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RENDERED: FEBRUARY 15, 2018
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2017-SC-000209-WC

LANDMARK MEDIA PUBLISHING, LLC
D/B/A STANDARD PUBLISHING COMPANY
AS INSURED/ADMINISTERED BY
PRAETORIAN/QBEAI

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS
CASE NO. 2016-CA-000693-WC
WORKERS' COMPENSATION BOARD
NO. 14-WC-90414

MARK BRANHAM;
LANDMARK MEDIA PUBLISHING, LLC
D/B/A STANDARD PUBLISHING
COMPANY AS INSURED BY TRAVELERS;
HON. R. ROLAND CASE; ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

In 2013, Mark Branham (Branham) was working at Standard Publishing Company (Standard) in Louisville, Kentucky. On July 8, 2013, Branham felt a tearing sensation in his abdomen while using a three-foot-long wrench to change rubber mats on the press machines. He filed his Form 101 in December of 2014, wherein he described the July 8, 2013, incident that

injured his abdomen. He sought compensation for multiple injuries, including a hernia, which is the subject of this appeal.

The Administrative Law Judge (ALJ) considered Branham's testimony and the testimony of multiple physicians who treated Branham after his injury. Based on this evidence, the ALJ awarded Branham medical expenses for care and relief from the effects of the work-related injury. Standard appealed to the Workers' Compensation Board (Board), which unanimously affirmed the ALJ's determination. Standard then appealed to the Court of Appeals, which unanimously affirmed the Board's decision. Standard now appeals to this Court. Having reviewed the record and the law, we affirm the Court of Appeals.

Standard of Review

In order to reverse, we must determine that the ALJ's findings were "so unreasonable under the evidence that it must be viewed as erroneous as a matter of law." KRS 342.285; *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000). This is clearly a difficult standard to satisfy.

Analysis

Standard's sole argument is that it was an abuse of discretion for the ALJ to find that the hernia was work-related. Standard specifically argues that the medical testimony did not affirmatively establish that Branham's injury was work-related. See *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004) ("Medical causation must be proved to a reasonable medical probability with expert medical testimony but [] does not require it to be proved with objective medical findings.").

In support, Standard claims that Branham had a pre-existing active hernia prior to the July 8, 2013 work incident. As such, Standard contends that Branham's injury is not compensable. However, "[i]t is well-established that the work-related arousal of a pre-existing dormant condition into disabling reality is compensable." *Finley v. DBM Techs.*, 217 S.W.3d 261, 265 (Ky. App. 2007) (citing *McNutt Constr./First Gen. Servs. v. Scott*, 40 S.W.3d 854 (Ky. 2001)). As described in *Finley*:

a pre-existing condition that is both asymptomatic and produces no impairment prior to the work-related injury constitutes a pre-existing dormant condition. When a pre-existing dormant condition is aroused into disabling reality by a work-related injury, any impairment or medical expense related solely to the pre-existing condition is compensable.

Finley, 217 S.W.3d at 265.

In resolving this issue, it is necessary to provide a brief recitation of Branham's relevant medical history.

Relevant Medical History

In 1999, Branham underwent laparoscopic surgery to remove his kidney, which he then donated to his brother. In December 2012, Branham was treated by Dr. Elizabeth Doyle, his family physician. He complained of abdominal pain. She concluded that "hernia confirmed negative in the right inguinal area and confirmed negative in the left inguinal area." A CT scan performed on December 13, 2012 revealed a "small fat-containing umbilical hernia."

Shortly thereafter, Branham was examined by Dr. Paul Rafson, the general surgeon who had treated Branham on prior occasions. Dr. Rafson determined that Branham had “a small umbilical hernia which may be related to his laparoscopic procedure or not.” Branham returned to Dr. Rafson in April of 2013, complaining of abdominal pain that was “bearable” but “would come and go.” Dr. Rafson testified that he “didn’t feel like [surgery] was warranted . . .”

As previously noted, the injury at issue here occurred on July 8, 2013, when Branham felt a tearing sensation in his abdomen while using a three-foot-long wrench to change rubber mats on Standard’s press machines.

In August 2013, Dr. Rafson performed hernia repair surgery on Branham. Branham returned to work at Standard in February 2014. On April 1, 2014, he felt another ripping sensation in his abdomen while tightening a bolt on a press machine. On October 7, 2014, Branham underwent another hernia repair surgery.

In 2015, Branham underwent two independent medical examinations (IMEs). Dr. Warren Bilkey assessed Branham and concluded that “the hernia did not exist as a symptomatic concern until July 8, 2013 and then there was surgery to repair it. The second work injury [] of 4/1/14 caused a recurrence of symptomatic hernia” Dr. Ellen Ballard similarly concluded that Branham’s injuries were work-related. However, she subsequently amended her report and claimed that Branham’s injuries were *not* work-related. She did not state what specific evidence changed her mind.

ALJ's Findings

In a twenty-five-page opinion, the ALJ thoroughly discussed the relevant evidence and concluded as follows:

Although the prior surgery in 1999 and complaints and findings prior to July 8, 2013 are worrisome to the [ALJ], the plaintiff's report of the injury to his family physician and the original opinion of Dr. Ellen Ballard and the opinion of Dr. Warren Bilkey persuade the [ALJ] the injury of July 8, 2013 further aroused a pre-existing condition into disabling reality necessitating the surgery and the [ALJ] therefore finds the July 8, 2013 injury to be work-related and will award medical expenses but not permanent partial or temporary total.

As to the change in Dr. Ballard's original opinion, the ALJ stated that he "is simply unable to find any basis for her change of opinion and will therefore go with her initial finding and opinion" The Board similarly concluded that "Dr. Ballard's original opinion is consistent with Dr. Bilkey's opinion and Branham's account of the work-related incidents and the tearing sensations he experienced on those occasions."

Other than several notations concerning minor abdominal discomfort, nothing in the relevant medical evidence expressly indicates that Branham's hernia was actively symptomatic prior to the July 8, 2013 work incident. In contrast, both IMEs revealed that Branham's injury was work-related. Dr. Bilkey specifically determined that "the hernia did not exist as a symptomatic concern until July 8, 2013 and then there was surgery to repair it. The second work injury [] of 4/1/14 caused a recurrence of symptomatic hernia" And although the second IME doctor, Dr. Ballard, subsequently changed her mind, Standard has failed to provide any additional evidence in the record supporting

Dr. Ballard's second opinion. Lastly, the ALJ properly considered Branham's own lay testimony concerning his injury and symptoms. Therefore, we cannot conclude that the ALJ abused his discretion.

Conclusion

For the foregoing reasons, we hereby affirm the Court of Appeals' decision, affirming the decisions issued by the Board and the ALJ.

All sitting. All concur.

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