

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000049-WC

MARK ANTHONY MYERS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-60793

COX INTERIOR, INC.; HON. OTTO DANIEL
WOLFF, ADMINISTRATIVE LAW JUDGE;
AND KENTUCKY WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: CLAYTON, D. LAMBERT AND NICKELL, JUDGES.

D. LAMBERT, JUDGE: Mark Anthony Myers appeals from the December 18, 2015 opinion of the Workers' Compensation Board (the "Board") affirming the decision of Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ"), to

dismiss Myers' benefit claims. The Board concluded that the ALJ properly found Myers' injuries were not related to his work. After review, we affirm.

I. BACKGROUND

Myers worked for Cox Interior, Inc. as a door sander. The position required him to lift heavy wooden doors onto a platform and smooth them using a hand sander. He had moved to this position from the IT department.

According to Myers' testimony, he injured his left shoulder while at work on November 17, 2012. He had spent the entire day wrapping doors in bubble wrap and lifting them. After he went home, his shoulder pain worsened. He called Ann Moss, Cox Interior's safety director, that evening and reported his injury. Myers also visited an urgent care facility that evening per Moss' instructions and was diagnosed with a pulled muscle.

Myers did not return to work the following week. However, his pain persisted. Moss directed Myers to see Dr. Jerome Dixon, Cox Interior's physician. Dr. Dixon ordered a cervical MRI, and then referred Myers to Dr. John Guarnaschelli. Dr. Guarnaschelli saw Myers and diagnosed left cervical radiculopathy with objective findings of a left C6 impingement. Myers underwent fusion surgery on March 4, 2013. He was able to return to light-duty work in April 2013 and continued in that capacity until July 7, 2014. At that time, Myers testified that his left shoulder "hurt so bad [he could not] do anything with it." Myers returned to Dr. Guarnaschelli who ordered a physical therapy regimen and

epidural block treatment. Cox Interior terminated Myers' employment on October 10, 2014.

At the administrative hearing, the primary issue was whether Myers sustained a work-related injury. The ALJ ultimately found Myers' condition was not work-related after finding that Myers' was not a credible witness. The ALJ observed that Myers had actually presented to Dr. Stephen Shaw, a chiropractor, on November 14, 2012, complaining of neck and right shoulder pain. This was three days before Myers first reported his injury to Moss. When pressed about this fact, Myers denied having chiropractic treatment in November 2012 and did not recall visiting Dr. Shaw for neck and shoulder pain. The ALJ also found the opinion of Dr. Gregory Gleis the most compelling with respect to Myers' injury. Dr. Gleis was a physician Cox Interior had requested to evaluate Myers, and he attributed Myers' condition to the natural aging process rather than his work. Though Dr. Gleis' opinion conflicted with that of Dr. James Farrage, who had found Myers' injury was solely the result of his work, the ALJ addressed this discrepancy by finding Dr. Farrage's report did not indicate he had reviewed Dr. Shaw's records. The ALJ denied Myers' benefit claim on April 27, 2015. The Board affirmed after the ALJ summarily denied Myers' petition to reconsider. This appeal followed.

II. STANDARD OF REVIEW

The role of the appellate court on review of a decision from the Board is to correct the decision only when the Board overlooked or misconstrued

controlling law, or committed a flagrant error when it assessed the evidence.

Western Baptist Hosp. v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992).

III. DISCUSSION

On appeal, Myers presents arguments that are similar to the ones he argued before the Board. Namely, he argues that the ALJ improperly determined that he was not a credible witness and that it was reversible error for the ALJ to have relied on the opinion of Dr. Gleir. Based on the following authorities, however, we will not disturb the Board's decision.

As the finder of fact, the ALJ has the sole authority to judge witness credibility and appraise conflicting medical opinions. *Bowerman v. Black Equipment Co.*, 297 S.W.3d 858, 870 (Ky. App. 2009); *see also Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997). This Court will not reverse the ALJ's factual determinations unless the complaining party is able to demonstrate through compelling evidence the determinations were unreasonable. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Importantly, mere evidence from the complaining party that would support a different outcome than the one reached by the ALJ is insufficient to render the ALJ's decision unreasonable and thus reversible on appeal. *Miller v. Go Hire Employment Development, Inc.*, 473 S.W.3d 621, 629 (Ky. App. 2015).

Here, the ALJ did not believe Myers when he testified he could not recall visiting Dr. Shaw for neck and shoulder pain three days before claiming a work injury to his shoulder. The ALJ also determined Dr. Gleis' opinion was more

convincing than Dr. Farrage's because Dr. Farrage did not indicate he reviewed Dr. Shaw's records. These decisions were for the ALJ to make, and the ALJ adequately supported them. That Myers did not recall seeking treatment for his right shoulder three days before complaining of pain in his left shoulder or that Dr. Farrage thought Myers' injury was caused by his work were not enough to overcome the ALJ's reasonable findings. Accordingly, the Board's decision is affirmed.

ALL CONCUR.

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