

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000769-WC

MICHAEL ROSA

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-88787

PLY TECH; DR. BARRET LESSENBERRY;
HON. JANE RICE WILLIAMS, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CAPERTON, LAMBERT, AND TAYLOR, JUDGES.

CAPERTON, JUDGE: The Appellant, Michael Rosa, appeals the April 8, 2014, opinion of the Kentucky Workers' Compensation Board, affirming the September 23, 2013, opinion, award, and order of the Administrative Law Judge, finding that

he sustained a permanent knee injury and a temporary low back strain. On appeal, Rosa argues that the Board erred in affirming the Administrative Law Judge, whom Rosa asserts erred as a matter of law in limiting his entitlement to future medical benefits for the right knee meniscal tear and repair only. Upon review of the record, the arguments of the parties, and the applicable law, we affirm.

Rosa was 54 years old on the date of the accident at issue in this matter. He has had a number of jobs in various fields, including working in manufacturing for several factories, working in machinery and equipment maintenance, as a patrolman for a security company, and as a 911 dispatcher. Rosa also worked various construction jobs.

Ply Tech is a manufacturer of hardwood flooring. When Rosa began working for Ply Tech on February 14, 2011, he was operating a lamination press. He was then trained to rebuild jigs for the saw, and it was in this capacity that he was injured. On April 12, 2012, Rosa was working the night shift, and was walking through the dark plant. As Rosa walked down an aisle, his right foot tripped over a pallet that someone had left on the floor. Rosa fell to the ground, twisted his leg, and hit his back on the floor. Rosa also believes that he hit his head on an air compressor, as there was a knot on his head after the event. Rosa was unable to state how long he remained on the floor, but it is undisputed that at some point he called 911.

Rosa was then transported to T.J. Samson Hospital, where an x-ray of his lumbar spine was performed. That x-ray revealed bilateral L5 parsdefects and

grade 1 spondylolisthesis, as well as mild to moderate degenerative changes, and degenerative disc disease at L5-S1. Rosa next treated with Dr. Pandaya, who referred him to Dr. Barrett Lessenberry. Dr. Lessenberry ordered an MRI of the right knee, which revealed a meniscal tear medially in the knee. He also noted patella femoral arthrosis, with no evidence of a fracture. A newer x-ray taken by Dr. Lessenberry of Rosa's lumbar spine again revealed grade one spondylolisthesis, but no acute injury. Dr. Lessenberry's impression was of a "right knee medial meniscal tear and spondylolistheses with likely degenerated disc at L5-S1 level." During a November 2012 appointment with Dr. Lessenberry, another MRI of the lumbar region was completed, which showed disc bulges at the L4-L5 level with right lateral recess impingement, as well as some spondylolisthesis at L5 and S1, demonstrating some foraminal narrowing. At that time, Dr. Lessenberry noted that the spondylolisthesis in the lumbar spine was a chronic, longstanding problem that was not work related.

Rosa was also seen by Dr. Michael Best for an Independent Medical Evaluation on December 12, 2012. Following a review of Rosa's medical records, medical history, and a physical examination, Dr. Best found signs of symptom magnification, and also noted that Rosa was morbidly obese, weighing 320 pounds and measuring 5'4 in height. Dr. Best opined that the primary cause of Rosa's persistent complaints was his obesity. He diagnosed Rosa with a medial and lateral meniscus tear in the right knee, grade three chondromalacia medial femoral condyle and lateral femoral condyle, and chronic low back pain. Dr. Best

determined that there was clearly pre-existing degenerative arthritis, and noted that Rosa had chronic low back pain for which he had never had surgery. Dr. Best assessed a 4% impairment rating pursuant to the 5th Edition of the AMA Guides, based upon the menisectomies undergone by Rosa. Dr. Best noted that any additional impairment would be secondary to Rosa's obesity and to pre-existing arthritic degeneration of the knees.

Rosa was also examined by Dr. Jared Madden on January 5, 2013. Dr. Madden diagnosed right knee internal derangement secondary to fall, medial and lateral meniscal tears, chronic pain due to trauma, right knee osteoarthritis, somatic dysfunction of the lower extremity, thoracic and lumbar regions, low back pain, thoracic pain, and insomnia secondary to chronic pain syndrome. Dr. Madden assigned Rosa a 15% whole person impairment rating for the right knee under the 5th Edition of the AMA guides. No impairment rating was assigned for Rosa's low back.

Rosa did not return to work following the April 12, 2012, work accident. As noted, the ALJ issued an opinion, award, and order on September 23, 2013. Therein, the ALJ found that Rosa sustained a permanent knee injury and a temporary low back strain. The ALJ awarded permanent partial disability benefits based upon Dr. Madden's assessment of 15% whole person impairment. However, the ALJ limited future medical benefits to treatment related only to the meniscal injury and its repair, specifically finding that Ply Tech was not responsible for the "longstanding degenerative changes in the knee." Concerning the low back injury,

the ALJ found that Rosa suffered only a temporary strain which resolved without permanent impairment.

Rosa filed a petition for reconsideration, requesting that the ALJ modify her findings regarding the compensability of medical expenses beyond meniscal tear and repair, as well as the alleged low back injury. In a November 4, 2013, order denying Rosa's petition for reconsideration, the ALJ stated:

[I]t has been found Plaintiff suffered a permanent injury to the knee. Plaintiff argues the injury aroused pre-existing dormant non-disabling conditions. That position is not adopted herein. The pre-existing conditions were not changed or affected by the meniscal tear, which is the only permanent injury found herein.

Rosa then appealed to the Board, again arguing that the evidence compelled a finding that he suffered from a pre-existing dormant condition prior to the April 12, 2012, work-related accident. He also argued that the ALJ erred in limiting his medical benefits with respect to the low back and right knee.

Following a review of the arguments of the parties and the applicable law, the Board entered an April 9, 2014, order affirming the ALJ. In so finding, the Board held that concerning the degenerative change in Rosa's knee, the opinion of Dr. Best constituted substantial evidence to support the position of the ALJ, because Dr. Best explicitly stated that the entirety of the degenerative arthritic condition of the knee was pre-existing and active. Additionally, the Board indicated that the medical notes filed from Dr. Lessenberry indicated that spondylosis was a longstanding problem unrelated to the work injury, and supported the finding that Rosa's back condition was pre-existing. The Board relied upon the opinions of Dr.

Best, who noted that Rosa had been off work for a significant period of time for low back issues prior to the work accident at issue in this claim. It is from that opinion that Rosa now appeals to this Court.

Prior to reviewing the arguments of the parties, we note that the function of this Court on review is to correct the Board only where the Court perceives that the Board has overlooked or misconstrued controlling statutes or precedent, or has committed an error in assessing the evidence so flagrant as to cause gross injustice. *See Western Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687088 (Ky. 1992). We review this matter with this standard in mind.

On appeal, Rosa argues that the ALJ erred as a matter of law in limiting his award of medical benefits only to the right knee meniscal tear and repair. Rosa asserts that he consistently testified that he was asymptomatic in his right knee prior to the work injury, and that no medical records have been submitted which indicate any prior symptoms or treatment for the right knee prior to April 12, 2012. While acknowledging that the arthritic changes in his knee were not caused by the work injury, Rosa asserts that those conditions were not symptomatic until the work injury, and were brought into a symptomatic state as a result of that incident. Thus, Rosa argues that in making an award of medical benefits only for the right meniscal tears and repair, the ALJ ignored substantial evidence indicating that the longstanding degenerative changes in the knee were aroused by the work injury, and that the holding of this Court in *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007) compels a different result.

Similarly, with respect to the low back condition, Rosa argues that the ALJ erred in finding that Rosa suffered only a temporary strain, and that he was not entitled to future medical treatment for his ongoing low back pain. While acknowledging that the records do confirm a lower back injury prior to the 2012 work incident at issue in this claim, Rosa asserts that his condition was not symptomatic or active prior to the work incident. Accordingly, he asserts that the ALJ's conclusion that his low back condition was pre-existing and active is not supported by the evidence of record, and urges this Court to reverse.

In response, Ply Tech argues that the decision of the ALJ concerning both the right knee and the low back was supported by substantial evidence, and accordingly, should be affirmed. Ply Tech asserts, with respect to the right knee, the opinion of Dr. Best was clear on the cause of the degenerative changes, noting that Rosa's current complaints were the result of his "malignant obesity," and were "not a function of the work event and meniscal tears." Concerning Rosa's low back condition, Ply Tech argues that the ALJ's determination was again supported by substantial evidence of record. Ply Tech asserts that the ALJ's finding that Rosa sustained only a temporary strain was supported by the opinion of Dr. Best, who explicitly stated in his report that obese individuals of Rosa's size will have back pain as a result, in addition to noting Rosa's significant history of low back issues, including his spondylolisthesis, which Dr. Best stated was "not related to his work but is a longstanding problem." Accordingly, Ply Tech argues that the

ALJ's finding that Rosa had no pre-existing and active low back impairment was supported by substantial evidence of record and should be affirmed.

Upon review of the record, the arguments of the parties, and the applicable law, we are in agreement with the Board in finding that the determinations of the ALJ in this matter were supported by substantial evidence.

As the claimant in a workers' compensation matter, Rosa had the burden of proving each of the essential elements of his cause of action. *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). As Rosa was unsuccessful in persuading the ALJ that the degenerative changes in his knee were brought into a disabling reality by the work incident, the question on appeal is whether the evidence compels a different result. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). Upon review, we cannot find that the evidence compels a result different than that reached by the ALJ, and indeed, believe that the ALJ's decision with respect to both the right knee and low back was supported by substantial evidence, and was in keeping with our holding in *Finley v. DBM Technologies*.

In finding that Rosa's knee condition was pre-existing and active prior to the work injury, the ALJ relied upon the medical report of Dr. Best, who clearly opined that the degenerative changes and Rosa's current complaints were the result of his "malignant obesity," and were "not a function of the work event and meniscal tears." Dr. Best supported that opinion with citations to several studies involving the close relationship between obesity, body mass index, and osteoarthritis. Dr. Best opined that Rosa's current complaints were subjective and

non-work related, and based upon the findings of Dr. Best, the ALJ specifically found that the degenerative condition of the knee was not changed by the work event, and was as correctly found by the Board, the ALJ's decision with respect to the right knee condition was supported by substantial evidence. Accordingly, we affirm.

Concerning Rosa's low back, the record clearly indicates that he had been off work for a total of six years as a result of prior low back injuries, and further clearly indicates that the spondylolisthesis noted to be present was a longstanding problem which was unrelated to the work event. The opinions of Drs. Best and Lessenberry supported those conclusions, and indeed, no physician assessed any impairment with respect to the alleged low back condition. Accordingly, we are in agreement with the Board's decision to affirm the ALJ's finding that the work injury caused only a temporary back strain which resolved and did not cause any permanent injury.

Wherefore, for the foregoing reasons, we hereby affirm the April 8, 2014, opinion of the Kentucky Workers' Compensation Board affirming the September 23, 2013, opinion, award, and order, and the November 4, 2013, order on petition for reconsideration rendered by the Honorable Jane Rice Williams, Administrative Law Judge.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ben T. Haydon
Audrey L. Haydon
Bardstown, Kentucky

BRIEF FOR APPELLEE:

Kelli Hagan
Bowling Green, Kentucky