

RENDERED: NOVEMBER 9, 2017; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2016-CA-001836-WC

JOHNNY COLLINS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NOS. WC-15-00571 & WC-15-00572

PINE BRANCH MINING, LLC;
HON STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MAZE, STUMBO, AND TAYLOR, JUDGES.

MAZE, JUDGE: Johnny Collins petitions for review of a November 4, 2016,
opinion of the Workers' Compensation Board (Board) which affirmed an order by
the Administrative Law Judge (ALJ) dismissing his claim for benefits arising from

cumulative trauma allegedly occurring during his employment with Pine Branch Mining, LLC (Pine Branch). He argues that the ALJ erroneously relied on the medical reports submitted by Pine Branch, and on the lack of medical records prior to 2015 which supported his claim. We agree with the Board that the ALJ's decision in favor of Pine Branch was supported by substantial evidence. Hence, we affirm.

Collins was born in December 1949 and resides in Hazard, Kentucky. Throughout his career, he worked in surface mining where he operated heavy equipment for over forty years, with over twenty-one years spent operating a loader for Pine Branch. While operating a loader, he dug up rock and loaded it into a truck, which required repetitive use of his upper extremities and left leg. Collins alleged his body was constantly jarred and jerked while performing this job. He also maintained and inspected the equipment he operated. Collins worked fifty to fifty-eight hours a week, and continued to work until July 7, 2014. He ceased working due to unrelated renal failure. Collins testified he did not miss any work prior to his cessation of employment, other than to attend his monthly doctor visits for his unrelated condition.

Collins filed a Form 101 on April 22, 2015, alleging injuries to his neck and back due to repetitive use while working for Pine Branch. Collins listed the date of injury as July 7, 2014, his last date of employment. He simultaneously filed a Form 103 alleging occupational hearing loss due to repetitive exposure to loud noise in the work place, for which he also provided a July 7, 2014, date of

injury. The ALJ consolidated the injury and hearing loss claims. Subsequently, the ALJ granted Collins's motion to amend his Form 101 to include additional injuries to his shoulders, left knee and bilateral carpal tunnel syndrome, all of which he alleged was caused by cumulative trauma at work. Pine Branch filed a timely special answer raising the statute of limitations defense and a Form 111 denying Collins's claims.

Collins previously filed a workers' compensation claim for bilateral carpal tunnel syndrome in 2006. He underwent carpal tunnel releases and was off work for thirteen weeks. Subsequent testing performed in 2007 demonstrated that he still had carpal tunnel syndrome, but he was able to return to work despite his continuing symptoms. His workers' compensation claim arising from this injury was resolved by settlement on November 20, 2007.

In addition, Collins testified that he experienced minor injuries during his employment, but he did not seek any medical treatment or miss any work for these injuries. He further testified he first injured his neck at work in 2001 when he hit his head on a steering cylinder. Collins notified his supervisor and filed an injury report. He received treatment and medication for the injury, but permanent restrictions were not imposed. Collins testified his neck has gradually worsened since the 2001 incident, and he has been treated regularly for this condition.

With respect to his current claim, Collins testified he began experiencing back pain approximately seven to eight years ago, which he attributes to the constant jarring he endured as a heavy equipment operator. He also

experiences limited range of motion in his shoulders, as well as knee pain. In addition, Collins stated that he has suffered hearing loss. However, he has not received any medical treatment for his alleged injuries other than for his neck. Collins does not believe he can return to his former job due to his back, shoulder, and leg pain.

In support of his claim, Collins filed records from Dr. Chad Morgan, D.C., a chiropractor, and Dr. Arthur Hughes, who examined Collins based upon a referral from Dr. Morgan. Dr. Morgan diagnosed tension headache, cervicgia, brachial neuritis/radiculitis, NOS, lumbago, sciatica, cervical subluxation, and lumbar subluxation. He noted Collins has a history of job related micro-trauma, and job related physical jarring and trauma from operating heavy equipment. Dr. Morgan concluded that Collins's neck and back issues were brought into disabling reality by the cumulative trauma years during the course of his job duties with Pine Branch.

Dr. Hughes diagnosed neck pain, right shoulder pain and limitation of motion, left shoulder pain and limitation of motion, bilateral carpal tunnel syndrome, status post bilateral carpal tunnel releases, low back pain with radiculopathy, and left knee pain. Like Dr. Morgan, Dr. Hughes concluded that these conditions were caused by cumulative trauma during the course of his job duties with Pine Branch. Dr. Hughes assessed a combined 30% impairment rating for the right shoulder, left shoulder, right carpal tunnel syndrome, left carpal tunnel syndrome, low back and left knee. He assessed a 0% impairment rating for the

neck. Dr. Hughes stated Collins had reached maximum medical improvement as of the date of his report if no additional treatments were approved. Dr. Hughes did not believe Collins could return to his former job and he assigned permanent restrictions.

In support of his hearing-loss claim, Collins filed the January 23, 2015, audiological evaluation performed at Beltone Hearing Center. Audiometric results demonstrated moderate to high frequency hearing loss. Collins was recommended to use hearing aids. The ALJ also considered the December 14, 2015, university evaluation report of Dr. Brittany Brose. Dr. Brose concluded that Collins has greater hearing loss than would be expected for a person of his age, and that his hearing loss pattern was consistent with long-term noise exposure in the workplace. However, Dr. Brose assessed a 0% impairment rating, and recommended that Collins use hearing aids.

In response, Pine Branch filed the reports of Dr. Daniel Primm and Dr. Russell Travis. Dr. Primm diagnosed degenerative changes consistent with age and no evidence of cervical or lumbar radiculopathy. Dr. Primm found no objective evidence of permanent impairment to Collins's low back, left knee, right upper extremity or left upper extremity based upon the AMA Guides. Dr. Primm also stated his belief that, except for the unrelated renal condition, Collins could return to work as an equipment operator without restriction.

In his report, Dr. Travis found no evidence of low back or shoulder pain, and no basis for an impairment rating for either condition. Dr. Travis noted

that Collins quit working due to his renal failure, and did not claim any cumulative trauma until bringing this claim. Dr. Travis further stated that he found that none of the imaging studies supported a finding of more than expected lumbar or shoulder degenerative changes.

After reviewing the evidence, the ALJ concluded that Collins failed to meet his burden of proving a work-related injury, evidenced by objective findings, to his back, shoulders, neck, or left knee. The ALJ found the reports of Dr. Primm and Dr. Travis to be most persuasive on these issues. The ALJ also noted that Collins's medical records do not show any complaints of low-back symptoms until 2015, and no complaints related to the carpal tunnel syndrome following the settlement of his 2006 claim. The ALJ accepted Dr. Brose's opinion regarding the occupational hearing loss. Based on these findings, the ALJ dismissed Collins's claim for benefits related to his alleged cumulative trauma injuries, and awarded medical benefits for the hearing loss.

The ALJ subsequently denied Collins's petition for reconsideration. On appeal, the Board affirmed, concluding that the ALJ properly relied on the opinions of Drs. Primm and Travis. Collins now petitions for review to this Court.

It is well-established that a claimant in a workers' compensation claim bears the burden of proving each essential element of his claim. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925, 928 (Ky. 2002). Where the party that bears the burden of proof is unsuccessful before the ALJ, the question on appeal is whether the evidence is so overwhelming upon consideration of the record as a whole as to

compel a finding in claimant's favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision.

Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). The function of this Court's review of the Board is to correct the Board only where the Court perceives that 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, 687-88 (Ky. 1992).

Collins argues that the ALJ erred in relying on the reports of Drs. Primm and Travis over those of his experts. He also argues that the ALJ could reasonably infer cumulative trauma from the nature of his injuries and his prior work. Consequently, he contends that the ALJ should not have discounted his claim of cumulative trauma based on the lack of medical records prior to 2015.

However, the ALJ has the sole authority to judge the weight to be accorded to and inferences to be drawn from the evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993). Where the evidence is conflicting, the ALJ has the discretion to pick and choose what to believe. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky. 1977). Furthermore, an ALJ is vested with broad authority to decide questions involving causation. *Dravo Lime Co. v. Eakins*, 156 S.W.3d 283, 290 (Ky. 2005).

Collins does not argue that Drs. Primm and Travis failed to rely on objective medical evidence in reaching their conclusions. He simply disagrees

with those conclusions, and argues that the ALJ should have accepted the conclusions of Drs. Morgan and Hughes instead. In the absence of a showing the ALJ committed a flagrant error in assessing the evidence, we have no basis to disturb the ALJ's findings.

Accordingly, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

McKinnley Morgan
London, Kentucky

BRIEF FOR APPELLEE:

Pine Branch Mining, LLC

W. Barry Lewis
Hazard, Kentucky