

RENDERED: OCTOBER 15, 2010; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-000074-WC

WILLIAM COUCH, JR.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-00181

BLEVINS LOGGING;
HON. DOUGLAS GOTT,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: CAPERTON, LAMBERT AND NICKELL, JUDGES.

NICKELL, JUDGE: William Couch appeals from a decision of the Workers' Compensation Board affirming the denial of benefits. Couch argues the denial of benefits was in error because it was not supported by substantial evidence. We affirm.

Couch was employed as a truck driver and a mechanic by Blevins Logging. On February 8, 2008, Couch filed an application for workers' compensation benefits alleging that on August 12, 2007, he injured his low back and left leg while lifting brake drums. Couch subsequently amended the application to include an additional injury involving his right arm that allegedly occurred on April 14, 2007, while he was working on a truck. The parties submitted evidence and a hearing was conducted by an Administrative Law Judge (ALJ).

After reviewing the testimony and evidence, the ALJ concluded Couch failed to sustain his burden of proving the occurrence of a work-related injury to his low back and left leg. Instead, the ALJ was persuaded that these complaints were long-standing in nature and predated the alleged work-related injury. The ALJ found Couch's right arm condition was causally related to his employment, but that medical evidence demonstrated no harmful change beyond a simple contusion and required an award for only transient medical treatment and no award of either temporary or permanent income benefits. Neither party filed a petition for reconsideration before the ALJ, but Couch appealed the decision to the Board. The Board affirmed. This appeal followed. Additional facts will be developed as necessary.

Couch argues the denial of benefits was not supported by substantial evidence. He further argues that factfinders should not be permitted to "cherry-

pick” between evidence from both parties’ witnesses in order to reach a particular conclusion. We disagree.

“It has long been the rule that 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). As fact-finder, the ALJ has sole authority to determine the quality, character, substance and inference to be drawn from the evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993); *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). Further, the fact-finder has the sole authority to judge the weight to be afforded the testimony of a particular witness. *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46 (Ky. 1974). The fact-finder is permitted “to believe part of the evidence and disbelieve other parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof.” *Caudill v. Moloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977). If there is substantial evidence in the record to support the fact-finder’s determination, the findings will be upheld, even though there may be conflicting evidence in the record. *Kentucky Commissioner on Human Rights v. Fraser*, 625 S.W.2d 852, 856 (Ky. 1981).

The standard of review in workers’ compensation cases is well-established. If the claimant is unsuccessful before the ALJ and appeals to the Board, the question before the Board 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 no reasonable person could reach the same conclusion as the ALJ. *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky. App. 1985). When this Court reviews a decision of the Board, our role is to correct the Board only if we believe it “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).

In the present case, Couch is essentially requesting this Court to reweigh the evidence in his favor and substitute our determination of witness credibility for that of the ALJ. However, we conclude the ALJ did not err in assessing the evidence and that his findings were supported by substantial evidence.

First, there was ample evidence to support the ALJ’s conclusion that Couch’s low back and left leg injury was not related to his work at Blevins Logging. Medical records from the Clover Fork Clinic and Mountain Comprehensive Care document a longstanding history of chronic back pain and an application for disability benefits dating back to at least 1998, together with a prior low back injury sustained while working for a previous employer in 1994. When Couch presented for treatment two days after the alleged injury, he offered no complaints of a work-related event, but instead merely sought treatment for heartburn, breathing difficulty, and arthritis. When Couch sought treatment from

Dr. James Bean on October 1, 2007, less than two months after the alleged injury, he stated he had been experiencing pain for about six months. After examining Couch and reviewing his medical records, Dr. G. Christopher Stevens could not relate causation of the low back injury to the alleged August 2007 incident.

Though Dr. David Muffly attributed Couch's low back condition to the alleged August 2007 work event, his opinion was founded upon only a partial review of Couch's medical record, particularly consisting of the medical records of Dr. Bean from October 2007.

In addition to medical evidence, the ALJ set forth a plethora of lay evidence contradictory to Couch's claims that his low back and left leg complaints were related to his work at Blevins Logging and that he had provided notice of such injury to his employer. Vernis "Pot" Blevins, the company owner and Couch's first cousin, did not recall Couch ever stating he had a low back problem while working for Blevins Logging. Shawna Blevins Eldridge, Vernis's daughter, maintained payroll and workers' compensation for Blevins Logging and could not recall Couch ever being injured while working for her father's company or having ever reported a work-related injury to his low back. She also testified that Couch had complained of back problems "for years." Finally, Marty Middleton, an employee of Blevins Logging, who Couch indicated had been working with him when he hurt his low back, testified he could not remember Couch hurting his back at work.

Second, regarding Couch's right arm injury, a treatment note from Clover Fork Clinic, dated April 16, 2007, documents that Couch injured his right arm at work and that the diagnosis was limited to a contusion. There were no medical records indicating Couch was taken off work by a physician due to his right arm condition or that he would require ongoing medical treatment for that injury. The ALJ also duly noted that Middleton and Jeff Bush, another co-worker, confirmed Couch had injured his arm at work, and that Eldridge likewise had conceded that, in April 2007, Couch had sustained a "scratch" on his right arm.

In support of his argument, Couch merely repeats his own testimony and attempts to cast doubt upon the credibility of other witnesses. Under the authority cited above, this is not sufficient to justify reversal. Contrary to Couch's argument, we are neither inclined nor permitted to overturn longstanding and well-grounded precedent established by the Supreme Court of Kentucky concerning the scope of an ALJ's authority to weigh the evidence and determine the credibility of witnesses. *See Special Fund v. Francis*, 708 S.W.2d 641, 642 (Ky. 1986). Based on our review of the briefs, the record and the law, we agree with the Board that the ALJ's detailed findings were reasonable and supported by substantial evidence.

Accordingly, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Johnnie L. Turner
Harlan, Kentucky

BRIEF FOR APPELLEE:

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