

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2009-CA-001251-WC

JONATHAN SMALLWOOD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-05-96523

LONE MOUNTAIN PROCESSING, INC.;  
HON. LAWRENCE SMITH,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, KELLER, AND VANMETER, JUDGES.

VANMETER, JUDGE: Jonathan Smallwood petitions for the review of an opinion of the Workers' Compensation Board (Board) affirming in part and reversing and remanding in part an opinion of the Administrative Law Judge (ALJ) with respect to Smallwood's injury claims. Finding no error, we affirm.

In May 2006, Smallwood filed an application for resolution of injury claim resulting from an October 2003 injury he suffered during the course and scope of his employment with Lone Mountain Processing, Inc. (Lone Mountain). Smallwood claimed that he sustained injuries to his head, neck and back; experienced headaches; pain in his legs; bladder, bowel, and sexual dysfunctions; urinary incontinence; and psychological and emotional overlay. At the time Smallwood filed his claim, treatment for his injury included low back surgery, physical therapy, trigger point injections, epidural injections, as well as narcotic medications.

In July 2008, the ALJ conducted a hearing to address Smallwood's claim. Smallwood presented evidence of his testimony as well as evidence of medical records and reports of numerous doctors and clinics. Lone Mountain also presented evidence of medical records and reports of multiple doctors. Following the hearing, the ALJ issued an opinion summarizing the relevant proof in the record and determining that Smallwood had sustained an injury and suffered a twenty-seven percent (27%) whole body impairment. Based on the expert testimony, the ALJ determined that Smallwood was not entitled to an impairment rating for the bladder, bowel and sexual dysfunctions, reasoning that the dysfunctions were most likely attributable to Smallwood's use of narcotic drugs. The ALJ further concluded, based on expert testimony, that the evidence did not substantiate a finding of psychological impairment. Finally, the ALJ concluded that Smallwood was not totally occupationally disabled.

Smallwood filed a petition for reconsideration, alleging that the ALJ erred by not finding a causal relationship between the dysfunctions and the injury. Further, Smallwood argued that the ALJ's determination that the dysfunctions resulted from his use of narcotic medication established a causal relationship between the dysfunctions and the injury so as to make the dysfunctions compensable. Smallwood further disputed the ALJ's finding that he did not suffer a psychological impairment. The ALJ denied his petition for reconsideration.

Smallwood then appealed the ALJ's opinion to the Board, which affirmed in part, and reversed and remanded in part. In a 53-page opinion, the Board affirmed the ALJ's finding that Smallwood had no psychological impairment and was not totally disabled. The Board also affirmed the ALJ's finding that Smallwood was not entitled to income benefits for the bladder and bowel dysfunctions. However, the Board reversed and remanded the case to the ALJ for entry of an order awarding Smallwood medical benefits for the treatment of the bladder and bowel dysfunctions, so long as these dysfunctions continue to be related to the treatment of Smallwood's work-related back condition. Further, the Board directed the ALJ on remand to enter an amended award of income and medical benefits for the sexual dysfunction based upon the five-percent (5%) impairment assessed.

On appeal, Smallwood argues that the Board erred by concluding the evidence supported the ALJ's finding that (1) his bowel and bladder dysfunctions

did not result in permanent impairment and (2) he did not sustain a psychological impairment as a result of his work injury. We disagree.

Our standard for reviewing a decision of the Board on appeal “is to correct 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.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). We note that “the claimant bears the burden of proof and risk of persuasion before the [B]oard” in a workers’ compensation case. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984). If the claimant is unsuccessful before the Board, our standard of review is whether “the evidence for claimant was so strong as to reasonably compel a finding in his favor.” *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Further, the ALJ, in its role as fact-finder, may judge the credibility of the testimony and has “the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party’s total proof.” *Caudill v. Maloney’s Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

In assessing Smallwood’s claim relating to his bowel and bladder dysfunctions the Board noted that the ALJ, within its prerogative, accepted and relied on the expert testimony of Dr. Primm concerning the causation of the dysfunctions, rather than the evidence proffered by Smallwood. In particular, the ALJ relied on Dr. Primm’s testimony that the dysfunctions resulted from

Smallwood's use of narcotic medication. The Board concluded that the ALJ made sufficient findings to support its decision, which are supported by substantial evidence in the record.

Further, the Board concluded that the record amply supports the ALJ's finding that Smallwood did not suffer a psychological impairment. The Board noted that the ALJ relied on evidence of substantial probative value sufficient to support its decision; specifically, the reports and testimony of Dr. Shraberg that Smallwood did not suffer a psychological condition meriting an impairment rating.

Having carefully reviewed the record in this matter, we do not find the evidence so compelling as to require a finding in Smallwood's favor on either claim of error. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Edmond Collett  
Monica Rice Smith  
Hyden, Kentucky

BRIEF FOR APPELLEE LONE  
MOUNTAIN PROCESSING, INC.:

Denise M. Davidson  
Hazard, Kentucky