

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 11, 2019

CLAIM NO. 201772509

TONY SEXTON

PETITIONER

VS. **APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE**

RESOURCE MFG. and
HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Tony Sexton (“Sexton”) appeals from the Opinion and Order rendered by Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”) on August 27, 2018. The ALJ found Sexton failed to prove he sustained a work-related left knee injury on June 26, 2017 while working for Resource, Mfg. (“Resource”), despite the fact he was involved in a work-related incident on that date. Sexton also appeals from the September 18, 2018 order denying his petition for reconsideration.

On appeal, Sexton argues the ALJ erred in dismissing his claim. He argues Resource bore the burden of proving his left knee condition was pre-existing active, and he sustained no work injury. He additionally argues the ALJ erred in concluding his left knee condition was active, and pre-existed the work-event, and that he sustained no harmful change due to the work incident. He also argues the ALJ's determinations are in direct contravention of the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). We determine the ALJ appropriately considered the evidence presented, and did not err in dismissing Sexton's claim. Therefore, we affirm.

Sexton filed a Form 101 on January 29, 2018, alleging he injured his left knee on June 26, 2017 in a twisting incident while working for Resource in Georgetown, Kentucky. Sexton did not file a Form 104 employment history in support of his claim.

Sexton testified by deposition on March 26, 2018, and again at the hearing held on June 26, 2018. Sexton was born on May 11, 1983. He completed the tenth grade, and has no specialized or vocational training. He also testified that he has never previously filed a workers' compensation claim. His work history includes operating forklifts, floor jacks and bobcats while unloading trucks, and working as a general warehouseman for various employers. Resource provided employees to work at the Toyota plant in Georgetown, Kentucky. His job involved loading parts onto trollies which were used in the assembly process. Part of his job required using an overhead crane to move batteries for hybrid vehicles. He was performing this portion of his job at the time of his alleged injury.

On June 26, 2017, Sexton was utilizing an overhead crane to move a hybrid battery. As he was maneuvering the battery with a crane, he turned to move. He testified that the cable utilized to move the crane became twisted, and something popped, lifting him up and pushing him backward. When he came down, he twisted his left knee and experienced pain. He immediately reported the incident to his supervisor. He testified he experienced left knee instability after the incident. He sought medical treatment and underwent a brief course of physical therapy, which did not improve his condition. Sexton continued to work on light duty for one to two weeks after the incident, until Dr. Michael Heilig took him off work. He testified he has continued to experience symptoms in his left knee since the incident with some days worse than others. He testified his symptoms include pain, bruising and swelling, and his left knee occasionally goes out.

Sexton admitted he had previously experienced left knee problems in late 2016, which were temporary in nature, and went away two days after he treated with Dr. Heilig. He testified he had no more left knee problems until the work incident in June 2017. He stated his left knee symptoms were much worse after the June 2017 incident than he had previously experienced. He also recalled a previous left knee sprain he experienced years before. He has not returned to work since Dr. Heilig took him off, and does not believe he can perform the full range of his work duties.

In support of his claim, Sexton filed Dr. Heilig's July 17, 2017 office note. Dr. Heilig, an orthopedic surgeon, noted Sexton was well known to his practice. Sexton reported a left knee injury three weeks prior when an overhead

hoist malfunctioned, causing him to fall and twist his left knee. An MRI showed Sexton has medial and lateral meniscus tears, an ACL tear, and bone bruising at the base of the ACL. Dr. Heilig diagnosed Sexton with left knee medial meniscus, lateral meniscus and ACL tears. He noted Sexton wished to proceed with left knee arthroscopy, partial medial and lateral meniscectomies, chondroplasty, and possible ACL reconstruction.

Sexton also filed the Form 107-I report of Dr. Anthony McEldowney, who evaluated him on February 6, 2018. Dr. McEldowney noted the history of left knee injury while using a crane to move a hybrid battery. Sexton related a history of previous left knee injuries which did not require therapy or an MRI, and noted he continued to work. Dr. McEldowney diagnosed Sexton with a left ACL tear/disruption, caused by the June 26, 2017 work injury. He noted Sexton reported residual pain and giving way of the left knee. He determined Sexton had reached maximum medical improvement (“MMI”) by September 26, 2017 because he is not interested in surgery. Dr. McEldowney assessed a 7% impairment rating pursuant to the AMA Guides. He noted Sexton is incapable of returning to his previous work. He advised Sexton to avoid activities requiring frequent cutting movements. He also advised Sexton to avoid of frequent stair climbing, repetitive leg bending, frequent stooping, squatting, or kneeling. He additionally advised Sexton to avoid lifting over sixty pounds on a maximum basis, or greater than one hundred pounds of pulling.

Sexton filed Dr. McEldowney’s supplemental May 17, 2018 report criticizing the findings of Dr. Rick Lyon who evaluated him on Resource’s behalf. Dr. McEldowney stated there were no objective findings indicating a previous ACL

injury, and Dr. Lyon's assessment to the contrary is based purely upon speculation. He stated Sexton had 0% impairment to the left knee prior to the work injury. In another supplement dated July 10, 2018, Dr. McEldowney stated Sexton was able to function without a completely functional ACL until the June 2017 incident.

Sexton additionally filed records from Dr. Heilig for treatment administered on October 3, 2016, October 17, 2016 and July 17, 2017 (previously filed with the Form 101). On October 3, 2016, Dr. Heilig noted Sexton had a six-year history of left knee problems, and had been wearing a brace. He noted Sexton complained of persistent locking, catching, and giving way of the left knee, which had progressively worsened. Sexton reported his left knee gave out the week prior as he was picking up a box. Physical examination revealed a large effusion of the left knee, limited range of motion, and medial joint line tenderness. He noted the examination of the ligaments was normal. Dr. Heilig diagnosed a left knee ACL tear and medial meniscus tear. He prescribed a brace, and recommended an MRI. He also noted Sexton wished to proceed with surgery due to the progression of the left knee problem for six years.

On October 17, 2016, Dr. Heilig noted Sexton had a positive McMurray's test. He also noted Sexton had full range of motion with no effusion. He diagnosed osteoarthritis of the left knee. The note reflects an MRI was planned for the underlying meniscal pathology.

Sexton also filed the MRI report from Pro Scan Imaging dated July 13, 2017 which noted he had sustained medial and lateral meniscal tears, and

incomplete tearing of the ACL. It also revealed a small joint effusion and edema in the infrapatellar fat pad.

In its Notice of Disclosure and Form 111 Claim Denial, both filed on February 27, 2018, Resource admitted Sexton was involved in a work event on June 26, 2017, but denied he sustained an injury.

Dr. Lyon evaluated Sexton at Resource's request on December 21, 2017. In his report dated January 15, 2018, Dr. Lyon noted the June 2017 incident when a malfunctioning crane at work pushed him backward. He also noted the history of episodes of knee instability in 2012 and 2016. He noted that on neither occasion were recommended MRIs performed. In October 2012, Sexton's left knee gave way with a loud pop, and he developed an effusion. Dr. Lyon stated this was consistent with an ACL tear. He noted no MRI was performed at that time, although it was recommended, and there is no documentation of a ligamentous evaluation.

Dr. Lyon noted that on October 16, 2016, Sexton was again seen for left knee complaints, including instability. Again, an MRI was recommended, but not performed, nor is there a record of ligamentous evaluation. Dr. Lyon noted the findings on evaluation were again consistent with an ACL tear based upon the findings of effusion, mechanism of injury, instability and recurrent symptoms. Dr. Lyon noted Sexton's complaints in June 2017, including instability, are consistent with an ACL tear. Dr. Lyon agreed with Dr. Heilig that Sexton needs an ACL reconstruction, but attributes this to the 2012 injury. He noted, "the natural history

of an ACL tear is typically progressive symptomatology and increased frequency of instability episodes.”

Dr. Lyon diagnosed Sexton with medial and lateral meniscus tears, and a left ACL tear, which he determined pre-existed the June 2017 work incident. Dr. Lyon stated Sexton has a 10% impairment rating pursuant to the AMA Guides, however, if he has successful surgery, this would reduce to 4%. He also determined Sexton’s condition has returned to its pre-injury status.

In a subsequent note dated February 26, 2018, Dr. Lyon indicated he had reviewed x-rays and an MRI of the left knee, and his opinions from the previous report remain unaltered. In an April 2, 2018 note, Dr. Lyon stated he had reviewed Dr. McEldowney’s report, and his opinions again remain unchanged. He stated the June 2017 work incident “was simply another instability event like those previously experienced by Mr. Sexton.” Dr. Lyon disagreed with Dr. Heilig, and stated there is no objective reason requiring Sexton to be off work.

On June 20, 2018, Resource filed an additional note from Dr. Lyon. Based upon his review of Dr. Heilig’s notes, he opined Sexton had ACL and meniscus tears prior to the work incident. He noted Sexton was a candidate for surgery eight months prior to the work incident. He did not believe the June 26, 2017 work incident contributed to the need for surgical intervention.

Resource also filed Dr. Heilig’s office notes from June 18, 2012 and October 17, 2016. The June 18, 2012 note reflects Sexton turned his left knee, and experienced pain and swelling with a loud pop two days before the office visit. The

diagnosis at that time was questionable for a meniscus tear of the left knee. An MRI was discussed, and a knee brace was prescribed.

At the Benefit Review Conference held June 13, 2018, the issues preserved for decision included benefits per KRS 342.730; work-relatedness/causation; injury as defined by the Act; exclusion for pre-existing active disability; TTD; compensability of requested surgery; and whether the impairment rating was assessed in accordance with the AMA Guides.

The ALJ rendered her decision on August 27, 2018. She determined Sexton failed to establish he sustained a work-related injury on June 26, 2017, and dismissed his claim. The ALJ specifically found as follows:

After careful consideration of the lay testimony and the medical records summarized above, the ALJ finds Sexton has failed [sic] satisfied[sic] his burden of proving he sustained a work-related injury to his left knee on June 26, 2017. Although Sexton experienced a work event on June 26, 2017, he failed to establish that the event caused a harmful change in the human organism evidence by objective medical findings. The medical treatment records show no change in the objective medical findings of Sexton's left knee following the event of June 26, 2017. Sexton describes his knee condition as totally different following the June 26, 2017 work event, however his testimony is inconsistent with the treatment records. The ALJ is persuaded by the opinion of Dr. Lyon, which is consistent with the treatment records of Dr. Heilig.

Dr. Heilig's treatment records indicate treatment for left knee pain and swelling starting in June 2012. On June 8, 2012, Dr. Heilig's objective findings included medial joint line tenderness, lateral joint line tenderness, effusion, patella tenderness and positive McMurray's test. Dr. Heilig diagnosed a possible meniscus tear and recommended an MRI at that time. In October 2012, Dr. Heilig noted the same objective findings and again recommended an MRI. On October 3, 2016, Dr.

Heilig's objective findings included effusion, decreased range of motion, medial joint line tenderness, positive McMurray's, positive Lachman and drawer testing. He diagnosed left knee ACL tear and medical[sic] meniscus tear. Following the June 26, 2017 event, Dr. Heilig's objective findings include positive Lachman and positive McMurray's. Dr. Heilig diagnosed left knee medial meniscal tear, lateral meniscal tear and ACL tear. The objective medical findings after the June 26, 2017 work event were present prior to the work event.

In addition, despite Sexton's insistence that his knee condition was totally different after June 26, 2017, Dr. Heilig's records establish his complaints were unchanged after June 26, 2017. On October 3, 2016, Sexton complained of persistent locking, catching and giving away in the left knee. Sexton also reported his left knee problem had progressively gotten worse. He advises Dr. Heilig that he wants his knee surgically repaired because he has had progressive problems for over six years. On June 17, 2017, Sexton's [sic] reports pain and feelings of instability and locking in the left knee. Instability was not a new symptom following the June 26, 2017 event, in fact, Sexton made the same complaints in October 2016.

The opinion of Dr. Lyon is consistent with the medical treatment records and most persuasive. Dr. Lyon opines the ACL tear and meniscus tears were present prior to June 26, 2017. He explains the work event of June 26, 2017 did not cause objective worsening of Sexton's existing knee condition. He explains the October 3, 2016 treatment note of Dr. Heilig confirms a positive Lachman and drawer test, as well as joint line tenderness. These findings confirm Sexton had an ACL tear and meniscus tears prior to the June work event. Dr. Heilig also noted Sexton had a six year history of progressive symptoms, consistent with the 2012 injury. Sexton report[sic] to Dr. Heilig a history of left knee problems progressively worsening. Dr. Lyon opines Sexton's knee conditions were active and pre-existed the June 26, 2017 work event. He advised Sexton was a candidate for ACL reconstruction and medial meniscectomy/repair in October 2016. In fact, the October 3, 2016 Heilig treatment note indicates surgery

was discussed as it notes Sexton advised Dr. Heilig he wanted his knee surgically repaired.

Although Dr. McEldowney initially opined Sexton's knee condition was completely related to the work event on June 26, 2017, he did not initially have the complete treatment records of Dr. Heilig. After reviewing specifically the October 3, 2016 record, Dr. McEldowney acknowledges that Sexton has had some form of anterior cruciate ligament dysfunction since approximately 2010. He does not provide any opinion as to how that information or acknowledgement affects his prior opinion.

Clearly, Sexton has tears in his left knee that require surgical intervention, but based on the foregoing, the ALJ finds that Sexton failed to satisfy his burden of proving he sustained any harmful changes related to the June 26, 2017 work event.

Sexton filed a Petition for Reconsideration requesting additional findings from the ALJ to support her conclusions regarding whether he had ACL and meniscus tears prior to June 2017. He also requested the ALJ provide additional findings regarding her determination that he sustained no harmful change to the left knee due to the June 26, 2017 incident. Sexton also requested additional findings from the ALJ regarding whether his left knee condition was symptomatic prior to June 26, 2017, and following that incident. The ALJ issued an order denying the petition on September 18, 2018. The ALJ specifically found as follows:

IT IS HEREBY ORDERED the Petition for Reconsideration is **OVERRULED**. As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (KY 1993). The ALJ had the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (KY 1977). The ALJ chose to rely on the

opinion of Dr. Lyon. Dr. Lyon opined on pages 4, 5, and 6 of his initial report and in his supplemental report that Sexton's ACL tear and meniscus tear were present prior to June 26, 2017. Sexton reported the same symptoms prior to June 26, 2017. In October 2016, Sexton reported to Dr. Heilig his left knee was getting progressively worse. Even Dr. McEldowney in his last supplemental report acknowledged Sexton had anterior cruciate ligament dysfunction prior to June 26, 2017. The ALJ finds no error on the face of the Opinion, Order and Award.

As the claimant in a workers' compensation proceeding, Sexton 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). Because he was unsuccessful in his 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 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001). 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 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). As 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 Sexton did not sustain a work-related left knee injury stemming from the June 26, 2017 work incident. 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 (Ky. App. 1981).

Sexton complained of left knee pain, which he stated had worsened since the June 26, 2017 work incident. However, the ALJ noted he had longstanding issues with his left knee. Dr. Lyon, as noted by the ALJ, specifically determined that

although Sexton is a surgical candidate for both ACL and meniscal tears, this is not due to the work incident. Dr. Lyon specifically noted Sexton's problems stem from an incident, which occurred in 2012, and that Dr. Heilig's records from 2012 and 2016 support this determination.

As explained by the ALJ, it is not disputed that Sexton was involved in a work-related incident on June 26, 2017. However, she determined that he suffered no harmful change to the left knee due to that incident. While evidence exists supporting Sexton's allegation that his left knee problem was caused by the work incident, it does not compel a decision in his favor. The ALJ clearly reviewed all evidence of record, and adequately provided a basis for her decision. The ALJ acted within her discretion in relying upon Dr. Lyon's opinions.

Sexton 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 Dr. Lyon's opinion in determining Sexton did not sustain a compensable left knee injury. Sexton merely points to conflicting evidence supporting a more favorable outcome, which is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., *supra*. Because substantial evidence supports the ALJ's determination and no contrary result is compelled, her decision shall remain undisturbed.

For the foregoing reasons, the August 27, 2018 decision, and the September 18, 2018 Order on Petition for Reconsideration rendered by Hon. Monica Rice-Smith, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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