

RENDERED: December 12, 2003; 10:00 a.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-001101-WC

KEVIN M. PAUL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-86761

GENERAL MOTORS CORPORATION; HONORABLE
DONNA H. TERRY, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

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BEFORE: KNOPF AND TACKETT, JUDGES; MILLER, SENIOR JUDGE.¹

TACKETT, JUDGE: Kevin Paul petitions for review from a decision of the Workers' Compensation Board (Board) affirming the Administrative Law Judge's (ALJ) determination that he did not suffer a work-related injury. We conclude that the evidence

¹ Senior Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

does not compel a finding in favor of the appellant and, therefore, we are required to affirm the Board's decision.

At the time of his Workers' Compensation claim, Paul was a forty-seven year-old man who had been employed by General Motors (GM) since 1977. He spent twenty years working on the assembly line in Kalamazoo, Michigan, then, when that factory closed in 1997, he transferred to Bowling Green, Kentucky, to work at the GM factory there. Paul performed a variety jobs on the assembly line including headlight, rear suspension and final assembly, wrapping and wire harness.

In August 2001, Paul began experiencing pain in his thumbs, fingers, and wrists and cracking in his joints. He notified his employer of his symptoms and GM referred him for X-rays. Paul also began to experience pain in the right side of his neck in April 2002; however, he continued working following the onset of his symptoms and did not miss any time at work as a result of his complaints. Paul filed a Workers' Compensation claim and ceased working in May 2002. He did not attach the X-rays from August 2001 to his Form 101; rather, he submitted X-rays taken in 1999 and 2000 which showed minimal osteoarthritic changes to his finger joints and no significant bone or joint abnormality in either wrist.

Paul consulted a hand surgeon, Dr. Margaret Napolitano, in July 2002 and she referred him to a neurologist,

Dr. Iyer, for EMG/NCV studies. In addition, Dr. Napolitano recommended physical therapy for which GM refused to pay, and stated that she could not complete an evaluation of Paul until he underwent physical therapy. Records from Drs. Napolitano and Iyer were not filed as evidence in Paul's claim; therefore, the ALJ's findings were supported solely by Paul's deposition testimony and the opinions of three evaluating physicians.

In his deposition, Paul testified that he sought treatment for neck pain by a physician and a chiropractor following a car accident and that he had been off work from June through October in 2001. However, he claimed that his pain from the accident had resolved prior to the onset of neck pain in April 2002 which he attributed to repetitive work activities. Paul stated that, due to his physical difficulties and the restrictions placed on him by both Dr. Napolitano and the physician at the GM factory, the company notified him on May 3, 2002, that it had no jobs available which he could perform. He applied for, and was receiving, sickness and accident benefits in the amount of \$545.00 per week. Paul testified that he believed Dr. Napolitano's restrictions prevented him from gripping with either hand, using vibratory tools, working overhead, and lifting over twenty pounds. Finally, he stated that he experienced difficulty performing everyday activities

related to hygiene, climbing stairs, mowing his yard and driving his car.

Dr. Frederic Hufnagle, an orthopedic surgeon, examined Paul on July 25, 2002. The examination occurred at the office of Paul's attorney and the results were dictated to a legal secretary who typed up the physician's report. According to the medical history taken by Dr. Hufnagle, Paul worked as an assembler underneath cars with his neck extended and he had suffered cervical pain since at least 1999 with stiffness in his wrists and hands developing over time. The doctor diagnosed cervical arthritis, arthritis of both hands and carpal tunnel syndrome and assessed a five percent impairment rating for the cervical condition and an additional five percent impairment rating for the bilateral hand complaints. On cross-examination, Dr. Hufnagle was questioned about the conversion tables for hand impairment to upper extremity impairment and for upper extremity impairment to whole person impairment. In response, he stated that he had probably omitted a reference to the initial table for hand impairment. When questioned about his methodology for measuring range of motion for Paul's fingers and determining his hand impairment, Dr. Hufnagle stated that he would furnish his handwritten notes for the evidentiary record and then failed to do so. Moreover, in evaluating Paul's cervical condition, the doctor relied on X-rays from 1999.

Dr. Martin Wagner, a neurologist, examined Paul on August 22, 2002. He recited Paul's medical history as bilateral numbness, tingling, and pain in the hands and discomfort in the right side of his neck which at times radiated into his shoulder. Dr. Wagner diagnosed Paul as suffering from moderate left ulnar nerve entrapment at the elbow and very mild right carpal tunnel entrapment. He concluded that Paul's neck pain was secondary to his cervical osteoarthritis and was not significant enough to limit his range of motion. Dr. Wagner assessed a zero percent impairment for the cervical complaints and four percent impairment as a result of the upper extremity complaints. He recommended left ulnar nerve compression and transposition surgery and right carpal tunnel decompression surgery which he felt would alleviate Paul's symptoms to the extent that he could return to his former job.

Dr. M.A. Quadar, an orthopedic surgeon, evaluated Paul on September 17, 2002. He reported that Paul's symptoms were inconsistent with carpal tunnel syndrome and noted that, rather than improving since Paul ceased his employment with GM, they were worsening. Based on Paul's descriptions of his symptoms and their lack of improvement, Dr. Quadar concluded that he had not suffered a work-related injury, but rather that his symptoms were the result of natural aging.

The ALJ examined the evidence submitted and made the following findings:

A review of the medical record indicates that three physicians have rendered expert opinions in this claim. Dr. Huffnagle completed a Form 107 indicating his [belief] that Mr. Paul's cervical and upper extremity problems were related to repetitive work activities, but his deposition revealed significant problems with both his lack of information regarding the type of jobs actually performed by Mr. Paul and the onset of symptoms. Dr. Wagner observed no significant clinical findings or evidence of cervical radiculopathy and reported no impairment related to any "illness, injury, or fracture to the cervical spine." Dr. Wagner did find a 4% impairment rating as the result of left ulnar nerve problems but did not specifically address the causation of that condition. Dr. Quadar opined that neither upper extremity nor cervical problems are the result of work activities, noting that Mr. Paul's symptomatology has worsened since he stopped working and the arthritic changes in Mr. Paul's neck are the result of the aging process and not the result of repetitive work activities.

After a careful review of the medical expert opinions in this record, and utilizing the authority afforded the trier of fact to select among competing medical opinions, the Administrative Law Judge concludes that Mr. Paul has failed to sustain his burden of proving that either his cervical problems or his upper extremity complaints are the result of repetitive work activities, based upon the expert opinion of Dr. Quadar. The lack of any objective support by Dr. Wagner for a significant cervical injury is further noted. This claim must, therefore be dismissed. Snawder v. Stice, Ky. App., 576 S.W.2d 276 (1979)

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The ALJ's opinion and order dismissing Paul's claim was issued on November 15, 2002. After his motion for reconsideration was overruled, Paul petitioned the Board for review. The Board's opinion, which included the above quoted portion of the ALJ's opinion and order, upheld the ALJ's order dismissing Paul's claim, and the current petition for review followed.

Paul argues that the ALJ misinterpreted the evidence and incorrectly applied the facts to the law in deciding to dismiss his claim. In order to prevail on a Worker's Compensation claim, Paul had the burden of proof to establish the work-related nature of the claimed injury. The question on review is whether the evidence, taken as a whole, would compel a finding in his favor. Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). Where there is conflicting evidence, the ALJ, as the fact finder, has the authority to judge the weight, credibility and inference to be drawn from the evidence. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Presentation of an alternate interpretation of the record does not constitute compelling evidence such as would mandate a finding in Paul's favor. Union Underwear Co. v. Searce, Ky., 896 S.W.2d 7 (1995).

Paul correctly contends that the evidence from the examining doctors indicated that he suffered cervical and upper extremity injuries. Nevertheless, before an award could be made, the ALJ was required to determine the causation of Paul's injuries. The ALJ reviewed objective medical evidence from the three examining physicians establishing Paul's injuries; however, two of them drew opposite conclusions with regard to the issue of causation while the third expressed no opinion at all regarding causation. The ALJ weighed the opinions expressed by Drs. Huffnagle and Quadar regarding causation and concluded that Dr. Quadar's opinion was more reliable. Among the reasons given by the ALJ were questions regarding Dr. Huffnagle's methodology for evaluating Paul's injuries and the physician's failure to turn over his handwritten examination notes as promised. We are unable to say to say that Paul has offered evidence which compels a finding in his favor and, therefore, we are required to uphold the determinations made by the ALJ and the Board.

For the forgoing reasons, the opinion of the Worker's Compensation Board affirming the Administrative Law Judge's dismissal of Paul's claim for failure to prove work-relatedness is affirmed.

ALL CONCUR.

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