

Commonwealth of Kentucky
Court of Appeals

NO. 2019-CA-001047-WC

JOHN BUCKLAND

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-17-60987

RESERVES NETWORK;
HONORABLE GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: JONES, KRAMER, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: John Buckland petitions this Court to review a June 21, 2019, Opinion of the Workers' Compensation Board affirming the Administrative Law Judge's (ALJ) decision dismissing Buckland's claim for permanent income and medical benefits. We affirm.

Buckland was employed by the Reserves Network, a temporary employment agency, and was assigned to work as a machine operator at Konsei beginning on October 1, 2017. Twelve days later, on October 13, Buckland alleged that he bent over to pick up a small metal piece and felt a sharp pain in his mid to lower back with numbness radiating down both legs.

As a result, Buckland filed a claim for workers' compensation benefits alleging a work-related injury to his low back. By a January 28, 2019, Opinion and Order, the ALJ determined that Buckland failed to prove that he suffered a permanent work-related back injury. Rather, the ALJ found that Buckland suffered a temporary lumbar strain that had completely resolved. Buckland then sought review with the Board.

By a June 21, 2019, Opinion, the Board affirmed the ALJ's opinion. This review follows.

To begin, our review of an opinion of the Workers' Compensation Board is limited. We will only disturb a Board's opinion if "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." *W. Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). In so doing, we necessarily review the opinion of the ALJ. When the ALJ's opinion is adverse to the claimant, the claimant must demonstrate that the evidence compels a finding in his favor in

order to prevail. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). And, the ALJ is the ultimate fact-finder and possesses the discretion to judge the credibility of evidence presented. *Miller v. E. Ky. Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997).

Buckland contends that the ALJ erred by finding that Buckland suffered a preexisting active low back condition and that he suffered no permanent impairment as a result of the work injury. In particular, Buckland maintains that there existed no evidence that he suffered from an active preexisting low back condition immediately before the work injury as required by *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007). Buckland argues that his low back condition constituted a dormant and nondisabling condition per *Finley*, 217 S.W.3d 261. Buckland additionally maintains that the work injury aroused his preexisting dormant condition into a permanent disabling condition. As a result, Buckland believes the ALJ erroneously determined that he suffered no permanent impairment due to the work injury.

It is well-established that a preexisting condition is considered active if it is both symptomatic and produces a permanent impairment prior to the work injury. *Finley*, 217 S.W.3d at 265. Conversely, a preexisting condition is considered dormant if it is both asymptomatic and produces no impairment prior to the work injury. *Id.* As held in *Finley*, 217 S.W.3d at 265, “[a] pre-existing

condition may be either temporarily or permanently aroused. If the pre-existing condition completely reverts to its pre-injury dormant state, the arousal is considered temporary. If the pre-existing condition does not completely revert to its pre-injury dormant state, the arousal is considered permanent, rather than temporary.”

In affirming the ALJ’s decision, the Board noted Buckland’s well-documented preexisting back condition and the opinions of various medical experts:

Buckland had received medical treatment for his back following a motor vehicle accident in 2013. He also acknowledged that he had a lumbar MRI in May 2017 after an incident where he lifted a picnic table in his backyard. He received a cortisone shot and returned to full time work after three days. Nonetheless, Buckland stated he was not actively treating for his back until the incident at work in October 2017. Buckland has not received medical treatment since January 2018.

Buckland visited Dr. Christopher Shields on January 25, 2018[,] for a neurosurgical consultation. He reported being hit by a metal cage at work on October 13, 2017. Buckland complained of low back pain radiating to his left lower extremity, and numbness in his left lower extremity and left hand. Buckland indicated he was asymptomatic prior to the injury. Consistent with a lumbar MRI performed on May 12, 2017, Dr. Shields diagnosed lumbar disc herniated at L5-S1 on the left, and a diffuse midline disc bulge at L3-4 with mild spinal canal stenosis.

Dr. Stacie Grossfeld performed an independent medical evaluation (“IME”) on March 29, 2018.

Buckland complained of back pain and bilateral radiculopathy. Dr. Grossfeld recorded a history of chronic lower back pain since at least December 2010, and additional follow-ups in 2015 and 2017. Lumbar x-rays were performed several times during this period. In May 2017, Buckland sought treatment at Jewish Hospital Health Center, reporting recurrent low back pain radiating down his left buttocks and into the left thigh. The May 10, 2017[,] lumbar MRI showed mild degenerative changes at L5-S1, with a left paracentral disc extrusion extending inferiorly with the effacement of the left lateral recess. Buckland returned in October 2017 with complaints of lower back pain.

Dr. Grossfeld diagnosed a lumbar strain that has resolved with no permanent impairment. She noted Buckland had a longstanding history of chronic low back pain and his current symptoms directly relate to pre-existing degenerative joint disease of the lumbar spine. Dr. Grossfeld noted a January 12, 2018[,] lumbar MRI showed a left paracentral disc extrusion at L5-S1, similar to that shown on the 2017 MRI. Dr. Grossfeld opined the current symptoms were unrelated to the alleged work incident. Rather, based on her examination and review of records, Dr. Grossfeld opined Buckland's symptomatology is the result of his pre-existing low back condition. His continued lumbar complaints are a return to his baseline of chronic lumbar pain that existed prior to the temporary exacerbation from the work injury. Dr. Grossfeld concluded Buckland reached maximum medical improvement ("MMI") on January 12, 2018[,] and requires no further treatment related to the work injury.

Dr. Henry Tutt performed an IME on September 21, 2018. Buckland denied a prior history of back or leg symptoms. However, Dr. Tutt noted a lumbar MRI was performed on May 10, 2017[,] due to severe low back pain and sciatic symptoms. Dr. Tutt also reviewed a May 4, 2017[,] note from Jewish Hospital Health Center

referencing a prior emergency room visit on April 4, 2017[,] for back pain that caused Buckland to wake up screaming in pain. He concluded the findings from the 2017 MRI were identical to findings seen on a January 12, 2018[,] MRI. In his examination, Dr. Tutt noted Buckland exhibited numerous positive Waddell's signs and no neurological deficits. He diagnosed a lumbar strain/sprain and concluded Buckland's continuing complaints were not related to the work injury. Dr. Tutt further stated Buckland reached MMI four to six weeks following the alleged work incident and he did not develop any permanent condition warranting assignment of an impairment rating, nor did he require any restrictions related to the alleged work injury.

Dr. Alan Roth performed an IME on June 22, 2018. Dr. Roth did not review records of treatment prior to the 2017 work incident. He diagnosed a lumbar spine strain, extruded lumbar disc at L5/S1, and radiculopathy of both lower extremities secondary to the extruded disc. Dr. Roth did not provide an opinion as to causation of claimant's low back condition. He further indicated he had requested additional medical records regarding Buckland's spine history and he would not discuss apportionment until the records were received.

Board's Opinion at 2-4. The Board then pointed out that the ALJ, as factfinder, relied upon the medical opinion of Dr. Grossfeld in finding that Buckland suffered only a temporary lumbar strain as a result of the work injury. Upon review of Dr. Grossfeld's medical opinion, the Board concluded that sufficient evidence supported the ALJ's findings and that Buckland failed to demonstrate that the evidence compelled a finding in his favor. We agree with the Board that the ALJ

properly exercised his authority as factfinder to view Dr. Grossfeld as credible and that Dr. Grossfeld's opinions were sufficient to support the ALJ's opinion.

In particular, Dr. Grossfeld believed Buckland experienced a lumbar strain while at work and that the lumbar strain had completely resolved.

According to Dr. Grossfeld, Buckland had also suffered from a preexisting lumbar condition that was evidenced by the May 2017 MRI and by medical records revealing Buckland's long history of chronic lower back pain. Dr. Grossfeld related that Buckland had complained of low back pain radiating down to his left thigh before the work injury. Dr. Grossfeld also pointed out that the pre-injury MRI and post-injury MRI were similar; each revealed a left paracentral disc extrusion at L5-S1. It was Dr. Grossfeld's opinion that Buckland's current low back complaints were 100 percent unrelated to the work-related lumbar strain. Dr. Grossfeld believed that Buckland's continued symptoms were a return to his chronic lumbar condition that existed prior to the work-related temporary lumbar strain.

Thus, in Dr. Grossfeld's opinion, Buckland experienced only a temporary lumbar strain as a result of the work injury and the lumbar strain had completely resolved. Additionally, based upon Dr. Grossfeld's opinion, Buckland also suffered from a lumbar condition that was both symptomatic and impairment ratable prior to the work injury. Upon the whole, we are unable to conclude that

the Board misconstrued controlling precedent or committed an error in assessing the evidence. *See W. Baptist Hospital*, 827 S.W.2d at 687-88. We, thus, cannot conclude that the Board committed error.

For the foregoing reasons, the Opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE RESERVES
NETWORK:

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