

RENDERED: APRIL 21, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-002392-WC

KEITH V. NORWOOD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
CLAIM NO. WC-04-01824

NORTH STAR STEEL OF KENTUCKY;  
INS CO OF STATE OF PA/AIG;  
HONORABLE GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER AND MINTON, JUDGES; HUDDLESTON, SENIOR JUDGE.<sup>1</sup>

MINTON, JUDGE: Keith Norwood petitions for review of a decision  
of the Workers' Compensation Board that affirmed the

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<sup>1</sup> Senior Judge Joseph R. Huddleston sitting as Special Judge by  
assignment of the Chief Justice pursuant to Section 110(5)(b) of the  
Kentucky Constitution and KRS 21.580.

administrative law judge's decision to award him permanent partial disability benefits based upon a three percent functional impairment. We affirm.

Norwood worked as a maintenance mechanic at North Star Steel of Kentucky, Inc. when he experienced pain in his left elbow while using a wrench to loosen a steel nut. He sought medical attention from Dr. William Stodghill, an orthopedic surgeon. Eventually, Dr. Stodghill performed surgery on Norwood's elbow; but the surgery did not completely alleviate his pain. Norwood retired from work because of unrelated health concerns and filed his application for workers' compensation benefits in October 2004.

Norwood principally relied upon Dr. Stodghill's conclusion that his work-related elbow injury caused him to have a twelve percent impairment. In response, North Star presented the report of Dr. Michael Moskal, an orthopedic physician who evaluated Norwood. Dr. Moskal's report contains his finding that "[t]he alleged work incident does not readily relate itself to the proximate cause of the left elbow problems." Thus, Dr. Moskal found that "one can use that instruction as the *Guides*<sup>[2]</sup> instructing the examiner to apply a maximum 3% of the whole person in those specific conditions recognizing this is a

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<sup>2</sup> AMERICAN MEDICAL ASSOCIATION'S GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT, Fifth Edition ("AMA Guides").

maximum." After conducting a hearing, the ALJ found that Norwood suffered from a three percent functional impairment. Norwood petitioned for reconsideration, arguing that Dr. Moskal's report was unintelligible. The ALJ denied Norwood's petition, and the Board affirmed the ALJ's decision. Norwood then filed this petition for review.

It is well established that this Court's 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."<sup>3</sup> Furthermore, Norwood, as the claimant, has the burden of proof and must prove every element of his claim.<sup>4</sup> Because the ALJ's decision was not in Norwood'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 [Norwood's] favor."<sup>5</sup> In order to be compelling, evidence must be "so overwhelming that no reasonable person would fail to be persuaded by it . . . ."<sup>6</sup>

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<sup>3</sup> Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-688 (Ky. 1992).

<sup>4</sup> Magic Coal Co. v. Fox, 19 S.W.3d 88, 96 (Ky. 2000).

<sup>5</sup> Wolf Creek Collieries v. Crum, 673 S.W.2d 735, 736 (Ky.App. 1984).

<sup>6</sup> Magic Coal Co., 19 S.W.3d at 96.

It must also be noted that the ALJ acts as the finder of fact in workers' compensation cases, meaning that the ALJ alone "has the authority to determine the quality, character[,] . . . substance[,]""<sup>7</sup> and weight of the evidence presented, as well as the inferences to be drawn therefrom.<sup>8</sup> 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."<sup>9</sup> Thus, in its limited function as a reviewing court, this Court may not "substitute its judgment" for that of the ALJ, nor can we render our own findings or direct the conclusions the ALJ shall make.<sup>10</sup>

Norwood's petition again states his belief that the ALJ could not rely upon Dr. Moskal's report because it is unintelligible. We have reviewed the report; and, as noted by the ALJ and the Board, it is not a model of clarity. But we have never held that a medical report must be deemed unreliable because of errors in syntax. In other words, despite its linguistic shortcomings, the report is certainly not so cryptic, vague, or nonsensical as to be unintelligible. Most

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<sup>7</sup> Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985).

<sup>8</sup> Miller v. East Kentucky Beverage/Pepsico., Inc., 951 S.W.2d 329, 331 (Ky. 1997).

<sup>9</sup> Magic Coal Co., 19 S.W.3d at 96.

<sup>10</sup> Wolf Creek Collieries, 673 S.W.2d at 736.

importantly, the report does contain a reasoned critique of Dr. Stodghill's methodology and conclusions. So the ALJ, who had the authority to decide which evidence to rely upon and which to reject, acted within his discretion when he used Dr. Moskal's report to reject Dr. Stodghill's conclusions. Once Dr. Stodghill's conclusions are discounted, the record clearly does not compel a finding that Norwood suffers from a disability greater than the three percent found by the ALJ because Dr. Stodghill's opinion would be the only evidentiary basis for such a finding. So even though we may have decided the matter differently, we must affirm the Board because the record does not compel a different result.

As we perceive that the Board has not committed an error that caused Norwood to suffer gross injustice, the Board's decision is affirmed.

ALL CONCUR.

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