

Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001424-WC

GRANTS BRANCH COAL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-80786

DANNY R. SCOTT; HONORABLE LLOYD R.
EDENS, Administrative Law Judge;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: GUDGEL, Chief Judge; HUDDLESTON and GUIDUGLI, Judges.

HUDDLESTON, Judge: Grants Branch Coal appeals from an opinion of the Workers' Compensation Board that affirmed a decision by an Administrative Law Judge awarding Danny R. Scott benefits based upon a 10% permanent partial disability resulting from a work-related groin injury.

On April 3, 1999, Scott injured his groin, back and leg when he was thrown against a piece of coal mining machinery known as a miner after a chain holding a tram motor that he and another employee were moving broke. He immediately felt pain in his groin,

lower back and stomach, but he did not seek medical treatment at that time. Due to pain and swelling in his groin area, Scott did not return to work and saw a family physician a few days later.

On April 29, 1999, Scott was examined by Dr. William Thorndyke, a urologist, who diagnosed Scott as suffering from a pulled groin muscle and acute epididymitis, which was confirmed by an ultrasound. He prescribed antibiotics, pain medication, rest and heat for the strained groin muscle. Dr. Thorndyke recommended avoidance of lifting and manual labor. He attributed Scott's symptoms to the work injury.

In May 1999, Scott was seen by Dr. Daniel Wolens, who is certified in occupational and environmental medicine, upon reference from the employer in connection with Scott's workers' compensation claim. Dr. Wolens reported that Scott had been diagnosed with epididymitis and orchitis, but he felt this condition was not work-related. He stated that there is no empirical or theoretical basis linking this condition to lifting tasks. Based on Dr. Wolens's report, Grants Branch denied Scott's claim for workers' compensation coverage.

In August 1999, Dr. Thorndyke prepared a Workers Compensation Form 107 stating that both Scott's acute epididymitis and groin pull were directly related to the lifting and straining that occurred with the April 1999 incident. He stated that Scott should be able to return to work after achieving full recovery in approximately eight weeks. Dr. Thorndyke, however, assigned a 10% permanent whole body impairment under the most recent American Medical Association (AMA) Guidelines.

In September 1999, Scott saw Dr. Vyas, a surgeon, with complaints of pain in his lower back pain and right knee. In August 2000, Scott was examined by Dr. Richard Sheridan, an orthopedic surgeon. He felt that Scott had suffered a low back strain from the April 1999 incident and had a slight tear in his right medial meniscus. Dr. Sheridan, however, did not attribute his current complaints to a work injury.

In October 1999, Scott filed an application for resolution of injury claim seeking compensation related to his groin, back and knee based on the April 1999 incident, and attached Dr. Thorndyke's Form 107 medical report. On November 18, 1999, in response to a request from Grants Branch concerning whether Scott had a permanent impairment, Dr. Thorndyke stated in a letter that he believed the condition had "already more or less resolved," although his pain may recur. He concluded: "Based on this last review in early September, he [Scott] appears to have more or less recovered fully and I would anticipate that he can return to full activity."

In December 1999, Dr. Charles Ray, a urologist, examined Scott. Based on his review of the medical records and his examination, he opined that Scott had suffered a case of bacterial epididymo-orchitis unrelated to his employment. He stated that the condition had been fully resolved and disagreed with Dr. Thorndyke's assignment of a permanent impairment. He agreed with Dr. Wolens that the medical literature did not support a connection between lifting and epididymo-orchitis.

Between March-May 2000, Scott was treated for depression allegedly related to pain from his injury and stress from his unemployment. He amended his compensation claim to add a psychological component. In September 2000, Scott was evaluated by Dr. David Schraberg, a psychiatrist, who concluded that Scott suffered from depression related to his work injury, but found no permanent psychiatric impairment.

On January 20, 2000, an arbitrator found that Scott had suffered a work-related injury that contributed to the infectious development of epididymitis and orchitis, but that he had no permanent impairment. He awarded temporary total disability benefits for eight weeks and payment of Scott's medical expenses. This decision was appealed to an ALJ for de novo review.

After a hearing, the ALJ awarded Scott temporary total disability for a period of eight weeks and permanent partial disability benefits based on a 10% permanent impairment. He rejected the claim with respect to the knee complaint and found the back condition to be a temporary condition resulting from a muscular strain. He also felt based on Scott's testimony and Dr. Schraberg's report that Scott suffered depression as a result of the work injury, but again found no functional impairment due to it. The ALJ recognized the conflict in the opinions of Drs. Thorndyke, Ray and Wolens, but found the testimony of Dr. Thorndyke more persuasive in assessing a 10% functional impairment as a result of the April 1999 injury. He granted benefits based on a 10% permanent disability rating under Kentucky Revised Statutes (KRS) 342.730 (1) (b). He also held the multiplier set forth in KRS

342.730 (1) (c) did not apply because Scott could return to his previous employment. Subsequently, the ALJ denied the employer's petition for reconsideration. On June 6, 2001, the Workers' Compensation Board affirmed the opinion of the ALJ. This appeal followed.

Grants Branch argues that the Board erred in holding that the ALJ properly relied on the impairment rating assigned by Dr. Thorndyke in his Form 107 report. It also contends that the ALJ's finding that Scott's epididymitis was work-related is clearly erroneous. Concomitantly, it asserts that Scott's psychological problem is not compensable because it was not a direct result of a work-related physical injury. See KRS 342.0011 (1).

We begin with the standard of review. In a workers' compensation action, the employee bears the burden of proving every essential element of a claim.¹ As the fact-finder, the ALJ has the authority to determine the quality, character and substance of the evidence.² Similarly, the ALJ has the sole authority to determine the weight and inferences to be drawn from the evidence.³ The fact-finder also may reject any testimony and believe or disbelieve various parts of the evidence even if it came from the same

¹ Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88, 96 (2000); Gibbs v. Premier Scale Co./Indiana Scale Co., Ky., 50 S.W.3d 754, 763 (2001); Jones v. Newberg, Ky., 890 S.W.2d 284, 285 (1994).

² Square D Co. v. Tipton, Ky., 862 S.W.2d 308, 309 (1993); Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418, 419 (1985).

³ Miller v. East Kentucky Beverage/Pepsico, Inc., Ky., 951 S.W.2d 329, 331 (1997); Luttrell v. Cardinal Aluminum Co., Ky. App., 909 S.W.2d 334, 336 (1995).

witness.⁴ When the decision of the fact-finder is in favor of the party with the burden of proof, the issue on appeal is whether the ALJ's decision is supported by substantial evidence, which is defined as some evidence of substance and consequence sufficient to induce conviction in the minds of reasonable people.⁵ The ALJ has broad discretion in determining the extent of occupational disability.⁶ Once the medical evidence establishes the existence of an injury, lay testimony of the claimant is competent on the extent of disability.⁷ A party challenging the ALJ's factual findings must do more than present evidence supporting a contrary conclusion to justify reversal.⁸ Upon review of the Board's decision, the appellate court's function is limited to correcting the Board "only where the [] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice."⁹

⁴ Magic Coal, *supra*, n. 1; Whittaker v. Rowland, Ky., 998 S.W.2d 479, 481 (1999); Halls Hardwood Floor Co. v. Stapleton, Ky. App., 16 S.W.3d 327, 329 (2000).

⁵ Rowland, *supra*, n. 4, at 481-82; Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986).

⁶ Cal Glo Coal Co. v. Mahan, Ky. App., 729 S.W.2d 455, 458 (1987); Thompson v. Fischer Packing Co., Ky. App., 883 S.W.2d 509, 511 (1994).

⁷ Hush v. Abrams, Ky., 584 S.W.2d 48 (1979); Newberg v. Sleets, Ky. App., 899 S.W.2d 495, 498 (1995).

⁸ Ira A. Watson Dep't Store v. Hamilton, Ky., 34 S.W.3d 48, 52 (2000).

⁹ Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687 (1992). See also McNutt Construction v. Scott, Ky., 40 S.W.3d 854 (2001); Huff Contracting v. Sark, Ky. App., 12 S.W.3d 704, 707 (continued...)

Grants Branch raises two issues concerning causation and duration. It challenges the ALJ's finding that Scott's epididymitis and psychological condition (depression) were caused by the April 1999 incident. It refers to the opinion of Dr. Ray that Scott suffered from bacterial epididymitis and the statements from both Drs. Ray and Wolens that there is no support in the scientific literature establishing suggesting a causal connection between lifting tasks and the development of epididymitis or orchitis.

While the opinions of these physicians support Grants Branch's position, Dr. Thorndyke unequivocally opined that Scott's acute epididymitis was directly related to and caused by the straining and lifting associated with the April 1999 incident. Scott had not experienced symptoms of this condition prior to the incident. As a certified urologist and treating physician, Dr. Thorndyke was qualified to give this opinion, and the ALJ was justified in relying on it. Grants Branch's argument merely illuminates a conflict in the evidence, which is insufficient to compel reversal. With respect to the psychological claim, Dr. Shraberg's report and Scott's testimony indicated that his depression resulted from the April 1999 injury. The ALJ's findings that Scott suffered a compensable work-related physical injury and that his psychological condition was a direct result of the physical injury were supported by substantial evidence.

⁹(...continued)
(2000).

Grants Branch's main argument, however, is that the ALJ erroneously concluded that Dr. Thorndyke believed that Scott suffered a permanent impairment from the April 1999 incident. Although acknowledging that Dr. Thorndyke assigned a 10% permanent functional impairment rating in his Form 107 report, Grants Branch contends its position is supported by language in the Form and his subsequent letter of November 1999 stating that he anticipated Scott would fully recover in eight weeks and that Scott could return to full activities.

We agree with the Board that Grants Branch has not shown that the ALJ erroneously relied on Dr. Thorndyke's impairment rating. As the Board indicated, it is not unreasonable for the ALJ to believe Dr. Thorndyke was aware of and followed the AMA Guideline directive that it is inappropriate to mischaracterize an impairment as permanent unless it is not likely to remit despite medical treatment. Moreover, Dr. Thorndyke's statements that Scott should recover and could return to full activity is not necessarily inconsistent with a permanent partial disability. KRS 342.730 provides for different benefit levels for persons who can return to employment or return to their previous employment. In his hearing testimony, Scott stated that his groin pain had returned after being absent for a period. In his November 1999 letter, Dr. Thorndyke stated that Scott's pain "may or may not recur[,] " and that "[i]ndividuals who may have injured themselves at this point may more easily develop an injury again if they over exert themselves." The November 1999 letter is at most ambiguous and does not clearly indicate that Dr. Thorndyke had changed his

opinion or retracted his earlier 10% permanent impairment assessment. As the Board stated, Dr. Thorndyke's statements can be interpreted as his belief that Scott had reached maximum medical improvement rather than a conclusion that he no longer had a permanent partial impairment. As a result, Grants Branch has not shown that the Board misconstrued controlling statutory or case law, or committed an error in assessing the evidence so flagrant as to cause gross injustice.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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