

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

# Supreme Court of Kentucky

2020-SC-0456-WC

COMMERCIAL CONTRACTING  
CORPORATION

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS  
NO. 2019-CA-1731  
WORKERS' COMPENSATION NO. WC-18-00180

BILLY CLARK; HONORABLE  
STEPHANIE LETITIA KINNEY,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

Commercial Contracting Corporation appeals from the Court of Appeals' decision upholding an Administrative Law Judge's (ALJ) award of permanent partial disability (PPD) benefits, temporary total disability (TTD) benefits, and medical benefits to Billy Clark. Commercial Contracting argues Clark failed to prove his injuries were work-related and incurred while in its employ, and further asserts the ALJ's findings were unsupported by substantial evidence. For the following reasons, we affirm.

On January 31, 2018, Clark filed a Form 101, Application for Resolution of Claim, with the Department of Workers' Claims, alleging he sustained a work-related low back injury on August 10, 2017, while lifting steel during his

employment with Triple C Metal Finishing. Clark subsequently amended his Form 101 to correct the name of his employer to Commercial Contracting. His employment with Commercial Contracting spanned from August 7, 2017, through September 11, 2017.

A treatment note from Clark's family practitioner, Dr. Jagdish Kothari, dated August 24, 2017, stated Clark had been experiencing back pain for two weeks but that he denied any injury. After injections and physical therapy proved unsuccessful at treating Clark's pain and an MRI discovered a bulging disk, he was referred to a surgeon, Dr. Thomas Becherer. Additional non-surgical treatment was recommended and performed, none of which alleviated Clark's symptoms. Clark sought treatment and second opinions from other providers before determining surgery was his best course of action. On May 7, 2018, Dr. Becherer performed a single level lumbar microdiscectomy at L4-L5. Following a brief recovery period, Clark was released to regular duty in his normal profession as a millwright.

Clark submitted the results of an independent medical examination (IME) performed by Dr. James Farrage who had seen Clark in April 2018. Dr. Farrage opined Clark's injury was work-related and stemmed from an event which occurred on September 22, 2017—some eleven days *after* Clark ceased to be employed by Commercial Contracting. No impairment rating was provided as Clark had not yet reached maximum medical improvement, but Dr. Farrage opined absent further treatment, Clark would qualify for a 5-8% rating. In January 2019, Clark submitted a supplemental report from Dr. Farrage

which assigned him an 11% whole person impairment rating attributed completely to his reported work injury. The supplemental report reiterated Clark's injury occurred on September 22, 2017.

Commercial Contracting submitted a lengthy IME report from Dr. Robert Jacob which noted Clark's medical records from multiple doctors listed varying dates of onset and none described a specific work injury. Dr. Jacob opined the etiology of Clark's injury was uncertain and could not definitively be traced to a work-related harmful change occurring on August 10, 2017, as Clark alleged. Nevertheless, Dr. Jacob assigned a 10% whole person impairment to Clark.

At a final hearing before the ALJ, Clark testified he was injured on August 10, 2017, while employed by Commercial Contracting and that employment was terminated on September 11, 2017. He stated he still experiences stinging, burning pains, numbness, and tingling from his injury which symptoms increase with physical activity. Clark further testified he has returned to work as a millwright at the same or greater wages than before his injury, although he now requires assistance from coworkers with strenuous activities.

In a June 10, 2019, Opinion, Award, and Order, the ALJ found Clark had suffered a compensable injury on August 10, 2017, while employed by Commercial Contracting. The ALJ found Clark to be credible, and, although he struggled with dates, she believed he timely reported his injury. Relying on Dr. Farrage's medical opinions, the ALJ concluded Clark retained a 10% whole body impairment and awarded TTD, PPD, and medical benefits. Commercial

Contracting petitioned for reconsideration, asserting the ALJ failed to reconcile the conflicting dates of injury contained in Clark's various medical records and IME reports. On June 29, 2019, the ALJ entered an order denying the petition, finding the treatment notes from Dr. Kothari and the IME report from Dr. Jacob established Clark's injury occurred on August 10, 2017, while he was employed by Commercial Contracting. Further, the ALJ concluded Dr. Farrage was mistaken in referencing September 22, 2017, as the date of injury.

Commercial Contracting appealed to the Workers' Compensation Board, asserting Clark did not prove he suffered a specific injury to his back and, alternatively, any injury he may have suffered occurred after he left his employment with Commercial Contracting. The Board concluded it was reasonable for the ALJ to infer Clark was injured at work on August 10, 2017, based on the lay and medical evidence presented. Finding the ALJ did not abuse her discretion, appropriately considered the evidence, and based her decision Clark's injury was compensable on substantial evidence, the Board affirmed.

Commercial Contracting petitioned the Court of Appeals for review, asserting the same allegations of error as it had before the Board. In affirming the Board, the Court of Appeals held that although the record contained conflicting evidence of Clark's date of injury, the ALJ did not err in finding Clark sustained a compensable work-related injury on August 10, 2017. In sum, the Court of Appeals determined the ALJ's conclusions were supported by substantial evidence. This appeal followed.

Before this Court, Commercial Contracting continues to argue the ALJ's finding Clark sustained a work-related injury on August 10, 2017, was unsupported by substantial evidence as Clark failed to prove how he was injured and the medical evidence contained conflicting dates of any injury he may have suffered. After review, we reject Commercial Contracting's arguments.

The well-established standard of review for the appellate courts of a workers' compensation decision "is to correct the Board only where the the [sic] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). "Our standard of review in workers' compensation claims differs depending on whether we are reviewing questions of law or questions of fact." *Miller v. Tema Isenmann, Inc.*, 542 S.W.3d 265, 270 (Ky. 2018). As to questions of law, an appellate court reviews de novo a decision of the Board or ALJ regarding proper interpretation of the law or its application to the facts. *Id.* (citation omitted). "The ALJ as fact finder has the sole authority to judge the weight, credibility, substance, and inferences to be drawn from the evidence." *LKLP CAC Inc. v. Fleming*, 520 S.W.3d 382, 386 (Ky. 2017) (citations omitted).

An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. *Jackson v. General Refractories Co.*, 581 S.W.2d 10 (Ky. 1979); *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky. 1977); *Magic Coal Co. v. Fox*, 19 S.W.3d 88 (Ky. 2000). In that regard, an ALJ is vested with

broad authority to decide questions involving causation. *Dravo Lime Co. v. Eakins*, 156 S.W.3d 283, 288-290 (Ky. 2005).

*Miller v. Go Hire Employment Development, Inc.*, 473 S.W.3d 621, 629 (Ky. App. 2015).

“When the decision of the fact-finder favors the person with the burden of proof, his only burden on appeal is to show that there was some evidence of substance to support the finding, meaning evidence which would permit a fact-finder to reasonably find as it did.” *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). “[A]n ALJ’s decision should not be overturned on appeal unless it ‘is so unreasonable under the evidence that it must be viewed as erroneous as a matter of law.’” *Eddie’s Service Ctr. v. Thomas*, 503 S.W.3d 881, 886 (Ky. 2016) (quoting *Ira A. Watson Dep’t Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000)). In this case, Clark had the burden of proof before the ALJ, so we must determine whether the ALJ’s Opinion, Award, and Order was supported by substantial evidence.

The medical professionals all agreed Clark suffered a herniated disk which ultimately required corrective surgery. The primary challenge was to the cause of the injury. In awarding benefits, the ALJ primarily relied on medical evidence from Dr. Farrage to determine the etiology of Clark’s back injury and its work-relatedness. Although Commercial Contracting points to Dr. Jacob’s opinion questioning the cause of Clark’s injury, nowhere in his report does Dr. Jacob offer an explanation of the cause contradictory to that posited by Clark. “The claimant’s own testimony is competent and of some probative value.”

*Caudill*, 560 S.W.2d at 16. Additionally, the record does not reveal any prior or subsequent injuries requiring medical treatment.

In determining the date of injury, the ALJ noted the various dates listed in Clark's medical records and Clark's own uncontroverted statements. Apart from Dr. Farrage's unexplained reference to September 22, 2017, all other physicians and Clark himself placed the date of injury on or about August 10, 2017, when Clark was employed by Commercial Contracting.

The ALJ set forth the conflicting medical opinions, Clark's uncontroverted allegations, and other evidence before weighing it to reach her final decision Clark had suffered a compensable work-related back injury. Although Commercial Contracting believes the evidence may have supported a contrary conclusion, we are not at liberty to substitute our judgment for that of the fact-finder and such evidence is not an adequate basis for reversal on appeal. *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46, 47 (Ky. 1974). Further, as previously noted, an ALJ has discretion to believe or disbelieve any parts of the evidence presented and draw appropriate inferences therefrom. *Miller*, 473 S.W.3d at 629. We have reviewed the record and determined substantial evidence supports the ALJ's decision. There was no error.

For the foregoing reasons, we affirm the Court of Appeals decision affirming the Board and upholding the ALJ's Opinion, Award, and Order.

All sitting. All concur.



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