

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-002379-WC

JASON LUCAS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-03-72384

COOK, ERNEST & SONS MINING, INC.;
HON. DANIEL WOLFF, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MOORE AND THOMPSON, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

THOMPSON, JUDGE: Jason Lucas appeals the decision of Kentucky's Workers'
Compensation Board upholding the Administrative Law Judge's (ALJ) ruling that

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

denied Lucas's request to reopen his workers' compensation claim and sustaining Cook, Ernest & Sons Mining, Inc.'s medical fee disputes. Because the ALJ's ruling was supported by substantial evidence, we affirm.

On September 20, 2003, Lucas injured his lower back while at work when his truck crashed into an embankment and he was ejected. He began treatment with Dr. Van S. Breeding and was initially diagnosed with contusions to his lumbar and thoracic spine. Dr. Breeding later amended Lucas's original diagnosis to a lower back sprain notwithstanding continued therapy. In a medical report dated November 11, 2003, Dr. Breeding remarked that Lucas had undergone an MRI of his lumbar spine and the results were completely negative. Thus, Dr. Breeding opined that Lucas's pain was probably myofascial in origin.

On January 5, 2004, Dr. Breeding recorded that Lucas's pain was intensifying, that he was experiencing numbness, and that pain radiated down his left leg into some of his toes. Dr. Breeding noted evidence of diminished sensation in the medial portion and lateral portion of Lucas's left leg. Consequently, he recommended that Lucas undergo another MRI and referred him to a neurosurgeon for further evaluation. Subsequently, Dr. Breeding observed that Lucas had been diagnosed with a bulging disc at L4-S1 and continued to complain of chronic back pain.

On March 8, 2004, Lucas was treated by Dr. James Bean, a neurosurgeon, and was given work restrictions and medication to moderate his back pain. A year later, Lucas was again seen by Dr. Bean who noted that Lucas

continued to complain of chronic lower back pain but continued to work. Dr. Bean observed that Lucas's MRI scan of his lumbar spine revealed evidence of a minimal disc bulge at L5-S1. He further opined that Lucas had reached maximum medical improvement and could return to work without restrictions. Dr. Bean assessed Lucas as having a five percent whole body impairment pursuant to the criteria set forth in the American Medical Association's *Guides to the Evaluation of Permanent Impairment* ("AMA Guides"). Based on this five percent impairment rating, Lucas and his employer reached a voluntary settlement agreement.

On June 7, 2007, Lucas went to the Mountain Medical Care Center for constant pain in his lower back and was seen by Dr. Hoover. Lucas did not inform Dr. Hoover of his previous work-related injury until January 4, 2008, when he informed Dr. Hoover that his back went out on Christmas Eve when he lifted a Christmas present. After examining Lucas, Dr. Hoover noted for the first time that Lucas suffered spasms of the lower paralumbar musculature and ordered an MRI. On February 4, 2008, Dr. Hoover diagnosed Lucas as having a herniated disc with displacement.

On March 20, 2008, Lucas returned to the care of Dr. Breeding who issued a report indicating that Lucas was previously diagnosed with a bulging disc at L4-5. Dr. Breeding further noted that Lucas's back pain was persistent and that Lucas's recent MRI showed a herniated disc at L4-5 with extruding fragments, which caused his pain. During the time preceding Dr. Breeding's report, Lucas did

not mention the Christmas-time injury. Rather, Lucas informed Dr. Breeding that he had suffered no additional injuries since his workplace injury. Ultimately, Dr. Breeding issued a report opining that Lucas's current (new) condition was caused by the gradual aging process resulting from his work-related injury.

On August 11, 2008, Dr. Ira Potter performed an independent medical evaluation on Lucas but was only informed of Lucas's work-related injury. With no knowledge of the Christmas-time 2007 injury, Dr. Potter diagnosed Lucas with a right L4-5 disc extrusion, lumbosacral sprain or strain, and right lumbosacral radiculitis. Like Dr. Breeding, Dr. Potter opined that Lucas's current condition resulted from his previous work-related injury in 2003. Dr. Potter further opined that Lucas's condition had greatly worsened since his injury and settlement. He assessed Lucas with an eleven percent whole body impairment and opined that Lucas no longer had the physical capacity to return to his previous type of work.

Dr. Timothy C. Kriss performed an independent review of Lucas's medical records on September 4, 2008. He observed a history of treatment for injuries, including Lucas's work-related injury and his Christmas-time injury. He noted that Lucas had undergone a lumbar MRI in November 2003 that was interpreted as a "normal study." He wrote that the radiologist who performed the initial MRI found that Lucas had no sign of herniation or spinal stenosis. Dr. Kriss, however, observed that a lumbar MRI performed in January 2008 revealed the presence of a broad based disk herniation at L4-5, which was more on the right rather than the left with an extruding fragment on the right side.

Dr. Kriss opined that Lucas suffered chronic back pain from a persistent musculoskeletal strain resulting from his work-related injury in 2003; a minimal L5-S1 disc bulge based on Dr. Bean's 2005 examination, which condition was not reflected on the November 2003 lumber MRI; and a "new" disc herniation at L4-L5 on the right side. Finally, Dr. Kriss opined that he had "little doubt that the 'new' right L4/L5 extruded disk fragment/herniation transpired on Christmas Eve or Christmas [D]ay of December 2007." He further opined, in pertinent part, the following:

What makes this causation determination all the more emphatic is the fact that Mr. Lucas had a totally 'normal' lumbar MRI scan in November 2003. With no demonstrable structural injury to the lumbar disks or spine specifically attributable to the September 2003 work trauma. We cannot possibly 'blame' this 'new' L4/L5 extruded dis[k] fragment/herniation on the September 2003 work incident.

Based on the *AMA Guides*, Dr. Kriss assessed Lucas with a ten to thirteen percent impairment rating but stated that any additional impairment rating beyond his previous five percent impairment was not the result of a work-related injury.

On November 26, 2008, Dr. Bean conducted an independent review of Lucas's medical records, including Dr. Kriss's medical reports. In his report, Dr. Bean opined the following:

I do not disagree with Dr. Kriss's assessment that there is a new finding of extruded dis[k] at L4-5 that was not present in 2005, and that the new finding is not a direct consequence of the injury since [it] was not present previously. On the other hand, I do believe that the prior impairment was related to L4-5 of 5% and therefore the

current impairment of 10% based on this herniated dis[k] would be a 5% addition to the prior impairment such that his new additional impairment is 5% beyond what he had previously.

After conducting a hearing, the ALJ issued an order finding that Lucas's condition was the result of his 2007 injury. The ALJ specifically wrote that "...it is significant that the 2003 MRI did not show a disc bulge or herniation at the L4-L5 level, but the 2008 MRI does show a right L4-L5 extruding disk fragmentation, something had to occur after the 2003 work incident to cause the right side herniation," which was the December 2007 injury. Thus, the ALJ denied Lucas's request to reopen his workers' compensation case and sustained Cook's medical fee dispute. The Board affirmed the ALJ's decision.

Lucas contends that the ALJ failed to make sufficient findings to permit the appellate review of his claims. Specifically, he argues that the ALJ should have made "findings as to whether or not the original injury together with the degenerative aging process accelerated by that injury was a substantial factor in causing and bringing about any separate effects of the incident which occurred when [Lucas] 'bent forward' on Christmas Day 2007."

Although an ALJ is required to recite his findings of facts, these findings need only be sufficient to permit a meaningful appellate review of a case. *Bowerman v. Black Equipment Co.*, 297 S.W.3d 858, 866 (Ky.App. 2009). If an ALJ's findings of facts indicate his factual basis for his determination, the factual

findings will be sufficient to permit appellate review. *Kentland Elkhorn Coal Corp. v. Yates*, 743 S.W.2d 47, 50 (Ky.App. 1988).

After reviewing the record, the ALJ's findings of fact sufficiently state the basis of his determination. The ALJ's findings stated that Lucas's new (2007) injury was not present when he received medical treatment for his work-related injury in 2003, that the intensity of his pain dramatically increased after the new injury, and that the pain affected a different (right) side of his body. Therefore, we conclude that that the ALJ's findings addressed the necessary issues in determining his claim. *Id.*

Lucas next contends that the ALJ's and Board's decision was not supported by substantial evidence. He argues that there was no evidence that he lifted a heavy object leading to the injury to his lower back. Thus, he contends that his minor movement, bending forward, could not have led to his significant lower back pain. Therefore, he argues that his work-related injury must have accelerated the degenerative process which made him highly susceptible to the 2007 injury.

On appellate review of an ALJ's findings of fact, we are required to provide these findings considerable deference and cannot set them aside unless evidence compels a contrary finding. *Mosely v. Ford Motor Co.*, 968 S.W.2d 675, 678 (Ky.App. 1998). We review the Board's application of law to the facts *de novo* and, thus, provide no deference to its application of the law to the facts. *Newberg v. Thomas Industries*, 852 S.W.2d 339, 340 (Ky.App. 1993).

It has long been the rule that a worker may be compensated for all harmful changes that result from a work-related injury. *Williams v. White Castle Systems, Inc.*, 173 S.W.3d 231, 235 (Ky. 2005). However, if a harmful change is attributable to an independent, intervening cause rather than flowing from a work-related injury, the harmful change or injury is not compensable. *Lane v. S & S Tire, Inc., No. 15*, 182 S.W.3d 501, 505 (Ky. 2005). Consistent with other types of workers' compensation claims, the claimant bears the burden of proof to establish the validity of his claim. *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000).

In this case, the ALJ found that Lucas did not have any structural defects to his vertebral column at L4-5 as a result of his workplace injury. The ALJ based this decision on an MRI that was conducted on Lucas two months after his workplace injury. The MRI was interpreted to be a completely negative study, indicating no defects at L4-5. However, a 2008 MRI revealed that Lucas had a "right L4-5 extruding dis[k] fragmentation...." The ALJ reasoned that the injury from 2007 must be the significant event to account for the difference. Further, the ALJ cited the reports of Drs. Kriss and Bean, indicating that Lucas's new condition was the result of his 2007 injury rather than his workplace injury.

While nonwork-related degenerative changes caused by a work-related trauma are compensable as stated in *Bright v. American Greetings Corp.*, 62 S.W.3d 381, 384 (Ky. 2001), we conclude that there was substantial evidence that Lucas's new condition was not related to his earlier workplace injury.

"Substantial evidence has been defined as some evidence of substance and relevant

consequence, having the fitness to induce conviction in the minds of reasonable people.” *Magic Coal Co.*, 19 S.W.3d at 96. Accordingly, based on the evidence in the record, we conclude that it was not unreasonable for the ALJ to find that the 2007 injury caused Lucas’s current condition unrelated to his workplace injury.

Although Lucas contends that he did nothing in December 2007 to account for the significant change in his condition, he acknowledges that Dr. Hoover interpreted his statements as indicating that he lifted a package. However, Lucas argues that Dr. Hoover did not indicate the weight of the package. Despite this fact, the ALJ was permitted to draw all reasonable inferences from the evidence in the record. *Carnes v. Parton Bros. Contracting, Inc.*, 171 S.W.3d 60, 66-67 (Ky.App. 2005). One possible inference is that Lucas lifted a package in such a way to injure himself. Therefore, we conclude that Lucas has not demonstrated that the evidence compels a different result in his case. *White v. Great Clips*, 259 S.W.3d 501, 503 (Ky.App. 2008).

For the foregoing reasons, the opinion of the Kentucky Workers’ Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Eric M. Lamb
Louisville, Kentucky

C. Phillip Wheeler, Jr.
Pikeville, Kentucky

BRIEF FOR APPELLEES:

Kamp T. Purdy
Lexington, Kentucky

