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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE  
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# Supreme Court of Kentucky

2013-SC-000235-WC

J-LOK CORPORATION

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS  
CASE NO. 2012-CA-001159-WC  
WORKERS' COMPENSATION NO. 10-00960

RONALD HAYES;  
HONORABLE DOUGLAS W. GOTT,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

Appellant, J-LOK Corporation, appeals from a Court of Appeals decision which affirmed an award of workers' compensation in favor of Appellee, Ronald Hayes, for occupational asthma resulting from work-related exposure to chemicals.<sup>1</sup> J-LOK argues on appeal: 1) that it presented sufficient proof to overcome the presumptive weight which is given to a university evaluator's opinion; and 2) that it was entitled to a more detailed explanation as to why the Administrative Law Judge ("ALJ") adopted the university evaluator's conclusions. For the reasons set forth below, we affirm the Court of Appeals.

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<sup>1</sup> Hayes was also awarded benefits for a work-related cervical spine injury, but J-LOK is not contesting that portion of the award.

Hayes began working for J-LOK, a company which manufactures resin cartridges used in the mining industry, in March 2008. In September 2008, he developed a chronic cough, shortness of breath, and wheezing. Hayes sought treatment with his family physician, but his symptoms did not improve. Hayes was referred to Dr. Lalith Urugoda, who began to treat him in February 2009.

Hayes complained to Dr. Urugoda of suffering from a chronic and persistent cough, labored breathing, and wheezing. He told Dr. Urugoda that he was exposed to limestone dust, silica dust, and benzene alcohol at work. Hayes stated that he was treated for a type of pulmonary disorder as an infant, but that he had no history of asthma as an adult. Dr. Urugoda performed a lung biopsy and pulmonary function tests. The biopsy was negative, but the pulmonary function tests showed significant breathing impairment for which medication was prescribed. However, Dr. Urugoda admitted that the results from the pulmonary function tests may have been skewed because it was performed soon after the lung biopsy was taken. Dr. Urugoda believed that Hayes's condition was related to occupational exposure at J-LOK.

Hayes continued to work for J-LOK until August 2010, when he had a severe coughing spell after being exposed to a polyester resin. Hayes filed an application for resolution of occupational disease claim in October 2010, alleging that he suffers from bronchiolitis due to exposure to certain chemicals.

Since Hayes made an occupational disease claim, Dr. Rodrigo Cavallazzi was appointed to conduct a university evaluation pursuant to KRS 342.315. The evaluation took place on April 11, 2011. Dr. Cavallazzi noted that Hayes's

symptoms began in September 2008, and improved once Hayes stopped working at J-LOK. The pulmonary function testing conducted by Dr. Cavallazzi revealed abnormal results. He diagnosed Hayes with occupational asthma with some evidence of airway obstruction. Dr. Cavallazzi concluded that the asthma was caused by Hayes's exposure to chemicals at J-LOK, and assigned him a 10-25% permanent impairment rating.

J-LOK had Dr. Jeff Selby conduct an independent medical evaluation on Hayes. Dr. Selby also performed pulmonary function testing on Hayes in which the results came back as normal. Dr. Selby diagnosed Hayes with what "appears to be garden variety asthma like what is present in up to 10% of the American people." Dr. Selby did not believe the asthma was work-related and did not find any evidence of bronchiolitis or occupational scarring lung disease. He attributed Hayes's condition to his history of pulmonary problems as an infant and his history of GERD<sup>2</sup>, which can cause or contribute to bronchospasm or asthma.

Shannon Sutton, J-LOK's safety supervisor, also testified. She stated that four individual industrial hygiene analyses and air sampling studies conducted in 2008, 2009, and 2010 indicated that J-LOK employees were not exposed to any level of chemicals or substances outside of the acceptable limits.

After a hearing was held, the ALJ made the following findings:

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<sup>2</sup> Gastroesophageal reflux disease

Dr. Rodrigo Cavallazzi conducted a university evaluation on March 23, 2011, pursuant to KRS 342.315. The history he received was shortness of breath, dry cough, and wheezing beginning in September 2010 after exposure to different chemicals at work. Symptoms were [sic] improved since leaving employment at J-Lok in September 2010. Dr. Cavallazzi assigned work related impairment of 10-25% based on the diagnosis of occupational asthma. He said Hayes did not retain the physical capacity to return to the type of work he did before his exposure. Dr. Cavallazzi's opinion on causation was supported by the records and deposition testimony of Dr. Mark Tackett, Hayes' [sic] primary care physician, and Dr. Lalith Urugoda, the treating pulmonologist.

In opposition, J-Lok submitted testimony from Shannon Sutton, safety supervisor at J-Lok, but the ALJ did not find it persuasive. For medical evidence, it filed the report of Dr. Jeff Selby, a pulmonologist in Henderson who evaluated Hayes at its request on November 18, 2010. Dr. Selby's spirometry testing was normal. His opinion was that Hayes did not have occupational asthma, but rather 'garden variety asthma that is well controlled when taking his medications appropriately. There has been no permanent lung disease as a result of his past occupations including that at J-Lok Corporation.

KRS 342.315(2) provides for a university evaluator's findings to be given presumptive weight. In this case, the contrary report from Dr. Selby was given serious consideration, but the ALJ concluded that it did not overcome the presumptive effect of Dr. Cavallazzi's opinions of work relatedness and impairment, for reasons including those stated by Hayes in his Brief, at pages 9-10.

J-LOK filed a petition for reconsideration arguing that it provided sufficient evidence to overcome the presumption given to Dr. Cavallazzi's opinion per KRS 342.315(2) and that the ALJ should have specifically cited to Sutton's testimony regarding the factory's air quality. The petition was denied. The Workers' Compensation Board and Court of Appeals affirmed the award. This appeal followed.

## **I. J-LOK DID NOT PRESENT SUFFICIENT EVIDENCE TO OVERCOME THE PRESUMPTIVE WEIGHT GIVEN TO A UNIVERSITY EVALUATOR'S OPINION**

J-LOK first argues that it presented sufficient evidence to overcome the presumptive weight afforded to Dr. Cavallazzi's opinion. J-LOK contends that Sutton's testimony, that J-LOK's employees were not exposed to hazardous levels of chemicals, and Dr. Selby's report, that Hayes suffered from regular asthma and GERD which cause his breathing impairments, overcome any of the conclusions drawn by Dr. Cavallazzi.

KRS 342.315(2) states that when a university evaluation occurs, the findings and opinions of the evaluator "shall be afforded presumptive weight by [the ALJ] and the burden to overcome such findings and opinions shall fall on the opponent of that evidence." Thus, J-LOK had the burden of proof to present evidence to overcome the presumptive weight given to Dr. Cavallazzi's opinion. Since the ALJ did not find that J-LOK met that burden, to prevail on appeal, it must show that the ALJ's decision was so unreasonable to be erroneous as a matter of law. KRS 342.285; *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000); *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). The ALJ has the sole discretion to determine the quality, character, and substance of the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985); *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

In this matter, J-LOK has not presented evidence to show that the ALJ's adoption of the university evaluator's opinion was unreasonable or erroneous

as a matter of law. Instead, J-LOK has presented evidence which conflicts with the university evaluator's opinion, but not evidence which proves that his opinion was clearly wrong. When there is conflicting evidence the ALJ, as fact finder, has "the sole discretion to determine the quality, character, and substance of evidence and to draw reasonable inferences from the evidence." *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). Accordingly, the ALJ found that Dr. Cavallazzi's opinion was of better quality and substance than the conflicting evidence presented by J-LOK. His decision is supported by the record. This evidence includes: Hayes's testimony that he has good and bad days, which support the abnormal results from the pulmonary function test that Dr. Cavallazzi performed; Dr. Cavallazzi's knowledge of Hayes's treatment for GERD which supports an inference that he took it into consideration in making his findings; and Dr. Uragoda's opinion which support Dr. Cavallazzi's findings.

Additionally, Sutton's testimony regarding the general air quality of the J-LOK plant also does not render Dr. Cavallazzi's opinion incorrect. Sutton only stated that the employees' exposure to chemicals was not above abnormal levels. She did not say that Hayes was never exposed to chemicals. Importantly, Dr. Cavallazzi's opinion was based on Hayes being *exposed* to chemicals, not over exposed. The ALJ was well within his discretion to adopt the university evaluator, Dr. Cavallazzi's, opinion, and we affirm the Court of Appeals on this issue.

## **II. THE ALJ PROVIDED SUFFICIENT EXPLANATION OF WHY HE ADOPTED THE CONCLUSIONS OF THE UNIVERSITY EVALUATOR**

J-LOK's final argument is that the ALJ did not provide a sufficient explanation as to why he adopted Dr. Cavallazzi's conclusion. J-LOK contends that the ALJ should have provided specific reasons for why he chose to reject the normal spirometry results obtained from the test administered by Dr. Selby and instead accepted the results obtained from the test given by Dr. Cavallazzi. J-LOK also believes that the ALJ should have addressed Sutton's testimony regarding the air quality studies conducted at their facility. *Arnold v. Toyota Motor Mfg.*, 375 S.W.3d 56, 61-62 (Ky. 2012) provides a blueprint for what constitutes a satisfactory ALJ opinion:

KRS 342.275(2) and KRS 342.285 contemplate an opinion that summarizes the conflicting evidence concerning disputed facts; weighs that evidence to make findings of fact; and determines the legal significance of those findings. Only when an opinion summarizes the conflicting evidence accurately and states the evidentiary basis for the ALJ's finding does it enable the Board and reviewing courts to determine in the summary manner contemplated by KRS 342.285(2) whether the finding is supported by substantial evidence and reasonable.

The ALJ's opinion in this matter satisfies this standard.

The ALJ cited to two pages from Hayes's brief which he found supported his decision to rely on Dr. Cavallazzi's opinion. Those two pages included numerous reasons as to why Hayes believed Dr. Cavallazzi's opinion was more credible than Dr. Selby's. Those reasons include: that Hayes's symptoms began after being exposed to chemicals at J-LOK; that several of the chemicals he was exposed to at J-LOK are known to cause asthma; that Dr. Cavallazzi noted there was a link between asthma and the chemicals Hayes was exposed



to; that photographs introduced into the record indicated a high amount of limestone dust in the air at the factory; and that Hayes's symptoms improved once he was no longer exposed to the chemicals. By listing the pages in Hayes's brief which the ALJ found persuasive in choosing to adopt Dr. Cavallazzi's opinion, it allows an appellate court to understand his reasoning and to properly review his opinion. The ALJ's opinion provided sufficient explanation as to why he found Hayes suffered from occupational asthma. Further, the ALJ stated that he reviewed Sutton's testimony and found it to be unpersuasive. We have no reason to conclude that the ALJ did not take Sutton's testimony into account when making his decision.

### **CONCLUSION**

For the above stated reasons, we affirm the decision of the Court of Appeals.

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

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