

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-000225-WC

TONY SEXTON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-17-72509

RESOURCE MFG; HONORABLE
MONICA RICE-SMITH, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: COMBS, GOODWINE, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Tony Sexton petitions this Court to review a January 11, 2019, Opinion of the Workers' Compensation Board (Board) affirming the dismissal of Sexton's claim by the Administrative Law Judge (ALJ). We affirm.

Sexton was employed by Resource MFG (Resource) to work at the Toyota plant in Georgetown, Kentucky. He began employment with Resource in January or February 2017. While working at the Toyota plant, Sexton's job duties included loading parts for the assembly line. On June 26, 2017, Sexton was utilizing an overhead crane to load hybrid batteries; however, the cable used to move the crane became twisted. As a result, the crane malfunctioned lifting Sexton's body up and then pushing him backwards. When he landed, Sexton reported that he twisted his left knee and experienced pain in this knee.

Sexton filed a claim for workers' compensation benefits. Sexton maintained he suffered a work-related injury to his left knee on June 26, 2017. In particular, Sexton alleged a medial meniscal tear, lateral meniscal tear, and ACL tear. Resource argued that Sexton's knee injury pre-existed the June 26, 2017, work incident.

By Opinion and Order, the ALJ found that Sexton did not suffer a work-related injury and dismissed his claim. The ALJ reasoned:

After careful consideration of the lay testimony and the medical records summarized above, the ALJ finds Sexton has failed satisfied [sic] his burden of proving he sustained a work-related injury to his left knee on June 26, 2017. Although Sexton experienced a work event on June 26, 2017, he failed to establish that the event caused a harmful change in the human organism evidence by objective medical findings. The medical treatment records show no change in the objective medical findings of Sexton's left knee following the

event of June 26, 2017. Sexton describes his knee condition as totally different following the June 26, 2017[,] work event, however his testimony is inconsistent with the treatment records. The ALJ is persuaded by the opinion of Dr. [Rick] Lyon, which is consistent with the treatment records of Dr. [Michael R.] Heilig.

Dr. Heilig's treatment records indicate treatment for left knee pain and swelling starting in June 2012. On June 8, 2012, Dr. Heilig's objective findings included medial joint line tenderness, lateral joint line tenderness, effusion, patella tenderness and positive McMurray's test. Dr. Heilig diagnosed a possible meniscus tear and recommended an MRI at that time. In October 2012, Dr. Heilig noted the same objective findings and again recommended an MRI. On October 3, 2016, Dr. Heilig's objective findings included effusion, decreased range of motion, medial joint line tenderness, positive McMurray's, positive Lachman and drawer testing. He diagnosed left knee ACL tear and [medial] meniscus tear. Following the June 26, 2017[,] event, Dr. Heilig's objective findings include positive Lachman and positive McMurray's. Dr. Heilig diagnosed left knee medial meniscal tear, lateral meniscal tear and ACL tear. The objective medical findings after the June 26, 2017[,] work event were present prior to the work event.

In addition, despite Sexton's insistence that his knee condition was totally different after June 26, 2017, Dr. Heilig's records establish his complaints were unchanged after June 26, 2017. On October 3, 2016, Sexton complained of persistent locking, catching and giving away in the left knee. Sexton also reported his left knee problem had progressively gotten worse. He advises Dr. Heilig that he wants his knee surgically repaired because he has had progressive problems for over six years. On June 17, 2017, Sexton's [sic] reports pain and feelings of instability and locking in the left knee. Instability was not a new symptom following the

June 26, 2017[,] event, in fact, Sexton made the same complaints in October 2016.

The opinion of Dr. Lyon is consistent with the medical treatment records and most persuasive. Dr. Lyon opines the ACL tear and meniscus tears were present prior to June 26, 2017. He explains the work event of June 26, 2017[,] did not cause objective worsening of Sexton's existing knee condition. He explains the October 3, 2016[,] treatment note of Dr. Heilig confirms a positive Lachman and drawer test, as well as joint line tenderness. These findings confirm Sexton had an ACL tear and meniscus tears prior to the June work event. Dr. Heilig also noted Sexton had a six[-]year history of progressive symptoms, consistent with the 2012 injury. Sexton report[ed] to Dr. Heilig a history of left knee problems progressively worsening. Dr. Lyon opines Sexton's knee conditions were active and pre-existed the June 26, 2017[,] work event. He advised Sexton was a candidate for ACL reconstruction and medial meniscectomy/repair in October 2016. In fact, the October 3, 2016[,] Heilig treatment note indicates surgery was discussed as it notes Sexton advised Dr. Heilig he wanted his knee surgically repaired.

Opinion and Order at 14-17.

Being dissatisfied with the ALJ's opinion, Sexton sought review with the Board. By Opinion entered January 11, 2019, the Board affirmed the ALJ's dismissal of Sexton's claim. This review follows.

Sexton contends that the Board erred by affirming the ALJ's dismissal of his claim. Sexton alleges that the ALJ erroneously found that the ACL tear, medial meniscal tear, and lateral meniscal tear pre-existed the June 26, 2017, work

injury. Sexton also argues that the ALJ improperly relied upon Dr. Rick Lyon's expert opinion that he suffered a pre-existing lateral meniscal tear. Sexton believes Dr. Lyon's opinion was unreasonable and unsupported by evidence.

As an appellate court, we will only reverse the Board's Opinion if it has overlooked or misconstrued the law or flagrantly erred in its evaluation of the evidence causing gross injustice. *W. Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). To do so, we must necessarily review the ALJ's opinion. As fact-finder, the ALJ possesses "the sole authority to determine the weight, credibility, and substance of evidence and to draw reasonable inferences from the evidence." *Transp. Cabinet v. Poe*, 69 S.W.3d 60, 62 (Ky. 2001). The ALJ is free to "believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness." *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). As the claimant bears the burden of proof before the ALJ, the claimant must demonstrate that the evidence compels a finding in his favor to be successful on appeal. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985).

In a letter dated January 15, 2018, Dr. Lyon stated that "[i]t is my opinion that the ACL tear and meniscal tears pre-existed the work event." His opinion was, in part, based upon the medical records of Dr. Michael R. Heilig, one of Sexton's treating physicians. The medical records of Dr. Heilig document his concerns that Sexton suffered a questionable meniscal tear and exhibited

underlying meniscal pathology as early as 2012 and continuing until a few weeks before the alleged work injury. While it is true that Dr. Heilig sometimes stated that Sexton could be suffering from a medial meniscal tear, the ALJ possesses the discretion to choose the evidence the ALJ deems credible. The medical evidence was conflicting as to whether Sexton's knee injury, including the lateral meniscus tear, pre-existed the June 26, 2017, work incident. In such instances, it is within the ALJ's sole authority to determine the weight of evidence and credibility of witness' testimony. Simply stated, Sexton failed to demonstrate that the evidence compels a finding that his knee injury, including the lateral meniscus tear, was not pre-existing. Therefore, we conclude that the Board did not err by affirming the ALJ's dismissal of Sexton's claim for benefits.

For the foregoing reasons, we affirm the Opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE RESOURCE
MFG:

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