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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.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: DECEMBER 22, 2005
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL

2005-SC-0376-WC

DATE 1-12-06 ELIA Grawhp.c.

JAMES NICHOLSON — APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2004-CA-1927-WC
WORKERS' COMPENSATION BOARD NO. 03-1297

AMERICAN GREETING CARDS; HON. LANDON OVERFIELD, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

The Workers' Compensation Board (Board) and the Court of Appeals have affirmed a decision to dismiss the claimant's application for benefits. Although he alleged a July 12, 2001, knee injury and November 15, 2001, repetitive trauma injuries to various parts of his body, an Administrative Law Judge (ALJ) determined that the claimant failed to give timely notice of a repetitive trauma injury and that neither condition was an injury as defined by the Act. The claimant appeals the decision, maintaining that the evidence compelled findings in his favor. We affirm.

The claimant testified that he worked for the defendant-employer from September 17, 1973, until November 15, 2001, when the employer closed the plant. Over the years, he operated and repaired various machines while producing and packaging the employer's products. The claimant stated that on July 12, 2001, he felt a

pop in his right knee while kneeling to get under a belt line. He had difficulty walking, noticed a bulge in the front of the knee, and sought treatment from Drs. Muffly and Menke. He testified that Dr. Muffly prescribed a knee brace for a couple of months; that he took Ibuprofen and Flexeril presently; and that he continued to be treated for pain and swelling in the knee by his family doctor, Dr. Rastogi. He stated that his knee continued to swell, to be painful, to give way and get weak when he walked, and to lock up occasionally, but no physician had recommended surgery. Questioned about Dr. Menke's report, he was unable to recall whether the injury occurred on July 12th or 19th.

Questioned about a prior injury that occurred on March 17, 1997, the claimant testified that he had fallen on black ice in the parking lot at the plant and injured his back. He stated that Dr. Rastogi treated him, but he was unable to recall the treatment. He admitted that he continued to have periodic difficulties with his back until his last day of work and that the medication for his back was the same as for his knee condition.

The claimant described the physical requirements of his work as involving repetitive motions with his legs, arms, hands, and head; frequent bending, lifting, carrying, and maneuvering anywhere from 30 to 150 pounds; and standing, walking, and climbing ten-foot ladders. He asserted that the repetitive trauma to his neck, back, shoulders, wrists, and joints caused a cumulative trauma injury to became manifest on November 15, 2001. His present symptoms included headaches, difficulty sleeping, swelling in his knees and ankles, and pain in his limbs, joints, and back. He asserted that his injuries were totally disabling. When asked whether he was working full time until the plant closed, he replied "Yes." He stated, however, that he did so in pain. Asked whether a physician had imposed any restrictions or limitations, he responded in the negative.

Dr. Muckenhausen, a neurologist, evaluated the claimant on June 5, 2003, and prepared a Form 107 report. Among other things, she diagnosed lumbosacral radiculopathy and degenerative conditions resulting from the fall a number of years ago; a contusion and soft tissue injury to the right knee as well as degenerative joint disease due to overuse of the left knee, both of which were secondary to the 2001 fall at work; a degenerative shoulder condition with rotator cuff impingement syndrome, bilateral carpal tunnel syndrome, and chronic neck pain, which were due to work-related repetitive trauma or overuse; emphysema and an allergic condition due to work-elated dust and chemical exposure; a history of dermatological changes due to work-related chemical exposure; and sleep disturbance, irritability, and short-term memory deficits affecting concentration and attention span, which were due to chronic pain, respiratory problems, and possibly aging. She assigned the following impairments: 13% lumbar, 8% cervical, 10% right knee, 13% shoulders, 10% affective changes, and 3% pain, for a total of 57%. Using the combined values table, this equaled a 46% AMA impairment. She would restrict the claimant to lifting or carrying ten pounds; to frequently lifting or carrying less than ten pounds; to sitting, standing, or walking less than three hours at a time; and to limited pushing and pulling.

Dr. Graulich, a neurologist, evaluated the claimant on November 19, 2003, on the employer's behalf. He examined the claimant, discussed his job duties, and reviewed Dr. Muckenhausen's report. Dr. Graulich noted no significant findings on physical examination, the lack of any imaging studies to review, and the lack of any specific diagnosis by an orthopedic surgeon. Furthermore, the claimant reported that the carpal tunnel symptoms began after he quit working, which indicated that the condition was not work-related. In Dr. Graulich's opinion, the joint pain was most likely due to age-related

degenerative arthritis. He assigned no AMA impairment to the knee, noting that the claimant had a full range of motion; placed the claimant in DRE cervical and lumbar category 1 for a 0% impairment; and assigned no impairment for pain. In his opinion, the claimant could return to his past work without restrictions or limitations.

Dr. Muffly re-evaluated the claimant for the employer on November 26, 2003. He reviewed records from Drs. Lester and Muckenhausen and requested records from Dr. Burgess. Dr. Muffly noted that he had treated the claimant on August 6, 2001, for right knee complaints. At the time, he diagnosed osteoarthritis and patellar tendon calcification, which he treated with a knee brace. In 2003, the claimant reported increased knee pain, especially when climbing steps, as well as intermittent swelling, weakness, and a knot on the front of the knee. Dr. Muffly noted the 1997 back injury and the complaints of stiffness and low back pain without numbness or radiation into the legs. The claimant also complained of hand and wrist pain and numbness, neck pain, a skin condition, and difficulty breathing. Dr. Muffly also noted a longstanding history of arthritis for which the claimant took medication.

Dr. Muffley's physical examination indicated that the claimant did not limp and was able to squat fully and rise without assistance. He moved his neck without signs of stiffness. He had a full range of motion in the knees, ankles, and hips, without complaint, and also had a full range of motion in the fingers, wrists, elbows, and shoulders. The cervical and lumbar spine was normal. X-rays taken of the lumbar spine that day revealed advanced degenerative disc disease at L5-S1 and osteoarthritic changes but no herniated disc or nerve root impingement. Dr. Muffley concluded that there was no sign of a permanent impairment related to the 1997 or 2001 injuries and no sign of a repetitive injury to the back, neck, knees, or hands. He attributed the

claimant's symptoms to osteoarthritis due to aging. He recommended treating the condition and thought that the claimant would be able to work if he were restricted to lifting a maximum of 50 pounds, with only moderate bending and stooping and no kneeling.

The parties stipulated that the employer had timely notice of the alleged knee injury and paid some medical expenses. Among the contested issues were whether the claimant gave timely notice of the repetitive trauma injuries, whether either of the alleged conditions was an injury as defined by KRS 342.0011(1), the extent and duration of disability, and the extent of pre-existing active disability. After an exhaustive review of the lay and medical evidence, the ALJ found Drs. Graulich and Muffly to be most credible and convincing. Both were of the opinion that the claimant had no impairment from the claimed injuries and that his physical condition "was, more likely than not, related to the natural aging process and neither to a traumatic incident nor to cumulative trauma in the workplace." On that basis, the ALJ determined that the claimant had failed to prove either an appreciable knee or repetitive trauma injury. The ALJ also determined that he failed to give timely notice of a repetitive trauma injury.

The claimant does not assert that the ALJ overlooked or misunderstood any relevant evidence. His sole argument is that the ALJ erred in relying on Drs. Graulich and Muffly rather than Dr. Muckenhausen. He asserts that the evidence compelled a decision in his favor.

The claimant had the burden to prove every element of his workers' compensation claim. KRS 342.285 designates the ALJ as the finder of fact. The courts have interpreted this statute to mean that the ALJ, rather than a reviewing court, has the sole authority to determine the credibility of witness, to draw reasonable inferences from

the evidence, and to weigh conflicting evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). When the party with the burden of proof fails to convince the ALJ, the question on appeal is whether the evidence in that party's favor was so overwhelming that the decision was unreasonable and a favorable decision compelled. Id.; see also Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986); REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985); Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). A decision that is supported by substantial evidence is not unreasonable. Special Fund v. Francis, supra. Thus, the existence of contrary medical evidence, by itself, will not compel a particular result. McCloud v. Beth-Elkhorn Corporation, 514 S.W.2d 46 (Ky. 1974).

In the present case, the medical evidence was conflicting. The claimant has pointed to nothing that would have required the ALJ to rely on Dr. Muckenhausen's opinions, and the ALJ found Drs. Graulich and Muffly to be more persuasive. Their testimonies provided substantial evidence that the claimant's present condition was due to the natural aging process rather than to a traumatic incident or cumulative workplace trauma. Therefore, it was reasonable to conclude that there was no appreciable injury.

The decision of the Court of Appeals is affirmed.

All concur.

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