

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-000958-WC

JOHNNY WHEELS, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-13-70103

JESSIE INMAN; HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, KRAMER AND STUMBO, JUDGES.

STUMBO, JUDGE: Johnny Wheels, Inc. petitions for the review of decisions of the Workers' Compensation Board rendered on October 24, 2014, and May 22, 2015, in favor of claimant Jesse Inman. It argues that the Board erred in characterizing as substantial evidence the medical report of Dr. Arthur Hughes,

who assessed a 5% permanent, whole body impairment to Inman. It also contends that the Board erred in affirming an award of Permanent Total Disability benefits. We find no error, and AFFIRM the Opinions on appeal.

On October 24, 2013, Jessie Inman filed a Form 101 alleging that on August 16, 2013, and while employed by Johnny Wheels, he sustained work-related injuries to his lower back, right hip and right leg. Inman, who worked as a mechanic, claimed that he sustained the injuries while squatting and turning his body as he replaced a hub assembly on a truck. He sought medical treatment for the injury, and later stated that his employment was terminated after he provided medical documentation to his supervisor. At the time of the injury, Inman had worked for Johnny Wheels for about 3 years.

After medical evidence was adduced, the Administrative Law Judge ("ALJ") conducted a Benefit Review Conference and Final Hearing in early 2014. On May 19, 2014, the ALJ rendered an Opinion and Award consisting of Temporary Total Disability ("TTD") and Permanent Total Disability ("PTD") benefits. Johnny Wheels appealed to the Board ("First Appeal"), arguing in relevant part that Dr. Hughes' report did not constitute substantial evidence because Inman's condition did not satisfy any of the criteria in the AMA *Guides* for DRE Category II, including radiculopathy. He also maintained that no evidence of record supported an award of PTD benefits, in part because Inman was a convicted felon and not a credible witness. Upon considering the matter, the Board rendered an Opinion on October 24, 2014, affirming in part, but vacating the ALJ's award of

PTD benefits and remanding the matter for additional findings. This ruling was based largely on the ALJ's erroneous finding that Inman had not obtained a GED.

The matter then proceeded on remand before the ALJ, who made additional findings. On January 13, 2015, the ALJ rendered an Amended Opinion and Order on Remand, and awarded to Inman TTD at the rate of \$337.47 for approximately 11 weeks after the injury, and PTD in the same amount beginning on August 27, 2013, and continuing for the duration of the disability. Notably, the ALJ found that Inman attended school to the 8th grade, and later obtained a GED. However, the ALJ also found that Inman's vocational testing revealed that he scored at the 4th grade level in both math and spelling. The outgrowth of this finding, coupled with his work history as a bricklayer and mechanic since 1987, was that Inman would not be employable outside the field of manual labor.

Thereafter, Johnny Wheels again appealed to the Board ("Second Appeal"), arguing that the ALJ's interpretation of Inman's vocational level and GED was flawed and did not support the award of PTD benefits. Citing *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986), the Board determined that the ALJ's findings were supported by substantial evidence, and that the ALJ properly articulated his reasoning for awarding PTD benefits based on the record. It affirmed the ALJ's Amended Opinion and Order on Remand, and this appeal followed.

Johnny Wheels first argues that Dr. Hughes' opinion was not in compliance with the *AMA Guides*, and therefore cannot properly be characterized

as substantial evidence. Specifically, it maintains that Dr. Hughes did not rely upon objective medical evidence present of the date of maximum medical improvement ("MMI") in reaching his impairment rating. Accordingly, since Dr. Hughes was the only medical professional to opine that Inman had a permanent impairment rating, and because his opinion was not supported by substantial evidence, Johnny Wheels argues that Inman failed to meet his burden of proof on this issue. Based on this alleged lack of substantial evidence, it goes on to argue that the Board erred in affirming the award of PTD benefits.

In examining these issues, the Board concluded as follows:

Johnny Wheels' argument that Dr. Hughes' report does not constitute substantial evidence because Inman's condition does not satisfy any of the criteria in the AMA Guides for DRE Category II, including radiculopathy, is without merit. While this Board is not a fact-finding tribunal, it is permitted to locate evidence in the record which supports the ALJ's decision. Despite Johnny Wheels' argument to the contrary, Dr. Hughes' December 17, 2013, medical report reveals he detected radiculopathy during his examination of Inman, as the report states as follows: "Straight leg raising on the right produces lower back pain extending to the proximal calf at 60 degrees and straight leg raising on the left produces lower back pain at 90 degrees extending in the hamstrings." This examination took place after Dr. Hughes opined Inman reached MMI on November 16, 2013.

While an ALJ may elect to consult the AMA Guides in assessing the weight and credibility to be afforded a physician's impairment rating, as finder of fact he or she is never required to do so. George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). So long as sufficient information is contained within a medical expert's testimony from which an ALJ can

reasonably infer the assessed impairment rating is based upon the AMA Guides, the ALJ, as fact-finder, is free to adopt that physician's impairment rating. Here, Dr. Hughes adequately set forth his rationale for assessing a 5% impairment rating for "[l]ower back pain with probable radiculopathy" pursuant to the AMA Guides. The ALJ is not required to second-guess Dr. Hughes' impairment rating, look into the AMA Guides at the specific criteria under Lumbar DRE Category II, and make an assessment as to whether Inman falls under any of the listed categories. The ALJ has the discretion to rely upon Dr. Hughes' opinions and impairment rating, and that discretion will not be disturbed.

Our function is to correct the Board only if we determine that 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 Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). We cannot conclude from the record that the Board misconstrued the law, or otherwise erred in a manner so flagrant as to cause gross injustice. The May 19, 2014 Opinion and Order reveal that the ALJ relied on numerous factors in concluding that Inman is permanently totally disabled. The ALJ took into account Inman's age, education and past work experience, his post-injury physical status as well as Dr. Hughes' medical report. The ALJ also considered the vocational report of Dana Ward, and determined that Inman was a credible witness and that "his testimony rang true." These factors led the ALJ to conclude that Inman's injury left him unable to find future employment consistent with his skills and work history. It was upon this finding that the ALJ ultimately determined that Inman was permanently and totally disabled.

We conclude from the totality of the record that the ALJ properly characterized Dr. Hughes' medical report as substantial evidence. His report, in conjunction with the entirety of the evidence presented, was sufficient to support an award of PTD benefits. The Board properly so found. Accordingly, we AFFIRM the October 24, 2014, and May 22, 2015 Opinions of the Workers Compensation Board.

ALL CONCUR.

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