

RENDERED: NOVEMBER 10, 2005; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001345-WC

RICHARD J. SCOTT

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
CLAIM NO. WC-04-00347

COGNEX, INC.;
HONORABLE J. LANDON OVERFIELD,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** **

BEFORE: BARBER, MINTON, AND TAYLOR, JUDGES.

MINTON, JUDGE: Richard J. Scott seeks review of an opinion of the Workers' Compensation Board affirming a decision of an administrative law judge ("ALJ") denying Scott's claim for benefits. Finding no error in the Board's opinion, we affirm.

In August 2002, during the course of his employment as a field service technician for Cognex, Inc., Scott purportedly injured his shoulder while installing parts on a piece of equipment in Russellville, Kentucky. Following that incident, Scott returned to his home in California and began receiving medical treatment, including shoulder surgery performed by Dr. Scott Forster in October 2002. Following the surgery, Scott continued to receive treatment from physicians, including Dr. Mannie Joel, a pain management specialist. In February 2004, Scott filed a claim for benefits stemming from the incident in Russellville two years earlier. Scott has not returned to work.

As is typical in workers' compensation cases, each side marshaled medical and lay testimony and opinions. Dr. Joel, who provided the main source of testimony on behalf of Scott, opined that Scott was 100 percent disabled due to the August 2002 incident. On the other hand, Cognex relied principally upon the opinion of Dr. Phillip Corbett, a Kentucky physician who examined Scott at Cognex's request. Based on an MRI report, his personal examination of Scott, and Scott's medical history, Dr. Corbett opined that Scott suffered from degenerative disc disease that pre-existed the August 2002 incident.

From the array of opinions and testimony, the ALJ chose to rely mainly upon the conclusions of Dr. Corbett. Based on Dr. Corbett's conclusions, the ALJ found that Scott had not met his burden to show that the August 2002 incident caused Scott's current condition. Rather, the ALJ found that Scott's condition stemmed from another work-related incident that occurred in Pennsylvania in April 2002. Thus, the ALJ dismissed Scott's claim. After the Board affirmed the ALJ, Scott filed this appeal.

Before Scott's specific argument is addressed, it is necessary to recall the permissible scope of this Court's review of a decision of the Board. It is well-established that our function in workers' compensation cases "is to correct the Board only where the . . . Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice."¹ Furthermore, Scott, as the claimant, has the burden of proof and must prove every element of his claim.² Because the ALJ's decision was not in Scott's favor, the issue on appeal is "whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in [Scott's]

¹ Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-688 (Ky. 1992).

² Magic Coal Co. v. Fox, 19 S.W.3d 88, 96 (Ky. 2000).

favor.”³ In order to be compelling, evidence must be “so overwhelming that no reasonable person would fail to be persuaded by it”⁴

The ALJ is the finder of fact in workers’ compensation cases, meaning that the ALJ alone “has the authority to determine the quality, character . . . substance”⁵ and weight of the evidence presented, as well as the inferences to be drawn therefrom.⁶ Thus, 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.”⁷ Accordingly, given our limited scope of review, this Court may not “substitute its judgment” for that of the ALJ, nor may we render our own findings or direct the findings or conclusions the ALJ shall make.⁸

Bearing those principles in mind, we now turn to Scott’s argument. Scott contends that the medical evidence compels a finding that his current condition was caused by the

³ Wolf Creek Collieries v. Crum, 673 S.W.2d 735, 736 (Ky.App. 1984).

⁴ Magic Coal Co., 19 S.W.3d at 96.

⁵ Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985).

⁶ Miller v. East Kentucky Beverage/PepsiCo., Inc., 951 S.W.2d 329, 331 (Ky. 1997).

⁷ Magic Coal Co., 19 S.W.3d at 96.

⁸ Wolf Creek Collieries, 673 S.W.2d at 736.

August 2002 incident and that consequently, the ALJ erred by finding otherwise.

Scott's argument is unavailing. First, as the ALJ and the Board both noted, many of Dr. Joel's records list April 2002 (the date when Scott suffered a work-related injury in Pennsylvania), as Scott's date of injury. In fact, Dr. Joel's records do not show August 2002 as being Scott's date of injury until May 2004, after the date Scott filed this claim for benefits. In addition, Dr. Forster's written notes regarding the shoulder surgery he performed on Scott say that Scott suffered from chronic rotator cuff impingement, which would be indicative of a condition pre-dating the August 2002 incident. Furthermore, although he was unable to state definitively whether the April 2002 or August 2002 incident was the precise date of the onset of Scott's current condition, Dr. Corbett did definitively state that Scott developed work-related shoulder problems in April 2002, probably as a result of an aggravation or arousal of a pre-existing condition.

In addition to relying upon Dr. Corbett's medical opinions, the ALJ based his conclusions upon his belief that Scott had been less than candid regarding the severity of the April 2002 incident. According to the ALJ, though Scott testified that the April 2002 incident was relatively minor, Dr. Joel listed the April incident as the injury onset date

until after Scott filed this application for benefits. In addition, Dr. Joel's March 7, 2003, office notes record that in April 2002, Scott "slipped and grabbed onto something to stop a fall and pulled hard on his left arm." Finally, as the Board observed, Scott did not report the April 2002 incident until "right before" the August 2002 incident, "bringing into question his motivations for claiming the August 6, 2002[,] incident as the sole cause of his current complaints."⁹ So the record supports the ALJ's decision to discredit Scott's account of the severity of the April 2002 incident.

Dr. Corbett's conclusions are clearly at odds with those of other physicians. But the ALJ was entitled to rely upon Dr. Corbett's conclusions and to draw all reasonable inferences from them in arriving at his ultimate findings. Furthermore, the mere fact that the record contains evidence that would support a different conclusion is insufficient to trigger reversal. Thus, as the ALJ has the unfettered right to choose which evidence to believe,¹⁰ and as the ALJ's decision is supported by the conclusions of Dr. Corbett, the inconsistencies in Dr. Joel's notes, and the ALJ's permissible decision to discount Scott's testimony regarding the April 2002 incident, we

⁹ Board's opinion, p. 18, n.1.

¹⁰ Magic Coal Co., 19 S.W.3d at 96.

must affirm because the evidence simply is not so overwhelming as to compel a finding in Scott's behalf.¹¹

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. Kenneth Nevitt
Louisville, Kentucky

BRIEF FOR APPELLEE:

Ronald J. Pohl
Crystal L. Moore
Lexington, Kentucky

¹¹ Wolf Creek Collieries, 673 S.W.2d at 736.