

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: February 11, 2022

CLAIM NO. 202077760 & 202001106

RANDY FAULKNER

PETITIONER

VS.

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

EZ PACK REFUSE HAULING SOLUTIONS and  
HON. PETER J. NAAKE,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Randy Faulkner (“Faulkner”) seeks review of the Opinion and Order rendered September 10, 2021, by Hon. Peter J. Naake, Administrative Law Judge (“ALJ”). The ALJ dismissed the claims Faulkner filed against EZ Pack Refuse Hauling Solutions (“EZ Pack”) finding he failed to establish he sustained work-related injuries on June 16 and June 17, 2020. Faulkner also appeals from the October 12, 2021 Order denying his Petition for Reconsideration.

On appeal, Faulkner argues the ALJ erred in finding he did not sustain work injuries and dismissing his claims. Faulkner also argues the ALJ erred by failing to award permanent total disability and medical benefits. Because we find the ALJ's decision is supported by substantial evidence, and a contrary result is not compelled, we affirm.

Faulkner filed a Form 101 on August 18, 2020 in claim number 2020-77760, alleging that on June 16, 2020, he was "walking out of an oven that was 500 degrees" when he fell backward and sustained a low back injury. Faulkner filed a Form 101 in claim number 2020-01106 on August 19, 2020 alleging he sustained a neck injury, a head laceration, and a concussion on June 17, 2020 when he passed out in a restroom stall at work. The claims were consolidated in an Order issued September 18, 2020. In the Form 104s filed with the claims, Faulkner indicated he began working for EZ Pack in 2016, and last worked there on June 17, 2020.

Faulkner testified by deposition on September 25, 2020, and at the Hearing held July 31, 2021. Faulkner is a resident of Cynthiana, Kentucky. He was born on April 11, 1963. Faulkner has a GED, and technician's degrees from KCTCS in horticulture and maintenance management.

Contrary to the assertion in the Form 104s, Faulkner testified he began working for EZ Pack in 2018. He initially installed wiring harnesses and lights in the assembly department. He transferred to the painting department seven to eight months later due to a higher pay rate. In the painting department, he initially washed truck parts with chemicals, including acids, in preparation for painting, and later he hung parts on a carousel, or assembly line, for painting. Once parts were

hung, they were painted, then moved down the line into an oven for curing. He testified the oven operated at five hundred degrees. After curing, the parts were removed from the carousel. Faulkner testified he earned \$14.75 per hour on the dates of his alleged injuries, and his supervisor was Sterling Bass (“Mr. Bass”).

Faulkner testified that on June 16, 2020 he was asked to paint two parts upon a special request from EZ Pack’s owner. After hanging the parts for painting, they were then sent to the oven. After the oven was shut down, he entered to check on the parts. He alleged he slipped and fell backward as he attempted to exit the oven. He stated his feet came out the oven door, but his back hit the oven floor. He denied hitting his head at that time. He testified he had never been advised to not enter the oven. He advised Mr. Bass of the fall afterward, but an accident report was not completed. He stated Mr. Bass was responsible for completing the accident report since he was the team leader. He claimed he injured his low back and neck in the fall and burned his elbows on the hot oven floor. He sought no treatment on June 16, 2020.

On June 17, 2020, Faulkner reported to work at 7:00 a.m. He testified he began feeling ill around 9:00 a.m. He went outside on break and vomited. He returned to his workstation, and again began feeling ill. He went to the restroom where he claimed he slipped, fell, and struck his head. Afterward, he sat in the floor of a stall and passed out. He testified he was unconscious for approximately two hours. When he awoke, he saw someone taking pictures and videos of him. Timothy Ray Ham, Jr. (“Mr. Ham”) told him to go to the first aid station. When he attempted to get up, he slipped and fell again. He claimed his neck and back were

hurting after the fall. Faulkner testified he never advised Mr. Ham he fell in the restroom. He also testified Mr. Ham did not escort him to the first aid station.

At the first aid station, Amanda Hope Mellen (“Ms. Mellen”) checked his vital signs. He attempted to clock-out and leave afterward, but he was advised by Rick Reed (“Mr. Reed”), the plant manager, that he would be terminated if he left. After going to the first aid station, Ms. Mellen and Mr. Reed took him to the Harrison Regional Hospital for a drug test. He testified he became ill again at the hospital and passed out. He stated his drug test was positive for marijuana because he uses CBD oil for “neuropathy in my arms and legs”. He also testified he used cannabis a day or two before June 16, 2020.

Faulkner first sought medical treatment on June 18, 2020 at the Harrison Regional Hospital Emergency Room. He stated he has suffered from a concussion since his second work accident. He testified at his deposition he treated with a nurse practitioner who continues to prescribe steroids. He also testified he treats with Dr. D. Ferguson, a chiropractor. He additionally testified he treats for an unrelated heart condition. He also has ongoing problems with low back pain, leg burning and throbbing, headaches, and neck pain. He admitted he had low back pain prior to the incidents, but he denied having ongoing treatment, or that he had any previous neck pain. He specifically denied treating at the Harrison Memorial Hospital in 2017 for neck pain. He has not applied for work since his employment was terminated effective June 17, 2020. He also testified he was never advised why he was terminated. We additionally note Faulkner did not acknowledge he was wearing a cap in the photograph shown to him at the Hearing.

In support of his claim, Faulkner filed the June 18, 2020 hip, pelvis, and lumbar x-ray reports from the Harrison Memorial Hospital. Those x-rays revealed no acute findings, and only minimal degenerative changes. Faulkner also filed cervical, head, and brain CT scan reports from the same date, which also demonstrated no acute findings. The record from Eugonda Fryman, APRN (“Nurse Fryman”), who attended Faulkner at that hospital visit, notes his complaints of low back pain. Faulkner reported to Nurse Fryman that he had gotten light-headed at work, and he fell, hitting the floor. He did not tell his supervisor, but he told co-workers during a break. The next day, he lost consciousness in a restroom, and he was awakened by co-workers taking photographs. At the visit, Faulkner complained of sharp pain, arthralgias, muscle stiffness, nausea, vomiting, and muscle weakness. Nurse Fryman diagnosed him with lumbar facet joint pain, and acute midline low back pain without sciatica.

Dr. John Gilbert evaluated Faulkner on October 8, 2020. He noted Faulkner was walking out of a five-hundred-degree oven when he fell onto his back and hit his head. Faulkner allegedly returned to work the next day, became ill, and fell, striking his head, causing a concussion. Dr. Gilbert diagnosed Faulkner with post-concussive syndrome with memory impairment and headache. He also diagnosed spinal spasms with cervical and lumbar radiculopathy related to the June 16, 2020 and June 17, 2020 work injuries. Dr. Gilbert assessed a 43% impairment rating pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. Of this rating, Dr. Gilbert found 18% attributable to the cervical spine, 14% attributable to memory loss, 13% attributable

to lumbar radiculopathy, and 8% attributable to thoracic pain and muscle spasms. Dr. Gilbert found none of the impairment was pre-existing active. He found Faulkner had reached maximum medical improvement (“MMI”) by October 8, 2020. Dr. Gilbert also advised Faulkner can only engage in sedentary work and he is 100% occupationally disabled.

Faulkner filed Nurse Fryman’s September 2, 2020 Residual Functional Capacity Assessment. She determined Faulkner is unable to lift up to ten pounds, stand for thirty minutes without interruption, walk fifteen minutes without interruption, push/pull/reach overhead with either the right or left extremity, climb stairs, ladders, or scaffolds due to balance, he should take four to five break periods per day, and he has chronic back pain effected by his work injury.

Faulkner also filed Dr. Michael Gainey’s September 24, 2020 partially legible treating physician statement. He saw Faulkner for chronic back pain and COPD. He stated Faulkner’s back pain was affected by his work injury. He noted Faulkner has heart rate and blood pressure issues and has problems with passing out. He additionally noted Faulkner’s low back pain prevents sitting for long periods.

Mr. Ham is a supervisor over the mixer weld and drum shop at EZ Pack. He has been employed with EZ Pack for over six years. He testified EZ Pack manufactures garbage trucks and concrete mixers. Faulkner worked for him on the paint line. He testified that on the paint line, parts are hung by hand on a carousel or line, and rotate through washing, drying, painting, and the back oven where they are cured. Finished parts are then removed from the line. Lighter parts are hung by hand. Heavier parts, those weighing in excess of forty pounds, are placed on the line

by either a forklift or by a team lift. He worked with Faulkner on June 16, 2020 and was unaware of any alleged injury. He did not learn of the allegation until June 29, 2020, at which time he investigated and discovered that no one was aware of the alleged injury.

Mr. Ham again worked with Faulkner on June 17, 2020. He took a photograph of Faulkner who appeared to be sleeping in the restroom stall. He noted Faulkner was last seen at his workstation at approximately 9:00 a.m. Mr. Bass assisted Mr. Ham in looking for Faulkner. He testified Mr. Bass is not a supervisor, nor is he a team leader. He noted Faulkner appeared to be sleeping while sitting upright in a stall. He noted Faulkner was snoring. Faulkner did not advise that he had slipped and fallen in the restroom but did state he was sick. Mr. Ham saw no evidence of the alleged slip and fall, nor did he see any evidence Faulkner had gotten sick. Mr. Ham testified he took Faulkner to the first aid station. He also testified Faulkner never returned to work after June 17, 2020.

Regarding the paint line, Mr. Ham testified the bake oven is one hundred feet long and operates at five hundred degrees. It is used for curing the paint. Mr. Ham testified he is unaware of parts falling off the line in the oven. He testified there is no reason for anyone to walk into the oven.

Ms. Mellen testified by deposition on March 4, 2021. She is the Environmental Health & Safety Manager for EZ Pack and began working there on September 4, 2019. In addition to her degree in Environmental Health Science at Eastern Kentucky University, she is a licensed EMT. She previously worked as an EMT for an ambulance service. Ms. Mellen testified she first learned Faulkner

alleged a work-related injury on June 26, 2020, after he had been terminated due to a failed drug screen administered on June 17, 2020. Once notified, she inspected the oven and found no evidence supporting Faulkner's allegation of a slip and fall, nor did she find evidence of blood or body fluids. Ms. Mellen testified the oven is cleaned once per year, in December, during the annual plant shut down.

Ms. Mellen testified that Faulkner was escorted into the first aid station by Mr. Ham on June 17, 2020. Faulkner was not feeling well, and she checked his vital signs. She was unaware of what may have occurred in the restroom at that time, but Faulkner kept falling asleep while his vital signs were checked. She saw no indication Faulkner burned his elbows in the oven. An ambulance was offered to Faulkner, which he declined. Based upon suspicion, a drug test was requested, which Faulkner initially refused. She testified the justification for the suspicion included Faulkner's mumbling, falling asleep, and dilated pupils. He eventually relented and was taken to the Harrison Memorial Hospital for the test. Mr. Reed drove, and she accompanied them. After the drug test, Mr. Reed drove Faulkner home.

EZ Pack filed a Form SVE alleging Faulkner was intoxicated at the time of his alleged accidents. It argued he violated KRS 342.610(4) and the company drug policy. It also asserted Faulkner was in an unauthorized location at the time of the alleged injuries. The Form SVE further asserted Faulkner was terminated after testing positive for marijuana, and he did not allege a work injury until after his termination.



Dr. Joseph Zerga, a neurologist, evaluated Faulkner on December 15, 2020. He noted Faulkner's complaints of neck and low back pain referable to the June 2020 incidents. Faulkner complained his neck locks up with stiffness from time-to-time, and his back is tight from L1 to L4, but the pain does not run into his legs. He also complained of sleeping difficulty due to stress. Faulkner was angry that he had been unable to receive immediate treatment after his accidents, and he is treating with a medical professional. Faulkner gave a history of slipping and falling at work, burning his elbows, and hitting his head. He subsequently had low back and neck symptoms. He also reported being ill at work the next day, and lost consciousness in the bathroom for over two hours. Faulkner reported having prescriptions for Prozac, Dopamine, Trazadone, and Seroquel. He also reported smoking one pack of cigarettes per day.

Dr. Zerga found no objective basis to render a specific diagnosis. Faulkner's primary complaint was neck pain. Prior to the dates of the alleged injury, Faulkner treated for both neck and low back symptoms, as well as bilateral arm symptoms. Dr. Zerga found it questionable as to whether anything occurred on either of the alleged June 2020 work incidents. He stated if anything did occur, Faulkner had reached MMI. He found no treatment is needed, and he would recommend no restrictions. He disagreed with Dr. Gilbert's opinions. He also noted the evidence of marijuana use.

Dr. Gregory Snider evaluated Faulkner on November 10, 2020 at EZ Pack's request. He noted Faulkner is a former electrician and painter with EZ Pack. Faulkner reported slipping and falling on June 16, 2020, but he could not recall if he

hit his head. He reported that the next day he passed out in the restroom at work for two hours. Dr. Snider noted the June 17, 2020 drug screen was positive for marijuana and Buprenorphine metabolites. At the evaluation, Faulkner complained of neck pain radiating into the left arm, numbness and tingling into the middle finger, and throbbing low back pain with occasionally locking up of the back. Faulkner reported he has not worked since the June 17, 2020 incident. Dr. Snider noted Faulkner's medical records indicated years of complaints consistent with those he now attributes to the work events.

Dr. Snider opined there are no objective finding supporting either a June 16, 2020, or June 17, 2020 work injury. He found no corroborating evidence confirming Faulkner experienced syncope, a fall, a contusion, a concussion, or any other condition. He additionally found no objective findings confirming the alleged neck or back injuries. He also noted the positive drug screen. Like Dr. Zerga, Dr. Snider stated that if Faulkner in fact sustained any work injuries, he had reached MMI by the time of the evaluation. Dr. Snider also recommended a thorough medical evaluation prior to any attempt by Faulkner to return to work, including a review of possible substance abuse, his cardiac condition, and neuropathy. He found Dr. Gilbert's impairment assessment is "overtly overblown and lacking in objective support." Dr. Snider found Faulkner's allegations of injury are suspicious, especially considering any confirming documented physical findings or witnesses.

A Benefit Review Conference was held on May 26, 2021. The issues preserved included benefits per KRS 342.730, work-relatedness/causation, notice, unpaid or contested medical expenses, injury as defined by the Act, temporary total

disability benefits, KRS 342.165 violation alleged against Faulkner, and occurrence of an injury.

The ALJ dismissed Faulkner's claim in the Opinion and Order issued September 10, 2021. The ALJ determined Faulkner failed to prove he sustained work injuries citing to numerous inconsistencies in the testimony, the history of low back and neck pain, the lack of notice of either alleged accident, and the positive drug screen. The ALJ noted the lack of corroborating evidence, and the fact Faulkner would not admit he was wearing a hat in the photograph submitted as evidence. The ALJ found Faulkner was not a credible witness, and "his statement alone will not sustain his burden of persuasion" in establishing he sustained work-related injuries.

Faulkner filed a Petition for Reconsideration on September 24, 2021, arguing the ALJ erred by dismissing his claim. He argued the ALJ's decision was not based upon the evidence of record. Faulkner argued the ALJ erred by determining the oven was operating at five hundred degrees when he entered it. He also argued the ALJ erred by failing to address whether he suffered a concussion at the time of the injury causing memory issues. He additionally argued substantial evidence, Dr. Gilbert, supports a finding he has a 43% impairment rating due to his work injuries. Faulkner also argued the evidence supports a determination he is permanently totally disabled, and he does not retain the physical capacity to return to the type of work he performed at the time of his work injuries.

In an Order issued October 20, 2021, the ALJ denied Faulkner's Petition for Reconsideration. The ALJ determined the Petition for Reconsideration

was merely a re-argument of the claim and a request to amend the decision based upon the merits of the claim, and he failed to address any patent errors.

On appeal, Faulkner argues the ALJ erred by finding he did not sustain any work injuries, and in dismissing his claim. He also argues the ALJ erred by not finding he is permanently totally disabled, and he is entitled to medical benefits.

Faulkner, as the claimant in this workers' compensation proceeding, 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). Since he was unsuccessful before the ALJ, 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 that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

In rendering a decision, Kentucky's workers' compensation Act grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. See KRS 342.275; KRS 342.285; AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may draw reasonable inferences from the evidence, 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. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Although a party may note evidence which would support an outcome other than that reached by the ALJ, this is not adequate to support a reversal 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 weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). In order to reverse the decision of the ALJ, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

After reviewing the evidence, we find the ALJ did not err in dismissing Faulkner's claim, and his decision is supported by the evidence. While we acknowledge Faulkner's testimony, along with the evidence he filed, we determine a contrary result was not compelled. The ALJ set forth the evidence he reviewed, along with the basis for his determination. We find no error in the ALJ's analysis, or in his determination. Because the decision is supported by substantial evidence and a contrary result is not compelled, we affirm the ALJ's determinations.

Accordingly, the September 21, 2021 Opinion and Order, and the October 20, 2021 Order denying Faulkner's Petition for Reconsideration, rendered by Hon. Peter J. Naake, Administrative Law Judge, are **AFFIRMED**.

ALL CONCUR.

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