IMPORTANT NOTICE

NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

RENDERED: FEBRUARY 20, 2003
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2002-SC-0287-WC

MARTIN COUNTY COAL CORPORATION — APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2001-CA-1763-WC
WORKERS' COMPENSATION BOARD NO. 99-58753

DANNY JUDE; HON. WALTER BEDFORD, JR;
ADMINISTRATIVE LAW JUDGE;
HON. SHEILA C. LOWTHER,
CHIEF ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appealing an Administrative Law Judge's (ALJ's) conclusion that the claimant was totally disabled, the employer has maintained that the decision failed to explain why uncontradicted vocational evidence was rejected and, therefore, that the claim must be remanded for further analysis. Nonetheless, the Workers' Compensation Board and the Court of Appeals have affirmed. Having determined that the ALJ was not obliged to give such an explanation, that there were sufficient findings of fact to permit a meaningful appellate review, and that the decision was not arbitrary, we affirm.

The ALJ's opinion contains an extensive summary of the lay and medical evidence. It notes that the claimant was born in 1956, completed high school, and had vocational training in auto mechanics. He worked for the defendant-employer

continuously from July 17, 1974, until October 13, 1999. Over the years, he worked as a laborer, was a grease man, weighed coal trucks, operated an excavator, and for the last 9-10 years he drove a rock truck over dirt roads in a surface mine.

On June 30, 1999, the claimant injured his back while attempting to dump rock from the truck that he operated. During the process, the jack that was raising the truck bed broke, and the entire 170- to 200-ton load fell back onto the truck, causing a severe jolt that bounced him around in the cab. He experienced low back pain at the time and reported the accident although he continued working.

Several months later, the claimant sustained another back injury. On October 13, 1999, he spent the day driving a rock truck over rough roads, and his back started to bother him. He testified that when he got off the truck that evening, he experienced severe pain from his back, into his hip, and down his left leg. He reported the incident to his supervisor and saw Dr. Lafferty the next day. Later, he was referred to Dr. Bansal and Dr. Tibbs, a neurosurgeon. At the hearing, he complained of constant pain of varying intensity in his left lower back, hip, and left leg and foot. He indicated that he was afraid to lift anything much heavier than a gallon of milk and that it was painful to walk or stand. He indicated that he had not worked since October 13, 1999.

Dr. Lafferty, a general practitioner, reported that a lumbar CT scan revealed bulging discs at L3-L4 and L5, with probable spinal stenosis at L4-5. L5-S1 showed diffuse bulging. He diagnosed lumbar disc disease with left lower extremity radiculopathy, chronic cervical strain, and depression, all of which he attributed to the work-related incidents. He assigned a 30% AMA impairment, of which he attributed 25% to the lumbosacral spine and 5% to the cervical spine. In his opinion, the claimant did not retain the physical capacity to return to the type of work that he performed when

injured. He should not lift more than 10 pounds, and he should not bend, walk, stand, ride, sit, climb, reach, grasp, or operate machinery for long periods of time.

Dr. Bansal, a neurologist and psychiatrist, first saw the claimant on December 16, 1999. He later testified that as of August, 2000, the claimant was totally unable to work in coal mining or driving a rock truck. He assigned a 20% AMA impairment, of which 10% was for lumbar radiculopathy and 10% was for depression. Furthermore, he restricted the claimant from excessive bending, stooping, or crawling and limited lifting to 25 pounds on an occasional basis.

Dr. Wagner examined the claimant on October 27, 1999, and prepared a report. He noted that he was unable to accurately measure the claimant's weight because it exceeded the 320-pound capacity of his scale. In his opinion, the claimant's complaints were unrelated to his employment and were due to his marked obesity and the natural aging process.

Dr. Primm, an orthopedic surgeon, examined the claimant in October, 2000, and diagnosed morbid obesity and lumbar strain superimposed on early degenerative disc disease. In his opinion, the spinal condition was due to the incidents at work, the natural aging process, and the arousal of pre-existing dormant changes of the lumbar spine. He assigned a 1-5% impairment to the spinal condition, most of which was due to the arousal of pre-existing changes, and he determined that the claimant retained the physical capacity to return to the work he performed when injured. He thought that the claimant could presently return to light work, that in six weeks he should at least be capable of medium duty, and that in another six weeks he should be able to return to rock truck driving.

Mr. Phil Pack, a certified clinical psychologist, evaluated the claimant in August, 2000, and diagnosed depressive disorder in addition to various medical problems. He assigned a Class 2 impairment, indicating that it would correspond to a 7% impairment rating. In his opinion, a 5% impairment was work-related; whereas, a 2% impairment was due to various non-work-related stressors.

Dr. Shraberg, a psychiatrist and neurologist, evaluated the claimant in October, 2000. He indicated that the claimant exhibited psychological symptoms associated with medical illness, adjustment disorder associated with his wife's stroke and disability, massive obesity associated with diabetes mellitus, hypertension, degenerative disc disease with bulging discs, hypercholesterolemia, and hyperlipidemia. In his opinion, the claimant had no permanent impairment from the work-related incidents and was psychologically fit to perform a wide variety of jobs.

Dr. Luca Conte, a vocational rehabilitation counselor, evaluated the claimant in November, 2000. After performing various tests and reviewing the medical records, he determined that the restrictions imposed by Drs. Primm and Bansal would allow the claimant to perform sedentary to medium work; whereas, those imposed by Dr. Lafferty would allow sedentary to light work. In his opinion, the claimant's occupational loss was 15%, with an estimated potential range of 10-20%.

After reciting the foregoing evidence, the ALJ determined that the claimant sustained work-related injuries to his lumbar and cervical thoracic spine, relying on the testimonies of the claimant and Drs. Bansal, Lafferty, and Primm. Indicating that the opinions of Dr. Shraberg were most persuasive concerning the psychiatric claim, the ALJ determined that the claimant did not suffer a work-related mental injury. After noting that an employer takes a worker as he is for the purposes of workers'

compensation, the ALJ determined that the claimant was "currently unable to market his labor in return for income on a regular and sustained basis in a competitive economy and is thus 100% occupationally disabled." In reaching this conclusion, the ALJ noted the claimant's "forthright and candid testimony" as well as his age, education, vocational skills, and past relevant work experience.

Characterizing the medical evidence as not relevant to the question on appeal, the employer notes that Dr. Conte was the only vocational evaluator to testify and that, in his opinion, the claimant was able to perform at least sedentary to light work. Thus, it maintains that his unrefuted vocational testimony showed that the claimant was not totally disabled. Noting that the ALJ's opinion summarized the testimony but failed to explain why the uncontradicted testimony was rejected, the employer asserts that the opinion did not comply with KRS 342.275(2) because it contained insufficient findings to support the ultimate conclusion or to permit meaningful appellate review. Wilder v. Great Atlantic & Pacific Tea Co., Inc., Ky., 788 S.W.2d 270 (1990); Shields v. Pittsburg & Midway Coal Mining Co., Ky.App., 634 S.W.2d 440 (1982); Collins v. Castleton Farms, Inc., Ky.App., 560 S.W.2d 830 (1977).

The ALJ is charged with determining the extent of a worker's occupational disability by applying the criteria prescribed by Chapter 342 to the evidence. Even under the 1996 Act, the ALJ retains broad discretion to determine whether an individual is totally disabled. Ira A. Watson Department Stores v. Hamilton, Ky., 34 S.W.3d 48 (2000). In doing so, the ALJ is free to consider the medical evidence as well as the claimant's age, education, work history, and other relevant factors, including the claimant's testimony concerning what he is and is not able to do since his injury. Although vocational evidence is relevant and may also be considered, the opinions of a

vocational expert are "do not supplant medical and other evidence but are merely part of the total evidence." Eaton Axle Corp. v. Nally, Ky., 688 S.W.2d 334, 337 (1985). Even uncontradicted opinions by vocational experts are "not such evidence as compels any specific findings by the . . . fact-finder." (emphasis original). Id. In other words, because the ALJ is charged with determining the legal conclusion to be drawn from the lay and medical evidence, even an uncontradicted vocational opinion will not compel a particular conclusion, and the reason for rejecting it need not be stated. Unlike the fact-finders in Shields, supra, and Wilder, supra, this ALJ explained a sufficient basis for concluding that the claimant was totally disabled to enable a meaningful appellate review and to make it clear that the decision was not arbitrary. Thus, it was properly affirmed on appeal

The decision of the Court of Appeals is affirmed.

All concur.

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