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Commonwealth of Kentucky

Court of Appeals

NO. 2020-CA-000206-WC

GREGORY SCOTT CECIL — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-14-01920

FORD MOTOR COMPANY (LAP);
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE; AND
KENTUCKY WORKERS' COMPENSATION
BOARD — APPELLEES

AND NO. 2020-CA-000308-WC

FORD MOTOR COMPANY (LAP) — CROSS-APPELLANT

v. CROSS-PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-14-01920

GREGORY SCOTT CECIL;
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE; AND
KENTUCKY WORKERS' COMPENSATION
BOARD CROSS-APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: COMBS, KRAMER, AND L. THOMPSON, JUDGES.

KRAMER, JUDGE: Following motions for reopening filed by both parties in this matter, an administrative law judge (ALJ) determined that the post-award condition of Gregory Cecil's lower back had worsened, entitling Cecil to a greater impairment rating and reimbursement from his employer, Ford Motor Company, for an L4-L5 fusion surgery Cecil underwent in October 2017. Following appeals from both parties, the Kentucky Workers' Compensation Board later affirmed both aspects of the ALJ's opinion,[1] despite Cecil's contention that he was entitled to a greater award, and despite Ford's contentions that Cecil was entitled to less of an award and that his surgery was non-compensable. Cecil now appeals. Ford cross-appeals. For the reasons discussed below, we affirm.

[1] The Board also addressed issues relating to Cecil's entitlement to temporary total disability benefits, as well as a higher rate of interest for past-due benefits. Those issues are not a subject of this appeal and will not be addressed.

Cecil was born in 1977. He has experience as a welder, forklift operator, and fabricator, and he began performing assembly line work for Ford in 2000. On October 20, 2014, Cecil filed a Form 101 alleging he had sustained repetitive trauma to his low back due to his work. Subsequently, as stated by the Board:

> Dr. Robert Knetsche treated Cecil for his lumbar disc herniation, low back pain, and lumbar radiculopathy. Dr. Knetsche performed an L4-L5 discectomy on April 27, 2015. On July 15, 2015, Cecil reported no radicular pain or extremity weakness. Dr. Knetsche released Cecil to return to work on July 16, 2015.
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> Dr. [Jules] Barefoot evaluated Cecil on October 1, 2015, noting Cecil was status post L4-L5 discectomy in April 2015. Dr. Barefoot diagnosed Cecil as having broad based disc disease with radicular complaints attributable to repetitive trauma from working at Ford. After a second evaluation on October 1, 2015 following surgery, Dr. Barefoot assigned a 12% impairment rating pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").
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> Dr. Joseph Zerga evaluated Cecil on February 9, 2015. Dr. Zerga diagnosed low back pain without a specific injury. Dr. Zerga re-evaluated Cecil on February 11, 2016. Dr. Zerga noted Cecil is status post a lumbar discectomy at L4-L5 on the right with a good result and he has reached maximum medical improvement. Dr. Zerga assessed a 12% impairment rating pursuant to the AMA Guides. He indicated Cecil is able to perform his current job, but should not perform highly repetitive bending.

> ALJ Thomas Polities issued an Opinion and Award on April 25, 2016. Relying on Dr. Barefoot's opinions and to an extent those of Dr. Knetsche, ALJ Polities determined Cecil had a compensable work-related injury at L4-5 resulting in a L4-5 discectomy, and a 12% impairment rating. ALJ Polities determined Cecil had no pre-existing active impairment.

Cecil eventually returned to work for Ford and continued to do so on a regular basis until the Fall of 2016. At that time, Cecil's job duties included installing weather stripping on approximately seven hundred vehicle doors per shift. Cecil reported to Ford medical that he was having problems with his back. Ford medical advised him to see his personal physician. In September 2017, Cecil and Ford filed motions to reopen. Cecil alleged a worsening of his October 28, 2013 injury; whereas Ford contested the compensability of a L4-L5 fusion surgery proposed by Dr. Knetsche, which Cecil claimed his work injury had necessitated.

On October 17, 2017, Dr. Knetsche performed the fusion surgery, which Cecil paid for through his private health insurance. Cecil would later testify in the course of the reopening proceedings that he initially did well after the surgery. When he briefly returned to his position with Ford on January 3, 2018, however, he discovered that pain in his back rendered him incapable of lifting, holding items, and twisting when putting on door panels, and that his back pain had caused him to leave work after approximately forty-five minutes. He has not returned to work since that date. Cecil testified that due to his pain, he could not

perform his pre-injury position or any of his other past jobs. Further, Cecil testified he has had no intervening incidents or specific injuries involving his back since his original injury.

Regarding the medical evidence involving the post-award condition of Cecil's back and the compensability of the fusion surgery, the Board correctly summarized it as follows:

> On August 4, 2017, Dr. Knetsche noted Cecil returned for follow-up for low back pain and bilateral leg pain worsening during the past four to five months. Conservative measures such as medication, time off work, and injections did not help. Based upon an MRI and Cecil's symptoms, Dr. Knetsche felt the L4-L5 disc was not structurally stable. Dr. Knetsche requested authorization for the surgery on August 21, 2017. Cecil had a non-antalgic gait, abnormal pain to palpation in the lumbar spine, and limited lumbar range of motion due to pain. Dr. Knetsche noted Cecil had low back pain, lumbar radiculopathy, a degenerative lumbar disc, lumbar arthritis, and opioid dependence. Dr. Knetsche eventually performed lumbar surgery on October 17, 2017. Dr. Knetsche released Cecil to return to work without restrictions on January 1, 2018. On January 19, 2019, Dr. Knetsche assigned a restriction of no lifting greater than fifty pounds.
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> Dr. H. Leon Brooks performed a peer review and a medical records review on September 7, 2017 regarding the request for an L4-L5 fusion. Dr. Brooks concluded the requested surgery is due to a normal disease of life rather than the October 28, 2013 injury.
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> Dr. Ryan Gocke performed a utilization review on September 27, 2017, for the requested fusion surgery. The June 19, 2017 MRI demonstrated disc desiccation at

the L4-L5 level. Dr. Gocke's review of the medical records found no significant imaging findings consistent with instability necessitating a lumbar fusion. Dr. Gocke recommended non-certification of the surgery.

Dr. [Gregory] Nazar performed an IME on July 10, 2018. Dr. Nazar diagnosed chronic low back pain with non-radicular leg pain initially precipitated by a work injury in October 2013, re-aggravated by an additional work injury occurring through repetitive motion when he returned to work after the 2015 surgery and re-aggravated by a third work injury occurring on January 3, 2018. Dr. Nazar stated Cecil's back pain is directly related to these work injuries that are a progression of the original work injury, subsequent treatments, and surgery. Dr. Nazar assessed a 23% impairment rating and stated Cecil did not have pre-existing low back pain prior to the initial injury. He stated Cecil should not lift or carry over ten pounds, nor should he bend, lift, stoop, or twist his back. Dr. Nazar stated Cecil could not return to the work performed at the time of his injury. In a March 11, 2019 addendum, Dr. Nazar noted Cecil continues to have significant pain and is disabled from his occupation with Ford. Dr. Nazar diagnosed Cecil with a failed laminectomy. Dr. Nazar assigned an additional 2% impairment rating giving him a 25% impairment rating. Dr. Nazar restricted Cecil to sedentary work.

Dr. James Montgomery, a pain management specialist, saw Cecil on October 26, 2018. Dr. Montgomery assessed Cecil with failed back syndrome and status post dorsal column nerve stimulator placement on October 22, 2018.

Dr. Robert Sexton evaluated Cecil on January 22, 2019. Dr. Sexton diagnosed Cecil as status post posterior spinal fusion L4-L5 and insertion of biomechanical disc L4-L5, status post spinal cord stimulator with open draining sinus, and no objective evidence of lumbar radiculopathy. Dr. Sexton stated Cecil had a 12% impairment rating

> prior to the October 2017 surgery. Cecil has an additional 7% impairment rating due to the unwarranted surgery in October 2017. These ratings combine to give Cecil an 18% impairment rating. Dr. Sexton did not believe the additional impairment rating was work-related. He opined that Cecil may return to the work he performed on October 28, 2013. In an April 22, 2019 letter, Dr. Sexton noted Cecil has markedly excessive subjective symptoms over objective findings. Dr. Sexton believed there is evidence of malingering and Cecil has a somatic symptom disorder for secondary gain. He stated Cecil is physically capable of returning to work with Ford.
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> Ralph Crystal, Ph.D., performed a vocational evaluation on February 18, 2019. He noted Cecil scored in the average range on the Kaufman Intelligence Test. Cecil scored in the 11.9 grade equivalent in reading, 11.3 grade equivalent in sentence comprehension, 6.8 grade equivalent in spelling/writing, and an 8.0 grade equivalent for arithmetic. He has transferable skills such as using good judgment and decision making, multi-tasking, coordination, planning and organizing, and problem solving. Based on Dr. Knetsche's medical records, he determined Cecil is qualified to return to his past and related work without a loss of employability or earning capacity. Dr. Nazar's restrictions limit Cecil to jobs performed at a desk, bench, table, or workstation. Based on Dr. Sexton's medical records, Cecil does not have a loss of employability or earning capacity. Dr. Crystal concluded Cecil is not disabled from employment.

Likewise, the Board aptly summarized the relevant substance of the ALJ's ultimate findings, as set forth in his June 24, 2019 opinion and award at issue in this matter, that Cecil's October 28, 2013 injury had worsened, and that his L4-L5 fusion surgery was compensable:

> Citing the *res judicata* effect of the previous Opinion, the totality of the opinions of Dr. Knetsche and the opinions of Dr. Nazar, the ALJ found the L4-5 fusion by Dr. Knetsche is work-related, reasonable and necessary. The ALJ also noted Cecil's credible testimony regarding the onset of symptoms and the lack of any intervening injury. The ALJ determined Cecil now has a 25% impairment rating, retains the capacity to return to the type of work performed on the date of injury, and is statutorily entitled to the enhancement of PPD benefits per KRS[2] 342.730(1)(c)2. The ALJ determined Cecil's work-related impairment rating has increased by 13%, with application of KRS 342.730(1)(c)2, but he is not permanently totally disabled. The ALJ awarded TTD benefits from August 28, 2017 through March 2, 2018, noting Cecil continued to work until August 27, 2017, and that pursuant to Dr. Knetsche's records, Cecil could return to work as of March 2, 2018.

Ford and Cecil filed petitions for reconsideration asserting most of the arguments they would later make in their respective appeals to the Board and this Court. In general, Cecil argued the ALJ should have given more weight to the evidence he had produced regarding his work-related disability (*i.e.*, his testimony that his pain effectively prevented him from returning to his pre-injury employment, and the opinions from Dr. Montgomery regarding his inability to perform any type of work). Cecil urged this evidence compelled a finding that he was either entitled to the three multiplier pursuant to KRS 342.730(1)(c)1[3] or an

[2] Kentucky Revised Statute.

[3] In relevant part, KRS 342.730(1)(c)1 provides: "If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time

award of permanent total disability benefits due to the worsening of his October 28, 2013 injury, not merely the two multiplier of KRS 342.730(1)(c)2.

Ford, on the other hand, argued the ALJ should have given more weight to the evidence it had produced regarding Cecil's work-related impairment, as well as what it maintained was the non-compensability of Cecil's L4-L5 fusion surgery. To that end, Ford urged that Dr. Knetsche had never explicitly related Cecil's need for the L4-L5 fusion surgery to Cecil's October 28, 2013 work injury and that Dr. Knetsche had executed three Unicare Certificates of Disability, respectively dated August 25, 2017, October 25, 2017, and February 1, 2018, that appeared to undercut the notion that Dr. Knetsche believed any such relationship existed. Specifically, each certificate asked a treating physician the following relevant questions:

> 2. Is disability due to current occupation? __ yes __ no
>
> 3. Is disability the result of an Injury? __ If yes, Date of Injury. _____
>
> 4. Description of Injury _____

Ford noted that on the August and October 2017 certificates, Dr. Knetsche equivocated, answering question "2" by indicating "yes per patient" and,

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of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments[.]"

while identifying the date of the injury as "10/28/13," describing the injury for purposes of question "3" as "unknown we did not see patient." Ford also noted that on the February 2018 certificate, Dr. Knetsche answered "no" to questions "2" and "3."

Furthermore, while Ford represented that it was *not* arguing *res judicata* did *not* preclude it from contesting whether Cecil had ever sustained any work-related injury, Ford nevertheless reemphasized Dr. Sexton's opinions that any harmful changes to the L4-L5 region of Cecil's back—even *before* the date of Cecil's prior award—had merely arisen from aging or other natural processes and that Cecil was a malingerer.

Ford also faulted the ALJ's reliance upon Dr. Nazar's opinion regarding Cecil's impairment, asserting Dr. Nazar's opinion was not rooted in an alleged worsening of Cecil's October 28, 2013 injury, but was instead based upon a total of three injuries, two of which Cecil had never pled (*i.e.*, in addition to the October 28, 2013 injury, what the ALJ had characterized as "an additional work injury occurring through repetitive motion when [Cecil] returned to work after the 2015 surgery" and "a third work injury occurring on January 3, 2018"). Ford argued that because Dr. Nazar's 25% impairment rating was, in its view, based upon three separate injuries rather than the worsening of a singular injury, Dr. Nazar's impairment rating was invalid.

In a subsequent order, the ALJ rejected both of their petitions, explaining in relevant part:

> I acknowledged the opinions of Dr. Montgomery and disregarded them in favor of the opinions of Dr. Knetsche, the treating surgeon. Dr. Montgomery is not the Plaintiff's surgeon and has only provided him pain management, i.e., palliative care. The Plaintiff was at MMI, and therefore we are able to ascertain return to work ability, prior to the "failed low back syndrome" diagnosis by Dr. Montgomery. The Plaintiff's petition is OVERRULED. The Defendant takes issue with my use of the doctrine of *res judicata* and whether or not they [sic] argued that it did not apply. It is clear from my Opinion that my analysis of *res judicata* was only the start of my analysis. I also cited to Drs. Knetsche and Nazar and the fact the Plaintiff had no intervening injuries. The finding of the work-relatedness of the L4-5 fusion is supported by substantial evidence and that portion of the Petition is OVERRULED. As to whether or not the Defendant argued the Plaintiff never had a work injury they [sic] certainly filed evidence to that effect. Dr. Sexton's report clearly and repeatedly states that none of the Plaintiff's lumbar diagnoses are work-related, once even including a clerical error that the date of injury was "11-28-13." He states Judge Polities only "inferred" causation of the original injury. The notion, under these facts, that the Plaintiff's lumbar condition is due to the "diseases of life" is non-credible even if admissible. The entire award is supported by the evidence. Dr. Nazar's opinions on impairment rating are substantial evidence.

Following petitions for review from both parties, the Board affirmed the ALJ's dispositive findings and conclusions. Regarding Cecil's arguments

(which he now reasserts in Appeal No. 2020-CA-000206-WC), the Board explained:

> On appeal, Cecil argues the ALJ erred in relying on "old medical evidence" from Dr. Knetsche and disregarded or failed to appropriately consider the subsequent medical history. Cecil further argues the ALJ misinterpreted the medical and lay evidence in determining the extent of disability. Cecil argues the ALJ did not offer any analysis of his actual job duties or his capacity to perform those duties. Cecil contends he qualifies for permanent total disability or permanent partial disability benefits enhanced by the three multiplier based upon his failed back syndrome.
>
> As the claimant in a workers' compensation proceeding, Cecil had the burden of proving each of the essential elements of his cause of action, including the extent of his disability/impairment. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because he was unsuccessful in proving a greater impairment rating or disability, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985) superseded by statue on other grounds as stated in Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).
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> In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D. Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof.

Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2005). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

We are convinced the evidence does not compel a finding of a greater disability than awarded by the ALJ. Although Dr. Montgomery, a pain management specialist, diagnosed failed back syndrome, the ALJ believed Dr. Knetsche was in a better position to judge the state of Cecil's back condition. The ALJ found Dr. Knetsche more persuasive regarding Cecil's retained capabilities. Dr. Knetsche's statement on January 19, 2019, given after Dr. Montgomery's diagnosis of failed back syndrome, assigned a restriction of no lifting greater than fifty pounds. Based on Dr. Knetsche's medical records, Dr. Crystal stated Cecil is qualified to do his past and related work without a loss of employability or earning capacity. Dr. Sexton also stated Cecil is capable of returning to the work he performed at the time of his injury. Substantial evidence supports a finding that Cecil retains the physical capacity to return to the type of work he performed at the time of the injury. Because the ALJ determined Cecil retains the physical capacity to return to his past work, he cannot be permanently totally disabled and no further analysis was required.

The ultimate goal of an ALJ is to assess an individual's condition as best as possible at the time of the entry of an award. In doing so, however, it is not incumbent upon the ALJ as fact-finder to rely upon the most recent medical testimony. The date of a given examination and

> the elements of that examination, as well as the relative qualifications of the physicians involved, are all issues addressing the weight accorded to the evidence, and analyzing the weight of the evidence falls uniquely within the discretion of the fact-finder. KRS 342.285; Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). Again, we note Dr. Knetsche assigned his restriction after Dr. Montgomery diagnosed failed back syndrome, and Dr. Sexton performed his examination after Dr. Montgomery's diagnosis. Dr. Sexton opined Cecil is physically capable of returning to work with Ford.

As indicated, Cecil continues to take issue with how the ALJ weighed the evidence regarding his level of disability; he maintains that the ALJ erred by failing to properly consider his "newer" evidence from Dr. Montgomery, and the Board erred in affirming below. As set forth in his brief, he asserts that Dr. Knetsche's singular restriction of "no lifting greater than fifty pounds" – the only restriction the ALJ lent credence to, and which by itself presented no impediment to Cecil returning to his pre-injury employment – should have been disregarded by the ALJ for the following reasons: (1) Cecil "was under the impression that Dr. Knetsche took the attitude that return to work restrictions weren't up to him, but rather to Ford"; (2) "this surgeon [(*i.e.*, Dr. Knetsche)] who performed [what Dr. Montgomery regarded as] the 'failed laminectomy' may have had self-serving motives when he released [Cecil] from his care"; (3) to date, Cecil continues to believe he cannot return to his pre-injury employment; and (4) Cecil "has undergone over a year-and-a-half's worth of additional treatments and procedures

since he was last seen by Dr. Knetsche," and "had to undergo a spinal stimulator implantation and subsequent revisions," and "has been continually kept off work by his post-Knetsche treating doctor, Dr. Montgomery." Apart from that, Cecil also argues (5) "The ALJ did not offer any analysis regarding [Cecil's] actual job duties in regards to capacity."

We disagree. With respect to Cecil's first three points set forth above, it is enough to say that Cecil's subjective impressions of Dr. Knetsche's mental processes; his suspicion that Dr. Knetsche may have lied about his restrictions; or Cecil's continued self-serving complaints of pain do not meet the standard of "compelling evidence." *See Barnes*, 691 S.W.2d at 226.

With respect to his fourth point, to the extent Cecil is insinuating his disability is somehow greater because it *warranted* the implantation of a neurostimulator device in his back or because a neurostimulator device *was* implanted in his back and because he later received a number of additional surgeries associated with it, Cecil has never sought to have Ford pay for those procedures. Consequently, there has never been any determination of whether those procedures were reasonable, necessary, or related to his October 28, 2013 work injury, and those procedures are irrelevant.

As to Cecil's fifth point, "[a]n ALJ is not required to engage in detailed discussion of the facts or set forth minute details of his reasoning in

reaching a result, so long as the ALJ lays out the basic facts from the evidence upon which the conclusions are drawn so the parties are reasonably apprised of the basis of the decision." *Mullins v. Rural Metro Corp.*, 570 S.W.3d 1, 6 (Ky. App. 2018) (citations omitted). Here, Dr. Crystal considered Cecil's capacity in the context of his job duties with Ford. In his report, Dr. Crystal determined that if Dr. Knetsche's work restrictions were to be believed, they would not prevent Cecil from returning to work. And, in the June 24, 2019 opinion and award entered in this matter, the ALJ chose to believe both Dr. Knetsche's restrictions and Dr. Crystal's report. Accordingly, nothing further was required.

In short, we discern no error in the Board's analysis and no reason to disagree with it. While Cecil has identified evidence supporting a different conclusion, substantial evidence was presented to the contrary. It was the ALJ's prerogative to determine which evidence to rely upon, and it cannot be said that the ALJ's conclusions were so unreasonable as to compel a different result. *See Ira A. Watson Dep't Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000).

We now turn to Ford's cross-appeal, No. 2020-CA-000308-WC. Regarding Ford's reasserted contention that the ALJ erred in finding the 2017 lumbar fusion surgery compensable, the Board explained:

> Ford notes Dr. Brooks stated there is no evidence-based support for disc desiccation as a known result of prior discectomy. Ford contends the current request for surgery relates to a normal disease of life rather than the

> work injury. Ford notes Dr. Gocke stated there is no documented significant imaging findings consistent with instability as recommended by guidelines for lumbar fusion. Ford maintains the surgery was not medically necessary. Dr. Knetsche indicated the condition was not work-related on a Unicare Certificate of Disability and later checked the condition was work-related "per the patient." Ford argues the doctrine of *res judicata* is not decisive on the issue of compensability of the lumbar fusion.
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> We note the ALJ did not engage in a blanket application of *res judicata*. Rather, he held it is *res judicata* that Cecil did not have a prior active impairment or disability, that the work produced an injury at L4-5, and that injury required a laminectomy. The ALJ's determination was based upon the prior holding, the totality of the opinions of Dr. Knetsche and Dr. Nazar, and Cecil's credible testimony regarding his onset of symptoms and lack of any intervening injury. Although Dr. Knetsche indicated the condition was not work-related on a Unicare Certificate of Disability, the statement was made after Ford had taken the position that Cecil's current problem with back pain was personal and not work-related. The record is devoid of any evidence of a subsequent event involving Cecil's back. Cecil testified he has had no intervening incidents or specific injuries to his back. Based upon the totality of the evidence, the ALJ could reasonably conclude the need for Cecil's fusion surgery is related to the work injury.

In sum, the Board observed that Ford's argument regarding the work-relatedness and necessity of the L4-L5 fusion surgery likewise implicated the ALJ's authority to draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof.

See Caudill, 560 S.W.2d at 16. Dr. Knetsche believed, based upon his observations and assessments of Cecil's condition set forth in his treatment records, that the L4-L5 fusion surgery was reasonable and necessary. Dr. Nazar believed, based upon his observations and assessments of Cecil's condition, that the L4-L5 fusion surgery was necessitated by Cecil's work-related injury of October 28, 2013. The ALJ assigned weight to this evidence, along with Cecil's testimony regarding the progression of his condition and concluded the L4-L5 fusion surgery was compensable. The ALJ's conclusion was not so unreasonable as to compel a different result. *Hamilton*, 34 S.W.3d at 52.

The Board likewise disagreed with Ford's argument that the ALJ erred in relying upon Dr. Nazar's impairment rating. As an aside, Ford's argument is not that Dr. Nazar miscalculated Cecil's impairment rating, *assuming* it related to the worsening of Cecil's original work injury. Indeed, the impairment ratings that have been adopted and attributed to the condition of Cecil's back, which largely originated from page 384, Table 15-3 of the AMA Guides,[4] are consistent with a worsening. Following a December 9, 2014 IME, Dr. Barefoot utilized Table 15-3 to initially classify Cecil's condition as a DRE Lumbar Category II impairment and assign him an 8% rating. Following a subsequent IME of October

[4] Utilizing page 575, Table 18-3 of the AMA Guides, Dr. Nazar also assessed Cecil an additional 2% impairment for pain.

1, 2015, Dr. Barefoot classified Cecil's condition as a DRE Lumbar Category III impairment, noting Cecil's impairment had increased "in that he has had surgery for a radiculopathy" and warranted a 12% impairment because Cecil continued to experience low back pain. As discussed, Dr. Barefoot's 12% rating was adopted by the prior ALJ in Cecil's original award. And, on March 11, 2019, in conformity with the notion that Cecil's existing impairment had worsened solely due to the fusion surgery at issue in this matter, Dr. Nazar likewise utilized Table 15-3 to classify Cecil's condition as a DRE Lumbar Category IV.[5]

Ford's argument has always been that Dr. Nazar's impairment rating should be disregarded because, as Ford interprets it, Dr. Nazar's impairment rating was based upon *three separate injuries,* not the worsening of *one*.

Addressing Ford's argument, the Board explained:

> Ford notes Dr. Nazar's report references three injuries, but Cecil never filed additional claims for injuries in 2015 or 2018. Dr. Nazar did not address a worsening of the 2013 injury.
>
> Dr. Nazar refers to Cecil's post-award condition as being exacerbated and re-aggravated at work. He characterizes the attempted return to work for a portion of a shift on January 3, 2018 as an injury. However, Cecil did not

[5] Regarding a DRE Lumbar Category IV impairment, Table 15-3 provides in relevant part that it permits a 20%-23% impairment rating for "Loss of motion segment integrity defined from flexion and extension radiographs as at least 4.5 mm of translation of one vertebra on another or angular motion greater than 15˚at L1-2, L2-3, and L3-4, greater than 20˚at L4-5, and greater than 25˚at L5-S1 . . . may have complete or near complete loss of motion of a motion segment due to developmental fusion, or successful or unsuccessful attempt at surgical arthrodesis."

> testify he sustained any injury on that date. Rather, he merely indicates an inability to perform the job because of his pain. Dr. Nazar attributed the current condition to a progression of the original work injury and subsequent treatment and surgery. Dr. Nazar's opinions, when considered in the context of the totality of the opinions of Dr. Knetsche and Cecil's testimony regarding the onset of symptoms and the lack of any intervening injury can reasonably be interpreted as relating the entire low back condition to the work injury. Regardless of the cause, Dr. Nazar and Dr. Sexton assigned their impairment ratings based upon the fusion surgery. Dr. Sexton specifically stated the increase in impairment rating occurred because of the fusion surgery. The evidence clearly supports a change in impairment rating on reopening based upon the surgery, which the ALJ found related to the work injury.

We find no error in the Board's analysis in this respect, either. Ford's argument regarding Dr. Nazar's impairment rating, like the other arguments posed in this consolidated matter, takes issue with the inferences the ALJ drew from the evidence and the weight the ALJ accorded it, and, for the reasons given by the Board, we agree that the ALJ's assessment of the evidence was not so unreasonable as to compel a different result. *Hamilton*, 34 S.W.3d at 52.

In short, Cecil and Ford have given this Court no reason to depart from the Board's opinion. Thus, we AFFIRM with respect to both appeals.

ALL CONCUR.

BRIEFS FOR APPELLANT/CROSS-APPELLEE GREGORY SCOTT CECIL:

Nicholas Murphy
Louisville, Kentucky

BRIEF FOR APPELLEE/CROSS-APPELLANT FORD MOTOR COMPANY (LAP):

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