Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 26, 2019

CLAIM NO. 201600522

TIMOTHY W. ARMSTRONG PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

GENERAL ELECTRIC COMPANY and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. Timothy Armstrong ("Armstrong") appeals from the December 21, 2018 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"), finding he failed to prove a work-related injury as defined by the Act and dismissing his claim against General Electric ("G.E."). Armstrong also appeals from the January 31, 2019 order denying his petition for reconsideration.

On appeal, Armstrong argues the ALJ failed to provide a sufficient analysis supporting his dismissal of the claim. Armstrong also argues the ALJ committed reversible error by dismissing his claims for work-related left shoulder, left arm, neck, rib, and bilateral hand and wrist conditions. Because we determine the ALJ performed the appropriate analysis, and substantial evidence supports his determination with no contrary result compelled, we affirm.

Armstrong filed a Form 101 alleging he developed left shoulder, arm, and neck pain while working on December 8, 2015. He also alleged he began experiencing right hand and wrist pain on January 5, 2016. In the Form 104, Armstrong indicated his employment experience included working as a material handler, tool and die worker, press operator, laborer at an automobile body shop, and repairman at a tobacco company.

Armstrong testified by deposition on May 26, 2016 and August 22, 2017. He also testified at the hearing held October 23, 2018. Armstrong was born on May 31, 1961, and is a resident of Taylorsville, Kentucky. He is a high school graduate with vocational training in tool and die, for which he received a certificate. He also received some automobile body training, but did not complete the course.

Armstrong began working for G.E. on January 2, 2007, and continued to work there until Haier purchased it on June 6, 2016. He continues to work for Haier. He testified he was working forty hours per week at the time of his alleged injuries. Armstrong testified he had previously experienced a right shoulder injury while working for G.E. in 2008 or 2010, for which he treated with Dr. Thomas Loeb, but he missed no time from work due to that incident. He additionally testified his

shoulders began bothering him in 2010, first his right, then his left. He also testified he had broken his right thumb in the past, and suffered a "small" heart attack in 2015.

Armstrong alleged he developed left shoulder, arm, and neck problems while working on December 8, 2015. At the hearing, he testified that while doing his job, he developed sudden left arm and rib pain. He went to G.E. medical because he did not feel well and was dizzy. He initially believed he may be having another heart attack. He was taken by ambulance to Baptist East Hospital due to a concern about his previous heart issues. After it was determined that he did not have a heart attack, an MRI was performed on the left shoulder, and he was referred to Dr. Scott Kuiper. In addition to the medical treatment received, Armstrong treated with Dr. James Bowles, D.C., who "popped" his left shoulder into place.

Armstrong also testified that on January 5, 2016, he reported to G.E. medical that he had right hand and thumb problems. He testified this had been bothering him for over a year at the time he reported it. He was referred to Dr. Thomas Gabriel who administered multiple injections without relief. He testified Dr. Gabriel advised he could do nothing else for him.

Armstrong has been evaluated by or treated with numerous physicians. By the time of his second deposition, Armstrong had undergone a rib resection on September 12, 2016, as well as a right carpal tunnel release and right thumb surgery on March 12, 2017. Armstrong missed various periods of work due to his multiple complaints and surgeries. He was released to return to work multiple times without restrictions. He worked regular duty until September 7, 2018 when he

was taken off due to an unrelated foot issue. He testified he continues to experience left shoulder pain into his neck on a daily basis. He also testified he experiences tingling and numbness down his left arm when he picks up items. He also indicated his ribs tingle, and he has pain down his left arm.

At the hearing, Armstrong testified about his job duties, and the physical activities required to perform those tasks. He specifically testified he lifts twenty-four to twenty-nine pounds approximately one-hundred and fifty times per shift. He also testified that Dr. Scott B. McClure performed left shoulder surgery on September 5, 2017.

In support of his claim, Armstrong filed Dr. Scott Kuiper's office notes. On February 23, 2016, Dr. Kuiper noted Armstrong's left shoulder pain gradually developed over three years, but it worsened at work in December 2015. He noted Armstrong had treated for left parascapular shoulder pain, and he administered an injection on the last visit. Armstrong also complained of pain around the trapezius and the base of the neck. Armstrong additionally related symptoms down his left arm with numbness. Dr. Kuiper recommended EMG/NCV studies. He also noted Armstrong's left shoulder was not particularly tender, and there were no findings of significant impingement. X-rays taken February 17, 2016, revealed moderate spondylosis at C5, C6, and C7. He diagnosed left parascapular pain, left shoulder joint pain, strain of muscle fascia and tendon at the neck level, cervical radiculitis, and cervical spondylosis with radiculopathy.

Dr. James Farrage evaluated Armstrong on two occasions. In his May 18, 2016 report, he noted a history of a December 8, 2015 work injury caused by

repetitive lifting and carrying of boxes. He noted those activities caused Armstrong to develop neck and shoulder pain extending to the hand. He additionally noted Armstrong continued to work light duty. He diagnosed left thoracic outlet syndrome with co-morbidities of cervical spondylosis with chronic left C6-C7 radiculopathy, bilateral carpal tunnel syndrome, left ulnar neuropathy at the elbow, left wrist mid carpal osteoarthritis, and left flexor tendinitis. He stated the conditions were consistent with the "proposed mechanism of injury". Dr. Farrage stated Armstrong should remain on light duty, and he lacks the physical capacity to perform his previous job. He determined Armstrong had not reached maximum medical improvement ("MMI"); therefore, he could not assess an impairment rating.

Dr. Farrage again examined Armstrong on January 31, 2018. He stated Armstrong primarily complained of left upper extremity problems, but he also noted complaints of cervical and contralateral issues. Armstrong complained of left shoulder and neck pain, exacerbated by activities. He did not complain of numbness or weakness, and Dr. Farrage noted no interval decline in Armstrong's focal neurological state. Dr. Farrage diagnosed Armstrong as status post VAT surgery with first rib resection for thoracic outlet syndrome, status post CMC arthroplasty (right thumb), status post bilateral carpal tunnel releases, status post arthroscopic left rotator cuff repair, cervical spondylosis C5-6 and C6-7, right mid carpal degenerative joint disease, bilateral flexor tendinitis, and left cubital tunnel syndrome based upon electro-diagnostic criteria. He opined repetitive trauma caused all of these conditions. He determined Armstrong had reached MMI, and assessed a 13% impairment rating pursuant to the 5th Edition of the American Medical Association,

Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Farrage indicated Armstrong should avoid lifting a maximum of over fifty pounds, or twenty-five pounds frequently. He also stated Armstrong should avoid working above his shoulder, and avoid repetitive wrist gripping and grasping.

Dr. Robert Jacob evaluated Armstrong on three occasions at G.E.'s request. Dr. Jacob first evaluated Armstrong on June 28, 2016. Dr. Jacob outlined Armstrong's medical treatment, and specifically noted he had seen Dr. Loeb who had previously treated him in 2012. He noted that Dr. Loeb found no abnormalities. He additionally noted Armstrong reported he had experienced right wrist pain and soreness for one year prior to his alleged January 2016 injury. Dr. Jacob found that Armstrong had not sustained a left shoulder injury and was capable of returning to his regular job at G.E. He also determined Armstrong did not sustain work-related carpal tunnel syndrome or wrist injuries. He found no evidence of thoracic outlet compression, nor findings suggestive of radiculopathy. He saw no need for treatment with injections. He found Armstrong might have had a mild left trapezius strain (resolved), and age-related mild degenerative arthritis. He stated no additional treatment is necessary.

Dr. Jacob next saw Armstrong on June 28, 2017. Armstrong reported continued problems with his left upper extremity. Dr. Jacob noted the complaints were "diffuse numbness and tingling in his left arm in a nonspecific distribution, nonspecific and unfocal pain in his left shoulder, and difficulty with breathing which included dyspnea with exertion, shortness of breath, and dizziness." He noted Dr. Robert Linker had performed a rib resection for thoracic outlet compression based

upon a vascular Doppler study. He noted Dr. Linker stated Armstrong continued to have complaints due to his left shoulder, not thoracic outlet compression. Dr. Jacob found all tests performed during physical examination were negative, just as they had been one year earlier. He specifically stated Armstrong's carpal tunnel syndrome and cubital tunnel syndrome are not work-related. He found the surgery on the right wrist and thumb were not for work-related conditions. He additionally stated there is no evidence Armstrong ever suffered from thoracic outlet compression. Dr. Jacob opined, "there is no work relationship or causation of his left upper extremity or right wrist and hand problems" due to Armstrong's alleged work-related injuries. He found no additional treatment is needed, and the thoracic outlet surgery was not reasonable and necessary. Dr. Jacob determined Armstrong's subjective complaints are inconsistent with his objective findings, and are not supported by the findings on physical examination.

Dr. Jacob next examined Armstrong on July 25, 2018. He noted Armstrong continued to complain of left shoulder pain and left carpal tunnel problems, with tingling and numbness radiating from the posterior left shoulder into all five fingers. He noted Dr. McClure performed a left shoulder arthroscopy in September 2017 for removal of bone spurs, and a left carpal tunnel release. He noted Armstrong had performed regular work duties prior to the surgery. He noted Armstrong now complains of right shoulder problems due to a March 2018 incident at work. Dr. Jacob noted Armstrong's left shoulder range of motion had improved since his last examination, and that he had returned to work despite his multiple surgeries. Dr. Jacob found Armstrong has a 5% impairment rating pursuant to the

AMA Guides for his right thumb surgery, but it is not work-related. He additionally noted Dr. Michael Nicoson reported Armstrong's left shoulder range of motion problems on January 8, 2018 were significantly better and inconsistent with Dr. Farrage's findings only a couple of weeks later. Dr. Jacob diagnosed Armstrong as status post left distal clavicle excision and biceps tenodesis with non-occupational age-related degenerative changes (successfully treated with arthroscopic surgery), normal cervical spine, status post first rib resection for reported thoracic outlet compression, bilateral carpal tunnel syndrome (status post releases) not occupationally related, non-work-related right wrist arthritis and metacarpal arthritis successfully treated with arthroplasty, and mild right shoulder bursitis and strain – resolved. Dr. Jacob also found no evidence of overuse repetitive trauma. He also assessed a 6% impairment rating pursuant to the AMA Guides for the distal clavicle resection, but also found it is not work-related. He stated Armstrong can continue to work without restrictions.

G.E. filed Dr. McClure's treatment records. The records contain an undated letter with the notation it was faxed on July 5, 2016, in response to a May 23, 2016 letter he received from Venise Johnson with Electric Mutual Insurance. Dr. McClure noted he saw Armstrong on May 14, 2016 for diffuse symptoms involving the neck and upper extremity, which he indicated could be related to cervical radiculopathy. He also stated he could not exclude a diagnosis of thoracic outlet syndrome. He noted Armstrong did not report a "discrete" injury. He noted Armstrong may have experienced a panic attack, and had difficulty describing the

event. He stated he was unable to determine whether Armstrong's problems were caused by his work.

On May 14, 2016, Dr. McClure noted Armstrong reported diffuse symptoms. Armstrong stated his symptoms were work-related, and had been present for six months. Armstrong reported he engaged in a lot of heavy lifting at work. He also reported a chiropractor had "popped" his shoulder into place, but certain movement caused him to experience pain and numbness. Dr. McClure diagnosed left shoulder pain with possible thoracic outlet compression, and he referred Armstrong to Dr. Linker. Dr. McClure limited Armstrong's activities to no repetitive use of the left upper extremity, no overhead use of the left arm, and no lifting greater than five pounds.

G.E. filed Dr. Loeb's June 28, 2016 report. Dr. Loeb stated he saw Armstrong on December 30, 2015. On examination, he found no specific pathology from Armstrong's neck, shoulder, or nerve compression. He noted Armstrong's reference to left shoulder complaints with no reference to a work-related injury. He found Armstrong's left shoulder and upper extremity were normal with no complaints suggestive of thoracic outlet compression, carpal tunnel syndrome, or cervical radiculopathy, nor did he find any complaints consistent with neurogenic origin. Dr. Loeb specifically stated, "I cannot find any objective evidence in the record supplied to me that supports any work relatedness to the presumptive diagnoses of shoulder or cervical pathology or thoracic outlet syndrome or carpal tunnel syndrome or left cubital tunnel syndrome." In his December 30, 2015 note, Dr. Loeb stated he saw Armstrong for complaints of the left shoulder grinding with

no particular complaint of pain. Dr. Loeb stated that despite Armstrong's fear of shoulder subluxation there was no injury that could have caused such condition. Dr. Loeb stated Armstrong had full range of motion, no left shoulder tenderness, and no evidence the shoulder had ever been subluxed. He also noted the left shoulder x-rays were within normal limits. Dr. Loeb's records also indicate he treated Armstrong in 2012 for right shoulder and scapular pain that had existed for two years.

G.E. filed Dr. Linker's April 18, 2017 letter to Dr. Kenneth Oder, Armstrong's primary care physician. He had seen Armstrong for a follow-up of the left VAT with first rib resection performed on September 12, 2016. Armstrong still complained of chest wall discomfort and problems with both shoulders. He noted Armstrong had recently undergone right carpal tunnel release surgery. He diagnosed Armstrong with atopic rhinitis, anxiety, chronic coronary artery disease, chronic rhinitis, dry eyes, family history of malignant neoplasm of prostate, GERD, myocardial infarction, lipoma of skin and subcutaneous tissue of the neck, obstructive sleep apnea, palpations, seborrheic keratosis, dyspnea on exertion, left hand paresthesias, cervicalgia, left arm pain, and thoracic outlet syndrome. Dr. Linker noted Armstrong had good muscle strength in all groups in both upper extremities, and had limited range of motion of the left shoulder. He found Armstrong had reached MMI for the first rib resection surgery, and could return to full duty work with no restrictions.

G.E. filed Dr. Nicoson's treatment notes for nine visits between October 21, 2016 and July 17, 2017. Dr. Nicoson noted Dr. McClure referred Armstrong to him for complaints of chronic right wrist pain. An MRI showed

arthritic right thumb changes. He noted previous injections by Dr. Gabriel did not improve Armstrong's conditions. He noted Armstrong had recently undergone a left cervical rib resection for thoracic outlet compression, and the right wrist caused difficulty with right forearm rotation. On November 4, 2016, Dr. Nicoson diagnosed unilateral priory osteoarthritis of the first carpometacarpal joint of the right hand and right wrist tendonitis. On December 12, 2016, he noted that right thumb surgery might be necessary and he needed a right shoulder work-up. On March 20, 2017, Dr. Nicoson noted Armstrong was post-op for right thumb surgery. He stated Armstrong could return to work with no restrictions on the non-operated hand. On July 7, 2017, Dr. Nicoson stated Armstrong had no right hand tenderness and could return to work with no restrictions.

G.E. additionally filed records from its medical department reflecting the reports and notes it had received from the various medical providers as reflected above. G.E. also filed the MRI and arthrogram reports from Highfield and Open MRI. A cervical MRI dated February 25, 2016 noted mild left posterolateral disc spondylosis and left foraminal stenosis at C5-C6 and C6-C7, and fatty lesion which was most likely a lipoma. The January 26, 2016 arthrogram and MRI noted Armstrong most likely had a superior labral tear, mild supraspinatus tendinopathy/ tendinitis (no evidence of rotator cuff disruption), mild bursitis, and mild to moderate degenerative changes in the subacromial space.

A Benefit Review Conference was held on October 3, 2018. The issues listed include whether Armstrong retains the capacity to return to the work performed at the time of injury, benefits per KRS 342.730, work-relatedness/

causation, unpaid/contested medical expenses, injury as defined by the Act, credit for wages paid, exclusion for pre-existing disability/impairment, application of multipliers, and retroactivity of the changes to the Workers' Compensation Act.

The ALJ rendered his decision dismissing Armstrong's claim on December 21, 2018. The ALJ outlined the evidence of record, and concluded Armstrong's claims of injury caused by overuse syndrome and cumulative trauma are not work–related, and dismissed his claim. The ALJ noted the evidence and opinions supporting his determination regarding each aspect of Armstrong's complaints and claims.

Armstrong filed a Petition for Reconsideration on January 4, 2019, arguing the ALJ erred by dismissing his claim "against the overwhelming weight of the medical and lay evidence of record". Armstrong argued G.E. had admitted to at least a portion of his claim by paying temporary total disability ("TTD") benefits from May 22, 2016 through July 10, 2016, and by paying a portion of his medical benefits. Armstrong also argued the ALJ did not adequately analyze the evidence for a cumulative trauma claim. He also argued the ALJ should have found at least a temporary injury, and requested additional findings of fact. The ALJ denied the petition by order dated January 31, 2019, as merely a re-argument of the merits of the claim.

As the claimant in a workers' compensation proceeding, Armstrong had the burden of proving each of the essential elements of his cause of action, including causation/work-relatedness. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he 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). "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).

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 discretion to determine 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse 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 the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky.

1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

We find substantial evidence supports the ALJ's determination Armstrong failed in his burden of proving he sustained work-related injuries and a contrary result is not compelled. Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995). When the question of causation involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts and an ALJ is not justified in disregarding the medical evidence. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Medical causation must be proven by medical opinion within "reasonable medical probability." Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980).

The ALJ clearly reviewed the evidence of record, and noted that the only physician who specifically determined Armstrong's conditions are work-related was Dr. Farrage. The ALJ outlined why he did not find Dr. Farrage's opinions persuasive, and why he relied upon other opinions and records in evidence. We acknowledge that G.E. paid a period of TTD and medical benefits. However, as G.E. argues in its brief, such payments do not preclude an argument and finding that it has no liability for Armstrong's alleged injuries. Western Casualty and Surety Co.

v. Adkins, 619 S.W.2d 502 (Ky. App. 1981), General Electric Company v. Morris, 670 S.W.2d 854 (Ky. 1984). As noted by G.E., those payments were made prior to receipt of Dr. McClure's letter stating he was unable to determine whether Armstrong's complaints are work-related.

Armstrong essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ, which we cannot do. Whittaker v. Rowland, supra. It was the ALJ's prerogative to rely upon evidence contrary to that relied upon by Armstrong in dismissing the claim. While we acknowledge Armstrong is able to point to conflicting evidence supporting a more favorable outcome, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., supra. Because substantial evidence supports the ALJ's determination, he performed an appropriate analysis, and a contrary result is not compelled, his decision shall remain undisturbed.

Accordingly, the December 21, 2018 Opinion and Order dismissing Armstrong's claim, and the January 31, 2019 Order on petition for reconsideration by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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