

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 12, 2018

CLAIM NO. 200300607

ROBERTA ROSE

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

AISIN AUTOMOTIVE CASTINGS
And HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. Roberta Rose appeals from the May 30, 2018 Opinion and Order and the June 29, 2018 Order on Reconsideration rendered by Hon. Chris Davis, Administrative Law Judge ("ALJ"). Aisin Automotive Castings filed a medical fee dispute to contest the compensability of a proposed left shoulder surgery. The ALJ determined the proposed surgery is not causally related to Rose's work-

related right shoulder condition, and dismissed the claim. Rose now appeals, arguing the ALJ's decision is not supported by substantial evidence. We affirm.

Rose suffered a fall while working at Aisin on July 18, 2001. She filed a claim for a right shoulder injury, which required surgery to repair a torn rotator cuff. The parties settled the claim by agreement dated May 7, 2004, and Rose retained her right to future medical benefits.

Prior to 2017, both parties moved to reopen the claim on numerous occasions. In 2007 and in 2011, Rose successfully established her right shoulder condition had worsened, and was awarded increased permanent partial disability benefits. On April 23, 2017, Rose again moved to reopen the claim to allege a left shoulder condition.

Rose testified she has not worked since 2003, and first began to notice symptoms in her left shoulder in early 2016. She noted the pain gradually increased, and did not appear to be associated with any particular activity. Rose stated her belief that her left shoulder pain developed because she relied on that arm as a result of her right shoulder injury.

Dr. Ryan Donegan is Rose's treating orthopaedist. He performed surgery on her right shoulder in 2011, and first evaluated her for left shoulder complaints on November 9, 2015. On that date, Dr. Donegan's physical examination revealed slow and moderately painful forward elevation in the left shoulder. On December 21, 2015, he diagnosed a left shoulder rotator cuff tear. Although Dr. Donegan did not offer an express opinion as to the cause of Rose's left shoulder condition, he noted the following in a portion of his records entitled

“subjective”: “She has been doing a lot of repetitive use activities with this left shoulder as a result of her right shoulder being pretty significantly debilitated from her four time operated on right shoulder.”

Dr. Marcia Atienza evaluated Rose on April 21, 2017. Dr. Atienza took a history of gradually developing left shoulder pain, but noted that no left MRI had been obtained. Nonetheless, Dr. Atienza concluded Rose “clearly” has a left rotator cuff tear and insufficiency based on her physical findings. She stated the condition is most likely overuse syndrome based on Rose’s history and her physical examination.

Dr. David Muffly conducted an independent medical evaluation (“IME”) on October 11, 2017. Rose reported left shoulder pain with decreased motion and weakness. Dr. Muffly’s physical examination revealed diminished rotator cuff strength in the left shoulder, with positive impingement and grinding. He diagnosed chronic left shoulder pain with loss of range of motion, which he opined is consistent with a left rotator cuff tear. He assigned a 4% impairment rating for the left shoulder condition, which he attributed to “cumulative trauma related to residual impairments of her right shoulder.” He recommended a left shoulder MRI and assigned restrictions.

Dr. Rick Lyon conducted an IME on March 2, 2018. Rose reported a burning sensation, pain and weakness in her left shoulder. Dr. Lyon found reduced strength and range of motion in Rose’s left shoulder. His review of Rose’s medical records indicate he received a December 1, 2017 MRI report of the left shoulder, which revealed a full thickness left rotator cuff tear.

Dr. Lyon diagnosed a left rotator cuff tear, and agreed with Dr. Donegan's recommendation for a left shoulder arthroscopy. However, he disagreed her left shoulder pathology is a result of overuse of the right arm. He explained:

[R]ecent scientific articles confirm that the etiology of the rotator cuff disease is likely multifactorial. There are contributions from external compression, from age-related degeneration, from trauma and even vascular abnormalities. Despite controversy regarding the importance of these factors, most investigators believe that the compression from the anterior acromion, the coracoacromial ligament and the acromioclavicular joint plays a significant role in the development of rotator cuff disease by the time treatment is considered. The acromion may be congenital or developmental variations in shape and slope or, along with the distal clavicle, may also become spurred with aging (osteophytes), generally due to degenerative arthritis of the acromioclavicular joint. If the osteophytes project inferiorly, they often impinge on and abrade the underlying bursa and tendon.

Contemporary medical science has revealed strong evidence for increased age, elevated BMI, biopsychosocial factors and sustained shoulder postures with more than 60 degrees of flexion or abduction as risk factors for the development of shoulder tendinopathy, impingement and rotator cuff tears. In conclusion, it is my opinion that the left shoulder rotator cuff tear is unrelated to the subject work event or to overuse of the left shoulder. Therefore, it is my opinion any additional treatment for the left shoulder is unrelated to the work event.

Upon review of the proof, the ALJ ultimately dismissed the claim for a left shoulder injury as not work-related. The ALJ stated his reliance on Dr. Lyon's opinion, which identified age and weight as possible factors in the development of rotator cuff pathology. The ALJ noted Rose's advanced age and her weight.

Rose filed a petition for reconsideration, raising the same arguments now made on appeal. The ALJ reiterated his reliance on Dr. Lyon's opinion and denied the petition. Rose now argues the ALJ's decision is not in conformity with KRS Chapter 342, that the decision is clearly erroneous, and is the product of an abuse of discretion.

Though presented as three distinct arguments, each allegation essentially is a challenge to the sufficiency of the evidence supporting the ALJ's decision. Because Rose was unsuccessful in establishing work-relatedness, 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).

The ALJ's decision is supported by substantial evidence. Dr. Lyon conducted a physical examination and reviewed Rose's medical history since her original right shoulder injury. He thoroughly explained his rationale, and his medical opinion that her right shoulder limitations did not cause her left shoulder rotator cuff tear. As fact-finder, the ALJ is entitled to rely on his opinion to support the ultimate conclusion. The fact Dr. Muffly opined otherwise is not a basis for this Board to reverse the ALJ's decision. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d

46 (Ky. 1974). When the ALJ's decision is supported by substantial evidence, such as Dr. Lyon's opinion, this Board is not at liberty to re-weigh the proof and reach a different conclusion.

For the foregoing reasons, the May 30, 2018 Opinion and Order, and the June 29, 2018 Order on Reconsideration rendered by Hon. Chris Davis, Administrative Law Judge, are hereby **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

STIVERS, MEMBER, NOT SITTING.

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