

Commonwealth of Kentucky
Court of Appeals

NO. 2014-CA-001504-WC

MICHAEL EVANS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-81571

ALPHA NATURAL RESOURCES, INC.,
HONORABLE J. GREGORY ALLEN, ADMINISTRATIVE
LAW JUDGE, WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: CLAYTON, KRAMER, AND NICKELL, JUDGES.

CLAYTON, JUDGE: Michael Evans petitions for review of the August 15, 2014 Workers' Compensation Board ("Board") decision affirming the April 8, 2014 Opinion, Order and Award, rendered by Hon. J. Gregory Allen, Administrative Law Judge ("ALJ"), awarding a temporary period of medical benefits. In his

petition, Evans argues that the Board erred in affirming the ALJ's decision, which did not award him permanent medical benefits. After careful consideration, we affirm the Board's decision.

Evans was employed as a mine clerk for Alpha Natural Resources, Inc. (hereinafter "Alpha"). He experienced a low back injury on May 30, 2012, while moving a chemical tote. He sought medical treatment the following morning, and returned to work with restrictions the next day. The central question is whether the May 30, 2012 work-related incident caused a permanent harmful change or temporarily exacerbated a pre-existing low back condition. In fact, Evans had been treated for low back pain for several years prior to the work injury including medication (Oxycodone, Neurontin, and Percocet), injections, and other treatment.

Dr. Jerry Banks and Dr. Galen Smith provided the ALJ medical records about treatment for Evans' back, which began in 2010 and continued until two months prior to the work-related incident. After the work-related injury, Evans was evaluated by Dr. James Owen and Dr. Ira Potter. Both doctors opined that the work-related incident permanently aggravated his prior lumbar condition.

However, Dr. Daniel Primm, who also evaluated Evans, disagreed. Although Dr. Primm agreed that Evans had an active, pre-existing condition, he concluded that the work incident merely resulted in a temporary exacerbation of a pre-existing back condition that completely resolved within three months.

The ALJ relied upon Dr. Primm's report and the medical records documenting Evans' treatment for back pain before the May 30, 2012 work-related incident. Ultimately, the ALJ decided that Evans had sustained a temporary aggravation and exacerbation of his pre-existing condition. Further, the ALJ determined that Evans reached maximum medical improvement ("MMI") on December 12, 2012, which was the date identified by Dr. Potter, and awarded medical benefits through that date.

On appeal, Evans contends that the Board erred when it affirmed the ALJ's opinion that he was not entitled to future medical expenses under Kentucky Revised Statutes 342.020(1). Notably, because Evans did not file a petition for reconsideration, the ALJ's factual determination – that he did not suffer permanent harm – is conclusive and binding as to all questions of fact. KRS 342.285(1). Therefore, Evans may not and does not challenge the ALJ's factual findings or the Board's acceptance of these factual findings. And the question before us is a legal one, that is, whether the Board erred when it affirmed the decision of the ALJ to not award permanent medical benefits for this work-related injury.

Our review of a Board's decision only permits us to reverse the decision if the Board has overlooked or misconstrued the controlling law or so flagrantly erred in evaluating the evidence that a gross injustice has occurred. *Daniel v. Armco Steel Co., L.P.*, 913 S.W.2d 797, 798 (Ky. App. 1995). In addition, although the interpretation of the law by the ALJ and the Board are given careful consideration, legal questions are subject to *de novo* review. *Carroll v.*

Meredith, 59 S.W.3d 484, 489 (Ky. App. 2001). Thus, in the case at bar, our review is *de novo*.

Evans argues that a claimant is entitled to permanent medical benefits for any work injury even if it is a temporary exacerbation of a pre-existing condition. As noted above, he has not challenged the ALJ's finding that the injury was merely a temporary exacerbation of a pre-existing condition. Since Evans does not challenge the ALJ's factual findings, the Board relied on this finding and confirmed that the ALJ's award of medical benefits to Evans until he reached MMI was appropriate. In doing so, the Board concluded that the ALJ correctly applied *Robinson v. United Parcel Service*, 64 S.W.3d 284 (Ky. 2001). Further, the Board disagreed with Evans' contention that *Derr Const. Co. v. Bennett*, 873 S.W.2d 824 (Ky. 1994), is factually analogous to this situation.

The workers' compensation statutes provide for medical benefits "for so long as the employee is disabled." KRS 342.020(1). Here, it is undisputed that the claimant suffered an exacerbation of pre-existing condition. Courts have held unambiguously that when a work injury causes a temporary exacerbation of a pre-existing condition, it is proper to award medical benefits only until the claimant reaches MMI and returns to his pre-injury baseline. See *Robertson, supra*; *Mullins v. Mike Catron Construction*, 237 S.W.3d 561 (Ky. App. 2007).

The Kentucky Supreme Court explained in *Robinson* that an injured worker may establish a temporary injury for which temporary total disability and/or temporary medical benefits may be paid but fail to meet the burden of proof

to establish a permanent harmful change to the human organism for which permanent benefits, including future medical expenses, are authorized. *Robinson*, 64 S.W.3d 284. Here, it has been established that the injury was not permanent but merely an exacerbation of a previous injury.

Evans argues that because KRS 342.020(1) states that an employer shall pay for the cure and relief from the effects of an injury, a claimant is entitled to permanent medical benefits for any work injury regardless of whether it is only a temporary exacerbation of a pre-existing condition. Continuing on, he alleges that the Board incorrectly found that “[t]here is no evidence the prior active condition has any relation to Evans’s work for Alpha.” Evans further maintains that substantial evidence does not support this assertion by the Board.

Significantly, under the Workers’ Compensation Act, the ALJ is the finder of fact, and the scope of review of the Board “is limited to determining whether the ALJ’s decision was: authorized, not procured by fraud, in conformity with Chapter 342, supported by the evidence, and not arbitrary or capricious.” KRS 342.285. *See Smith v. Dixie Fuel Co.*, 900 S.W.2d 609, 612 (Ky. 1995). Thus, Evans cannot now insinuate that the Board made a finding unsupported by substantial evidence.

Notwithstanding this allegation, based on the statutory language and *Derr*, Evans suggests that liability for future medical expenses only requires an injury caused by work. We disagree with this line of reasoning as overly broad and not in line with precedent. To begin with, *Robinson* is controlling. If a claimant experiences an aggravation of a pre-existing condition, which is

temporary, he is only entitled to medical expenses that return the claimant to MMI. Here, the ALJ, relying on Dr. Potter, determined that Evans returned to MMI in December 2012. Keeping in mind, that the factual issues are not disputed, Evans had a pre-existing condition aggravated by a work-related incident. Such an injury allows for medical expenses until it is ameliorated rather than permanent medical benefits.

Indeed, KRS 342.020 and *Derr* are inapposite to the factual scenario herein. The statute is not relevant because Evans has reached his pre-injury status, and therefore, Alpha has paid for his return to his pre-injury status, that is, the cure and relief of his work-related injury. KRS 342.020. Moreover, *Derr* is irrelevant to our review because it simply does not address the factual situation present in this case. Rather it discusses apportionment between employers. *See Sears Roebuck & Co. v. Dennis*, 131 S.W.3d 351, 356 (Ky. App. 2004). The facts in *Derr* involved an injury caused by the effects of a cumulative trauma, where the claimant's work accelerated his arthritic condition sooner than otherwise would have been the case. Thus, ongoing cumulative trauma from claimant's work contributed to the arthritic condition, but here, as explained by the Board, the work-related injury did not cause progression of a pre-existing active condition. In the case at bar, once Evans recovered from the temporary effects of his work injury, ongoing treatment was no longer necessitated by the work injury and his future medical care is not compensable.

Evans correctly observes that under *Cavin v. Lake Construction Co.*, 451 S.W.2d 159 (Ky. 1970) and *Derr*, an award of medical benefits may be made for a work injury even if the injury produces no permanent disability. However, this does not address the matter at hand. Here, the ALJ awarded medical benefits for the work injury, but these medical benefits were only payable until Evans reached MMI from the temporary exacerbation. The ALJ, relying on Dr. Potter, ascertained Evans reached MMI on December 12, 2012.

We concur with the Board that once Evans recovered from the temporary effects of his work injury, ongoing treatment was no longer necessitated by the work injury and future medical benefits are not compensable. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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