

RENDERED: July 2, 1998; 10:00 a.m.  
NOT TO BE PUBLISHED

NO. 97-CA-2759-WC

J. R. RIVES, JR.

APPELLANT

v.

PETITION FOR REVIEW  
OF A DECISION OF  
THE WORKERS' COMPENSATION BOARD  
WC-96-097149

EMERSON ELECTRIC COMPANY;  
RONALD CHRISTOPHER,  
DIRECTOR OF SPECIAL FUND;  
HON. THOMAS A. NANNEY,  
ADMINISTRATIVE LAW JUDGE; and  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\* \* \*

BEFORE: GARDNER, HUDDLESTON, AND KNOX, JUDGES.

KNOX, JUDGE: J. R. Rives, Jr., appeals from the rulings of the Administrative Law Judge (ALJ) and Workers' Compensation Board (Board) dismissing his claim for workers' compensation benefits.

Appellant commenced his employment with Emerson Electric Company (Emerson) on February 5, 1990, as a press operator. He alleges that he suffered work-related back injuries on October 1, 1994, and January 9, 1996. The record reflects

that in March 1994, appellant sought treatment from Dr. Patrick Hayden for back pain. Dr. Hayden noted that appellant told him, "He went to sit down on the ground and he got about 1-1/2 feet away from sitting down when he felt a pain in his lower back on the right side and a pop and he fell to the ground." In his deposition, at page 13, appellant testified that he "pulled the muscle" at home. Appellant was off work for one week.

Appellant testified that, while at work on October 1, 1994, he again felt a "pop" in his back. Although he continued working, he did inform his supervisor, Butch Inman, of his injury. Several weeks later, on November 29, 1994, appellant sought treatment from Dr. Hayden. Dr. Hayden's notes do not reflect that appellant told him the injury was work-related. Dr. Hayden diagnosed a herniated disk at L5-S1. Dr. Hayden referred appellant to Dr. Gregory Langford, a neurosurgeon, who diagnosed appellant with a herniated disk at the L5-S1 level. On February 22, 1995, Dr. Langford performed surgery, and released appellant to start work on April 17, 1995.

On January 9, 1996, appellant reported he had again injured his back at work. He again consulted with Dr. Langford. A myelogram was performed, which showed some disk bulging in the lumbar and cervical region. Appellant was treated for cervical and lumbar strain, and was referred to a work-conditioning program. Further, he was placed on some lifting restrictions. However, appellant complained of intolerable pain, and was

reassigned by Emerson to work at an automated job as a scroll slitter.

The ALJ ruled that the injuries to appellant's back were not work-related. He based his conclusion upon his observation that appellant had given no history of work-relatedness until his January 1996 back complaints. He found that appellant suffered from a significant back injury as early as March 1994, that the condition continued until January 1996, and that the October 1994 and January 1996 incidents were "merely exacerbations of the pre-existing, active condition which had been present since March 1994." The ALJ dismissed appellant's claim for benefits. The Board affirmed the ALJ's decision.

Appellant argues that the ALJ and the Board erred in determining: (1) appellant's back injuries were not work-related; and, (2) appellant's back condition was active from March 1994 through the January 1996 injury.

The record reflects evidence that in March 1994, appellant experienced a non-work-related injury to his back severe enough to cause him to fall to the ground, to experience pain down his legs and difficulty in walking, and to require emergency medical treatment. The record further reflects evidence that, while appellant consulted with Dr. Hayden in November 1994 about a work-related back injury similar in nature to that reported by him in March 1994, he did not report that injury to Dr. Hayden as being work-related.

The individual claiming workers' compensation benefits has the burden of proof and risk of persuasion. If the claimant is unsuccessful, the question on appeal is whether the evidence is so overwhelming upon consideration of the record as a whole as to compel a finding in claimant's favor. See Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984); Snawder v. Stice, Ky. App., 576 S.W.2d 276 (1979). Compelling evidence is that which is so overwhelming that no reasonable person could reach the same conclusion reached by the finder of fact. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985). If the ALJ's decision is supported by substantial evidence of record, it must be upheld. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

The record reflects evidence that appellant did suffer a non-work-related back injury in March 1994, that he did not report his October 1994 injury to Dr. Hayden as a work-related injury, and that the symptoms of that injury were similar to his March 1994 complaints. As such, we do not believe the evidence considered by the ALJ and the Board compels a different result.

Appellant next argues that the ALJ and the Board erred in concluding appellant's back condition was pre-existing and active prior to his injury of January 9, 1996. Appellant argues the evidence demonstrates that appellant's condition was nondisabling and therefore dormant. He relies upon the testimony of Dr. Thomas Loeb, who conducted an independent examination of

appellant, and who testified that the January 1996 incident aggravated a dormant condition.

The ALJ, in concluding appellant's back condition was an active, pre-existing condition dating to March 1994, determined the condition continued on until the injury of January 1996, at which time the existing, active condition was aggravated. We believe evidence in the record supports that conclusion. While Dr. Loeb characterized appellant's condition as "dormant," we believe the ALJ was entitled to rely upon evidence in the record that (1) appellant's October 1994 injury, which was not a work-related injury, was sufficiently similar in nature to his March 1994 complaints as to be an extension of the same back problem first experienced in March 1994; and, that (2) appellant's January 1996 problems, which were characterized by Dr. Langford as "post-operative changes," were the result of his March 1994 injury. Again, considering the record, we cannot conclude the evidence compels a different result than that reached by the ALJ and the Board.

Accordingly, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

B. Frank Radmacher III  
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BRIEF FOR EMERSON ELECTRIC  
COMPANY:

Joy D. Denton  
Bowling Green, Kentucky

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Benjamin C. Johnson  
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