

RENDERED: AUGUST 17, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2012-CA-000055-WC

MICHAEL HUNT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-10-00707

MUBEA, INC.; HON. HOWARD E. FRASIER,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: MOORE, STUMBO AND VANMETER, JUDGES.

STUMBO, JUDGE: Michael Hunt appeals from an Opinion of the Workers' Compensation Board affirming a decision of Administrative Law ("ALJ") Judge Howard E. Frasier. The ALJ's decision dismissed Hunt's claim for benefits against Mubea, Inc. Hunt argues that the decision should be reversed because it

was arbitrary, capricious and not supported by substantial evidence. For the reasons stated below, we affirm the Opinion of the Workers' Compensation Board.

On June 22, 2010, Hunt filed an Application for Resolution of Hearing Loss Claim, alleging that he received a work-related hearing loss. Hunt maintained that he received the last injurious exposure to loud noise on February 18, 2009, while employed by Mubea. Hunt began his employment with Mubea in 2002, where he worked as a maintenance technician. For about 11 years prior to working for Mubea, Hunt worked for manufacturing facilities where he was exposed to loud noise, but used hearing protection. Prior to that, Hunt worked as a surface miner, where he was exposed to loud noise, but did not use hearing protection.

Hunt's employment with Mubea ended on February 18, 2009, when he suffered a non-work injury and was unable to return to work. On May 4, 2010, Hunt underwent a hearing test administered by otologist Dr. Robert Manning. Manning assessed a hearing loss, which he translated to a 12% impairment rating based on the *AMA Guides to the Evaluation of Permanent Impairment*.

After filing the claim for benefits, Hunt was evaluated by Drs. Eisenmenger and Willoughby. Dr. Eisenmenger opined that Hunt sustained a hearing loss due to repetitive exposure to hazardous noise, and she assessed a 17% impairment based on the *AMA Guides*. Dr. Eisenmenger later stated at deposition that two objective tests, namely a tympanogram and acoustic reflex testing, demonstrated normal and borderline normal results, respectively. She also stated that only a portion of

Hunt's hearing loss was work-related, and she could not apportion the work-related portion.

Dr. Robert Woods, II, an Otolaryngologist, evaluated Hunt at Mubea's request on November 1, 2010. Dr. Woods testified that the results of the audiograms administered by Dr. Eisenmenger were consistent with age related rather than noise induced hearing loss, and he did not agree with Dr. Eisenmenger's conclusion that some of Hunt's hearing loss was the result of noise exposure. He concluded that, "within a reasonable degree of medical probability, I do not think Mr. Hunt has significant hearing loss and I doubt that it is connected with noise exposure at work." Dr. Woods determined that Hunt was exhibiting pseudohypacusis, which is a false or exaggerated hearing loss. Mubea also introduced records from Hunt's Social Security claim, noting that Hunt did not allege hearing loss as a basis for his application for benefits.

On July 7, 2011, the ALJ rendered a decision dismissing Hunt's claim for benefits upon finding that Hunt did not demonstrate that he sustained a work-related hearing loss. As a basis for the ruling, the ALJ found the report and deposition of Dr. Woods to be more credible than that of Dr. Eisenmenger. In examining Dr. Woods' finding of false or exaggerated hearing loss, the ALJ noted that after Dr. Eisenmenger first examined Hunt, she told him to remove some significant earwax in one ear. After the wax was removed by another doctor, Hunt was retested by Dr. Eisenmenger. The ALJ noted that contrary to what one would expect, Hunt exhibited additional hearing loss relative to the first test. The ALJ

also relied on Dr. Woods' conclusion that Hunt had "too good of [an] ability to figure out words for the degree of hearing loss that he was presenting or giving in his results." According to the ALJ, Hunt also had no problem understanding the questions of attorneys even though the raw testing results appeared to indicate that his ability to hear declined after each test. The ALJ also found as persuasive other technical arguments related to the test data, including the finding that Hunt did not exhibit the typical and prominent "4k notch" that would be expected in noise induced hearing loss. The ALJ found no work-related hearing loss, and accordingly denied Hunt's claim for benefits.

Hunt appealed to the Board, which affirmed the decision of the ALJ by way of an Opinion rendered on December 9, 2011. The Board concluded in relevant part that the ALJ relied on substantial evidence - namely the report and opinion of Dr. Woods - in concluding that Hunt's alleged complaints were either exaggerated or not work-related. This appeal followed.

Hunt now argues that the Board erred in sustaining the ALJ's determination that he failed to demonstrate a work-related hearing loss. Specifically, he contends that the ALJ's decision was not supported by substantial evidence, that it was arbitrary and capricious, and that the evidence compelled a decision in his favor. Hunt directs our attention to the opinion of Dr. Eisenmenger, who found that Hunt suffered a hearing loss at frequencies consistent with those found in occupational hearing loss cases. He also contends that Dr. Eisenmenger found an increased hearing loss or "notch" at the high frequencies of Hunt's range of hearing, which

supported a finding of a work-related rather than age-related hearing loss. Hunt goes on to argue that it is of no consequence that he did not claim a hearing loss on his application for Social Security benefits, because that application was submitted about one year prior to his first complaints of hearing loss. He also notes that Mubea stipulated that he was exposed to work-related noise for 30 years, claims that the ALJ failed to state a reasonable basis for rejecting the opinion of the University Evaluator, and argues that the weight of the evidence compels an award of benefits.

Because Hunt is the claimant, the burden of proof rested with him to prove the essential elements of his cause of action, *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979), including that his hearing loss was caused by work-related noise exposure. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925 (Ky. 2002). Since he was unsuccessful before the ALJ, the issue on appeal is whether the evidence compels a finding in his favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is evidence which is so overwhelming that no reasonable person could share the conclusion of the ALJ. *REO Mech. v. Barnes*, 691 S.W.2d 224 (Ky. App. 1985).

KRS 342.285 provides that the ALJ is the fact finder, and has the sole authority to determine the weight, credibility and substance of the evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308 (Ky. 1993). The ALJ may draw reasonable inferences from the testimony, and believe or disbelieve various parts of the evidence. *Caudill v. Maloney's Disc. Stores*, 560 S.W.2d 15 (Ky. 1977).

In the matter at bar, the parties tendered conflicting evidence as to the extent and causation of Hunt's hearing loss. On one hand, Hunt presented the testimony of Dr. Manning who assessed a 12% impairment rating due to hearing loss, and Dr. Eisenmenger, who also diagnosed a hearing loss. Dr. Eisenmenger opined that while Hunt has a hearing loss, she believed that some of the hearing loss was work-related but was unable to apportion the work-related and age-related components. Conversely, Mubea offered the testimony of Dr. Woods, who noted that Dr. Manning is not a medical doctor, and who concluded that Hunt's test results were consistent with age-related rather than work-related hearing loss. Dr. Woods stated that the results of the testing he administered were not reliable enough to make an assessment of functional impairment for hearing loss, and it was his opinion that Hunt's speech discrimination testing was almost perfect and was inconsistent with other testing. He did not believe that Hunt suffered a work-related hearing loss, and he diagnosed malingering or pseudohypacusis, which is a false or exaggerated hearing loss.

In determining that Hunt did not prove that he suffered a work-related hearing loss, the ALJ accepted the opinion of Dr. Woods and to large degree rejected that of Dr. Eisenmenger. It is fully within the authority of the ALJ to accept one medical opinion and reject another, especially when they are conflicting. *Caudill, supra*. The question then is whether the evidence in support of Hunt's alleged work-related hearing loss is so overwhelming that no reasonable person could conclude that Hunt did not have a work-related hearing loss. *REO*

*Mech., supra.* The evidence is not so compelling as to find that no reasonable person could share the ALJ's determination that Hunt did not prove a work-related hearing loss. The ALJ drew reasonable inferences from the testimony, and believed or disbelieved various parts of the evidence as the law so entitles him. *Caudill, supra.* Accordingly, we find no error in the ALJ's determination that Hunt did not prove a work-related hearing loss.

For the foregoing reasons, we affirm the Opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE MUBEA,  
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