RENDERED: JULY 23, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000383-WC

GARY WATKINS — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-07-01285

L3 COMMUNICATIONS;
HON. IRENE STEEN, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: MOORE AND WINE, JUDGES; HARRIS,[1] SENIOR JUDGE.

[1] Senior Judge William R. Harris sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

HARRIS, SENIOR JUDGE: Gary Watkins has petitioned for review of an opinion of the Workers' Compensation Board (the "Board") entered on January 29, 2010, which affirmed the Administrative Law Judge's ("ALJ") June 23, 2009, order dismissing his claim. We affirm.

Watkins worked as an aircraft mechanic in the engine rotor shop for L3 Communications from 2003 to 2007, and in various other departments for L3 from 2001 to 2003. His primary tasks as an aircraft mechanic were disassembling, cleaning, and modifying helicopter rotor heads, tail rotor assemblies, main rotor assemblies, and transmissions. This work involved the use of solvents to clean the various parts.

Watkins filed a workers' compensation claim for occupational disability benefits, claiming that his contact with the solvents produced cognitive problems, peripheral neuropathies, respiratory problems, anxiety, and depression. The claim was dismissed by the ALJ, along with Watkins' subsequent petition for reconsideration. The Board affirmed the ALJ's decision, and this appeal followed.

Appellant first argues that the ALJ's determination that Watkins failed to carry his burden of proving a causal relationship between his use of solvents and his cognitive difficulties was erroneous. Rather, Watkins asserts that the university evaluator's opinion established a causal link between Watkins' cognitive impairments and his occupation.

In a workers' compensation case, "the claimant bears the burden of proof and the risk of nonpersuasion before the fact-finder with regard to every

element of a workers' compensation claim." *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). In order for Watkins to meet his burden of causation, he was required to prove that the solvent exposure was the cause of his cognitive impairment within a reasonable medical probability. *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004). The speculation or mere possibility that the solvent exposure caused the disability is insufficient to impose liability. *Young v. L.A. Davidson, Inc.*, 463 S.W.2d 924, 926 (Ky. 1971).

Because Watkins was unsuccessful before the Board, the question before this Court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). Compelling evidence is defined as evidence that is "so overwhelming that no reasonable person could reach the [same] conclusion" as the ALJ. *Greene v. Paschall Truck Lines*, 239 S.W.3d 94, 108 (Ky. App. 2007) (quoting *REO Mechanical v. Barnes*, 691 S.W.2d 224, 226 (Ky. App. 1985)). As long as any evidence of substance supports the ALJ's opinion, it cannot be said that the evidence compels a different result. *Special Fund v. Francis*, 708 S.W.2d 641, 644 (Ky. 1986).

The university evaluator, Dr. Brown, specifically stated in his medical report that the cause of Watkins' cognitive issues was unknown. He also testified that there was no way within a reasonable medical probability to determine what was causing Watkins' cognitive complaints. He acknowledged "[w]e don't know

what's causing his symptoms. I don't know what's causing his symptoms." Further, he stated that "[t]here is no way to prove a causal relationship in this case . . . [b]etween his – there's no way to prove that his work exposure caused his mild cognitive impairment . . . [.]" Therefore, Dr. Brown's medical report and testimony did not compel a different result from that arrived at by the ALJ and the Board.

Watkins next argues that KRS 342.315 required the ALJ to give presumptive weight to the findings and opinions of the university evaluator. KRS 342.315(2) states that:

> [T]he clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

In *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 94-95 (Ky. 2000), the Court stated that "KRS 342.125(2) does not prohibit the fact-finder from rejecting a finding or opinion of a university evaluator but requires only that the reasons for doing so must be specifically stated." The ALJ needs only to articulate a "reasonable basis" for rejection of the university evaluator's opinion. *Bright v. American Greetings Corp.*, 62 S.W.3d 381, 383 (Ky. 2001).

Even if the university evaluator's testimony could be interpreted in such a way as to establish causation, the ALJ stated her grounds for rejecting the

evaluator's opinion. Specifically, the ALJ relied on evidence from the results of scientific tests conducted on the solvents which found acceptable levels of chemicals and metals in the solvents. These results were reviewed by a University of Louisville toxicologist, who found that Watkins' described symptoms were too broad to attribute them to chemical exposure after having seen the results of the test.

Dr. Brown did not see the results of these tests before preparing an opinion on causation. Tellingly, Dr. Brown testified that the results of these tests would be important in determining the origin of Watkins' symptoms. Therefore, even if Dr. Brown's medical report and testimony supported Watkins' position on causation, the test results established a reasonable basis for the ALJ to disregard Dr. Brown's opinion on causation. We find no error.

Finally, as to Watkins' claim that the ALJ erred in considering non-medial evidence in rejecting Dr. Brown's opinion on causation, there is no statutory or case law authority that precludes the ALJ from considering non-medical evidence in rejecting a university evaluator's opinion. As stated in *Fox*, "[a]though KRS 342.315(2) indicates that the 'burden to overcome' a university evaluator's testimony falls on the opponent of the evidence, it does not provide a standard for determining the type of evidence which is necessary in order to do so[.]" *Fox*, 19 S.W.3d at 95. Here, the test samples were sent to an independent laboratory for analysis, and the test results were then analyzed by a toxicologist.

Furthermore, the results were entered into evidence without objection from Watkins. Again, we find no error.

Accordingly, we affirm the decision of the Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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Lexington, Kentucky

BRIEF FOR APPELLEE, L3 COMMUNICATIONS:

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