

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000614-WC

ROGER KUCHLE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-01903

ROGER KUCHLE GARAGE, INC.,
HON. LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE,
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; CAPERTON AND MOORE, JUDGES.

CAPERTON, JUDGE: Roger Kuchle (Kuchle) appeals the March 13, 2007, opinion of the Workers' Compensation Board (WCB) which affirmed the Administrative Law Judge's (ALJ) opinion of September 26, 2006. On appeal Kuchle claims the WCB erred in affirming the ALJ's dismissal of his claim for a lower back injury. We disagree and affirm.

Kuchle injured his right knee while working at Roger Kuchle Garage (Garage) on April 14, 2004, and then re-injured the knee on July 28, 2004. Subsequently he underwent knee surgery performed by Dr. James Bilbo. Kuchle then complained of disabling back pain post-knee surgery.

The evidence presented to the ALJ included multiple doctor evaluations, medical opinions, medical records, deposition testimony, and hearing testimony. The record indicates that Kuchle had experienced intermittent back problems starting in the year 2002, for which he sought treatment only at the onset, but had never missed work. Kuchle presented Dr. Bilbo's opinion that his back pain was partially due to an abnormal gait from the knee injury. The garage presented the opinions of Dr. Goldman and Dr. Loeb which both disagreed with Dr. Bilbo. Dr. Goldman in his deposition and lengthy report determined that Kuchle's back pain was not related to the knee injury but rather to congenital issues that resulted in chronic degenerative facet and disc changes. Dr. Loeb agreed that Kuchle's problems were from degenerative disease progression rather than the knee injury.

The ALJ determined that Kuchle's back pain was not causally related to the knee injury and, thus, not compensable. The ALJ based his findings of causation on Kuchle's multilevel lumber degenerative changes, age, history of prior back problems, and the medical conclusions and explanations of Dr.

Goldman and Dr. Loeb as to why Kuchle's altered gait could not and did not cause the kind of back complaints alleged by Kuchle.

Kuchle argues that the ALJ erred in finding that the back injury was unrelated to the work-related knee injury as the evidence before the ALJ compelled a different result. Kuchle further argues that the medical evidence the ALJ relied upon was neither substantial nor competent. Kuchle claims that the evidence compels a finding that his back pain is the result of an altered gait from his knee injury and surgery in addition to the wear and tear of thirty-one (31) years of consecutive employment at the Garage.

Conversely, the Garage counters that Kuchle's back pain is due to chronic degenerative changes and is not due to the effects of his work-related knee injury. The Garage argues that the medical evidence relied upon by the ALJ was certainly substantial and competent.

An injured worker has the burden to prove every element of a claim for benefits. KRS 342.285 designates the ALJ as the finder of fact. Therefore the ALJ rather than the Board or a reviewing court has the sole discretion to determine the quality, character and substance of evidence; to draw reasonable inferences from the evidence; and to decide whom and what to believe. The court in *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky.1986), explained that a finding that favors the party with the burden of proof must be upheld if it is supported by

substantial evidence and, therefore, reasonable. A party with the burden of proof who fails to convince the finder of fact has an even greater burden on appeal. The party must show that the favorable evidence was so overwhelming that no reasonable person could have failed to be persuaded. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985) and *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky.App. 1985).

Upon a thorough examination of the record we agree with the WCB that the evidence is not so overwhelming as to compel a finding in Kuchle's favor.

Kuchle also argues that the ALJ erred in failing to find that Kuchle's knee injury caused a dormant pre-existing condition, more specifically, his back injury, to become disabling and thus compensable. Kuchle relies on *McNutt Construction v. Scott*, 40 S.W.3d 854 (Ky. 2001) where the court held that a disability which results from the arousal of a prior dormant condition by a work-related injury is compensable. The Garage argues that the back injury was not a dormant pre-existing condition but, rather, an active pre-existing condition that was not causally related to the knee injury. In dismissing the back injury claim, the ALJ simply found the medical opinions of Dr. Goldman and Dr. Loeb on the issue of causation to be more persuasive than the evidence presented by Kuchle. Kuchle's reliance on *McNutt* is misplaced. Whether Kuchle's pre-existing condition is dormant or active is not properly before this Court

without a finding of causation. As the record supports the ALJ's findings on causation, this Court must affirm.

For the aforementioned reasons, we affirm the Workers' Compensation Board.

ALL CONCUR.

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