

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2014-CA-001603-WC

OFFIE MACKS, JR.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-11-00089

UNITED PARCEL SERVICE;  
HON. JOHN B. COLEMAN,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; STUMBO AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Offie Macks, Jr. petitions this Court to review a September 4, 2014, Opinion of the Workers' Compensation Board (Board) affirming the Administrative Law Judge's (ALJ) award of permanent disability benefits. We affirm.

Macks was employed as a pilot for United Parcel Service (UPS). On January 20, 2009, Macks had flown a UPS aircraft from Louisville, Kentucky, to Toronto, Canada. Upon exiting the plane, Macks stepped onto portable stairs and slipped upon some snow or ice accumulated thereupon. As a result of the fall, Macks suffered injury to his lumbar spine and was thereafter unable to resume piloting as he could not pass a flight physical.

Consequently, Macks filed a claim for workers' compensation benefits alleging to be permanently and totally disabled as a result of the January 20, 2009, injury. Following a hearing, the ALJ assigned Macks a 10 percent impairment rating and awarded Macks permanent partial disability benefits. Being dissatisfied with the award, Macks sought review with the Board. By Opinion rendered September 4, 2014, the Board affirmed the ALJ's award. This review follows.

Our review of an opinion of the workers' compensation board is limited. We only reverse the Board's opinion where "the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause a gross injustice." *W. Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687–88 (Ky.1992). In reviewing the Board's opinion, we necessarily look to the ALJ's opinion. The ALJ's findings of fact may only be disturbed if the record compels a finding in favor of the claimant. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). And, the ALJ, as fact-finder, possesses the sole discretion to judge the credibility of testimony and

weight of evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky.1985).

Macks contends that the ALJ committed error by finding that he suffered only a 10 percent impairment. Specifically, Macks argues that the ALJ erroneously relied upon the medical opinions of Dr. Charles Wolff and Dr. Stephen Slobodian. While both physicians assessed a 10 percent impairment rating, Macks maintains that their opinions contravened the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment*, 5<sup>th</sup> Ed. In particular, Macks points out that Dr. Wolff did not indicate whether he utilized the *AMA Guides* to determine the impairment rating. And, Macks argues that Dr. Slobodian improperly utilized the diagnosis related method instead of range of motion method, which was in contravention of the *AMA Guides*. We disagree and believe the Board adequately and properly addressed this issue:

Macks next argues the ALJ erred in relying on the 10% impairment rating assessed by Drs. Slobodian and Wolff because they are not in conformity with the AMA Guides. We agree that the report of Dr. Wolff does not sufficiently establish that his impairment rating was assessed pursuant to the AMA Guides. For this reason, it cannot be considered substantial evidence supporting the award.

However, Dr. Slobodian did assess his impairment rating pursuant to the AMA Guides. Nonetheless, Macks argues Dr. Slobodian's rating is not substantial evidence because his report does not indicate why he employed the range of motion ("ROM") method over the diagnosis related ("DRE") method. As the ALJ noted in the Order on Reconsideration, Dr. Slobodian diagnosed multilevel disc involvement. According to the AMA Guides, the

ROM method is used to evaluate individuals with more than one level of injury in the same spinal region. As such, the ALJ was well within the authority to rely on Dr. Slobodian's rating.

Workers' Compensation Board Opinion at 8-9.

We view the Board's above legal analysis as cogent and adopt it herein. As Dr. Slobodian's opinion constituted evidence of a probative value, we are unable to conclude that the record compels a finding that Macks should have been assessed a greater impairment rating.

In sum, we do not believe that the Board overlooked or misconstrued the law or made such an error as to cause a gross injustice. See *W. Baptist Hosp.*, 827 S.W.2d 685.

For the foregoing reasons, the Opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Mat A. Slechter  
Louisville, Kentucky

BRIEF FOR APPELLEE UNITED  
PARCEL SERVICE:

Christopher Newell  
Louisville, Kentucky