began working at Webster County Coal (“Webster”) in 2009. He worked there until January 16, 2019 as an underground coal miner when Webster shut down the mine where he was working. Rather than move to another job with Webster, Lynn accepted employment with the Commonwealth of Kentucky Division of Mine Safety as an inspector. This position began on January 19, 2019. He currently inspects mine sites and machinery to ensure all safety protocols are followed. He works underground 60 percent of the time, and must kneel, stoop, and crawl while wearing a safety belt weighing approximately 16 pounds. Lynn has not missed any work because of his claimed injuries.

Lynn testified to performing many different jobs during his time at Webster. He installed belts, rock dusted, set up crews, built brattices buildings, and operated a roof bolter, shuttle car, and continuous miner. His job required him to kneel, stoop, crawl, and walk all day. He lifted 50–60-pound bags of rock dust. Belt installations required a lot of pulling, lifting, and dragging cables. He also performed office work including training, scheduling, and preparing accident reports. He missed no work at Webster due to the alleged injuries caused by cumulative trauma.

Lynn filed a Form 101 alleging injuries to multiple body parts caused by cumulative trauma. He performed heavy manual and repetitive work and listed a manifestation date of January 16, 2019, his last day of work at Webster. He testified

to having severe upper neck pain some mornings and headaches. He treats with a chiropractor, Dr. John Stachurski, every two weeks. This treatment started approximately four or five months before he was deposed in September 2021. Before that, he had seen another chiropractor for years. He testified to experiencing numbness in his shoulders and stated his right knee goes out sometimes. Lynn has had no other treatment for his neck and none for his knees. Lynn did receive injections into his elbows at Baptist Health. Julie Guess, APRN, also prescribed Meloxicam for the elbow pain, but Lynn has had no other treatment. He has not seen the orthopedist at Baptist Health and he stopped taking the Meloxicam, preferring Ibuprofen instead.

Dr. John W. Gilbert examined Lynn on August 19, 2021 at the request of Lynn's counsel. Dr. Gilbert completed a Form 107 report. Lynn complained of cervical radiculopathy, shoulder pain, and bilateral shoulder weakness followed by bilateral knee weakness. Dr. Gilbert noted Lynn "shows positive Spurling's test bilaterally... some tightness and tenderness and limited range of motion in neck." He also stated Lynn has reproducible slight weakness in the shoulder and 4+/5 strength in his knees that also seems to be reproducible. Dr. Gilbert assigned a 34% whole person impairment, with 18% apportioned for Lynn's cervical radiculopathy, 10% for his bilateral shoulder weakness, and 10% for his bilateral knee weakness pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Gilbert did not assess an impairment for the condition of the elbows. When asked if he believed the work event caused the impairment found, he checked "yes." Dr. Gilbert opined Lynn is unable to return to

his job as an underground coal miner but stated Lynn should continue his light duty job as a mine inspector.

Dr. Russell L. Travis examined Lynn on December 15, 2021 at the request of Webster's counsel. Dr. Travis filed a lengthy report. He reviewed medical records and forms filed with the Department of Worker's Claims, including Lynn's work history in the coal industry. Dr. Travis assessed a 0% impairment rating for the cervical spine, a 2% upper extremity impairment rating for both shoulders, a 4% impairment rating for the right elbow, a 0% impairment rating for the left elbow, and a 0% impairment rating for both knees for a combined 6% whole person impairment rating based on the AMA Guides. Dr. Travis opined Lynn is at maximum medical improvement and could return to work without restrictions. He recommended no additional treatment. Dr. Travis opined there was no indication from imaging studies or medical history that Lynn suffered from injuries to his neck, back, shoulders, or knees caused by cumulative trauma.

Lynn filed a questionnaire from James Rushing, D.C., who answered affirmatively when asked whether Lynn's neck and right shoulder conditions are due to cumulative trauma.

Lynn also filed Baptist Health records from March 27, 2019 through April 4, 2019, which documented his bilateral elbow pain and noted the pain subsided after injections.

The Benefit Review Conference Order listed "work-relatedness/causation" and "injury as defined by the Act," along with "benefits per

KRS 342.730,” “entitlement to medical benefits,” and “ability to return to work” as contested issues in the claim.

A hearing was held on February 23, 2022. In her April 25, 2022 Opinion and Order, the ALJ found Lynn did not meet his burden in proving the alleged injuries were caused by work-related cumulative trauma. The ALJ relied on Dr. Travis’ opinion that there is insufficient medical evidence of degenerative changes more advanced than would be anticipated for Lynn’s age. The ALJ also noted Lynn’s testimony that he never missed work, had mild complaints, and receives only chiropractic care. Lynn filed a Petition for Reconsideration, which the ALJ denied on May 31, 2022.

Lynn now appeals, arguing the ALJ committed patent error in determining he did not meet his burden of proving injuries caused by work-related cumulative trauma and failing to award benefits pursuant to KRS 342.020.

ANALYSIS

As the claimant in a workers’ compensation proceeding, Lynn had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Lynn 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.

This claim presents conflicting medical opinions as to the degree of Lynn's injuries and, importantly, as to their cause. Lynn suffered no acute injury and

missed no time from work, either at Webster or his current job as a mine inspector. Additionally, he has had no surgeries and treatment has been limited. It is recognized that the mine inspector position Lynn currently holds is less physically demanding than his previous work.

An “injury” is defined 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.” KRS 342.0011(1). “Injury does not include the effects of the natural aging process[.]” *Id.* “Objective medical findings” means information gained through direct observation and testing of the patient applying objective or standardized methods.” KRS 342.0011(33).

Injuries occasioned by cumulative trauma are compensable if it is found that the nature and duration of the work probably aggravated a degenerative condition to the degree that it culminated in an active physical impairment sooner than would have been the case had the work been less strenuous. Haycraft v. Corhart Refractories Co., 544 S.W.2d 222, 225 (Ky. 1977).

When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Where there is conflicting medical evidence, the question of which evidence to believe is the exclusive province of the ALJ. Pruitt v. Bugg Bros., 547 S.W.2d 123 (Ky. 1977); Square D Co. v. Tipton, *supra*. Although an opposing party may note evidence supporting a conclusion contrary to the ALJ’s

decision, such evidence is not an adequate basis for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

With these precepts in mind, we turn to the particulars of this claim. The ALJ reviewed all the evidence thoroughly and clearly stated the reasons for dismissing the claim. The ALJ relied on Dr. Travis' opinion, which she believed was most consistent with the totality of the evidence. She did not believe Dr. Gilbert explained how he arrived at his diagnosis of injuries caused by work-related cumulative trauma. In contrast, Dr. Travis discussed that an injury caused by cumulative trauma is proven by degenerative changes more advanced than would be anticipated for the age of the individual. There was no cervical MRI performed and no x-rays could be located. This is equally true of both Lynn's shoulders and his knees. Dr. Travis noted that because no imaging studies were available, there is no evidence of injuries caused by cumulative trauma. In terms of the elbows, there were only one-time injections. Further, Lynn had an essentially benign physical exam. There is no evidence of radiculopathy, sensory changes, or changes in motor function.

Dr. Travis also reviewed Lynn's work history, including his underground coal work. He received Lynn's statements regarding his work as well as the physical requirements Lynn performed for many years as a coal miner listed on the questionnaire from Dr. Rushing. Dr. Travis' report constitutes substantial evidence upon which the ALJ may rely.

Finally, the ALJ also discussed Lynn's testimony that his condition has never prevented him from working and his limited medical treatment. He

testified no MRIs have ever been performed. His medical treatment consists of chiropractic adjustments.

To be successful, this appeal would require the Board to usurp the role of the ALJ, which we cannot do. The Board's singular determination is whether substantial evidence supports the ALJ's decision and not whether evidence would have supported a different result. The ALJ adequately considered the evidence, provided a sufficient analysis, and a contrary result is not compelled. The ALJ's finding dismissing Lynn's cumulative trauma claim is supported by substantial evidence. The issue of medical benefits is moot since the ALJ found no injuries were caused by work-related cumulative trauma.

Accordingly, the April 25, 2022 Opinion and Order and the May 31, 2022 Order on Petition for Reconsideration, rendered by the Hon. Monica Rice Smith, Administrative Law Judge, are hereby **AFFIRMED**.

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