

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: May 31, 2019

CLAIM NO. 201800176 & 201800130

ROBERT LEE MAXIE

PETITIONER

VS.

APPEAL FROM HON. JOHN H. MCCRACKEN,  
ADMINISTRATIVE LAW JUDGE

L.M. WRIGHT TRUCKING, INC.,  
And HON. JOHN H. MCCRACKEN,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**RECHTER, Member.** Robert Lee Maxie appeals the December 21, 2018 Opinion and Order and the January 24, 2019 Order on Reconsideration rendered by Hon. John H. McCracken, Administrative Law Judge (“ALJ”). The ALJ dismissed Maxie’s claim for a cumulative trauma injury to his low back. Maxie argues the

ALJ's conclusions are unsupported by substantial evidence. For the reasons set forth herein, we affirm.

Maxie worked as a heavy equipment operator and truck driver for thirteen years with L.M. Wright Trucking, Inc. He worked for other employers for an additional eleven years performing similar work. Maxie testified about the physical demands of his job, which included changing tires on large machinery, constant jarring and vibrating, heavy lifting, twisting and pulling. He began to experience low back pain fifteen years ago, which gradually worsened. He testified that during the last two years of his employment, his symptoms worsened significantly and included right leg, back, muscle spasms, and numbness in his legs.

Maxie visited Dr. Kevin Gooch on May 29, 2015. He reported low back pain off and on for fifteen years, which had increased significantly in the past year. Dr. Gooch diagnosed chronic low back pain and prescribed non-narcotic pain medication and physical therapy. He later ordered a lumbar MRI which revealed herniation at L4-5 and L5-S1. Upon reviewing the MRI, Dr. Gooch referred Maxie to Dr. Duane Densler, a neurosurgeon. Dr. Densler did not recommend surgery, and performed an injection which provided no relief. Thereafter, Maxie treated with Pikeville Pain Management for chronic low back pain through 2016. He resigned on February 28, 2016, due to pain.

Dr. Bruce Guberman conducted an independent medical evaluation ("IME") on December 11, 2017. Maxie reported ongoing low back pain for seventeen years. Dr. Guberman reviewed the 2015 lumbar MRI and Maxie's treatment records with Drs. Gooch and Densler. He diagnosed chronic strain of the lumbosacral spine and

degenerative disc disease. He opined the diagnoses were due to cumulative trauma related to Maxie's work.

Dr. Daniel Primm conducted an IME on April 13, 2018. He performed a physical examination and reviewed medical records. Dr. Primm diagnosed mild mechanical low back pain with very early degenerative changes at L5-S1. He opined Maxie's degenerative changes are consistent with his age. Dr. Primm stated there was no evidence to conclude Maxie's low back symptoms are related to his work activities.

Following Dr. Primm's IME, Maxie began treating with Dr. April Hall for back, neck and knee pain. In an August 9, 2018 letter, Dr. Hall diagnosed lumbar radiculopathy. She stated the 2015 MRI, as well as Maxie's loss of lumbar range of motion and reported muscle weakness, substantiated this diagnosis.

In a September 12, 2018 Addendum, Dr. Primm stated he had reviewed Dr. Hall's letter and treatment notes. He disputed the conclusion Maxie suffered a cervical or lumbar disc herniation. He reiterated his opinion that Maxie's current complaints are unrelated to his work activities.

The ALJ articulated several factors which led to his determination that Maxie's lumbar complaints are not work-related. He cited the fact Maxie's symptoms continued even after he resigned from work in February 2016, and were significant enough after this date to require ongoing treatment and pain management. The ALJ also noted that no treating physician attributed Maxie's condition to his work. Though Dr. Primm erroneously cited Maxie's age as 51, when in fact he was 48, the ALJ nonetheless was persuaded by his opinion that the MRI showed normal, age-

related degeneration. In dismissing the cumulative trauma injury claim, the ALJ relied upon Dr. Primm's opinion that Maxie's lumbar condition was not caused by his work.

Maxie petitioned for reconsideration, which was denied as a re-argument of the merits of the claim. On appeal, Maxie first argues it was improper for the ALJ to rely on the fact that no treating physician provided an opinion as to the cause of his lumbar condition. Second, he asserts Dr. Primm's impairment rating was not assessed in conformity with the American Medical Association Guides to the Evaluation of Permanent Impairment, 5<sup>th</sup> Edition ("AMA Guides"). Finally, Maxie claims the ALJ's conclusions are unsupported by substantial evidence and reflect a misapplication of the law.

Maxie's first argument is without merit. He challenges the ALJ's statement that none of Maxie's treating physicians provided an opinion that his lumbar condition is work-related. Maxie emphasizes that the absence of proof is not evidence in and of itself. However, the ALJ did not rely solely on this circumstance in dismissing Maxie's claim. He articulated several factors which led to the ultimate conclusion. We find no error in the ALJ's exercise of his discretion to assess the totality of the proof and to determine all reasonable inferences to be drawn therefrom. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997).

Maxie next argues Dr. Primm's examination was not conducted in accordance with the AMA Guides. He states Dr. Primm did not review the entire medical history prior to the IME examination, did not use the required instruments to record lumbar range of motion, mistakenly implied nerve root compression or disc

herniation were required to assess impairment, erroneously referred to Dr. Guberman as a cardiologist, and concluded Maxie's MRI showed degeneration normal for a 51 year-old man when in fact Maxie was 48 at the time of the examination. Even if accepted as true, however, these deficits would only invalidate Dr. Primm's impairment rating. KRS 342.730(1)(b) requires the use of the AMA Guides in assessing an impairment rating. The ALJ relied upon Dr. Primm's opinion as to causation. To the extent Maxie has identified errors or bias in Dr. Primm's evaluation, these arguments go to the weight to be afforded the opinion, not to its reliability. It is not the function of this Board to reassess the proof and reach alternate conclusions. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999).

Maxie next challenges the sufficiency of the evidence supporting the ALJ's conclusions. For the reasons stated above, we find no deficiency in the reliability of Dr. Primm's medical opinion as to the cause of Maxie's lumbar condition. Dr. Primm conducted an evaluation and opined Maxie's lumbar condition is degenerative and age-related. This opinion constitutes the requisite substantial evidence to support the ALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

In dismissing Maxie's cumulative trauma injury claim, the ALJ referenced the testimony of Maxie's co-worker Michael Wright. Mr. Wright testified as to Maxie's regular work duties, and to a certain extent discounted the degree of heavy labor involved. Maxie argues this testimony was insufficient to disprove Dr. Guberman's otherwise reliable opinion as to causation. This argument misstates the burden of proof required by a worker's compensation claimant. Maxie bore the burden of proof and the ALJ was not required to assess whether sufficient evidence was presented to

disprove his *prima facie* case. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Maxie 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). Dr. Primm's opinion alone is sufficient to support the ALJ's conclusions. As such, we cannot conclude the evidence compelled a particular result.

Finally, Maxie asserts the ALJ disregarded the reality that the arousal of normal degenerative changes into active impairment is compensable. Again, we conclude Dr. Primm's medical opinion is substantial evidence upon which the ALJ was entitled to rely. Dr. Primm concluded Maxie suffered no work-related trauma to his lumbar spine. As to the assertion that Dr. Primm was not made aware of Maxie's job requirements, we note Dr. Primm stated he reviewed Dr. Guberman's IME report which contained a detailed recitation of the position.

Further, the ALJ specifically acknowledged that trauma can arouse dormant degenerative changes, and such injury is compensable. Nonetheless, the ALJ was persuaded such work-related trauma had not occurred in this claim. In essence, Maxie has requested this Board to reweigh the proof in this claim and reach a conclusion in his favor. Where the ALJ's conclusions are supported by substantial evidence, as in this claim, we are not at liberty to reverse.

Accordingly, the December 21, 2018 Opinion and Order and the January 24, 2019 Order on Reconsideration rendered by Hon. John H. McCracken are hereby **AFFIRMED**.

**ALL CONCUR.**

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

HON. SHERRY BRASHEAR  
PO BOX 1626  
HARLAN, KY 40202

**LMS**

**COUNSEL FOR RESPONDENT:**

HON. GUILLERMO A. CARLOS  
444 WEST SECOND STREET  
LEXINGTON, KY 40507

**LMS**

**ADMINISTRATIVE LAW JUDGE:**

HON. JOHN H. MCCRACKEN  
ADMINISTRATIVE LAW JUDGE  
PREVENTION PARK  
657 CHAMBERLIN AVENUE  
FRANKFORT, KY 40601

**LMS**