

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

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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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE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 BINDING PRECEDENT IN ANY OTHER
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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,
RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR
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OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE
BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION
BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED
DECISION IN THE FILED DOCUMENT AND A COPY OF THE
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DOCUMENT TO THE COURT AND ALL PARTIES TO THE
ACTION.

Supreme Court of Kentucky

2012-SC-000338-WC

BILLY CHANEY

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
CASE NO. 2011-CA-001107-WC
WORKERS' COMPENSATION NO. 10-98012

PREMIER ELKHORN COAL CO.;
HONORABLE RICHARD JOINER,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

Appellant, Billy Chaney, appeals the dismissal of his claim for workers' compensation benefits based upon the Administrative Law Judge's ("ALJ") conclusion that he did not suffer a work-related injury. Chaney argues that the ALJ's decision overlooks probative evidence in the record which proves he was injured while working for his employer, Premier Elkhorn Coal Co. However, because the ALJ's decision is supported by substantial evidence, we affirm the dismissal of Chaney's claim.

Chaney was employed by Premier Elkhorn as a heavy equipment operator. On the day of his injury, Chaney was assigned to use a bulldozer, which had a reputation among Premier Elkhorn's employees of being very

rough to operate. As he was using the bulldozer, Chaney backed over some uneven dirt or rock causing the bulldozer's back end to rise up off of the ground. Chaney then states that the bulldozer slammed back down causing his entire body to jerk. He immediately felt shoulder pain. Chaney testified that he reported the incident to the shift foreman, but did not request an accident report be filed at that time. Whether Chaney reported the incident to the foreman at this time was never corroborated. Chaney worked the rest of his shift.

Approximately a day after the incident with the bulldozer, Chaney awoke to severe pain in both of his shoulder blades and his rectum. The pain was so strong that he experienced a syncopal episode, i.e. he fainted, and collapsed on the ground. The next day, Chaney saw Dr. Thad Manning. Dr. Manning suspected that Chaney was having prostate problems and scheduled a colonoscopy. Chaney testified that Dr. Manning also told him that the pain in his shoulder blades was caused by the bulldozer incident. However, the bulldozer incident was not mentioned as a cause of Chaney's pain in Dr. Manning's notes.

Later that afternoon Chaney reported to his job and asked the shift supervisor to fill out an accident report about the bulldozer incident. A report was eventually filed. Chaney attempted to work, but began to experience pain in his shoulders which spread to his neck. Chaney left work and ultimately was taken to the emergency room. An emergency room in-take form which documented Chaney's patient history included the fainting spell and fall at his

house but omitted mention of the bulldozer incident. A CT scan performed indicated that Chaney suffered from mild degenerative disk disease. Chaney subsequently filed for workers' compensation benefits.

Chaney was examined by three doctors whose reports were reviewed by the ALJ. Dr. Ira Potter diagnosed Chaney with cervical sprain/strain, bilateral cervical radiculitis, multilevel cervical degenerative disk disease, cervical spondylosis, and C3-4 and C4-5 mild neural foraminal encroachment. Dr. Potter believed that the bulldozer incident caused Chaney's medical problems and assigned him an 8% whole person impairment. Dr. Scott Akers, one of Chaney's treating physicians, agreed with Dr. Potter's assessment that the bulldozer caused Chaney's neck and shoulder pains. However, Dr. Akers did not believe that Chaney had reached maximum medical improvement, but believed his long-term prognosis was excellent.

In contrast to Dr. Potter, Dr. Michael Best found that the bulldozer incident did not cause any long term harmful change to Chaney's body. Dr. Best believed that Chaney's medical issues stemmed from pre-existing conditions and that the bulldozer incident did not worsen them. Dr. Best assigned Chaney a 0% permanent whole body impairment and found that he could return to full and unrestricted physical duties. Dr. Best examined Chaney on behalf of Premier Elkhorn.

The ALJ, after weighing all of the evidence made the following conclusion:

[a]fter careful consideration of the lay and medical evidence herein, the [ALJ] does not find persuasive the testimony of [Chaney], Dr. Potter, nor Dr. Akers and therefore finds that the Plaintiff has not met his burden of proving that his condition is causally related to

an injury as the term 'injury' is defined by the Act. *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Although the event on the bulldozer probably occurred, I cannot find that it was of such significance as to constitute an injury. Mr. Chaney had pre-existing conditions in his spine which were symptomatic. I am not satisfied that the event with the bulldozer worsened those pre-existing conditions. Without an appreciable change, no injury occurs. The case is further confounded by the syncopal episode which occurs [sic] the following day. I am left wholly unpersuaded that Mr. Chaney sustained a harmful change to the human organism as a result of an incident at work.

By holding that Chaney was not entitled to workers' compensation benefits, the ALJ effectively accepted Dr. Best's medical conclusion that even if the bulldozer incident occurred, it did not cause an injury to his person as defined under the Workers' Compensation Act. The Workers' Compensation Board and the Court of Appeals¹ affirmed the ALJ's decision.

Chaney now appeals arguing that he presented sufficient evidence to prove he suffered a work related injury. Chaney focuses on evidence which indicates that he was in a normal state of health prior to the bulldozer incident and he attacks the ALJ's conclusion that he suffered from a pre-existing condition. In the alternative, Chaney argues that if he had a dormant pre-existing condition, the incident on the bulldozer caused it to become active. He also criticizes the ALJ's decision to find Dr. Best's findings credible because Dr. Best only examined him once and performed the examination on behalf of Premier Elkhorn.

¹ Judge Sara Combs dissented from the majority opinion because she believed Chaney presented sufficient evidence to show the bulldozer incident caused a work related injury.

But, Chaney bore the burden of proving each of the essential elements of his claim before the ALJ. *Snawder v. Stice*, 576 S.W.2d 276, 279 (Ky. 1979). Among those elements were causation and the occurrence of an injury. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925, 928-929 (Ky. 2002). Because Chaney was initially unsuccessful in satisfying that burden, the question on appeal is whether the evidence presented compels a finding in his favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984); see also *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986).

An ALJ has the sole discretion to determine the quality, character, and substance of the evidence presented, as well as the inferences to draw from that evidence. *Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997); *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993); *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). In this matter, the ALJ reviewed all of the evidence presented by the parties and effectively determined that Dr. Best's conclusion was the most credible. There is no indication the ALJ abused his discretion by finding that the testimony of Chaney, Dr. Akers, and Dr. Potter was unpersuasive when compared with substantive evidence in the record. While there is evidence in the record which could have led to the conclusion that Chaney suffered a work related injury, that alone is not an adequate basis to reverse the ALJ's conclusion. *Whittaker v. Rowland*, 998 S.W.2d 479, 482 (Ky. 1999) ("Although a party may note evidence which would have supported a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal.") We

do not find that the evidence before us is so compelling as to require a finding for Chaney. See *Wolf Creek Collieries*, 673 S.W.2d at 736.

For the reasons set forth above, the decision of the Court of Appeals is affirmed.

Minton, C.J.; Abramson, Cunningham, Noble, Scott, and Venters, JJ., concur. Keller, J., not sitting.

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