

RENDERED: OCTOBER 16, 2015; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2014-CA-001907-WC

NORTHPOINT TRAINING CENTER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-92238

QUINCY LENTZ; HON.
JONATHAN WEATHERBY,
ADMINISTRATIVE LAW
JUDGE; WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, TAYLOR, AND THOMPSON, JUDGES.

TAYLOR, JUDGE: Northpoint Training Center petitions this Court to review an October 24, 2014, Opinion of the Workers' Compensation Board (Board) that affirmed in part, vacated in part, and remanded an Opinion and Award of an

Administrative Law Judge's (ALJ) holding that Quincy Lentz suffered a 19 percent permanent partial impairment. We affirm.

Beginning in 2003, Lentz was employed as a correctional officer at Northpoint. While working at Northpoint, Lentz tripped on a door frame and fell injuring his neck and left shoulder on March 11, 2011. In 2008, Lentz had been involved in a nonwork-related motor vehicle accident that resulted in neck surgery in April 2008.

Consequently, Lentz filed a claim for workers' compensation benefits. As a result of the work injury, Lentz claimed he injured his neck and required a surgical fusion at C6-C7 level. Lentz maintained that he suffered a permanent impairment due to the work-related injury. Northpoint asserted that Lentz suffered from a pre-existing neck condition due to the prior surgical fusion at C5-C6 in 2008, and it was entitled to an "offset" reflecting Lentz's permanent partial impairment due to the effects of the pre-existing neck condition arising from the nonwork-related injury.

By Opinion and Award entered May 20, 2014, the ALJ determined that Lentz did not suffer from a pre-existing active neck condition. Rather, the ALJ believed that Lentz's pre-existing neck condition was dormant prior to the work-related injury; thus, no offset was permissible. The ALJ found that Lentz suffered a 19 percent permanent partial disability rating. Northpoint was dissatisfied with the ALJ's Opinion and Award; it sought review with the Board. The Board affirmed in part, vacated in part, and remanded the Opinion and Award

of the ALJ. Relevant to our review, the Board affirmed the ALJ's conclusion that Lentz did not suffer a pre-existing active neck injury; thus, Northpoint was not entitled to an offset for Lentz's pre-existing neck condition. 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 Hospital 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 will not be disturbed if supported by substantial evidence of a probative value. *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). Our review proceeds accordingly.

Northpoint argues that the ALJ erred by failing to grant an offset reflecting Lentz's permanent impairment due to his pre-existing neck condition. Northpoint points out that both the ALJ and the Board relied upon *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007) for determining that Lentz's pre-existing neck condition was dormant and compensable. Northpoint believes that *Finley* is distinguishable and maintains that any impairment attributed to the pre-existing neck condition should be offset against Lentz's total impairment and is not compensable.

We have reviewed the ALJ's Opinion and Award, the Board's Opinion, and *Finley*, 217 S.W.3d 261. Based upon the particular facts of this case, we conclude that the ALJ and the Board correctly applied *Finley*, 217 S.W.3d 261 to Lentz's pre-existing neck condition.

In *Finley*, the Court of Appeals held that “[t]o be characterized as active, an underlying pre-existing condition must be symptomatic *and* impairment ratable.” *Id.* at 265. While Lentz arguably possessed an impairment attributed to his pre-existing neck condition, there is substantial evidence in the record that Lentz's neck condition was asymptomatic prior to the work-related injury. It, thus, cannot be considered an active pre-existing condition, but rather a dormant condition. Accordingly, we hold that the ALJ properly concluded that Lentz's pre-existing neck condition was dormant and compensable. Hence, the Board properly affirmed the ALJ upon this issue.

We view the remaining issues of error as moot or without merit.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

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