

RENDERED: AUGUST 15, 2008; 2:00 P.M.
 NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000077-WC

JOHN SEAVER

APPELLANT

v.
PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD

ACTION NO. WC-02-66224

GALLOWAY ELECTRIC; HON. GRANT S.
ROARK, ADMINISTRATIVE LAW JUDGE;
HON. DONNA H. TERRY, CHIEF
ADMINISTRATIVE LAW JUDGE; DEPARTMENT
OF WORKERS CLAIMS AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

*** * * * *

BEFORE: ACREE, VANMETER, AND WINE, JUDGES.

ACREE, JUDGE: John Seaver appeals, *pro se*, from an opinion of the Workers' Compensation Board affirming two orders from Administrative Law Judges who

presided over the fact-finding portion of this case. The first ALJ found that Seaver had sustained a work-related injury to his neck and awarded him benefits as a result, but found in favor of his employer, Galloway Electric, with regard to Seaver's claims for thoracic and lumbar injuries, as well as secondary psychological overlay. The second ALJ denied, in relevant part, Seaver's petition for reconsideration. We affirm the Board.

Seaver, a high-school educated electrician, was in the employ of Galloway when he was struck from behind and dragged by a forklift on September 27, 2002. He filed an application for workers' compensation benefits listing lower, middle, and upper back, neck, knee, and ankle injuries. Later, he amended the application to include claims of psychological impairment arising from his injury at work.

The ALJ issued an initial order on July 17, 2007, finding that the medical evidence only supported Seaver's claim that his neck was injured in the forklift accident. His remaining claims were dismissed with prejudice. The evidence before the fact finder included a plethora of medical opinions, as to both Seaver's physical and psychological health. The ALJ's summary of the medical evidence presented accounted for thirteen pages of a twenty-page opinion. Seaver was awarded temporary total disability, permanent partial disability, and medical expenses. After the initial order, both Seaver and Galloway filed motions for reconsideration. However, an *ex parte* communication between Seaver and the ALJ led to the claim being reassigned. On August 20, 2007, the second ALJ

issued an order addressing the motions for reconsideration. The original order, awarding benefits based on Seaver's neck injury and dismissing his other claims of injury, was essentially upheld. Seaver's counsel subsequently withdrew, and Seaver appealed to the Board *pro se*.

Seaver argued that the ALJ erred in denying him permanent total disability benefits due to his neck injury, erroneously dismissed his claim for low back injury without fully understanding his condition, and erred in relying on the opinions of Dr. Ellen Ballard and Dr. Robert Granacher in dismissing most of his injury claims. The Board's opinion included another lengthy summary of the evidence presented by the parties. After reviewing all of it, the Board determined that the ALJ had reached the correct result.

It is obvious from Seaver's *pro se* brief that he feels he has been dealt with unfairly. Even so, as a matter of law the decision of the ALJ in this case must be affirmed.

...
Although we understand Seaver is frustrated at the outcome of his workers' compensation claim, we also recognize the ALJ's job as fact finder is a difficult responsibility. As a rule in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning those matters at issue. It is for this reason that in cases where the evidence is conflicting regarding an issue, the facts concerning that issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

The Board ultimately concluded that Seaver did not meet the evidentiary burden required to overturn an ALJ's decision on appeal. Consequently, Seaver appeals to us from the Board's opinion and order.

On appeal, Seaver raises the same arguments he pursued unsuccessfully before the Board. Thus, we begin with an examination of the standard we use when reviewing a decision of the Workers' Compensation Board. First, we look to see whether the Board has misconstrued the law or flagrantly erred in evaluating the evidence to the point of causing gross injustice. *Daniel v. Armco Steel Company*, 913 S.W.2d 797, 798 (Ky. App. 1995). Since the Board upheld the ALJ's factual and legal findings, we must determine whether the ALJ's findings were supported by substantial evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence has been defined as "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." *Smyzer v. B. F. Goodrich Chemical Co.*, 474 S.W.2d 367, 369 (Ky. 1971).

The ALJ relied heavily on the medical reports from Dr. Ballard and Dr. Granacher. Dr. Ballard first evaluated Seaver in October 2004. In addition she performed an extensive review of his medical records before forming her opinion. Nevertheless, she found that the only evidence of injury related to the forklift accident was the injury to Seaver's neck. Thus, she assessed him a five percent impairment rating. This rating did not change after a second medical evaluation and review of additional medical records performed almost two years later. Dr. Granacher attributed Seaver's current psychological difficulties to the breakup of his second marriage. He also noted that Seaver had a lengthy history of troubled behavior and mental health issues, particularly in the area of his romantic

relationships. While Dr. Granacher concluded that Seaver currently lacked the mental capacity to resume his work as an electrician, he also stated that Seaver did not suffer any psychiatric impairment due to his workplace injury.

Seaver is correct in pointing out that the voluminous medical evidence before the ALJ was contradictory. For his part, Seaver presented opinions from numerous medical providers supporting his claims that he suffered multiple physical injuries from the forklift accident. In particular, Dr. David Johnson assessed Seaver with a whole body impairment of nineteen percent, predominantly due to thoracic and lumbar impairments. Several mental health professionals opined that Seaver's psychological problems resulted from the pain of his injuries and his inability to work, which led to depression and anxiety. Dr. Tom Wagner, a psychologist and vocational expert, evaluated Seaver and expressed the opinion that he was completely occupationally disabled due to the medical restrictions imposed by Dr. Johnson. Dr. Wagner further opined that Seaver's depression was caused by his work-related injury.

Nevertheless, it is a well-recognized principle in workers' compensation litigation that the ALJ has the sole discretion to evaluate the weight of the evidence presented. *Whittaker v. Rowland*, 998 S.W.2d 478, 481 (Ky. 1999). When the evidence conflicts, "the finder of fact, and not the reviewing court, has the authority to determine the quality, character and substance of the evidence presented[.]" *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). Further, the ALJ may choose to believe or disbelieve the proof of

either party or even portions of a party's proof. *Caudill v. Maloney's Discount Stores*, 569 S.W.2d 15, 16 (Ky. 1977).

If the claimant in a workers' compensation case is unsuccessful before the ALJ, the question during appellate review is "whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor." *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). "Compelling evidence is evidence 'so overwhelming that no reasonable person could reach the conclusion' of the ALJ." *Neace v. Adena Processing*, 7 S.W.3d 382, 385 (Ky. App. 1999). (Citation omitted.)

Like the Board, we recognize that Seaver is disappointed with the result of the ALJ's determination of his claims. However, as the Board so thoroughly explained in its opinion and order, Seaver's arguments on appeal fall well short of showing that the evidence which he presented to the ALJ compelled a finding in his favor. Consequently, we are bound to uphold the determination of the fact finder that only Seaver's neck injury and the related headaches are the results of a compensable, work-related accident.

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

ALL CONCUR.

DOCKET NO. APP-14-00001
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BRIEF FOR APPELLEE,
GALLOWAY ELECTRIC:

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