RENDERED: December 23, 1999; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002622-WC

JACK HUMPHREY APPELLANT

v. PETITION FOR REVIEW
OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
NO. WC-96-72131

B.L. RADDEN PAINTING; SPECIAL
FUND; HON. THOMAS A. NANNEY,
ADMINISTRATIVE LAW JUDGE; and
WORKERS' COMPENSATION BOARD APPELLEES

OPINION
AFFIRMING

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BEFORE: COMBS, EMBERTON, and GUIDUGLI, Judges.

COMBS, JUDGE: Jack Humphrey (Humphrey), *pro se*, petitions this Court for review of a decision of the Workers' Compensation Board (the Board) affirming the decision of the Administrative Law Judge (ALJ). In an opinion rendered June 19, 1998, the ALJ found Humphrey to be 15% occupationally disabled due to his neck condition and awarded both permanent partial and temporary total disability benefits due to a November 1, 1996, work injury at B.L. Radden Painting (B.L. Radden). Arguing that the work injury totally disabled him, Humphrey appealed to the Board and then petitioned this Court for review. Having reviewed the record as

well as the parties' arguments, we find no error. Hence, we affirm.

Both in his appeal to the Board and in his petition to this Court, Humphrey argues that the award which he received from the arbitrator should not have been taken away by the ALJ and that he has always been — and continues to be — totally disabled. The Board carefully and fully addressed both of these issues in its thorough opinion. Therefore, we adopt the Board's opinion in full as our own.

> Jack Humphrey ("Humphrey"), pro se, appeals from the decision of Hon. Thomas A. Nanney, Administrative Law Judge ("ALJ"), awarding him 15% occupational disability and temporary total disability benefits for the period of December 8, 1996, through and including March 12, 1997.
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> Humphrey was injured on November 1, 1996. He was pulling some scaffolding along a sidewalk and apparently a wheel came off and it fell into or near a high voltage line. There is some question about whether or not he sustained an electric shock injury but, as a result of the event, he complains of low back pain, headache, dizziness, numbness and tingling in both hands, problems with his back and foot, aching in both legs, neck pain, and arm and shoulder discomfort. He has seen a variety of physicians. Humphrey does not believe he is capable of working at this time and testified that he continues to experience significant symptomatology. He has pain into his right shoulder as well as pain in his left knee, both of which he testified occurred at the time of the incident. He indicated he advised physicians early on after the incident that he was experiencing shoulder and leg pain. He acknowledged that a history related to one of the physicians about the development of knee pain after getting up from a couch was not new but merely an aggravation of pain that he was already experiencing.
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> Medical evidence was submitted from treating orthopedic surgeon, Dr. Gregory

D'Angelo, who diagnosed Humphrey with degenerative disk disease in the cervical spine, assigned 4% to that condition but assessing no physical restrictions. This opinion was rendered on March 12, 1997. Dr. D'Angelo also assigned a 1% impairment rating to Humphrey's knee problems but was unable to attribute that condition to the work injury.

Dr. Vicky Young testified that Humphrey had a cervical strain with low back pain and significant deconditioning.

Dr. Gregory Anderson, a neurologist, also diagnosed cervical, lumbar and thoracic strain with significant pain. He did not believe Humphrey was capable of yet returning to active gainful employment.

Dr. Michael Best, an orthopedic surgeon, examined Humphrey at the request of B. L. Radden Painting ("Radden") and believed Humphrey was engaging in malingering activities. He could not find any evidence of functional limitation or any need for the assessment of an impairment or any restrictions. He believed that there was no evidence to suggest that an electrocution injury had occurred nor any need to limit Humphrey from any work for which he was qualified.

This pro se appellant has attached to his brief on appeal a number of medical records which were not introduced before the ALJ. Many of these records were as the result of examinations that occurred after the rendition of the ALJ's award. While we understand the difficulty faced by individuals proceeding pro se, the limitation on this Board is to consider only the evidence that was presented to he ALJ. In reviewing this matter, we operate under this limitation. KRS 342.285 prohibits the introduction of any new or additional evidence at the Workers' Compensation Board level. So long as there is evidence to support the ALJ's conclusion, it may not be disturbed on appeal. Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). When, as here, the appealing party had the burden of proof before the ALJ, then that appealing party must show that the evidence compelled a contrary result. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

Compelling evidence is evidence that is so overwhelming that no reasonable person could fail to be persuaded by it. Reo Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985). When, as here, there is conflicting evidence or evidence which is subject to multiple reasonable inferences, those inferences and interpretations are for the ALJ and not the Workers' Compensation Board. Jackson v. General Refractories Co., Ky., 581 S.W.2d 10 (1979); and Smyzer v. B. F. Goodrich Chemical Co., Ky., 474 S.W.2d 367 (1971).

When Humphrey initially filed his claim, it was assigned to an Arbitrator. After the presentation of proof, the Arbitrator also found a 15% occupational disability based upon the evidence. However, unlike the ALJ, the Arbitrator awarded temporary total disability benefits through June 16, 1997. After the Arbitrator entered his award, Humphrey, by counsel, requested a de novo hearing before the ALJ. After the presentation of proof and a hearing, the ALJ found as referred to above.

First, Humphrey argues that what he received before the Arbitrator should not be taken away since the employer did not appeal. However, regardless of who requests a de novo hearing before the ALJ, once that has been taken the finality and the existence of the Arbitrator award ceases to exist. It has no legal effect. The ALJ, pursuant to the statute as enacted on December 12, 1996, is to make a totally independent determination based upon the evidence that is presented to him. Therefore, so long as there is evidence before the ALJ which would support his finding of the termination of temporary total disability as of March 12, 1997, his decision may not be disturbed on appeal. The evidence of record includes a form filled out by Dr. D'Angelo, a treating orthopedic surgeon, indicating that as of March 12, 1997, he would assign no physical restrictions and he would assess a 4% functional impairment. Although there was evidence to the contrary of record, that evidence standing by itself is sufficient to support he ALJ's termination of temporary total disability as of March 12, 1997. Epling v. Four B & C Coal Co., Ky. App., 858 S.W.2d 216 (1993).

As best we can interpret Humphrey's argument, he believes that he continues to be totally disabled at this time. The ALJ believed that the medical evidence as a whole raised a question concerning whether a rotator cuff injury was related to the original incident. Although Humphrey directs our attention to certain medical records which indicate he was complaining of neck and arm pain and he asserts in his brief that he complained of shoulder pain from the date of the injury on, the medical evidence itself is much less clear on this issue. Dr. Best found no physiological problems at all. Dr. D'Angelo in his initial reports focused solely upon the neck and back with some radiating pain into the arms. Dr. D'Angelo indicated that the shoulder condition, as ultimately discovered, might be related to the original injury, but we believe that it was well within the ALJ's authority to infer from the overall circumstances coupled with the medical testimony that the work injury did not result in the shoulder difficulties.

Ultimately, this appeal is on questions of fact. KRS 342.285, which establishes the appellate process to the Workers' Compensation Board, limits this Board's authority on appeal. We are without authority to substitute our judgment for that of the ALJ's. In fact, so long as there is evidence to support that ALJ, we are prohibited from reaching a contrary result. It is simply not enough under the standard of review in Kentucky for there to exist some evidence of record which would support a contrary conclusion so long as there is evidence that would support the conclusion reached by the ALJ. See McCloud v. Beth-Elkhorn Corp., Ky., 514 S.W.2d 46 (1974). As the evidence was presented to the ALJ for his consideration, it would have been within the ALJ's authority to rely upon the testimony of Dr. Best and find that there was no occupational disability. However, the ALJ chose to rely in significant part upon the testimony of Dr. D'Angelo, who assessed a 4% functional impairment but did not direct any specific restrictions. Ultimately, the ALJ has the authority to rely upon different medical providers regardless of whether they are treating or examining physicians and regardless of their speciality. See Yocom v.

Emerson Electric, Ky. App., 584 S.W.2d 744 (1979).

Humphrey may have wished for the ALJ to rely upon different evidence of record, but the ALJ did not do so. In our opinion, there was more than ample evidence to support eh ALJ's conclusion and, therefore, we cannot conclude that the evidence compelled a contrary result. Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977).

Accordingly, the decision of Hon. Thomas A. Nanney, Administrative Law Judge, is hereby AFFIRMED and this appeal is DISMISSED.

The decision of the Workers' Compensation Board affirming the opinion of the Administrative Law Judge is AFFIRMED.

ALL CONCUR.

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