

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: September 3, 2021

CLAIM NO. 202096835

TYSON FOODS, INC. D/B/A  
EQUITY GROUP - KENTUCKY DIVISION, LLC

PETITIONER

VS.

APPEAL FROM HON. THOMAS G. POLITES,  
ADMINISTRATIVE LAW JUDGE

PAUL CHAPLIN, and  
HON. THOMAS G. POLITES,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**BORDERS, Member.** Tyson Foods, Inc. d/b/a Equity Group – Kentucky Division, LLC (“Tyson”) appeals from the May 20, 2021 Opinion, Award, and Order and the June 15, 2021 Order on Petition for Reconsideration rendered by Hon. G. Thomas Polites, Administrative Law Judge (“ALJ”). The ALJ determined Paul Chaplin (“Chaplin”) sustained work-related injuries in a January 20, 2020 motor

vehicle accident (“MVA”). Chaplin was awarded permanent partial disability (“PPD”) benefits based on a 40% impairment rating without the application of any statutory multipliers, temporary total disability (“TTD”) benefits from January 20, 2020 to April 6, 2020, and medical benefits for both his back and dental injuries. The ALJ also enhanced the award of TTD benefits by the provisions of KRS 342.040(1).

Both parties submitted Petitions for Reconsiderations. The ALJ sustained the petitions to the extent he corrected the interest rate per KRS 342.040 to be 12% and not 18%, and to reflect recent statutory amendments. As the issue on appeal is limited to the assessment of 12% interest from March 9, 2020 to April 6, 2020, only proof relevant to this issue will be considered and summarized.

Chaplin testified by deposition on August 24, 2020 and at the hearing held March 24, 2021. He was injured in a MVA on January 21, 2020 while driving his truck hauling chicken feed for Tyson. He suffered injuries to multiple body parts including his back, face, head, and teeth. He received medical treatment at Vanderbilt University, where he was hospitalized for four days. Before he could return to work, he was required to pass a CDL physical examination. Chaplin stated he failed the first examination because his blood pressure was elevated. He stated, “My back was hurting so bad that it had my blood pressure up, so she failed me for four weeks, but April the 6th I went back to – back to see her and she passed me.” He then returned to driving a truck for Tyson on April 6, 2020, but he continued to experience a lot of pain. At first he was assigned in a Mack truck, but he could not drive it because the seat did not adjust. He then was given a Kenworth that had an adjustable seat and a better air ride system. For the first week, Chaplin hauled only

two loads per day rather than the customary three. He is unable to perform his work as he did prior to the accident. He is unable to lift the hood of the truck for DOT pre and post trip inspections. Tyson accommodates him by having the mechanics raise the hood and check the oil, water, power steering fluid, and belts. He now drives approximately 100 fewer miles per day.

Chaplin treated at Vanderbilt University Hospital on January 21, 2020. Chaplin was diagnosed with multiple rib fractures, a T12 compression fracture, L1 compression fracture, L1 and L2 transverse process fractures, and broken teeth. Chaplin was discharged on January 25, 2020 .

Dr. Frank Burke performed an independent medical evaluation (“IME”) on May 18, 2020. Dr. Burke diagnosed a complex back injury with additional injuries at the sacrum/sacrococcygeal area, and facial injuries with mastication issues. Dr. Burke stated Chaplin had reached maximum medical improvement (“MMI”) and assigned a 40% impairment rating consisting of 6% for the compression fracture at T12, 37% for the lumbar spine, and 5% for impaired mastication, pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, (“AMA Guides”). Dr. Burke noted Chaplin had returned to work with reported pain. Dr. Burke recommended Chaplin follow up with his treating physician to determine future treatment options. Dr. Burke felt Chaplin should not lift, push, or pull any significant amount of weight on a repetitive basis.

Dr. J. Rick Lyon performed an IME on October 8, 2020 and prepared a report dated November 5, 2020. Dr. Lyon noted Chaplin had returned to working

full duty. Dr. Lyon expected Chaplin would experience difficulty performing more than a light duty job. Dr. Lyon expected Chaplin would not reach MMI until 12 to 18 months post injury.

Dr. Lyon testified by deposition on November 17, 2020. He again stated Chaplin was not at MMI. Dr. Lyon noted that the range of motion model would be used to rate Chaplin's spinal injury because of the multi-level fractures. He indicated it takes 12 to 18 months following the injury to reach a baseline for pain and range of motion. He noted there had been some improvement in range of motion from the time of Dr. Burke's evaluation.

In a supplemental report dated March 16, 2021, Dr. Lyon indicated he had re-evaluated Chaplin to determine an impairment rating on February 15, 2021. He assigned a 37% whole person impairment rating pursuant to the AMA Guides, with 5% attributable to the thoracic spine and 34% attributable to the lumbar spine. He opined Chaplin is permanently restricted to a sedentary to light-duty job.

The ALJ entered the following findings of facts and conclusions of law relevant to this appeal, which are set forth, *verbatim*:

#### **TTD/MMI/ATTORNEY FEES/INTEREST**

In regard to MMI, Plaintiff argues that he did not reach MMI until April 6, 2020 at which time he returned to work. The Defendant paid TTD from January 21, 2020 to March 9, 2020 in the form of a check issued on April 9, 2021 which was received by Plaintiff on April 15, 2021. The most credible testimony regarding MMI comes from Dr. Burke who placed Plaintiff at MMI on May 18, 2020. However Plaintiff returned to work on April 6, 2020. Given these facts, it is determined that Plaintiff reached MMI on May 18, 2020 but is entitled to payment of TTD benefits to April 6, 2020, the date he returned to work.

As to whether Plaintiff should be entitled to enhanced interest and attorney fees due to the Defendant's alleged failure to pay timely TTD benefits without reasonable foundation pursuant to KRS 342.040 which provides for same, given that the nature of Plaintiff's injury was a motor vehicle accident and as such the occurrence of the work injury from a work relatedness/causation basis was apparent from the outset, it is difficult to understand why, and there appears to be no basis for, the Defendant's failure to pay TTD in a timely fashion which is one of the fundamental purposes of workers' compensation benefits which is the immediate provision of wage loss benefits. As such, Plaintiff shall be entitled to interest at 18% in regard to the TTD award made herein, and the Defendant shall be responsible for an attorney fee of 20% of the TTD award to be paid to Plaintiff's counsel as it is determined that the Defendant denied or delayed payment of TTD without reasonable foundation.

On reconsideration, the ALJ corrected his opinion to reflect the statutory changes reducing the interest rate from 18% to 12%. This appeal followed.

As the claimant in a workers' compensation proceeding, Chaplin 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 successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. 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). 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).

On appeal, Tyson argues the ALJ erred in awarding TTD benefits through April 6, 2020 because Chaplin was released to return to work on March, 9 2020. It also argues the assessment of the 12% interest as a penalty for the time period of March 9, 2020 through April 6, 2020 was in error as it had a good faith basis for denying the benefits.

The ALJ determined while Chaplin may have been released to return to work on March 9, 2020, his high blood pressure, caused by his work-related back pain, prevented him from passing a DOT physical, which did not allow him to return to work until April 6, 2020. Consequently, he is entitled to TTD benefits through that date. This determination is supported by substantial evidence and will not be disturbed on appeal. We affirm in this regard.

KRS 342.040 (1) states as follows

**342.040 Time of payment of income benefits and retraining incentive benefits -- Attorney's fees for recovery of overdue temporary total disability income benefits -- Interest on overdue benefits.**

(1) Except as provided in KRS 342.020, no income benefits shall be payable for the first seven (7) days of disability unless disability continues for a period of more than two (2) weeks, in which case income benefits shall be allowed from the first day of disability. All income benefits shall be payable on the regular payday of the employer, commencing with the first regular payday after seven (7) days after the injury or disability resulting from an occupational disease, with interest at the rate of six percent (6%) per annum on each installment from the time it is due until paid, **except that if the administrative law judge determines that the delay was caused by the employee, then no interest shall be due, or determines that a denial, delay, or termination in the payment of income benefits was without reasonable foundation, then the rate of interest shall be twelve percent (12%) per annum.** In no event shall income benefits be instituted later than the fifteenth day after the employer has knowledge of the disability or death. Income benefits shall be due and payable not less often than semimonthly. If the employer's insurance carrier or other party responsible for the payment of workers' compensation benefits should terminate or fail to make payments when due, that party shall notify the commissioner of the termination or failure to make payments and the commissioner shall, in writing, advise

the employee or known dependent of right to prosecute a claim under this chapter.”

As this statute clearly sets forth, the ALJ is granted discretion in determining whether the employer denied TTD benefits without reasonable foundation. Here, the ALJ determined Tyson was aware of the MVA, the accident was known about by Tyson, they knew it was work-related and serious enough for Chaplin to be hospitalized, yet, no TTD benefits were paid without a reasonable explanation. The ALJ determined those actions were unreasonable. We believe the ALJ properly exercised his discretion in arriving at his determination, and we discern no error. The ALJ’s decision is clearly supported by substantial evidence and will not be disturbed on appeal. Thus, we affirm.

Accordingly, the May 20, 2021 Opinion, Award, and Order and the June 15, 2020 Order on Petition for Reconsideration rendered by the Hon. Thomas Polites, ALJ are **AFFIRMED**.

ALL CONCUR.

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