

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2002-CA-001885-WC

ARLIE JACKSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS= COMPENSATION BOARD  
ACTION NO. 00-78667

SCHNEIDER NATIONAL CARRIERS;  
HON. ROGER RIGGS, ALJ; AND  
WORKERS= COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: GUIDUGLI, JOHNSON, AND KNOPF, JUDGES.

KNOPF, JUDGE: Arlie Jackson appeals from an opinion by the Workers' Compensation Board (Board) affirming an order of an Administrative Law Judge (ALJ). The ALJ denied Jackson's claim for benefits because in his estimation Jackson failed to prove that his disability was work-related. Finding that the ALJ's determination was supported by substantial evidence, we affirm.

Jackson was employed by Schneider National Carriers (Schneider) as a truck driver. During the course of his employment with Schneider, Jackson delivered items from the Wal-Mart distribution center in London, Kentucky to numerous destinations in Kentucky, Tennessee, Ohio, Georgia, Michigan and

New Jersey. Jackson was not required to load and unload his truck or perform maintenance thereon.

On August 5, 1999, while operating his tractor-trailer in Columbus, Ohio, Jackson sideswiped an S-10 Chevrolet pickup truck during an attempt to change lanes on Interstate 75. The S-10 pickup was traveling in Jackson's blind spot. This accident damaged the bed and a wheel rim of the S-10 truck. Despite this damage, the S-10 truck was operational and its driver was not injured. In regard to his own condition, Jackson stated that he experienced a sudden jump at the time of the collision and experienced whiplash. Despite these events, Jackson did not believe that he suffered any injuries. Jackson's truck was not damaged and he returned to London. Jackson reported the accident to his supervisor, but did not report any injuries to his person as a result of this incident.

Approximately one week after the accident, Jackson began experiencing headaches and pain in his neck and back. Jackson did not seek medical attention for these symptoms, but took Tylenol and continued working.

In November 1999, approximately three months after the traffic accident, Jackson saw his family practitioner, Dr. Steven Spady. Initially, Dr. Spady diagnosed Jackson as having an inflammation of the middle ear. Dr. Spady did not treat Jackson for head, neck or back pain until January 17, 2000. Dr. Spady treated these complaints with medications and physical therapy.

While obtaining treatment from Dr. Spady, Jackson continued driving for Schneider until his employment was terminated in January 2000.

On January 26, 2000, Jackson filed for short-term disability benefits. In his application for disability benefits, Jackson stated that his symptoms began occurring around November 1, 1999 while he was driving his truck. However, Jackson indicated on his application that he was not sure whether his symptoms were related to his employment.

In February 2000, Jackson was referred to Dr. Mukut Sharma, a neurosurgeon, concerning his physical condition. Dr. Sharma performed an MRI on Jackson that revealed Jackson to be suffering from a herniated disc. Based upon this diagnosis, Dr. Sharma performed a bilateral laminectomy at L5-S1 with a discectomy at the same level. After surgery, Jackson's symptoms improved temporarily before worsening. At this point, Jackson returned to Dr. Spady's care. On April 19, 2000, Jackson informed Dr. Spady for the first time that he had been involved in the August 5, 1999, motor vehicle accident.

Jackson filed for workers' compensation benefits on April 6, 2000 alleging work-related injuries concerning his lower back. This claim was later amended to include neck, upper extremity and lower extremity complaints, as well as a psychological condition.

During the litigation of this matter, Jackson was

evaluated by Dr. Kenneth Graulich. Based upon his review of Jackson's medical records and his examination of Jackson, Dr. Graulich opined that Jackson's neck and back complaints were too remote in time from the traffic accident for the symptoms to be related thereto. Additionally, Dr. David Shraberg opined that Jackson's psychological condition was caused by marital problems and was not work-related. Based mainly upon the opinions of Dr. Graulich and Dr. Shraberg, the ALJ concluded that Jackson's physical and psychological conditions were not related to the August 5, 1999, traffic accident. Consequently, the ALJ dismissed Jackson's claim for benefits. On appeal, the Board affirmed the ALJ's findings. This appeal followed.

Kentucky law is clear concerning the scope of our review of decisions from the Workers=Compensation Board. The function of our review is to correct the Board only where it has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause injustice. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992). In pursuing workers=compensation benefits, the claimant bears the burden of proof and risk of nonpersuasion with regard to every element of the claim, and the decision of the ALJ is conclusive and binding as to all questions of fact. KRS 342.285; Carnes v. Tremco Mfg. Co., Ky., 30 S.W.3d 172, 175-176 (2000), citing Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). When the party with the burden of

proof is unsuccessful before the ALJ, the issue on appeal is whether the evidence in that party's favor is so compelling that no reasonable person could have failed to be persuaded by it. Carnes, 30 S.W.3d at 176. Where there exists evidence of substance supporting the ALJ's finding, the conclusion cannot be labeled Aclearly erroneous.@ Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986).

Despite this high standard, Jackson argues that the ALJ's findings were not supported by substantial evidence because he adequately carried his burden of proof. We disagree. With regards to the alleged August 5, 1999, injuries, the medical documentation submitted in this matter tends to indicate that Jackson's complaints did not arise until November 1999. Even then, the source of Jackson's complaints could not be traced back to the traffic accident. In addition, the ALJ noted that Dr. Spady, Jackson's original treating physician, did not learn that Jackson had been involved in a motor vehicle accident until April 19, 2000, which is one month and nineteen days after Jackson's lower back surgery. Dr. Sharma also recorded at the outset of his treatment that Jackson did not divulge any precipitating factor that produced his complaints. In fact, it was not until much later in 2000 and 2001 that the first medical opinions arose on the subject of a potential connection between Jackson's complaints and the work-related traffic accident. Furthermore, concerning Jackson's psychiatric complaints, Dr. David Shraberg

concluded that Jackson's psychiatric problems were due to the abandonment by his wife and his distress over attempts to reconcile. Thus, when all of this evidence is considered with Dr. Graulich's opinion that Jackson's neck and back complaints are not related to the traffic accident, we agree with the ALJ and the Board that Jackson failed to carry his burden of proving that he was injured during the course of his employment.

Jackson contends that the ALJ placed too much emphasis on the medical records and reports from Dr. Graulich, Dr. Shraberg, Dr. Spady, and Dr. Sharma. Rather, Jackson asserts that the ALJ should have relied on the records and reports of the physicians who supported his claim, most notably Dr. Christa Muckenhausen, Dr. John Gilbert and Dr. Robert C. Hoskins. While Dr. Hoskins's office notes reflect that Jackson visited him on August 1, 2000, seeking treatment for headaches and neck pain which began after the traffic accident, the reports and medical records from Dr. Muchenhausen and Dr. Gilbert fail to link Jackson's symptoms to the traffic accident.

The ALJ, as finder of fact, has the authority to determine the quality, character, and substance of the evidence presented. Miller v. East Kentucky Beverage/Pepsico, Inc., Ky. App., 951 S.W.2d 329 (1997). The weight given to the evidence and the credibility accorded to the witnesses are matters within the sole province of the fact-finder. Paramount Foods v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Likewise, the ALJ, as

finder of fact, has the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the adversary party's total proof. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15, 16 (1977).

Clearly, the ALJ acted within his discretion in placing more weight on the reports of Dr. Graulich and Dr. Shraberg. While Jackson is free to point out evidence which would have supported a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal. Ira A. Watson Dept. Store v. Hamilton, Ky., 34 S.W.3d 48 (2000). Therefore, we conclude that the ALJ's findings were supported by evidence of substance, and that the other evidence of record did not compel a different result.

Accordingly, the opinion and order of the Workers= Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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