

RENDERED: DECEMBER 2, 2016; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-000600-WC

FORD MOTOR COMPANY (KTP)

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-13-58839

RONALD COLEMAN, JR.; HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CLAYTON, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Ford Motor Company (KTP) appeals from an Opinion of the
Workers' Compensation Board affirming an Opinion, Order and Award of
Administrative Law Judge ("ALJ") Hon. J. Gregory Allen. The ALJ determined

that Petitioner Ronald J. Coleman, Jr. was entitled to temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits and medical benefits for work-related right carpal tunnel syndrome and right lateral epicondylitis caused by repetitive activities at Ford. Ford argues that the Board erred in concluding that there was substantial evidence to support the ALJ’s finding that Coleman’s lateral epicondylitis was work-related. Ford also contends that the Board erred in finding that there was substantial evidence to support the ALJ’s finding of a 6% whole person impairment for the work-related injury alone. For the reasons stated below, we find no error and AFFIRM the Opinion on appeal.

On June 15, 2015, Coleman filed a Form 101 alleging an injury to his right hand, wrist and elbow due to highly repetitive job activities on the assembly line at Ford. At the time of the alleged injury, Coleman had worked at Ford for approximately 16 years.

Coleman testified by way of deposition on August 31, 2015, and later at a November 18, 2015 hearing. Coleman stated that he first noticed symptoms in his right wrist in about 2005 and received treatment from Dr. Thomas Harter for two years. The problem resolved. He began to experience more symptoms in about 2011 and began taking Ibuprofen. He testified that by June 3, 2013, he was taking 12 to 20 Ibuprofen tablets daily and sought treatment at the Ford medical department. Coleman attributed his pain in whole or in part to his job duties, which required him to break apart taped wiring harnesses some 300 to 350 times

per shift. He claimed that this repetitive motion caused him to develop throbbing pain in his elbow.

After visiting the Ford medical department, Coleman was moved to a position requiring him to drive trucks off the assembly line. He testified that while he was unable to perform the pre-June 2013 job duties, he had no difficulty with the new job assignment.

In November, 2013, Dr. Navin Kilambi performed surgery on Coleman's right wrist and elbow. The surgery partially improved his symptoms, but he continues to have sharp pain in his hand when performing repetitive actions, numbness in two fingers, and pain despite injections. Coleman was subsequently treated by Dr. Tuna Ozyurekoglu, who recommended additional physical therapy and injections.

Coleman continues to work at Ford in the truck driving position, which is classified as an inspector position. He earns the same hourly rate, but works more overtime so his salary has increased. He continues to have pain in the right elbow and wrist and occasionally takes Ibuprofen.

In support of his claim, Coleman filed records created on June 3, 2013, by the Ford Motor Company Occupational Health and Safety Information Management System ("Ford OHSIMS"). He also filed a September 24, 2015 report of Dr. Jules Barefoot who evaluated him on that date. Dr. Barefoot noted Coleman's history of complaints and surgery by Dr. Kilambi on November 19, 2013, which consisted of a right carpal tunnel release, right open lateral epicondyle

debridement and extensor tendon debridement. Dr. Barefoot diagnosed bilateral median nerve neuropathy, persistent right elbow common extensor tendinosis and left carpal tunnel syndrome. Pursuant to the American Medical Association *Guides to the Evaluation of Permanent Impairment*, 5th Edition (“AMA Guides”), Dr. Barefoot assessed a 6% whole person impairment rating. He also noted that Coleman would have difficulty with repetitive grasping and lifting, and could have difficulty operating vibrating equipment or machinery with hand controls. Dr. Barefoot stated that, “I would apportion 100% of this 6% whole person impairment to work-relatedness.”

Ford filed various records, including the report from Jewish Hospital Medical Center East and records from OHSIMS. Ford also filed the records and reports of Drs. Tuna Ozyurekoglu and Thomas Harter.

A Benefits Review Conference (“BRC”) was conducted on November 31, 2015. The only issues preserved were benefits per KRS¹ 342.730 and whether Coleman had the capacity to return to the type of work performed on the date of injury. Subsequent to the BRC, the work-relatedness of the right elbow condition and entitlement to additional TTD benefits were listed as issues.

The matter proceeded before the ALJ, who rendered an Opinion on January 7, 2016. The ALJ found both the right carpal tunnel and right elbow conditions as work-related and compensable. He awarded TTD, PPD and medical

¹ Kentucky Revised Statute.

benefits. The ALJ relied on Dr. Barefoot's opinions and awarded PPD benefits based on his 6% impairment rating.

Ford filed a Petition for Reconsideration arguing that no evidence supported the ALJ's determination that the right elbow condition was work-related. The Petition was denied by way of an Order rendered on February 17, 2016. In support of the Order, the ALJ noted that he relied on the report of Dr. Barefoot regarding causation of Coleman's right elbow condition, as well as that portion of the questionnaire that indicated that Coleman did retain the physical capacity to return to the type of work he performed at the time of injury.

Thereafter, Ford appealed to the Board. It argued that there was no substantial evidence in the record to support the ALJ's finding that Coleman's lateral epicondylitis was work-related. Ford also argued that substantial evidence does not support the ALJ's finding that Coleman had a 6% impairment rating due to his injury alone. By way of an Opinion rendered on April 15, 2016, the Board affirmed the ALJ's decision upon finding that it was supported by substantial evidence. This appeal followed.

Ford now argues that the Board erred in finding that there was substantial evidence to support the ALJ's finding that Coleman's lateral epicondylitis was work-related. Ford also contends that the Board erred in finding that there was substantial evidence to support the ALJ's finding of a 6% whole person impairment for the work-related injury alone.

As to the first issue, Ford contends that while Coleman's IME physician, Dr. Barefoot, diagnosed persistent right elbow extensor tendinitis, right open lateral epicondyle debridement and exterior tendon debridement, he never found Coleman's right elbow condition to be work-related. Ford maintains that Dr. Barefoot's report contains no discussion whatsoever as to causation nor how Coleman's work activities caused his right elbow condition. To the contrary, Ford notes that another IME was conducted by Dr. Richard Dubou who cited literature which did not find any consistent evidence linking occupational work exposure with epicondylitis tendinopathy. In sum, Ford argues that the record contains no substantial evidence to support a finding of work-related lateral epicondylitis and that such a finding would require significant speculation not supported by the record.

As the claimant in a workers' compensation proceeding, Coleman has the burden of proving the elements of his claim. KRS 342.0011(1); *Snawder v. Stice*, 576 S.W.2d 276, 279 (Ky. App. 1979). Since Coleman was successful in meeting this burden, the question on appeal is whether substantial evidence supports the ALJ's decision. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). "Substantial evidence" is evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. *Smyzer v. B.F. Goodrich Chemical Company*, 474 S.W.2d 367, 369 (Ky. 1971).

In concluding that Coleman's right elbow condition was work-related, the ALJ relied in part on the questionnaire attached to Dr. Barefoot's report. Both

the ALJ and the Board on review determined that Dr. Barefoot clearly established that Coleman's right elbow condition was caused by his employment. Dr. Barefoot's report and questionnaire constitute substantial evidence in support of the ALJ's conclusion on this issue. That is to say, they are evidence of relevant substance having fitness to induce conviction in the minds of reasonable persons. *Smyzer, supra*. Additionally, the ALJ clearly expressed why he found the opinions of Dr. Barefoot to be most credible. This determination falls squarely within the exclusive province of the fact finder. *Square D Company v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993). We find no error on this issue.

As to Ford's contention that the Board erred in finding substantial evidence to support the ALJ's finding that Coleman has a 6% whole person impairment for the work-related injury alone, we also find no error. This claim of error is predicated on Ford's prior argument that the record does not contain substantial evidence that Coleman's right lateral epicondylitis is work-related. Having found substantial evidence to support the ALJ's finding of work-relatedness, we have no basis for finding error on this issue.

For the foregoing reasons, we AFFIRM the Opinion of the Workers' Compensation Board.

ALL CONCUR.

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COLEMAN, JR.:

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