

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000674-WC

RICHARD EDWARDS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-97121

BUDGET RENT A CAR;
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE;
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND TAYLOR, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

TAYLOR, JUDGE: Richard Edwards petitions this Court to review an opinion of the Workers' Compensation Board (the Board) entered March 3, 2006, affirming the Administrative Law Judge's (ALJ's) decision to dismiss Edwards' workers' compensation claim. We affirm.

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

Edwards was born November 27, 1930. He was employed by General Electric but retired in 1988. In 1995, Edwards went to work for Budget Rent a Car (Budget), driving automobiles to various dealerships. Edwards was involved in a single vehicle accident in Indiana on January 22, 2002. While driving a van, Edwards fell asleep and hit a guardrail that resulted in an injury to his left elbow. Several weeks after the accident, Edwards testified that he began to experience back and neck pain.

Edwards filed a claim for workers' compensation benefits as a result of the automobile accident. He claimed to have suffered permanent impairment to his elbow, cervical, and lumbar spine. The ALJ ultimately found that Edwards suffered a work-related injury to his elbow and lumbar spine, but these injuries were not permanent. The ALJ also found Edwards failed to prove that he suffered a permanent work-related injury to his cervical spine. Thus, the ALJ dismissed Edwards' claim for benefits. Being unsatisfied with the ALJ's decision, Edwards sought review with the Board. On March 3, 2006, the Board entered an opinion affirming the ALJ's decision, thus precipitating this petition for our review.

Edwards contends the ALJ committed error by dismissing his claim for a permanent work-related injury to his cervical spine. In this context, the ALJ specifically found:

Even the Plaintiff concedes he has no proof establishing a causal nexus between alleged cervical complaints and the MVA. Accordingly, plaintiff's claim for any neck injury must be dismissed because he bears the burden of proving every essential element of his claim.

Edwards believes that the ALJ's conclusion that he failed to meet his burden of proof was erroneous. He points to evidence from Dr. Martin Schiller that Edwards suffered a cervical strain and lumbo sacral strain that were work related.

To prevail on appeal, Edwards must demonstrate that the record compels a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky.App. 1984). Also, it is within the sole province of the ALJ to judge the credibility and quality of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). To answer Edwards' contention that the ALJ erred in dismissing his cervical injury claim, we cite to the Board's well-reasoned opinion:

First addressing Edwards' cervical condition, we note there were virtually no findings made by the ALJ other than Edwards' concession that he had introduced no proof establishing a causal nexus between his cervical complaints and the work-related motor vehicle accident. Edwards' petition for reconsideration, however, did not address any shortcomings he may have perceived with respect to this particular finding, nor did he allege that the ALJ misunderstood, misconstrued or misinterpreted the evidence on this point. In the absence of a petition for reconsideration, the only function of the

Board is to determine whether there exists substantial evidence in the record to support the ALJ's award.

We believe Dr. Petruska's opinion, after his review of Edwards' medical records, supports the ALJ's finding of non-work-related causation. Dr. Petruska specifically stated he could not comment as to the origin of Edwards' cervical problems, because there had been no diagnostic work-up. Dr. Petruska rendered that opinion on November 2, 2004, almost three years after the accident, and after other physicians concluded Edwards' advanced osteoarthritis provided a basis for impairment. Under these circumstances we cannot say the ALJ's decision is so wholly unreasonable that it must be disregarded as a matter of law. The fact that Dr. Schiller opined Edwards had sustained a work-related cervical strain does not alter our conclusion, since Dr. Schiller's opinion does not compel the result Edwards seeks in the face of the conflicting evidence.

We agree that the evidence does not compel a finding in Edwards' favor as to the alleged cervical injury. Even though Edwards specifically cites Dr. Schiller's opinion that he did suffer a work-related cervical strain, Dr. Schiller further opined the cervical strain was not a permanent injury. Considering the evidence of both Dr. David Petruska and Dr. Schiller, we cannot say the evidence compels a finding that Edwards suffered a permanent work-related injury to his cervical spine.

Edwards also argues the ALJ committed error by finding that he suffered no permanent injury to his lumbar spine.

Edwards argues the ALJ erred by relying upon the testimony of Dr. Schiller. Specifically, Edwards attacks Dr. Schiller's testimony because "[h]e did not address, however, whether or not this arthritic condition could have been aroused, aggravated or exacerbated by the accident, only that he had a lumbar strain which would have improved long after the accident." Edwards Brief at 18.

As pointed out by the Board, "[t]here is no evidence in this claim from any physician that Edwards' extensive preexisting osteoarthritis was a dormant condition aroused by the work-related injury." Indeed, Dr. Schiller's opinion was specific that Edwards' symptoms were secondary to degenerative changes in his back and neck and not related to the work accident. Dr. Schiller believed that the accident would have resulted in a lumbo sacral strain but that this strain would have improved after the accident. Dr. Schiller specifically stated that he could not attribute any permanent impairment rating to Edwards' elbow, neck, or back as a result of the work-related accident. Based upon the record as a whole, we do not believe the evidence compels a finding that Edwards suffered a permanent injury to his lumbar spine as a result of the accident.

Edwards last maintains the ALJ erred in its award of medical expenses. Edwards' argument in this regard is somewhat confusing and is stated as follows:

As to medical treatment, it is submitted that the previous award of medical expenses was fatally flawed. The Petitioner cannot be entitled to medical expenses paid to date for his lumbar strain. The reason is that no medical expenses were paid for the lumbar strain as there was a contested issue as to causation so the award would be a nullity. The ALJ should have awarded reasonable medical benefits related to the Petitioner's lumbar condition pursuant to the Act.

The Board states that unpaid medical bills was not listed as a contested issue at the BRC nor was it brought to the attention of the ALJ as[sic] the final hearing. It did not need to be. It is included in the issue of work-related/causation and the records from Dr. Gavin reflect that he suggested an MRI and the Plaintiff testified that the reason that he hired counsel was that the insurance carrier refused to pay for an MRI. While this was eventually paid for by workers' compensation, it is the Plaintiff's position that having found a work-related condition, the Plaintiff is unconditionally entitled to medical treatment.

Edwards Brief at 20.

We are unsure as to whether Edwards is arguing for past medical expenses or future medical expenses. If he is seeking entitlement to past medical expenses, Edwards has not specifically listed any past medical expenses that were not reimbursed by Budget. If Edwards is seeking entitlement to

future medical expenses, we agree with the Board that a claimant may suffer a temporary injury for which temporary total disability benefits and medical benefits may be paid and yet fail to satisfy his burden of proof of a permanent injury for which permanent medical benefits would be appropriate. See Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001).

We, thus, reject Edwards' claim.

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

ALL CONCUR.

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