

Commonwealth of Kentucky

Court of Appeals

NO. 2009-CA-000785-WC

A.O. SMITH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-08-00351

RONALD HOWARD; HON.
JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, DIXON, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: A.O. Smith petitions this Court to review a March 25, 2009, opinion of the Workers' Compensation Board (Board) affirming the Administrative Law Judge's (ALJ) award of permanent partial disability benefits to Ronald Howard. We affirm.

The record indicates that the parties stipulated that Howard suffered a work-related injury on April 24, 2007, while employed by A.O. Smith. However, the extent of the work-related injury was disputed. After a hearing and consideration of several medical experts' opinions, the ALJ found that Howard was entitled to permanent partial disability benefits upon a 23 percent permanent whole body impairment rating. In so finding, the ALJ found persuasive the medical opinion of Dr. Robert Byrd. Being dissatisfied with the ALJ's award, A.O. Smith sought review with the Board. By opinion entered March 25, 2009, the Board affirmed the ALJ's award. This review follows.

A.O. Smith contends that the Board erred by affirming the ALJ's award of permanent partial disability benefits upon a 23 percent impairment rating. In particular, A.O. Smith argues that the ALJ erred by relying upon the medical opinion of Dr. Byrd. A.O. Smith believes that Dr. Byrd misinterpreted and misapplied the 5th Edition of the *American Medical Association Guidelines* to the Evaluation of Permanent Impairment (*A.M.A. Guides*) in rendering his opinion that Howard was entitled to a 23 percent impairment rating. A.O. Smith points out that Dr. Byrd's 23 percent impairment rating was based upon results of grip strength testing performed upon Howard. According to A.O. Smith, the *AMA Guides* prohibit an impairment rating to be based upon "decreased strength in the presence of a painful condition." A.O. Smith's Brief at 5. As it was undisputed that Howard suffered from a painful condition, A.O. Smith alleges that the ALJ erred by relying upon Dr. Byrd's expert opinion.

Upon review of the record, it appears Dr. Byrd performed an independent medical evaluation of Howard and diagnosed Howard as suffering from chronic epicondylitis and bicipital tendonitis. Dr. Byrd was fully aware of Howard's medical condition, including his pain, but still utilized the grip strength test. Most importantly, Dr. Byrd stated that "his impairment rating was assessed pursuant to the [*A.M.A.*] *Guides* and [Dr. Byrd] explained his methodology." Board's Opinion at 10.

The case *sub judice* is not one where a physician directly disregarded the *A.M.A. Guides* in arriving at an impairment rating. *But see Jones v. Brasch-Barry Gen. Contractors*, 189 S.W.3d 149 (Ky. App. 2006).¹ Rather, in this case, there existed a disagreement among medical experts concerning the proper interpretation and application of the *A.M.A. Guides*.

Our Supreme Court has recently held that "[t]he proper interpretation of the *Guides* and the proper assessment of impairment are medical questions." *Lanter v. Ky. State Police*, 171 S.W.3d 45, 52 (Ky. 2005). And, when the medical evidence is conflicting upon a "medical question" or issue, the ALJ, as fact-finder, is vested with sole authority to judge the credibility of conflicting medical evidence. *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615 (Ky. 2004); *Greene v. Paschall Truck Lines*, 239 S.W.3d 94 (Ky. App. 2007); *Jones v. Brasch-*

¹ In *Jones v. Brasch-Barry Gen. Contractors*, 189 S.W.3d 149 (Ky. App. 2006), a physician testified that he disregarded the *American Medical Association Guides to the Evaluation of Permanent Impairment (A.M.A. Guides)* in rendering an impairment rating and that he believed the *Guides* to be flawed. Under those circumstances, the Court of Appeals held that a physician's assessment that directly disregarded the *A.M.A. Guides* could not constitute substantial evidence.

Berry Gen. Contractors, 189 S.W.3d 149 (Ky. App. 2006). In this case, the ALJ properly exercised his authority as fact-finder in relying upon the expert opinion of Dr. Byrd. As such, we do not believe the Workers' Compensation Board erred by affirming the ALJ's award of permanent partial disability based upon a 23 percent impairment rating.

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

ALL CONCUR.

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