

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2000-CA-000525-WC

LINDSEY CRUM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-98-97921

FLOYD COUNTY BOARD OF EDUCATION;  
HON. J. LANDON OVERFIELD,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: HUDDLESTON, MILLER AND TACKETT, JUDGES.

TACKETT, JUDGE: Lindsey Crum (Crum) petitions for review of a decision of the Workers' Compensation Board (the Board) affirming the opinion and award of an administrative law judge (ALJ). We affirm.

Crum was employed by respondent, Floyd County Board of Education, as a maintenance technician when he fell off of a ladder and fractured the fifth metatarsal of his right foot. However, the fracture was not discovered until some months later, when an x-ray of the foot was taken by Dr. Timothy Webb in

conjunction with treatment for another condition. Crum was not aware of the fracture due to a lack of feeling in his foot as a result of diabetes. Crum later filed a claim for workers' compensation benefits and the ALJ awarded Crum benefits based upon the fracture, but denied benefits for Crum's Charcot's joint.<sup>1</sup> Crum's petition for reconsideration was denied, after which he appealed to the Board. The Board affirmed the ALJ, after which Crum filed this petition for review.

Crum argues that the ALJ erred by denying him benefits for his Charcot joint. As the claimant, Crum "bears the burden of proof and risk of nonpersuasion before the fact-finder [ALJ] with regard to every element of the claim." Whittaker v. Rowland, Ky., 998 S.W.2d 479, 481 (1999). The ALJ has the "sole discretion to determine the quality, character, and substance of [the] evidence. . . ." Id. The ALJ "may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it came from the same witness or the same adversary party's total proof. . . ." Id. Since Crum was unsuccessful before the ALJ:

[O]n appeal he must prove that the evidence compels a finding in his favor. Paramount Foods v. Burkhardt, Ky., 695 S.W.2d 418 (1985). To be compelling, evidence must be so overwhelming that no reasonable person could reach the same conclusion as the ALJ. REO Mechanical

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<sup>1</sup>Charcot's joint is defined as joint "enlargement with osteoarthritis due to trophic disturbances in patients with tabes dorsalis." Stedman's Medical Dictionary 734 (4<sup>th</sup> ed. 1976). Trophic is defined as "[r]esulting from interruption of nerve supply." Id. at 1488. Tabes dorsalis is "a chronic inflammation and progressive sclerosis of the posterior proximal spinal roots, the posterior columns of the spinal cord, and the peripheral nerves. . . . [T]rophic disorders of the joints (arthropathies) are frequent, and paralysis is a late symptom[.]" Id. at 1399.

v. Barnes, Ky. App., 691 S.W.2d 224 (1985). If the decision of the ALJ is supported by any substantial evidence of probative value, it cannot be reversed on appeal. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

Daniel v. Armco Steel Company, L.P., Ky. App., 913 S.W.2d 797, 799-800 (1995).

Crum relies upon the testimony of Dr. Webb to support his contention that he was entitled to benefits for his Charcot joint condition, which Crum alleges occurred as a result of the work-related fracture. When asked as to the cause of Crum's Charcot joint condition in his deposition, Dr. Webb replied: "I suspect in this case it could possibly have been the fracture of the fifth metatarsal which caused increased weight bearing on the remaining metatarsal that could have thrown the metatarsal cuneiform joint into improper alignment." Later in his deposition, Dr. Webb stated that Crum's fracture was a causative factor in his Charcot joint condition. Confusingly, Dr. Webb also testified that "[i]f you're asking me if it's with reasonable probability that his result of his foot now is not from a cause of the earlier [work-related] injury, I would agree with that."

Dr. Webb's testimony is confusing and contradictory. The ALJ could have relied on selected portions of that testimony to find that Crum's Charcot joint condition was caused by the fracture. However, the ALJ had the sole power to determine the "quality, character, and substance" of the evidence. Rowland, supra. Furthermore, Dr. Michael Kyles specifically found that "Crum[s] foot pathology is directly related to his diabetes which

is not caused from a traumatic injury. Therefore, no relationship exist[s] between his [Crum's] current problem and his injury [fracture]. . . ." Even if Dr. Webb's testimony is viewed in a light most favorable to Crum, Dr. Kyles's report means that the record does not compel a different result. Thus, the ALJ's decision is supported by substantial evidence and may not be disturbed on appeal. Daniel, supra.

The Workers' Compensation Board's opinion is affirmed.

ALL CONCUR.

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COUNTY BOARD OF EDUCATION:

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