

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001061-WC

GULF STATES PAPER CORPORATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-72407

JAMES MOUNCE; LLOYD R. EDENS,
ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: COMBS, HUDDLESTON, AND MILLER, JUDGES.

MILLER, JUDGE: Gulf States Paper Corporation (Gulf States) asks us to review an opinion of the Workers' Compensation Board entered April 18, 2001. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Gulf States is a manufacturer of folding cartons. James Mounce, appellee, has been employed by Gulf States since 1973. For most of that time, Mounce was a gravure press operator. His position required lifting 35 to 40 pound buckets of ink, and 50 to 100 pound dies and plates. Mounce's job also

included pushing down a lever on an arbor press in order to cut out the cartons.

In 1984, Mounce was involved in a motor vehicle accident with injuries to his head and mouth. In 1985 or 1986, he suffered a work-related back injury. After approximately six weeks off, Mounce returned to his same job without limitations. In 1990, Mounce was involved in two motor vehicle accidents. One accident resulted in a low back injury. As a result of the motor vehicle accident injuries, he underwent surgery in 1992. After eight to ten weeks of recovery, Mounce returned to the same job without limitations.

Mounce claims he sustained a low back injury while working for Gulf States on August 20, 1997. While engaging the arbor press lever, he alleges that he felt pain in his back, and subsequent numbness in his right leg. He was taken to the hospital emergency room the night of the incident. Mounce followed up with a family physician, who referred him to neurosurgeon, Magdy El-Kalliny. Ultimately, Dr. El-Kalliny assigned a 23% impairment rating using the range of motion (ROM) model of impairment evaluation. Dr. El-Kalliny assigned the full impairment to the August 20, 1997 injury.

Mounce was also evaluated by Dr. Richard T. Sheridan, an orthopedic surgeon, on March 27, 2000, at the request of Gulf States. Dr. Sheridan calculated the 10% impairment rating using the diagnosis related estimates (DRE) model. Dr. Sheridan further calculated a 10% prior active impairment rating as a

result of the 1990 motor vehicle accident and subsequent surgery, thus leaving a net impairment rating of zero.

On June 10, 2000, Mounce was seen by Dr. James Templin, a specialist in occupational medicine. Dr. Templin assigned an impairment rating of 25% using the ROM model of impairment evaluation. Dr. Templin assigned 8% prior impairment rating as a result of the 1992 surgery, leaving a net impairment rating of 17% to be assigned to the August 20, 1997 work-related injury.

Mounce's records were also reviewed by Dr. Leon H. Ensalada, a specialist in occupational environmental medicine. Dr. Ensalada reviewed Mounce's records back to 1986. He assigned a 10% impairment rating based on the DRE model of impairment evaluation. Dr. Ensalada also assigned a 10% prior active impairment rating from the 1990 motor vehicle accident, resulting in a net impairment rating of zero. Dr. Ensalada further concluded that there was no harmful change in Mounce evidenced by "objective medical findings" arising out of the 1997 work-related injury.

The ALJ found Mounce was 17% functionally impaired solely as a result of his August 20, 1997 injury. The ALJ also determined the use of the ROM model appropriate in assessing Mounce's impairment. The Board affirmed the ALJ in an opinion entered April 18, 2001. This appeal followed.

Gulf States first contends the Board erred in affirming the ALJ's determination that Mounce did not have a pre-existing active impairment from the 1990 motor vehicle accident. Specifically, Gulf States asserts that Mounce's impairment is

10%, and, when offset with a 10% pre-existing active impairment rating, is zero.

On appeal, the issue is whether the ALJ's opinion is supported by substantial evidence of record. Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). The ALJ, as fact finder, has the sole authority to determine weight, credibility, substance of, and inferences to be drawn from, the evidence. Paramount Foods, Incorporated, v. Burkhardt, Ky., 695 S.W.2d 418 (1985). In the case *sub judice*, four qualified medical experts offered testimony. Dr. El-Kalliny determined there was no pre-existing active impairment and assigned a 23% impairment rating. Dr. Templin determined 8% of Mounce's injury was pre-existing leaving a net 17% impairment rating. We believe the above to be substantial evidence to support the ALJ's finding that Mounce did not suffer an active pre-existing injury. It is not enough that Gulf States offered evidence to support a contrary conclusion. Cf. McCloud v. Beth-Elkhorn Corporation, Ky., 514 S.W.2d 46 (1974). Thus, we perceive no error.

Gulf States next maintains the ALJ erred in weighing the evidence of functional impairment under the AMA Guides. Specifically, Gulf States asserts Drs. Templin and El-Kalliny erroneously used the ROM model of evaluation instead of the DRE model under the AMA Guides. The ALJ, as fact finder, has the sole authority to determine weight, credibility, substance of, and inferences to be drawn from, the evidence. Paramount Foods, 695 S.W.2d 418. It is undisputed the AMA Guides indicate use of the ROM model in situations where it is unclear into which

category a patient belongs. In his July 20, 2000 report, Dr. Templin points out that the DRE categories do not adequately cover Mounce's injuries. It is apparent from that report that Mounce's diagnosis was not limited to a single condition. We think the above evidence alone constitutes substantial evidence to support the ALJ's determination that the use of the ROM model by Dr. Templin was appropriate.

Gulf States next avers that Mounce did not suffer "injury" as defined by KRS 342.0011(1), which reads, in pertinent part:

"Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

Specifically, Gulf States complains that there are no "objective medical findings" as defined by KRS 342.0011(33), which reads:

"Objective medical findings" means information gained through direct observation and testing of the patient applying objective or standardized methods.

In Dr. El-Kalliny's operative report, he indicates he observed a broken articular facet on the right side with a piece of the facet indenting the L5 nerve root. Dr. Templin was of the opinion this occurred during the work incident. Because Dr. El-Kalliny's report was based on his direct observation, the ALJ concluded the observations in the report to be objective medical findings under KRS 342.0011(33). We agree with the ALJ. We conclude that Dr. El-Kalliny's report of his direct observation constitutes an objective medical finding under KRS 342.0011(33).

We believe the above constitutes substantial evidence to support the ALJ's conclusion that Dr. El-Kalliny's observation constitute objective medical findings under KRS 342.0011(33).

Thus, we affirm the opinion of the Board under the precepts of Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

For the foregoing reasons, the opinion the Workers' Compensation Board is affirmed.

ALL CONCUR.

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