

Commonwealth of Kentucky
Court of Appeals

NO. 2015-CA-001842-WC

TRIPLE D COMMUNICATIONS, LLC

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-14-01342

GREGORY STACY;
HONORABLE JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: COMBS, DIXON, AND STUMBO, JUDGES.

DIXON, JUDGE: Triple D Communications, LLC seeks review of a Workers'
Compensation Board decision affirming an Administrative Law Judge's (ALJ)

award of benefits for lumbar and thoracic spine injuries sustained by Triple D's former employee, Gregory Stacy. We affirm.

On January 9, 2014, Stacy was involved in a motor vehicle accident during the course of his employment with Triple D. Stacy was driving with a co-worker, Russell Combs, on a snowy mountain road when the truck began sliding backwards. Both men jumped from the vehicle, and the truck ultimately crashed further down the mountain. According to Stacy, he landed on his side and back in a briar thicket. Stacy did not seek medical treatment after the accident and did not miss any work.

On March 26, 2014, Stacy was a passenger in a work vehicle driven by his co-worker, Josh Nelson. Stacy experienced a seizure-like episode, where his body tensed and twitched and his speech was slurred. When Stacy refused to go to the emergency room, Nelson drove Stacy home. Later that evening, Stacy was admitted to the hospital for a possible syncopal episode or possible seizure. At the hospital, Stacy reported ongoing back pain since the January work accident and asserted the pain had increased in severity following the episode earlier that day. Stacy was diagnosed with compression fractures involving T-12, L-1, and L-2 vertebrae. Thereafter, Stacy did not return to his employment at Triple D, and he filed a claim for workers' compensation benefits alleging the January 9, 2014, work accident caused his back injury.

At the final hearing, Stacy testified that, following the work accident, he noticed pain in his hip and low back on a daily basis. He continued to work, but

he modified his duties so he did not have to do as much lifting. Stacy asserted that he chose not to complain about his back pain because he was afraid of losing his job. Stacy submitted the independent medical exam (IME) report of Dr. Jeffrey Uzzle. Dr. Uzzle reviewed Stacy's history of the work accident and the possible syncopal episode or seizure. Dr. Uzzle determined the compression fractures were caused by the work injury, and he assessed a whole person impairment of 13%.

Triple D presented evidence to support its position that Stacy was not injured in the work accident; rather, it was the seizure-like episode on March 26 that caused his back injury. Triple D submitted an IME report prepared by Dr. Christopher Stephens. Dr. Stephens diagnosed T-12, L-1, and L-2 compression fractures of undetermined age; however, he opined Stacy could not have sustained acute compression fractures in the work accident without seeking immediate medical treatment. Triple D introduced the deposition of Dr. Uzzle to rebut Stacy's IME report by questioning the doctor regarding the circumstances of the work accident and the severity of the seizure-like episode. Triple D also introduced the dash-cam video of the accident and the depositions of Stacy's co-workers, Josh Nelson, Scott Hamrick, Russell Combs, and Ronnie Farmer.

The ALJ concluded that Stacy suffered a work-related injury to his low back as a result of jumping from the vehicle on January 9, 2014. The ALJ relied on the opinion of Dr. Uzzle and found Stacy gave credible testimony regarding jumping from the truck and continuing to do his job despite back pain. The ALJ also noted that one of Stacy's co-workers acknowledged that Stacy

complained of hip pain following the accident. Based on the lay and medical evidence, the ALJ awarded Stacy permanent partial disability benefits based on a 13% impairment rating.

On appeal to the Board, Triple D challenged the sufficiency of the evidence as to causation. According to Triple D, in the course of Dr. Uzzle's deposition, he retracted his original opinion on causation and opined the compression fractures occurred as a result of the seizure-like episode. The Board disagreed with Triple D's contention and concluded that Dr. Uzzle's opinion, coupled with Stacy's credible testimony, constituted substantial evidence to support the ALJ's decision regarding causation. The Board rendered an opinion affirming Stacy's award of benefits. This petition for review followed.

The findings of an ALJ in favor of an injured worker will not be disturbed on appeal where the decision is supported by substantial evidence. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). When this Court reviews a workers' compensation decision, our function is to correct the Board only where we believe "the Board has 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).

As it did before the Board, Triple D contends substantial evidence did not support the ALJ's finding of causation. Specifically, Triple D asserts Dr. Uzzle's IME was based on an incomplete history, Dr. Uzzle retracted his initial

opinion as to causation, and the ALJ improperly assumed the role of medical expert.

We have fully reviewed the record, and we agree with the Board's well-reasoned analysis of the issues raised by Triple D. The Board stated, in relevant part:

The issue of Dr. Uzzle's testimony is more concerning. At the outset, we disagree with Triple D that Dr. Uzzle's testimony is unreliable because he did not receive an accurate history from Stacy. Stacy described the events of January 9 and March 26, 2014 to Dr. Uzzle as he perceived them. Triple D contested this characterization of the events via the dashboard camera video and Nelson's testimony, as was its prerogative. However, it never conclusively refuted Stacy's characterization of the events. It was unable to definitely establish what speed the vehicle was moving on January 9, 2014, whether Stacy landed on his back or his feet, or whether Stacy suffered a syncope episode versus a seizure. Furthermore, Dr. Uzzle was provided all of Stacy's medical records during the relevant period, and there was no allegation Stacy concealed relevant records or other medical conditions. For these reasons, any analogy to the circumstances in *Cepero v. Fabricated Metals Corp.*, 132 S.W.3d 839 (Ky. 2004) is unfounded.

Moreover, we disagree with Triple D's assertion Dr. Uzzle completely retracted the opinion contained in his written report at his deposition. Dr. Uzzle was presented with new information: the dashboard camera video, the deposition of Josh Nelson, and the testimony regarding Stacy's work habits following the accident. Assuming all of defense counsel's assumptions are true, Dr. Uzzle concluded the March 26, 2014 event likely caused Stacy's compression fractures. However, Dr. Uzzle was clear throughout his deposition testimony that he did not necessarily agree with all of defense counsel's assumptions. He was not convinced Stacy suffered a seizure on March 26, 2014, he stated his belief Stacy's

pain had a gradual onset, and he was unable to conclude how Stacy landed after jumping from the vehicle. For these reasons, we agree with the ALJ's statement that 'one can come to any conclusion from reading certain excerpts of Dr. Uzzle's deposition.'

For these reasons, we disagree Dr. Uzzle's report and testimony are unreliable and should be rejected, as Triple D asserts. The ALJ acknowledged Dr. Uzzle's testimony was somewhat contradictory, but concluded Dr. Uzzle's 'final determination is that the January 9, 2014 event caused the compression fractures.' It is reasonable to conclude Dr. Uzzle did not agree with defense counsel's assumptions regarding the circumstances of the accident and Stacy's behavior thereafter, and therefore adhered to his ultimate conclusion that the compression fractures were causally related to the January 9, 2014 incident. It is not our function to superimpose our own appraisal of Dr. Uzzle's testimony. *Whittaker v. Rowland*, 998 S.W.2d 479, 481 (Ky. 1999).

Triple D did not request further findings of fact in its petition for reconsideration or in its brief to this Board. Therefore, our review is limited to a determination as to whether the ALJ's opinion is based on substantial evidence. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986). For the reasons set forth above, we believe the ALJ's opinion is supported by the requisite substantial evidence. *Smyzer v. B. F. Goodrich Chemical Co.*, 474 S.W.2d 367 (Ky. 1971). The issue of causation was contested, and conflicting proof was presented. In her role as fact-finder, the ALJ is entitled to believe or disbelieve any portion of the proof. *Magic Coal Co. v. Fox*, 19 S.W.3d 88 (Ky. 2000).

Finally, we disagree the ALJ assumed the role of medical expert by stating her doubt that 'two minutes of twitching from a seizure created more impact than jumping from a moving vehicle onto a snowy embankment.' This statement is simply the ALJ's articulation of her doubts regarding Dr. Stephens' opinion. As fact-finder, she is entitled to do so.

Furthermore, as we have found her ultimate determination supported by substantial evidence, any alleged error is harmless.

After careful consideration, we are not persuaded the Board erred in its assessment of the evidence. Although Triple D is dissatisfied with the weight given to the evidence, we are mindful it was within the ALJ's "authority to determine the quality, character and substance of the evidence." *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). The ALJ weighed the conflicting evidence on the issue of causation and found Dr. Uzzle's medical opinion, coupled with Stacy's testimony regarding jumping from the truck and continuing to do his job despite back pain, to be the most credible. We find no error in the Board's decision.

For the reasons stated herein, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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