

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 30, 2018

CLAIM NO. 201700282

REX COAL CO. INC.

PETITIONER

VS.

APPEAL FROM HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE

EARL BEGLEY
and HON. R. ROLAND CASE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

STIVERS, Member. Rex Coal Co. Inc. (“Rex Coal”) seeks review of the July 30, 2018, Opinion, Award & Order of Hon. R. Roland Case, Administrative Law Judge (“ALJ”), finding Earl Begley (“Begley”) contracted coal workers’ pneumoconiosis (“CWP”) while in the employ of Rex Coal. The ALJ awarded permanent partial disability (“PPD”) benefits and medical benefits. Rex Coal also appeals from the August 31, 2018, Order overruling its petition for reconsideration, and a September 6,

2018, Order amending the opinion to reflect the date of last exposure was November 8, 2015, instead of July 7, 2014, and also correcting the award to reflect the payment of PPD benefits commenced on November 8, 2015, the date of last injurious exposure.

On appeal, Rex Coal asserts the ALJ erred in beginning the award on the date of last injurious exposure instead of the date the CWP became disabling which it contends is January 20, 2017.

BACKGROUND

Begley filed his claim on February 16, 2017, alleging he contracted CWP in the course of his employment with Rex Coal. His alleged last date of injurious exposure is November 8, 2015, which the record reflects was his last date of employment with Rex Coal. Multiple medical reports were introduced concerning the presence of CWP. Among the medical reports is that of Dr. Sanjay Chavda, who was selected by the Commissioner of the Department of Workers' Claims to conduct an evaluation. Relying upon Dr. Chavda's opinions, the ALJ found Begley suffered from Category 2/2 CWP with no large opacities and no pulmonary impairment attributable to coal dust. Since Dr. Chavda found Begley's FEV1 and FVC functions were greater than 80%, the ALJ determined Begley has a 25% disability rating. The ALJ entered an award of PPD benefits commencing on November 8, 2015, the last date of Begley's exposure to coal dust.

Rex Coal filed a petition for reconsideration asserting the ALJ erroneously relied upon Dr. Chavda's opinions set forth in his April 26, 2018, report. It also asserted the start date of the award of income benefits was contrary to statute.

Rex Coal's argument concerning the start date of the award mirrors its argument on appeal.

As previously noted, by Order dated August 31, 2018, the ALJ overruled Rex Coal's petition for reconsideration. The ALJ addressed Rex Coal's argument concerning the commencement date of the award with the following:

The Defendant/employer also argues on the commencement date of the benefits but attention is directed to the report of Dr. Chavda wherein he indicated Mr. Begley has had shortness of breath and cough for four years, which would be prior to him ceasing to labor. It is found the Plaintiff's last day of exposure is the appropriate commencement date of benefits. For the above reasons the Petition for Reconsideration is overruled.

Rex Coal argues the award must begin on the date the disability from CWP arose which it contends is January 20, 2017. It notes that KRS 342.316 directs the benefits begin on one of two dates; 1) the date of the employee's last injurious exposure to the cause of the disease; or 2) the date of actual disability, whichever is later. Rex Coal concedes Begley's last date of injurious exposure is November 8, 2015, but asserts the evidence reveals the date of actual disability occurred after the last date of injurious exposure. Acknowledging disability is not explicitly defined in KRS 342.0011, Rex Coal contends there is no meaning of disability that would allow a finding that the date of actual disability was prior to January 20, 2017, and there is absolutely no evidence that the actual disability began when employment ceased. Without citing to a medical opinion, Rex Coal contends Begley was not disabled until long after his employment with it ceased. It notes Begley confirmed he was laid off in November 2015 and subsequently received unemployment benefits for six months. It

maintains that in receiving unemployment benefits, Begley was required to verify he was physically capable of working and actively looking for work. Rex Coal maintains since Begley subsequently worked as a bus driver in March 2016, his physical condition at that time was not disabling and he possessed no limitations to his employment. Further, it asserts there is no evidence supporting a finding Begley suffered from CWP when he was laid off in November 2015. Rather, it posits the earliest indication of CWP is an x-ray performed and interpreted by Dr. Glen Baker on January 20, 2017. Rex Coal notes Begley confirmed up until that point he had never seen a physician for lung problems and Dr. Baker was the first physician to discuss CWP or black lung. Thus, there is no indication Begley had CWP prior to the findings of Drs. Chavda or Baker. Rex Coal argues pursuant to the statute any award of benefits cannot begin until sometime after the date of last injurious exposure which is January 20, 2017, when an x-ray was performed and interpreted by Dr. Baker. We disagree and affirm.

ANALYSIS

Begley, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including the initial date upon which he is entitled to income benefits. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Begley was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision on this issue. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant

consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An 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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, 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).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made 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). 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 other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

KRS 342.316(1)(b) reads as follows:

The time of the beginning of compensation payments shall be the date of the employee's last injurious exposure to the cause of the disease, or the date of actual disability, whichever is later.

The above language requires the ALJ to begin the award on either the date of last injurious exposure or the date of actual disability, whichever is the latter. Rex Coal's argument is based on the premise that Begley cannot be suffering from a disease prior to the fact he was actually examined and told he had contracted the disease. The fact Begley was first advised by a physician he had contracted CWP, in this case Dr. Baker, does not prevent a finding Begley actually suffered from the harmful effects of CWP prior to the time he saw Dr. Baker. We note Rex Coal is unable to point to any medical evidence establishing the date of actual disability is January 20, 2017. A review of the medical evidence reveals none of the physicians offered an opinion specifically addressing when Begley first began suffering from the harmful effects of CWP.

That said, as noted by the ALJ in his August 31, 2018, Order, Dr. Chavda's report indicates Begley had been suffering from complaints associated with CWP for four years which would have been prior to November 8, 2015, the date of last injurious exposure. Dr. Chavda's Form 108 reveals that when he saw Begley on April 26, 2018, he was provided the following history: "He has wheezing every day

for 4 years. He has shortness of breath with exertion such as walking for about 4 years, cough every day for 4 years. For 3 years he has had 1 pillow orthopnea.”

Clearly, the ALJ concluded the history Begley provided to Dr. Chavda establishes he initially began experiencing the effects of the disability approximately four years prior to April 26, 2018, which was well before Begley’s date of last injurious exposure. Moreover, according to Dr. Thomas Jarboe, Begley had been experiencing the symptoms of CWP four to five years prior to his June 22, 2017, examination, again, well before the date of Begley’s last injurious exposure on November 8, 2015. Dr. Jarboe’s history reads in relevant part as follows:

Mr. Begley is short of breath walking 100 yards on level ground at a regular pace. He has noted this for the last 4 to 5 years. He has a daily cough that is mostly dry. His chest wheezes every now and then. He estimates he will wheeze 2 to 3 days of the week. He uses a metered-dose inhaler 4 to 5 times per week. He does not have to use the inhaler often at night. He says that he cannot sleep on his back because he feels like there is pressure in his chest. His wheezing and shortness of breath are worse with perfumes.

The reports of Drs. Chavda and Jarboe support a finding the date of actual disability began well before Begley’s date of last injurious exposure. That being the case, the reports of Dr. Chavda and Dr. Jarboe constitute the requisite medical evidence supporting the ALJ’s determination to begin the award on the date of Begley’s last injurious exposure to the cause of CWP. The reports of at least two physicians firmly support the finding Begley was suffering from the effects of CWP and the actual disability commenced well before he stopped working at Rex Coal. Consequently, the ALJ’s start date of the award is in conformity with the directive of KRS 342.316(1)(b). Since substantial evidence supports the ALJ’s determination that

Begley's date of last injurious exposure to the cause of CWP is the point at which the compensation payments must begin, his decision must be affirmed.

ALL CONCUR.

DISTRIBUTION:

METHOD

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