

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

NO. 2017-CA-002006-MR

JOE NEELY

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT  
HONORABLE THOMAS D. WINGATE, JUDGE  
ACTION NO. 16-CI-00868

KENTUCKY RETIREMENT  
SYSTEMS

APPELLEE

OPINION  
AFFIRMING

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BEFORE: CLAYTON, CHIEF JUDGE; JOHNSON<sup>1</sup> AND KRAMER, JUDGES.

KRAMER, JUDGE: Joe Neely applied for duty-related disability retirement

benefits pursuant to KRS<sup>2</sup> 61.621. The Kentucky Retirement Systems' medical

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<sup>1</sup> Judge Robert G. Johnson concurred in this opinion prior to the expiration of his term of office. Release of the opinion was delayed by administrative handling.

<sup>2</sup> Kentucky Revised Statute.

review board denied his application. He requested a hearing to challenge the denial, and one was conducted. Considering the evidence presented, the hearing officer determined Neely failed to demonstrate entitlement to duty-related benefits, and recommended denying Neely's application. The Systems' Board of Trustees ultimately adopted its hearing officer's recommendation. Neely then filed an original action in Franklin Circuit Court, seeking relief from the Board's denial. There, he argued the Board had failed to adequately set forth the basis of its decision in its order denying his application for benefits; failed to support its decision to deny his application for benefits with substantial evidence; and had otherwise misapplied the law. The circuit court affirmed; this appeal followed; and Neely reasserts what he argued before the circuit court. Upon review, we likewise affirm.

Neely's claim for benefits originates from an incident that occurred during his employment with the Boone County School District. He began working for the District on or about December 11, 2009, and the incident occurred on June 24, 2013, his last day of paid employment, when he was about fifty-seven years of age. On that date, Neely was performing his duties as a summer grass cutter at Ockerman Elementary School, using a diesel mower that weighed approximately 1800 pounds. When he mowed too closely to the side of a ditch, his mower became stuck. To free it, Neely and a coworker attempted to tow the mower out

using another vehicle and a tow rope. While the coworker operated the vehicle pulling the tow rope, Neely sat on the mower (pursuant to his employer's policy) to prevent damage to certain parts of the mower. The mower suddenly flipped over, pinning Neely underneath. Shortly afterward, the coworker was able to lift the mower off him. Paramedics arrived on the scene, placed him in a neck brace and on a back board, and transported him to a hospital. He was released from the hospital later that evening.

In his subsequent application for duty-related disability retirement benefits,<sup>3</sup> Neely asserted that he had sustained neck and back injuries due to the incident. He later amended his application to include associated psychological impairments of depression and anxiety. He claimed the circumstances of his alleged injuries and his resulting condition satisfied the requirements of KRS 61.621. On the date of Neely's accident, that statute provided in relevant part:

(1) . . . any employee participating in one (1) of the state-administered retirement systems who is not in a hazardous duty position . . . shall be eligible for minimum benefits . . . if the employee . . . becomes totally and permanently disabled to engage in any occupation for remuneration or profit as a result of a duty-related injury.

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<sup>3</sup> Neely applied for duty-based disability retirement benefits because he was ineligible for standard disability retirement benefits. Pursuant to KRS 61.600(1)(a), eligibility for standard disability retirement benefits requires a minimum of sixty months of service. Neely only had 38 months.

(2)(a) For purposes of this section, “duty-related injury” means:

- 1.a. A single traumatic event that occurs while the employee is performing the duties of his position . . . and
2. The event or act of violence produces a harmful change in the human organism evidenced by objective medical findings.

(b) Duty-related injury does not include the effects of the natural aging process, a communicable disease unless the risk of contracting the disease is increased by nature of the employment, or a psychological, psychiatric, or stress-related change in the human organism unless it is the direct result of a physical injury.

As indicated, the Board ultimately concluded that Neely had failed to demonstrate through a preponderance of the evidence that his claim satisfied these statutory prerequisites. To that effect, the Board largely focused its order denying his request for benefits (as adopted from its hearing officer’s recommendation) upon the medical records and other evidence that detailed the extensive history of Neely’s condition prior to and after June 24, 2013, relative to his neck, back, and mental health. Because the adequacy of the Board’s findings in this respect are a central issue of Neely’s appeal, we set forth the full extent of this aspect of the Board’s order:

A. 01-25-2010: Claimant presented to VA emergency room for evaluation of neck and lower back pain and right sided chest discomfort following a motor vehicle accident. (Exhibit 17, pp 25, 61). Lumbar spine x-ray

revealed severe degenerative disease in the lumbar spine and right sacroiliac joint, but not acute traumatic abnormality. Cervical spine x-ray showed degenerative disease in the lower cervical spine. (Exhibit 17, pp 22-23).

B. 02-22-2010: Dinn Chiropractic: Claimant indicated he had arthritis and it was noted “It would be odd not to have pain, very active in sports throughout life, many aching joints daily.” Claimant exhibited 4/5 or 5/5 pain in all areas of the cervical and lumbar spine examined. (Exhibit 17, pp 5-6).

C. (Undated)-2010: Letter from chiropractor Chris Freeman: “Joe Neely was referred to our office in February of this year and presented with neck pain and low back pain. Mr. Neely has been suffering from these symptoms for years and they have been exacerbated by a car accident in January of this year... x-rays show degenerative arthritis in all regions of the spine...” “It is entirely possible, and in my opinion probable, that Mr. Neely’s knee injury and degeneration has contributed to and increased the degeneration seen in his pelvis and lumbar spine.” (Exhibit 17, p 39).

D. 01-07-2011: Department of Veterans’ Affairs: After a consultation Claimant diagnosed with “generalized anxiety disorder r/o major depressive disorder.” (Exhibit 24, p 52).

E. 02-07-2011: Department of Veterans’ Affairs-Brian Evans, D.O.-Staff Psychiatrist: Diagnosed Claimant with Major depression recurrent episode, moderate in partial remission. Psychiatric history of “...at least one previous episode of depression in his 40’s treated with venlafaxine 150 mg for 5 years (felt like a zombie) he experienced severe withdrawal sx’s when tapering off... Tx’d by private psychiatrist previously.” (Exhibit 24, pp 178-180).

F. 07-15-2011: Dinn Chiropractic: Noted Claimant experiencing cervical, thoracic, and lumbar symptoms. (Exhibit 17, p 10).

G. 09-27-2012: Dinn Chiropractic: Claimant had complaints of severe pain in his neck, onset 6 months prior. (Exhibit 17, pp 11-12),

H. Claimant continued with chiropractic adjustments for neck, thoracic, and lumbar pain with Dinn Chiropractic on 17 visits from 09-27-2012 through 06-12-2013. (Exhibit 17, pp 52-59)

I. 12-20-2012: Cervical spine MRI: Claimant had multilevel cervical spondylosis with left sided foraminal stenosis at C4-5, C3-4, and C5-6; multilevel disc dessication, spondylosis, facet arthropathy, facet fusion at C2-3, and spinal cord effacement at C3-4, C4-5 without gliosis or syrinx formation. (AR 120).

J. 01-28-2013: neurosurgical consult: noted:

“The original onset of his left-sided neck pain began while wrestling in the United States Marine Corps in 1979. He has had this chronic pain through the years and has noticed his symptoms became a lot worse about a year ago with radiation down his left arm, which has significantly increased in the last two months.”

No urgent need for neurosurgical care. Claimant was advised to undergo “full maximization of conservative realms.” (Exhibit 24, pp 151-153).

K. 03-15-2013: Physical Medicine-Rehab Consult: Claimant presented for evaluation of chronic neck pain with radiation to the left shoulder. Claimant stated the:

“...neck pain began in his twenties (~30 yrs ago) and has been progressively worsening... a constant ache (6-7/10), with intermittent sharp stabbing pain (10/10) that are incapacitating... notes one specific trauma to neck while performing Grecco style of wrestling while in the military. Otherwise notes likely several other traumas as he was involved with Martial Arts, wrestling and football.” (Exhibit 24, p 33).

L. 03-[2]9-2013: Physical Therapy Consult: Noted Claimant had severe chronic cervical pain for 20-30 years; reported multiple traumas to the cervical spine. Has consistently been under the care of a chiropractor for 20 years. Assessment included:

“Chronic cervical pain due to extensive cervical DDD/DJD with multilevel foraminal stenosis. He has severely limited ROM in cervical rotation but normal Neuro exam today. He reported a very positive response to mechanical cervical traction and was fitted with a home traction collar...” (Exhibit 24, p 29).

M. 03 & 04-2013: Acupuncture Consult: Claimant sought relief from chronic neck pain which radiated into his left shoulder. (Exhibit 24, p 23).

N. 05-21-2013: Claimant involved in another motor vehicle accident. CT of cervical spine showed multilevel spondylosis with significant left C4 and left C5 foraminal stenosis; multiple degenerative changes.

O. 06-03-2013: Psychological Consult: Claimant presented with depression and expressed an escalation of stress in past month over his son’s serious behavioral/emotional problems and resulting conflict between he and his wife over parenting strategies.

Therapist noted a “high level of family conflict and tension right now.” (Exhibit 24, p 127).

P. 06-13-2013: Dinn Chiropractic: Claimant presented with complaints of neck pain following car accident on 05-21-2013. (Exhibit 17, pp 13-15).

Q. 06-14-2013: Dinn Chiropractic: Claimant had “extensive DJD/stenosis by prior neurological consult/management, extensive fibrosis, no peripheral nerve tension.” (Exhibit 17, p 20).

**R. 06-24-2013: Date of Claimant’s work accident.** Such accident constituted a single traumatic event that occurred while Claimant was performing the duties of his position. While at the University of Cincinnati Emergency Department, Claimant denied “significant past medical history except for chronic neck pain.” Claimant’s neck was tender to palpitation throughout; musculoskeletal exam showed normal range of motion; psychological exam revealed a normal affect for situation. (AR 180). “Trauma consult labs were negative of CT of C. and T-spine demonstrated degenerative changes but no acute fractures.” Claimant had chest pain, which he had had in the past; “a musculoskeletal strain and/or some cartilage sitting up in his chest.” (AR 181-182).

S. 06-24-2013: CT of the cervical spine showed no evidence of a cervical fracture; multiple-level degenerative changes throughout the mid to lower cervical spine. (AR 162). CT of the thoracic spine showed no evidence of a thoracic spine fracture; moderate cervicothoracic degenerative changes; no significant spinal canal or foraminal stenosis. (AR 163).

T. 06-28-2013: Examination by Dr. Evan Davies: Noted Claimant’s prior history of left sided neck pain and neurogenic pain. Cervical spine tender to palpitation in the right paracervical area, pain with movement, limited



range of motion, normal light touch sensation in the upper extremities. Diagnosed with neck strain, lateral collateral ligament sprain-knee, thoracic strain, abrasion, contusion-multiple. "The cause of this problem is related to work activities per patient reported history." Claimant was restricted to: no lifting/carrying more than 5 pounds; no pushing/pulling more than 10 pounds; bending/twisting of neck limited to 10 times per hour; intermittent ice to be used 3x/day followed by intermittent heat as tolerated; sit or stand to comfort; no driving commercial vehicles; no operating hazardous machinery; no ladders; minimal stairs. (AR 65-67).

U. 07-25-2013: Cervical MRI: cervical condition largely unchanged from 12-2012 cervical MRI; showed multilevel degenerative disc disease and disc protrusions; "no high-grade canal stenosis but there is foraminal narrowing primarily related to uncovertebral joint osteoarthritis and especially prominent at C3-C4 and C4-C5 and probably greater on the left side than on the right... Normal cord... Normal alignment. No obvious traumatic abnormality detected." (AR 122).

V. 07-26-2013: Examination by Dr. Davies: Range of motion was full in the thoracic and lumbar spine. Strength testing and sensation in the lower extremities as normal. Claimant's restrictions were modified to: no lifting/carrying more than 10 pounds; no pushing/pulling more than 15 pounds; bending/twisting of neck limited to 20 times per hour; sit or stand to comfort; no driving commercial vehicles; no operating hazardous machinery; no ladders; minimal stairs. (AR 51).

W. 07-30-2013: St. Elizabeth Physical Therapy: Claimant's neck alignment was normal, no obvious evidence of fracture or subluxation, no prevertebral soft tissue swelling; cerebellar tonsils and cord were normal. Patient reported improvement in neck pain since last week; improved ROM in neck. (AR 47).

X. 08-08-2013: Exam by Dr. Davies: Claimant's restrictions were modified to: no lifting/carrying more than 15 pounds; no pushing/pulling more than 20 pounds; bending/twisting of neck limited to 30 times per hour; sit or stand to comfort; no driving commercial vehicles; no operating hazardous machinery; no ladders; minimal stairs. (AR 44).

Y. 08-14-2013: Mental Health Note: Claimant assigned a provisional diagnosis of major depression and was prescribed Celexia [sic]. Assessed with a GAF score of 58 and his **Axis IV was severe due to financial concerns, relationship issues with son and daughter, and sleep deprivation.** (Exhibit 20, pp 11-12). (Emphasis added).

Z. 08-20-2013: Thoracic spine MRI: right foraminal narrowing at T2-T3 due to costovertebral, costotransverse, and facet hypertrophic change, and facet hypertrophy. No acute thoracic abnormalities observed. (AR 171-172).

AA. 10-28-2013: Mental Health Note: Claimant assessed with a GAF score of 65 and discussed challenges arising from dealing with his son. Two major life changes occurred: (1) work related accident required numerous family and financial adjustments; impacted his depression in terms of his inability to work; (2) adult daughter and infant granddaughter moved in with Claimant and his wife who had been assigned temporary guardianship due to substance abuse related issues. (Exhibit 20, p 21).

BB. 11-12-2013: Examination by Dr. Bradley Mullen: Mr. Neely reported 50-60% improvement overall. He may wish to become involved in a work hardening program prior to his return to work. "I have no difficulty in his returning to gainful employment at the appropriate time... is able to return to work following a work

hardening program. He will return to the OP Spine Center as needed going forward.” (Exhibit 18, p 7-8).

CC. 11-13-2013: Cervical spine x-ray: no evidence of spondylolisthesis or fracture. Large osteophytes at multiple levels from C3 through C7 and facet arthropathy at C3-4 and C4-5; multilevel degenerative change and facet arthropathy; no acute findings. (AR 158).

DD. 11-15-2013: Work Restrictions issued by Dr. Cathy Gratkowski, valid through 12-13-2013: Lifting limit of 15 pounds, avoid repetitive twisting/bending, restricted to 4 hours per day, 5 days per week.

EE. 12-03-2013: St. Elizabeth Physical Therapy: Claimant reported the pain in his neck was gone but still had stiffness and headaches. Physical therapy terminated this date as Claimant had plateaued and a trial of chiropractic treatment was recommended. (AR 35-36).

FF. 01-07-2014: Dr. Gratkowski: Claimant reported his mid-back was doing better; still had some soreness/stiffness; headaches were “minimal” and he had been “really seeing improvement.” He had been “carrying feed for his chickens w/no problems” (AR 132).

GG. 02-13-2014: Dr. Gratkowski: Claimant’s pain had decreased “since treatment Monday – has not needed anti inflammatories... Pt going back to work full duty full time 6 ½ hrs/day...” She issued restrictions: lifting limit of 50 pounds and restricted to working 6.5 hours per day. (AR 34; Exhibit 19, p 3).

HH. 02-26-2014: Assessment of Workability by Dr. James Keller: Dr. Keller noted that following Claimant’s workplace accident he had no fractures, was treated conservatively with physical therapy followed by two epidural injections in the cervical-thoracic spine, and was advised to return to work. Claimant had arthritis and

sport-related injury that pre-existed the workplace accident. Concluded Claimant's lifting restrictions and limitations of movement per Dr. Gratkowski prevented Claimant from qualifying for a commercial driver's license, but a vocation rehabilitation program would be beneficial in transitioning to other work. (AR 30-32).

II. 02-28-2014: Dr. Gratkowski indicated Claimant had reached maximum medical improvement (MMI) and had a permanent lifting restriction of no more than 50 pounds repetitively. (Exhibit 16).

JJ. 03-05-2014: Mental Health Note: Therapist encouraged Claimant to look into vocational rehabilitation options. (Exhibit 20, p 19).

KK. 04-24-2014: Dr. Gratkowski: Claimant had been "...doing a lot of physical work – was tearing down a chicken run and was hurting after that. Used a rotary tiller on Sunday and was very sore in the back through yesterday." (Exhibit 19, p 13).

LL. 05-23-2014: Dr. Gratkowski: Noted Claimant was sore from yardwork the previous Tuesday and Wednesday; his neck was stiff but not painful. (Exhibit 19, p 15).

MM. 07-17-2014: Dr. Gratkowski: Noted Claimant assisted his wife and mother-in-law move a sidewalk/repair. (Exhibit 19, p 23).

NN. 08-15-2014: Dr. Gratkowski: Noted Claimant reported he had driven a church bus the end of the prior week; put up a ceiling fan all day on Monday; Wednesday his back felt better. (Exhibit 19, p 28).

OO. 09-16-2014: Dr. Gratkowski: Noted Claimant reported he had nerve pain and tightness caused by putting in a conduit and shoveling gravel "which he did

slowly and carefully.... He had the nerve pain prior to his accident” (Exhibit 19, p 31).

PP. 10-08-2014: Little Clinic-Stacey Victor, APN- Department of Transportation physical: Claimant reported he was feeling well with no complaints. He passed the examination and met standards, but required periodic monitoring due to blood pressure. “Driver medically qualified with no restrictions.” On his Form 649-F Claimant reported he “fell over on lawn mower 2013. No injury... no limitations.” Medical Examiner found no limitation of motion or tenderness in his spine or musculoskeletal system. He qualified for a CDL. (Exhibit 26, pp 6-11, 15).

QQ. 03-24-2015: Dr. Gratkowski: Noted Claimant reported mid back pain flared due to his use of a splitter to cut wood and reaching down to pick up the wood. (Exhibit 19, p 51).

RR. 08-24-2015: Psychiatry Note: Claimant reported his son had been admitted for mental health reasons and he experienced an overwhelming sudden onset of anxiety. Mental examination was fair. Assessed with GAF score of 58; an Axis I diagnosis of major depression recurrent episode, in partial remission; Axis IV diagnosis of parent child conflict, relationship conflict. (Exhibit 24, pp 59-60).

SS. 09-13-2015: Vocational Assessment by William T. Cody, M.S.: After a personal interview with Claimant, and having reviewed a 06-15-2014 disability determination explanation from Elisabeth Das, M.D., Mr. Cody concluded Claimant was:

“...permanently and totally occupationally disabled. That is, there are no jobs in the local or national economies that he is able to perform. This conclusion was reached considering his age, work history, education,

and the physical and psychological limitations that he has as a result of his diagnosed conditions. This seems to have been the situation since he last worked in June of 2013.” (Exhibit 22).

This Assessment, for our consideration in this case, is questionable on a number of levels: While Mr. Cody believed Claimant to be psychologically impaired, there is no direct link made between such impairment and a physical injury, generally, or to the 06-24-2013 accident, specifically; the conclusion of physical impairment conflicts with Claimant’s exhibited abilities, post-accident, to perform physical labor and activities outside his employment, as well as the last set of restrictions issued by Dr. Gratkowski; there is no mention or explanation of Claimant having passed a CDL physical examination nearly 1 year prior.

KRS 61.621(2)(a)(2) requires Claimant to show the “duty-related injury” was the result of an “event or act of violence”, as evidence by “objective medical findings”. Objective medical evidence is defined as:

“...reports of examinations or treatments; medical signs which are anatomical, physiological, or psychological abnormalities that can be observed; psychiatric signs which are medically demonstrable phenomena indicating specific abnormalities of behavior, affect, thought, memory, orientation or contact with reality; or laboratory findings which are anatomical, physiological, or psychological phenomena that can be shown by medically acceptable laboratory diagnostic techniques, including but not limited to chemical tests, electrocardiograms, electroencephalograms, X-rays, and psychological tests”. KRS 61.510(33).

Mr. Cody's Vocational Assessment does not constitute "objective medical evidence."

Furthermore, when examining records in or generated by the Workers Compensation Board or Social Security Administration,[<sup>4</sup>] the Hearing Officer may only consider:

"...objective medical records contained within the determination and shall not consider vocational factors or be bound by factual or legal findings of other state or federal agencies." 105 KAR 1:210 Sec. 8(2).

TT. 01-19-2016: Ohio Bureau of Motor Vehicles driver history transcript: shows Claimant issued a Class B commercial license on January 19, 2016, with Tank VHCL, Passenger, and School Bus endorsements; no restrictions. (Exhibit 27).

As noted, the Franklin Circuit Court affirmed the Board's order denying Neely's claim for benefits. And, Neely asserts the same overarching arguments here as he did before the circuit court; namely, that the Board failed to adequately set forth the basis of its decision in its order denying his application for benefits; and, that the Board failed to support its decision to deny his application for benefits with substantial evidence and otherwise misapplied the law.

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<sup>4</sup> As this statement tends to indicate, Neely filed workers' compensation and social security disability claims based upon his psychological state and the conditions of his neck and back. He also introduced records associated with those separate matters in this proceeding.

Neely's first argument has no merit. In the context of this and other administrative proceedings, all that is required is "an opinion that summarizes the conflicting evidence concerning disputed facts; weighs that evidence to make findings of fact; and determines the legal significance of those findings." *Arnold v. Toyota Motor Mfg.*, 375 S.W.3d 56, 61-62 (Ky. 2012) (discussing these requisites in the context of workers' compensation proceedings). Here, the Board's order did so. It summarized Neely's evidence at length; and throughout its summary the Board stated, implicitly<sup>5</sup> if not explicitly, why it did not believe Neely had demonstrated -- more likely than not -- that the June 24, 2013 incident had caused him to become "totally and permanently disabled to engage in any occupation for remuneration or profit," per KRS 61.621(1).

In short, the Board considered Neely's claimed impairment and concluded "there is no direct link made between such impairment and a physical injury, generally, or to the 06-24-2013 accident, specifically[.]" In support, it pointed to evidence indicating Neely's depression, anxiety, and the painful conditions of his neck and back predated the incident by several years. It pointed to evidence attributing Neely's depression and anxiety to familial issues and

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<sup>5</sup> See, e.g., *Arnold*, 375 S.W.3d at 62 ("Implicit in the ALJ's decision to reject the employer's argument that the shoulder injury did not prevent the claimant from working until November 2008 are findings that pain from the injury contributed to causing the stress and depression that Dr. Wechman diagnosed on May 15, 2007 and that the effects of the injury, *i.e.*, pain, stress, and depression, resulted in the claimant's inability to work." (Emphasis added.))



financial concerns. It referenced evidence indicating Neely's painful conditions of his neck and back originated from sources unrelated to the June 24, 2013 incident, such as prior injuries and the process of aging. The Board acknowledged that some evidence supported Neely had sustained *an* injury from the incident. But, it noted other evidence demonstrated that the objective conditions of his back and neck were the same after the incident as before. And to the extent that any sprain or strain owing to the incident had caused Neely additional complaints of pain and or lost range of motion, evidence further supported that those conditions improved and his work restrictions were reduced thereafter -- so much so that, over a year later, *Neely attested* to the Department of Transportation *that he sustained no injury and no limitations due to the June 24, 2013 incident*. He was issued a commercial driver's license based upon the results of his October 8, 2014 physical examination that qualified him for one "with no restrictions."

As an aside, Neely's primary complaints in this vein appear to be that the Board's order (1) fell short of holding that he *did* sustain an injury due to the June 24, 2013 incident; and, in his words (2) "failed to make findings as to [his] residual functional capacity or his limitations and restrictions and failed to state what impairments [he] had regarding his ability to work." But, these points are irrelevant. The clear import of the Board's order is that, in the Board's view, *no* objective medical evidence demonstrated *whatever* occurred to Neely on June 24,

2013, permanently affected him, let alone *caused* him to be totally and permanently disabled to engage in any occupation for remuneration or profit.

Neely's second argument is likewise untenable. To be clear, the question before the circuit court and this Court is *not* whether substantial evidence supported the Board's order. Nor, for that matter, was the Systems required to produce substantial evidence to *defeat* Neely's claim. *See Kentucky Retirement Systems v. West*, 413 S.W.3d 578, 581 (Ky. 2013). Where, as here, "the fact-finder's decision is to deny relief to the party with the burden of proof or persuasion, the issue on appeal is whether the evidence in that party's favor is so compelling that no reasonable person could have failed to be persuaded by it." *McManus v. Kentucky Ret. Sys.*, 124 S.W.3d 454, 458 (Ky. App. 2003) (citations omitted). Consequently, the Franklin Circuit Court was permitted to reverse the Board's conclusions only if the evidence was overwhelmingly in Neely's favor. We are bound by the same standard. We must therefore give considerable deference to the Board's findings, particularly on matters of witness credibility and balancing of evidence. *Kentucky State Racing Comm'n v. Fuller*, 481 S.W.2d 298, 308 (Ky. 1972).

Here, there is no error in the Board's application of the law, and the evidence was not overwhelmingly in Neely's favor. Indeed, the Board cited a litany of evidence detracting from Neely's claim. Neely fails to address much of it

in his brief – most saliently his qualification for and receipt of an unrestricted commercial driver’s license from the Department of Transportation after the incident; and his statement to the Department of Transportation that he sustained no injury or permanent limitations due to the incident. *See Kentucky Bd. of Nursing v. Ward*, 890 S.W.2d 641, 643 (Ky. App. 1994) (“In determining whether the evidence is substantial, the court must take into account whatever in the record fairly detracts from its weight.” (Internal quotation marks omitted)).

In light of the foregoing, we AFFIRM.

ALL CONCUR.

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