

RENDERED: AUGUST 2, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-002174-WC

MARTIN COUNTY COAL/PILGRIM MINING CO.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-00680

LARRY MUNCIE; HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; DIXON AND THOMPSON, JUDGES.

DIXON, JUDGE: Martin County Coal/Pilgrim Mining (Martin) petitions for review of an opinion of the Workers' Compensation Board affirming an Administrative Law Judge's (ALJ) award of permanent partial disability benefits to Larry Muncie. We affirm.

Muncie was employed by Martin as superintendent of its coal preparation facility. Muncie injured his back, neck, and shoulder when he fell from a ladder during the course of his employment. Muncie was ultimately unable to return to his position at Martin, and he filed a claim for workers' compensation benefits alleging permanent physical and psychological impairment. After hearing the evidence, the ALJ concluded Muncie sustained a work-related cervical injury and depression. The ALJ awarded Muncie benefits based on a 24% whole person impairment for his cervical injury and depression. The ALJ attributed 17% impairment to Muncie's psychological claim, finding that he developed major depressive disorder as a result of the work-related physical injury. Martin filed a petition for reconsideration regarding the finding of psychological impairment, which the ALJ denied. Martin appealed the issue of psychological impairment to the Board, which affirmed the ALJ's award. Before this Court, Martin does not contest the ALJ's finding of cervical impairment; rather, the sole issue raised is the propriety of the ALJ's award of benefits for depression.

On the issue of psychological impairment, Muncie testified that he felt shame and embarrassment due to his physical inability to return to work. He explained that, in addition to loss of appetite, he had no interest in social interaction or leaving his house. Muncie's medical records from his family physician, Dr. Don Chaffin, indicated he advised the doctor he was feeling depressed during an office visit on March 30, 2010. Dr. Chaffin prescribed Paxil, and Muncie continued to follow up monthly with Dr. Chaffin. Muncie submitted

the report of Eric Johnson, Ph.D., who evaluated Muncie in December 2010. Dr. Johnson diagnosed Muncie with major depressive disorder and recommended psychiatric counseling and medication. Dr. Johnson noted that Muncie had no history of psychiatric illness prior to the work-related physical injury. In Dr. Johnson's opinion, Muncie developed depression as a result of the pain and activity restriction caused by the work injury. Dr. Johnson assessed Muncie's current psychological impairment at 17% pursuant to the *AMA Guides*; however, Dr. Johnson stated that Muncie's permanent impairment could not be determined until Muncie had proper psychiatric treatment for nine to twelve months.

Martin submitted the psychiatric report of Douglas Ruth, M.D., who evaluated Muncie in July 2011. Dr. Ruth diagnosed Muncie with major depression due to pain and physical functional limitations. Dr. Ruth stated that Muncie's psychiatric condition was not at maximum medical improvement (MMI) because his symptoms could improve with more aggressive treatment through medication and psychotherapy. Dr. Ruth noted that Muncie had a history of degenerative disc disease that could contribute to his pain symptoms; however, Dr. Ruth concluded that "more likely than not" Muncie's psychiatric condition was the "result of the pain and subsequent physical functional limitations, including loss of employment." At Martin's request, Dr. Ruth subsequently tendered a revised report, which concluded that Muncie's psychological complaints were attributable to pain related to a pre-existing back condition, according to the findings in Dr. Henry Tutt's independent medical evaluation.

In awarding benefits for permanent partial disability, the ALJ assessed a 17% impairment rating for Muncie's psychological condition, concluding that it was directly attributable to the work injury. The ALJ noted the evidence established that Muncie did not have a pre-existing mental health condition; rather, his depression developed after he sustained the work-related cervical injury.

In its petition for reconsideration, Martin argued that the evidence did not support the award of permanent benefits for psychological impairment because both Dr. Johnson and Dr. Ruth stated that Muncie's condition was not at MMI. The ALJ denied the petition, explaining that Dr. Johnson assessed a permanent impairment rating based on Muncie's existing condition, even though Dr. Johnson also believed Muncie's condition might improve if he received proper treatment.

Martin appealed to the Board, asserting that the psychological award was not a direct result of the work injury and that Muncie's major depressive disorder was not at MMI. In its opinion affirming, the Board rejected Martin's arguments, noting the ALJ's award was supported by substantial evidence. Martin now raises the same arguments before this Court.

Pursuant to Kentucky Revised Statutes (KRS) 342.0011(1), a psychological condition must be the direct result of a work-related physical injury. As such, Martin challenges the sufficiency of the evidence supporting the ALJ's finding that Muncie's depression was directly attributable to the work injury. Martin opines that its expert, Dr. Ruth, provided a more reliable report, which concluded the psychological condition was not related to the work injury. Martin

specifically contends that Dr. Johnson's report, relied upon by the ALJ, was not based on an accurate medical history because it did not acknowledge Muncie's pre-existing lumbar pain. Martin cites *Cepero v. Fabricated Metals Corp.*, 132 S.W.3d 839 (Ky. 2004), for the proposition that a medical opinion as to causation does not constitute substantial evidence where the medical history is "substantially inaccurate or largely incomplete." *Id.* at 842.

The findings of an ALJ in favor of an injured worker will not be disturbed on appeal where the decision is supported by substantial evidence. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). "The [ALJ], as 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). Furthermore, the ALJ is free "to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party's total proof." *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

In the Form 107, Dr. Johnson concluded that Muncie's depression was the direct result of his physical injury. Dr. Johnson explained that Muncie had no prior history of psychiatric illness, and the injury caused pain and restrictions, which caused Muncie to develop depression. When a medical expert attributes a psychological condition to a work-related physical injury, the psychological condition "may be viewed as a 'direct result' of the underlying physical injury." *Coleman v. Emily Enterprises, Inc.*, 58 S.W.3d 459, 462 (Ky. 2001).

Additionally, the records of Dr. Chaffin established that Muncie first complained of depression in March 2010, and he began taking an antidepressant medication. In Dr. Ruth's initial report, he indicated that if the ALJ determined that Muncie's physical pain was related to the work injury, "then his depression would be attributable to the work injury."

We conclude Dr. Johnson provided an accurate medical opinion as to causation of the psychological impairment. The ALJ was apprised of all the evidence and free to weigh the medical opinions. There was substantial evidence in the record supporting the ALJ's finding as to causation; accordingly, the Board correctly affirmed the ALJ.

Martin next asserts that the evidence was insufficient to support a permanent impairment rating for the psychological injury. Martin points out that, according to the *Guides*, a permanent impairment rating cannot be assigned "until the clinical findings indicate that the medical condition is static and well stabilized, often termed the date of . . . MMI." Since both Dr. Ruth and Dr. Johnson indicated that Muncie had not reached MMI, Martin argues that the 17% impairment assessed by the ALJ was not supported by substantial evidence.

In his report, Dr. Johnson asserted that Muncie should undergo psychiatric treatment for nine to twelve months before determining permanent impairment. Although he recommended additional treatment, Dr. Johnson assessed Muncie's current psychological impairment at 17% pursuant to the *AMA Guides*. Dr. Johnson additionally executed a Form 107 expressing his opinion that

Muncie sustained 17% whole body impairment for the psychological condition. Dr. Chaffin prescribed Paxil after Muncie first complained of feeling depressed in March 2010. According to Muncie's deposition testimony, Martin refused to pay for mental health treatment, and Muncie paid out-of-pocket for his Paxil prescription.

It was within the province of the ALJ to weigh the credibility of the evidence. *Caudill*, 560 S.W.2d at 16. "MMI refers to the time at which a worker's condition stabilizes so that any impairment may reasonably be viewed as being permanent." *Tokico (USA), Inc. v. Kelly*, 281 S.W.3d 771, 775-76 (Ky. 2009). Furthermore, "[t]he need for additional treatment does not preclude a finding that a worker is at MMI." *Id.* at 776. Although Dr. Johnson believed that Muncie's condition could improve with proper treatment, he assigned a permanent impairment rating and executed a Form 107; thereafter, Muncie never received any additional mental health treatment. Based on the evidence, the ALJ could reasonably view Muncie's condition as permanent and assign an impairment rating. The Board properly affirmed the ALJ's decision because it was supported by substantial evidence.

For the reasons stated herein, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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