

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001131-WC

LARRY V. YOUNG

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-80793

HOME DEPOT; HON. IRENE STEEN,
ADMINISTRATIVE LAW JUDGE; HON.
R. SCOTT BORDERS, ACTING CHIEF
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD,
OFFICE OF WORKERS' CLAIMS

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: FORMTEXT TAYLOR, CHIEF JUDGE; STUMBO, JUDGE;
SHAKE, SENIOR JUDGE.

TAYLOR, CHIEF JUDGE: Larry Young petitions this Court to review a May 14,
2010, Opinion of the Workers' Compensation Board (Board) that affirmed an
opinion of the Administrative Law Judge (ALJ) dismissing Young's claim for
workers' compensation benefits. We affirm.

Young filed a claim for workers' compensation benefits. Therein, he claimed to have suffered work-related injuries to his left knee, right heel, and low back on July 5, 2006, while employed by Home Depot. Specifically, Young alleged that he was replacing lumber on a sales rack at Home Depot when lumber from an upper rack fell upon him. According to Young, the lumber struck him on the left knee, right heel, and back causing him to fall to the ground.

Despite Young's depositional testimony to the contrary, Home Depot discovered that Young was also currently involved in a workers' compensation claim in Ohio.¹ This discovery ultimately led to numerous discrepancies between Young's hearing testimony and depositional testimony.

In its opinion dismissing Young's claim, the Administrative Law Judge (ALJ) outlined the substantial discrepancies:

On cross-examination, [Young] became quite guarded in his responses and was questioned about the various untruths he had stated during his deposition testimony. He claimed that defense counsel had put a lot of pressure on him and that he had been on medication, but could not explain what kind, and in fact, had previously stated that he had not been on any medication at that time. He was also asked about his previous denial of having ever been in an auto accident, so he then changed his testimony and admitted that he had been hit in 1992 by a drunk driver and had to be taken to the hospital, where he had been treated for low back, neck and right knee pain. He then admitted that he had filed an Ohio Compensation claim for that injury, even though he had denied, at his deposition, that he had ever filed a

¹ In Claim No. 92-87973 filed with the Ohio Bureau of Workers' Compensation, the record reveals that Young was allegedly involved in an automobile accident while employed by Besly Products Corporation. He alleged injury to the right knee, neck, right foot/heel, and right tibia. Young also unsuccessfully attempted to supplement the Ohio claim with an alleged work-related back injury.

Workers' Compensation injury in his life. In connection with that claim he was asked if he were now trying to add a back injury to that claim, which he then admitted that he was. [Young] also had to admit that he had never advised the compensation people in Kentucky that he also had a claim ongoing in Ohio at the same time. It further appears that [Young] also received TTD benefits from Ohio during some of the same time as he was getting TTD from Kentucky. This had occurred because the very day he alleged injury herein, [Young] had presented in his Ohio doctor's office, telling them that he was having right knee pain that had been ongoing for the last several months, which worsened with activities. He never mentioned one word about having sustained a Kentucky injury the day before. This is again in stark contrast to his earlier testimony that his right knee was giving him no trouble whatsoever. Now, due to his right knee complaints, [Young]'s Ohio claim was therefore re-activated so he could attend physical therapy. [Young] was then asked why he had failed to mention to Dr. Duffy that he had injured his left knee just the day before. Oddly, he attempted to explain that away by stating that the right knee was an Ohio claim and that he was not going to let anybody touch his left knee other than the doctors from Home Depot. [Young] was then confronted with his earlier denial of ever having been hospitalized before except for a finger surgery and that he had otherwise been in perfect health, when, in fact he had been hospitalized for three right total knee replacement type surgeries. He again blamed this contradictory deposition testimony on the medications he was taking at that time, but apparently forgot that he had testified at the deposition that he was not on any medications.

There also seemed to be an issue with the first report of injury conflicting with [Young]'s description of the incident. It appeared that the report had reflected that a piece of wood had fallen on [Young]'s right knee. When this was brought up during cross examination, [Young] responded that one piece of wood could not have caused as much damage as he had suffered. He stated that the report was not even filled out on the date of the injury, but had been done after the supervisors had "had their little powwow" to decide how to handle his

claim. He denied that he had ever reviewed the report, but yet he admitted that he had signed it. He then claimed that because of his left knee injury, he had to seek some treatment for his right knee, because he had needed to favor his right knee. [Young] was very evasive when asked as to why he had not sought treatment until late in the evening on the date of the injury, but his explanation was that it was difficult to get a hold of Dr. Moran. He then had to admit that he had not even seen Dr. Moran that night, but someone else entirely.

The ALJ ultimately found that Young did not suffer a work-related injury on July 5, 2006. Specifically, the ALJ found:

I am not persuaded that there even was an actual injury such as [Young] described The amount of lumber that allegedly fell has varied from one piece to over twenty. I do not believe that [Young] was covered up by lumber and was lying on the floor for five to six minutes in this very busy store before anyone came to his rescue.

Consequently, the ALJ dismissed Young's claim.

Being dissatisfied with the ALJ's dismissal, Young sought review with the Board. The Board subsequently affirmed the ALJ. Our review follows.

Young contends that the Board erred by affirming the ALJ's dismissal of his workers' compensation claim. Young maintains that the ALJ ignored undisputed medical evidence and that dismissal was contrary to the evidence. Young believes that evidence concerning his Ohio workers' compensation claim consisted of "collateral matters" and was simply irrelevant to his current claim.

Upon review of the Board's decision, our role is limited to whether "the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross

injustice.” *W. Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-688 (Ky. 1992). In so doing, we must necessarily review the opinion of the ALJ. When the ALJ’s opinion is adverse to the claimant, the claimant must demonstrate that the evidence compels a finding in his favor in order to prevail. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). And, the ALJ is the ultimate fact-finder and possesses the sole discretion to judge the credibility of the testimony or evidence. *See Miller v. E. Ky. Beverage/Pepsico, Inc.*, 951 S.W.2d 329 (Ky. 1997).

In affirming the ALJ’s dismissal of Young’s claim, the Board reasoned:

The record reveals ample evidence in support of the ALJ’s inference that an injury as defined by the Act did not occur at Home Depot on July 5, 2006, as it is filled with misleading and inconsistent testimony from the claimant. This testimony has already been noted in detail in ALJ Steen’s Opinion and Dismissal, and we would be committing a redundancy recounting it again here. However, what is most compelling to this Board is Young’s lack of candor in his deposition regarding never having been in a motor vehicle accident. The record reveals Young was not only involved in a motor vehicle accident in 1992, but this accident is the subject of an Ohio workers’ compensation. Young certainly could not have forgotten his Ohio claim considering his request for custom orthotics in said claim was authorized just one week prior to his deposition in the case *sub judice*. Young also testified in his deposition that his health was “perfect” prior to the alleged accident on July 5, 2006, with no attempt being made to qualify this statement other than Young had a finger operated on as a child and knee surgery in 1988. While Young testified at the final hearing that he was under medication on the day of his deposition and this medication could have affected his ability to answer questions, it appears the ALJ found this explanation to be nothing more than continued

subterfuge. We are unable to disagree with the ALJ.
(Citation and footnote omitted.)

Young's lack of candor manifested itself repeatedly through his appointments with Dr. Moran where he was receiving diagnoses for his low back and right heel, conditions that had already been diagnosed or were in the process of being diagnosed in Ohio, while simultaneously attempting to add those conditions to his claim in Ohio. The record reveals Young attempted on several occasions to have his low back condition added to his Ohio claim and failed. Our review of the record reveals one of Young's most recent attempts took place on January 31, 2008. Young seemingly was successful in adding his right heel condition to the Ohio claim as the record reveals the abovementioned orthotics were compensable. The Ohio records in conjunction with Young's undeniable lack of candor is more than enough to support the ALJ's dismissal of Young's back and right heel claims.

Regarding Young's left knee, while Dr. Moran's testimony does support a finding that Young's torn medial meniscus was the result of trauma, Dr. Moran was wholly at the mercy of Young's rendition of a traumatic occurrence which allegedly took place on July 5, 2006, at Home Depot. Dr. Corbett's testimony on the subject was quite ambiguous, as it appears he was merely repeating Dr. Moran's assessment that the "specific diagnosis related to the alleged work injury . . . is a torn meniscus." Dr. Corbett, however, unambiguously noted his belief that Young is currently suffering "primarily from the surgical attempt to modify the osteoarthritic condition, i.e. chondroplasty, which was unsuccessful." The ALJ chose not to believe Young's testimony regarding the July 5, 2006[,] incident due to his extraordinary lack of candor. Young's unabashed dishonesty throughout this litigation constitutes evidence that supports the ALJ's inference that a traumatic injury, as defined by the Act, did not occur at Home Depot on July 5, 2006. Instead, the ALJ made the inference that Young's "left knee condition was due to degenerative changes in the meniscus, what had appeared frayed." In reaching this conclusion, the ALJ was acting within the discretion

afforded to her under the law. The ALJ is solely responsible for sifting through the evidence and reaching conclusions consistent with the law and supported by the record.

Upon review of the whole, we can neither conclude that the evidence compels a finding in favor of Young or that the opinion of the Board has overlooked or misconstrued the law or committed an error in assessing the evidence “so flagrant as to cause gross injustice.” *W. Baptist Hospital* 827 S.W.2d at 688. Rather, the record is replete with evidence impugning Young’s credibility as a witness and with conflicting evidence concerning the specifics of the alleged work-related injury. Simply stated, it was entirely within the ALJ’s discretion to find that no work-related injury occurred on July 5, 2006. Accordingly, we cannot conclude that the Board erred by affirming the ALJ’s dismissal of Young’s claim for workers’ compensation benefits.

For the foregoing reasons, the Workers’ Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carl Grayson
Edgewood, Kentucky

BRIEF FOR APPELLEE, HOME
DEPOT:

Scott M. Brown
Daniel J. Urban
Lexington, Kentucky