

RENDERED: DECEMBER 16, 2011; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-001391-WC

MAHLE ENGINE COMPONENTS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-09-93859

RONALD J. TARRENCE; HON. DOUGLAS W.
GOTT, ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: MOORE, STUMBO AND WINE, JUDGES.

STUMBO, JUDGE: Mahle Engine Components is appealing from an award of workers' compensation benefits to Ronald Tarrence. We find there was substantial evidence presented that justified the award and affirm.

Tarrence is an employee of Mahle. He is a machine operator. His primary job is to take semi-rough parts and turn them into finished parts for machinery. On August 4, 2008, Tarrence was working on a machine. In order to reach a certain part of the machine, he had to put his body in an awkward position. During this task, he felt numbness in his left arm and into his left hand. It caused him to drop the wrench he was using. He immediately reported the incident to his supervisor, Ronnie Delk.

Soon after the injury, Tarrence attempted to make an appointment with Dr. Keith Morrison, an orthopedic surgeon who specializes in the treatment of hands and arms. However, Tarrence was unable to see Dr. Morrison because his office had not received the right paperwork. Tarrence eventually made an appointment with his family doctor, Dr. Verst. Dr. Verst put off making a recommendation for a diagnostic study because Tarrence's rescheduled appointment with Dr. Morrison was upcoming.

Tarrence eventually saw Dr. Morrison on October 24, 2008. Dr. Morrison initially diagnosed carpal tunnel syndrome. He also noted Tarrence reported a history of light tingling and numbness in both hands before the August injury. Prior to the August injury, Tarrence reported that he had received no treatment for his hands. Dr. Morrison was going to treat with nighttime bracing and obtain EMG/NCV studies.

On December 10, 2008, Tarrence presented himself to Western Kentucky Orthopedic and Neurosurgical Associates with complaints of arm pain. Tests were run that produced findings consistent with carpal tunnel syndrome.

On December 17, 2008, Tarrence saw Dr. Morrison for a follow-up examination. Tarrence reported he now had symptoms in his elbow area. Dr. Morrison ordered that an MRI be performed.

The MRI was performed on December 31, 2008. It showed a cervical disc herniation. On January 5, 2009, Dr. Morrison diagnosed a massive C3-4 cervical disc herniation and left cubital tunnel and carpal tunnel syndrome. Dr. Morrison referred Tarrence to see either Dr. Phillip Singer or another neurosurgeon for a cervical evaluation and possible surgery.

On February 16, 2009, Tarrence returned to Dr. Morrison for another follow-up examination. During this examination, Dr. Morrison noted there was confusion concerning Tarrence's workers' compensation claim inasmuch as no one had yet approved Tarrence to see someone concerning his cervical evaluation and possible surgery. Dr. Morrison reiterated that Tarrence's injury was work related and that the injury needed to be addressed as soon as possible.

Tarrence eventually saw Dr. Singer on March 3, 2009. Dr. Singer noted Dr. Morrison's findings and concluded that given the amount of pain Tarrence was experiencing and considering his lack of improvement, Tarrence should consider a decompression and fusion at the C3-4 level. At an April 16,

2009, visit to Dr. Singer, he noted that Tarrence was now demonstrating significant cervical myelopathy and that surgical treatment was imminent.

Tarrence was then referred to Dr. Vaughan Allen for evaluation and surgery. Over a period of about three months, Dr. Allen examined and evaluated Tarrence. He diagnosed a large C3-4 herniation and a severe spinal cord compromise. He also recommended immediate surgery. He also believed the disc herniation was acute and that it would be extremely unlikely for it to have existed prior to the August 2008, injury.

Mahle's workers' compensation carrier refused to pay for the surgery. Tarrence therefore submitted it to his health insurance. Dr. Allen performed the surgery on July 14, 2009. Allen later released Tarrence to return to work on December 10, 2009. Tarrence has continued to work at Mahle since that time. The workers' compensation carrier did not pay any temporary total disability benefits, permanent partial disability benefits, or medical expenses.

Mahle retained Dr. Russell Travis, a neurosurgeon, to review Tarrence's pre- and post-August 4, 2008, medical records and provide an opinion regarding the cause of the cervical disk herniation. Dr. Travis concluded that the herniation was present before August 4, 2008. He did, however, note that the work incident could have exacerbated the condition.

An independent medical evaluation was also performed by Dr. James Farrage. Dr. Farrage noted Tarrence had sustained a work injury in August, 2008. He also concurred with the findings of Dr. Morrison. He also opined within a

reasonable medical probability that Tarrence's work injury was the cause of his complaints. He also believed Tarrence did not have an active impairment prior to the work injury.

The only contested issue in this case was whether the injury was work related. In an opinion rendered February 1, 2011, the Administrative Law Judge (ALJ) found that the injury was work related. The ALJ found Tarrence to be a highly credible witness and found that the medical experts on both sides of the claim opined that the injury was work related. The ALJ also set forth certain facts that might have supported a finding of non-work relatedness. Ultimately, the ALJ found that all of the doctors presented by Tarrence believed the injury to be work related. The ALJ also found that Mahle's expert, Dr. Travis, did not believe Tarrence suffered from an acute injury, but that the preexisting injury was exacerbated by the work incident. The ALJ concluded by stating that "regardless of which party's medical experts' theory of causation is accepted . . . there is a consensus in the evidence . . . that the event at work at a minimum contributed to causing the need for surgery[.]" Mahle then appealed that decision to the Workers' Compensation Board (hereinafter "the Board"), which affirmed. This appeal followed.

Mahle argues that the Board erred in its assessment of the evidence and in its determination that substantial evidence supported the ALJ's finding on causation. "The function of further review of the WCB in the Court of Appeals is to correct the Board only where the Court perceives 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.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687 - 688 (Ky. 1992).

KRS 342.285 designates the ALJ as the finder of fact. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985), explains that the fact-finder has the sole authority to judge the weight, credibility, substance, and inferences to be drawn from the evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986), explains that a finding that favors the party with the burden of proof may not be disturbed if it is supported by substantial evidence and, therefore, is reasonable.

AK Steel Corp. v. Adkins, 253 S.W.3d 59, 64 (Ky. 2008). “Substantial evidence means 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).

Mahle claims that the ALJ and Board misjudged the evidence presented by its expert, Dr. Travis. Mahle argues that Dr. Travis found the injury was in no way work related and that both the ALJ and Board erred in finding that Dr. Travis did find work relatedness. The ALJ’s and Board’s finding can be best summarized by citing to pages 11 and 12 of the ALJ’s opinion:

Dr. Morrison, Dr. Singer, Dr. Allen, and Dr. Farrage all supported Tarrence with an opinion of work relatedness. The ALJ was not in a position to reject that collective opinion because Dr. Travis’ [sic] did not refute it. Dr. Travis performed a comprehensive records review for the Defendant and demonstrated the best history of the case of all the medical experts; and he confirmed the work relatedness opinion of the other doctors, albeit by a different theory . . . Dr. Travis disagreed with Dr. Allen’s

opinion that Tarrence sustained an acute injury that caused the disc herniation, but Dr. Travis clearly states that the work injury exacerbated Tarrence's preexisting active disc herniation. Dr. Travis established causation for Tarrence with an opinion of a work related injury superimposed on a prior active condition no less than five times.

The ALJ then lists the five instances where Dr. Travis discusses that the exacerbation of the preexisting condition was because of the event at work.

As stated previously, all four of Tarrence's doctors believed the injury to be work related. Further, Dr. Travis stated that the event at work exacerbated Tarrence's preexisting condition. An employer is responsible for medical expenses when a work related event causes a worsening of a preexisting condition. *Derr Construction Company v. Bennett*, 873 S.W.2d 824 (Ky. 1994); *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007). All five doctors found some type of work related causation. This is substantial evidence to support the conclusions of the ALJ and Board.

Even assuming *arguendo* that the ALJ, Board, and this Court have all misconstrued Dr. Travis' opinions, the outcome would be the same. The ALJ relied on all the medical evidence and the testimony of Tarrence, who the ALJ found to be "highly credible." This too is substantial evidence supporting the conclusion of the ALJ.

Based on the above, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

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