

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001164-WC

DENTON W. DYER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-85372

M.W. MANUFACTURERS HOLDING
CORPORATION; HON. ANDREW F.
MANNO, ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: DIXON, VANMETER, AND WINE, JUDGES.

WINE, JUDGE: Denton W. Dyer (Dyer) petitions for review of a May 14, 2007, opinion by the Workers' Compensation Board (Board), which affirmed an administrative law judge's (ALJ) opinion and award denying his claim for future income and medical benefits. He argues that the ALJ's findings were not based on substantial evidence, and that the ALJ and the Board erroneously conditioned his entitlement to future medical

benefits upon a finding of permanent occupational disability. Finding no error, we affirm.

Dyer was employed as a sales representative for M.W. Manufacturers Holding Corporation (M.W.). As part of his duties, Dyer sold, stocked and displayed windows and patio doors. On April 28, 2004, while rearranging inventory at a Lowe's store in Winchester, Dyer fell from a rolling staircase onto a concrete floor. He testified that he immediately felt pain in his neck, head and mid-back.

Dyer was transported to the emergency room, where he was treated and released. As recommended, Dyer then consulted with his family physician, who recommended additional testing and referred Dyer to a neurologist. Dyer was ultimately referred to Dr. Saroj B. Dubal for additional treatment. M.W. stipulated that Dyer had suffered a work-related injury, but contested the extent and duration of the injury, comprehensibility of medical expenses, causation and work relatedness, entitlement to a credit for long-term disability and duration of temporary total disability benefits.

In support of his claim, Dyer principally relied on the medical records and diagnoses of Dr. Dubal and the independent medical reports from Dr. Donald R. Douglas and Dr. Robert P. Granacher. Dr. Dubal diagnosed chronic regional pain syndrome (CRPS) of the right and left upper extremities, cervical spondylosis with cervical facet arthropathy, bilateral occipital neuralgia, cervicogenic headache, chronic pain secondary to the work injury, and reactive anxiety and depression. Dr. Dubal treated Dyer with

injection therapy and included right and left stellate ganglion blocks for bilateral upper extremity pain, neck pain and headaches.

Following a physical examination, Dr. Douglas diagnosed CRPS, right upper extremity with spread to left, cervical spondylosis with cervical facet and myofascial pain, cervicogenic headaches with reactive anxiety and depression, and right brachial plexopathy. Dr. Douglas found that Dyer's condition was caused by his work-related injury and assessed a 32% whole body impairment. He did not believe that Dyer retained the physical capacity to return to the type of work Dyer performed prior to the injury.

Dr. Granacher performed a psychiatric evaluation and diagnosed mood and cognitive disorder due to chronic regional pain syndrome and post-concussion syndrome. He assessed a 19% neuropsychiatric impairment due to cognitive and psychological dysfunction. Dr. Granacher also was of the opinion that Dyer lacked the mental capacity to engage in any work he was trained or educated to perform.

In response, M.W. relied on the independent medical examinations performed by Dr. Patrick K. Leung; Dr. Ronald Charles Burgess, an orthopedic surgeon; and Dr. David Shraberg, a forensic psychiatrist. Dr. Leung agreed that Dyer had suffered post-concussion syndrome and soft tissue injury from the fall, but he found no objective evidence of any permanent impairment. Similarly, Dr. Burgess disputed the diagnosis of CRPS, stating that Dyer did not meet all the criteria for that condition. Finally, Dr. Shraberg disputed Dr. Granacher's diagnosis of cognitive and psychological dysfunction,

stating that Dyer's test results revealed poor effort, bordering on malingered memory complaints suggesting marked symptom magnification and elaboration. Dr. Shraberg attributed Dyer's psychiatric condition to his history of dependence on prescription medicine, and he assessed a 0% impairment as a result of the work-related injury.

The ALJ found that Dyer had suffered a work-related injury on April 28, 2004, but concluded that Dyer had not shown that he has a permanent physical impairment as a result of the injury. The ALJ rejected Dr. Douglas's impairment rating in favor of the opinions of Drs. Leung, Burgess and Shraberg, specifically finding that Dr. Douglas's testimony was not credible since he did not sufficiently set forth the basis for his rating. The ALJ was more persuaded by Dr. Burgess that only two of the ten criteria for CRPS were present and that all diagnostic testing yielded normal results. The ALJ was also persuaded by Dr. Leung's testimony that Dyer's soft tissue injury had resolved. And finally, the ALJ relied on Dr. Shraberg's testimony that Dyer needed no further psychiatric treatment as a result of the work injury. Therefore, the ALJ found that Dyer was entitled only to medical and income benefits from the date of injury through September 6, 2006, the date Dyer reached maximum medical improvement (MMI).

On appeal, the Board found that the ALJ's credibility determinations were supported by substantial evidence. The Board also found that the ALJ properly denied Dyer's claim for future medical expenses. The Board agreed that there are circumstances where a claimant may receive future medical benefits even in the absence of a permanent impairment rating. But based on the ALJ's findings that Dyer's work-related injuries had

resolved, the Board concluded that such an award was not appropriate in this case. Dyer now appeals to this Court.

Dyer first argues that the ALJ's decision was not supported by substantial evidence. It is well-established that a claimant in a workers' compensation claim bears the burden of proving each of the essential elements of his cause of action. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925 (Ky. 2002). Where the party with the burden of proof is not successful before the ALJ, the issue on appeal is whether the decision was unreasonable because the overwhelming evidence favored that party. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence is defined as evidence of relevant consequence, having the fitness to induce conviction in the minds of reasonable people. *Smyzer v. B. F. Goodrich Chemical Co.*, 474 S.W.2d 367 (Ky. 1971).

Dyer contends that the physicians upon which the ALJ relied failed to account for symptoms including his drooping eye, partial face paralysis and a swollen and discolored arm. But Dyer does not detail his objections to the methodology used by Drs. Leung, Burgess and Shraberg. Moreover, on factual matters, the ALJ has the sole authority to judge the weight to be accorded to and inferences to be drawn from the evidence. *Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329 (Ky. 1997); *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky.App. 1995). Likewise, the ALJ has the sole discretion to determine the quality, character, and substance of evidence and an 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. *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000); *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985); and *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977). Under the circumstances, we are not convinced that the ALJ has “committed an error in assessing the evidence so flagrant as to cause gross injustice.” *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685, 688 (Ky. 1992).

Dyer primarily argues that the ALJ and the Board erroneously conditioned his receipt of future medical benefits upon a finding of a permanent impairment rating. The Kentucky Supreme Court recently addressed this issue in *FEI Installation, Inc. v. Williams*, 214 S.W.3d 313 (Ky. 2007). In that case, the Court held that KRS 342.020(1) allows a worker who has reached MMI, but has no permanent impairment rating from the injury, to continue to be compensated for reasonable and necessary medical treatment for the effects of the injury. *Id.* at 318-19. *See also Cavin v. Lake Construction Co.*, 451 S.W.2d 159, 162 (Ky. 1970); and *Combs v. Kentucky River District Health Department*, 194 S.W.3d 823 (Ky.App. 2006).

In *Williams*, however, the claimant's condition was entirely work related and serious enough to require surgery and additional physical therapy. Furthermore, no medical evidence indicated that future medical treatment would be unreasonable or unnecessary. *Id.* at 319. Thus, KRS 342.020(1) authorized an award of future medical expenses even though the claimant had failed to prove a permanent impairment rating. In contrast, the ALJ in this case found that, while Dyer suffered a work-related injury, its effect was only transient. The ALJ was convinced that the effects of the April 28, 2004,

injury had resolved and required no further treatment. The ALJ further concluded that Dyer's remaining conditions were not work related. Therefore, additional medical treatment was not reasonable and necessary, and the ALJ properly denied Dyer's claim for future medical benefits..

Accordingly, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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**BRIEF FOR APPELLEE, M.W.
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