RENDERED: NOVEMBER 13, 2026; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2026-CA-0557-WC

ADIENT US, LLC — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-24-01229

BILLY GIBSON; HONORABLE STEPHANIE LETITIA KINNEY, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD OF KENTUCKY — APPELLEES

OPINION AFFIRMING IN PART, REVERSING IN PART, AND REMANDING

** ** ** ** **

BEFORE: ECKERLE, L. JONES, AND KAREM, JUDGES.

KAREM, JUDGE: Adient US, LLC, petitions for review of an opinion of the Workers' Compensation Board. The Administrative Law Judge ("ALJ") dismissed Billy Gibson's claim that he suffered a cumulative injury while employed by Adient. The Board vacated, holding that the medical evidence compelled a finding that Gibson suffered a work-related injury. The Board remanded the case for the

ALJ to make additional findings to determine the nature and extent of the injury. Upon careful review, we affirm in part, reverse in part, and remand.

FACTUAL AND PROCEDURAL BACKGROUND

Gibson was born in 1970. He obtained a high school diploma. He began working for Adient (formerly Johnson Controls), an automotive seating company, in 1996. For approximately the first fifteen years of his employment, he worked on the assembly line, using his arms overhead and later at waist level. He then became a forklift driver and material handler. In this job, he spent about 80 percent of his time operating the forklift, unloading and moving boxes containing parts. Because the boxes were stacked high on the forklift and obstructed the view ahead, Gibson often had to drive in reverse, with his head twisted around to see over his shoulder. He also had to look upwards for long periods of time because the boxes were stored on racks fifteen to twenty feet high. The forklifts did not have suspension seats and the ride over the bumpy concrete floors was very rough. Gibson spent the other 20 percent of his time manually retrieving and moving the boxes. He described them as awkward to handle, about six feet long, 2 ½ feet wide, and weighing 20 to 30 pounds.

In June 2022, Gibson reported a work injury after he strained his neck while handling some boxes. He felt pain extending from his neck to his left arm and he developed a pull in his neck that steadily increased. He consulted Dr.

Steven Kiefer, of Baptist Health Medical Group Neurosurgery, on September 21, 2022. Dr. Kiefer reviewed Gibson's MRI and diagnosed slowly improving cervical spondylosis with radiculopathy and cervical degenerative disc disease. He ordered physical therapy and work restrictions. Gibson returned to Dr. Kiefer on November 2, 2022, reporting that his symptoms had improved. Dr. Kiefer cleared Gibson to return to regular work.

The incident which is the subject of this appeal occurred about one year later, on November 8, 2023. Gibson was operating the forklift, looking upwards as he moved boxes on the racks, when he felt severe pain in his neck, radiating into his left arm, hand, and fingers. It was the same pain pattern he had experienced before. He was referred to Bluegrass Orthopaedics and Dr. Travis Hunt. An MRI was performed and showed multilevel spondylosis. Dr. Hunt noted that a possible surgical decompression might be required.

In March 2024, Gibson returned to Dr. Kiefer, complaining of neck and left upper extremity pain. He described looking up as he operated the forklift and experiencing severe neck pain extending into his left hand and fingers. Dr. Kiefer noted that Gibson had already completed several weeks of physical therapy at Bluegrass Orthopaedics and had received an epidural injection that alleviated the pain for about 2.5 weeks. He also noted that the orthopedic surgeon there recommended cervical surgery. Dr. Kiefer diagnosed left upper extremity

radiculopathy, described the symptoms as severe and limiting, and also recommended surgery, specifically, keyhole foraminotomies.

Immediately following the November 8, 2023, incident, Gibson notified his supervisor and was transferred to light duty. He later returned to driving a forklift but was ultimately transferred to kitting, which involves putting items on carts to go to the production line for seat assembly. Kitting did not involve any heavy lifting nor was Gibson required to look upwards. Gibson did not miss any work or lose any income due to the November 8, 2023, incident.

Gibson filed a claim for workers' compensation benefits on December 16, 2024. On his Form 101 Application for Resolution of a Claim, he alleged that he was injured on November 8, 2023, due to "repetitive work activities involving operating forklift." He listed as the cause of injury "Cumulative NOC" and the body part injured as "Vertebrae-Neck."

In addition to the medical records of Dr. Kiefer and Dr. Hunt, Gibson submitted an evaluation performed at his counsel's request by Dr. Frank Burke, an orthopedic surgeon. Dr. Burke opined that Gibson sustained an acute cervical injury with an aggravation of a pre-existing dormant spondylosis of the cervical spine that was aroused into disabling reality with a left radiculopathy (pinched nerve) in the C7 distribution, as a result of the November 8, 2023, work injury. Without further intervention, Dr. Burke diagnosed Gibson at maximum medical

improvement with a 16 percent cervical impairment. He agreed with Dr. Kiefer that Gibson was a candidate for surgery.

Dr. Jerry Magone, an orthopedic surgeon, conducted a medical evaluation at the request of Adient. When Dr. Magone was asked whether the alleged work injury was the cause or contributing cause of the current diagnosis, he replied that the work incident was "a temporary exacerbation of an ongoing chronic condition," cervical spinal stenosis, and that the medical records show Gibson had symptoms of this condition prior to November 8, 2023. When Dr. Magone was asked whether the work exposure or incident aggravated a pre-existing condition, he replied that "the work incident was responsible for a temporary, not permanent, aggravation. We know this is temporary because by him switching job responsibilities[,] not needing to look up[,] the symptoms have mitigated." Dr. Magone opined that "the symptoms he experiences are temporary, and therefore a permanent partial impairment relative to the alleged work injury would not be supported."

According to the brief Gibson submitted to the ALJ, Adient's workers' compensation insurance carrier paid his medical expenses following the November 8, 2023, incident, but refused further coverage when Dr. Kiefer recommended cervical surgery. Gibson requested coverage of his medical

benefits, including the cervical surgery, and TTD (temporary total disability) benefits for any period he was unable to work due to the surgery.

The ALJ found that Dr. Burke's opinion – that Gibson sustained an acute injury to his neck – did not correspond with the injury theory pled on the Form 101. The ALJ concluded that the claim for a cumulative trauma injury to the neck was not supported by substantial medical evidence and dismissed Gibson's claim.

Gibson filed a petition for reconsideration. The ALJ reviewed the medical evidence for proof of either cumulative trauma, as alleged in Gibson's Form 101, or an acute injury, as diagnosed by Dr. Burke. The ALJ reaffirmed her opinion that Gibson had not sustained a work-related injury under either theory, explaining in pertinent part as follows:

> [W]hile the Plaintiff's expert, Dr. Frank Burke, described an *acute* cervical injury on November 8, 2023, that opinion does not establish the existence of a *cumulative* or *gradual* injury as alleged in the Form 101. Plaintiff therefore failed to offer medical evidence causally relating his cervical condition to repetitive work activities over time.
>
> Kentucky law is clear that a cumulative trauma claim must be supported by competent medical evidence identifying a gradual injury process and linking it to the claimant's work. See *Hill v. Sextet Mining Corp*., 65 S.W.3d 503 (Ky. 2001); *Haycraft v. Cohart Refractories Co*., 544 S.W.2d 222 (Ky. 1976); and *Consol of Kentucky, Inc. v. Goodgame*, 479 S.W.3d 78 (Ky. 2015). Here, Dr. Burke's opinion of an acute traumatic event

does not constitute proof of cumulative trauma within the meaning of the [Workers' Compensation] Act or case law. The employer's medical expert, Dr. Magone, opined Plaintiff experienced only a temporary exacerbation of pre-existing degenerative changes, further undermining causation. Thus, the ALJ does not find Dr. Burke's assessment of an acute injury to be persuasive in support of a finding of a cumulative trauma injury as he alleged.

. . .

The Administrative Law Judge has further considered the evidence within the context of an *acute* injury theory, consistent with Dr. Burke's opinion. Plaintiff described operating a forklift and looking upward while stacking boxes on November 8, 2023, but the evidence shows those duties were part of his long-standing, routine work as a material handler rather than a distinct traumatic or acute occurrence. Medical records from Bluegrass Orthopaedics and Dr. Kiefer reflect a history of similar neck and upper extremity complaints dating back to 2022, when Plaintiff was treated for cervical radiculopathy. Diagnostic imaging from 2023 and 2024 revealed multilevel degenerative disc disease and spondylosis, findings consistent with a progressive condition rather than an acute traumatic change. Dr. Magone credibly explained that the work activities described could temporarily exacerbate symptoms but did not cause a new injury, and that Plaintiff's cervical spinal stenosis and foraminal narrowing are degenerative in nature. Accordingly, even if the claim were construed as one for an acute traumatic injury as described by Dr. Burke, the Administrative Law Judge is not persuaded Plaintiff sustained a distinct work-related traumatic event on November 8, 2023, producing a harmful change to the human organism as defined by [Kentucky Revised Statute] KRS 342.0011(1).

Gibson appealed to the Board, which reviewed the evidence and vacated the ALJ's decision, on the grounds that the medical testimony "unequivocally and unanimously" compelled a finding that Gibson had sustained a work injury. According to the Board, even the opinion of Dr. Magone, Adient's expert, that the November 8, 2023, work incident caused a "temporary exacerbation of an ongoing chronic condition," unquestionably supported a finding of a work injury. The Board remanded the case for the ALJ to enter a finding that Gibson had sustained a work injury and to determine whether it was a temporary or a permanent work injury due to an acute work event or cumulative trauma to the neck.

This petition for judicial review by Adient followed. Further facts will be set forth below as necessary.

STANDARD OF REVIEW

> An injured worker bears the burden of proof and the risk of nonpersuasion before the fact-finder with regard to every element of a workers' compensation claim. . . . As the finder of fact, the ALJ, and not the reviewing court, has the authority to determine the quality, character and substance of the evidence presented.
>
> We will not disturb the ALJ's findings of fact unless they are clearly erroneous, but this Court is bound by neither the ALJ's decisions on questions of law nor the ALJ's interpretation and application of the law to the facts. On such matters, our review proceeds under the *de novo* standard.

> If the ALJ finds against the party who bears the burden of proof, the claimant must show that the ALJ misapplied the law or that the evidence in her favor was so overwhelming that it compelled a favorable finding.

Thompson Catering & Special Events v. Costello, 701 S.W.3d 541, 545–46 (Ky. 2024) (internal quotation marks and citations omitted).

When the Court of Appeals reviews a decision of the Board, "we reverse only where it has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence that it has caused gross injustice." *GSI Commerce v. Thompson*, 409 S.W.3d 361, 364 (Ky. App. 2012) (citing *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992)).

ANALYSIS

Adient argues that the Board erred in vacating the ALJ's opinion because the ALJ was acting well within her discretion as the finder of fact in rejecting Gibson's claim that he suffered a cumulative work-related injury. Adient points out that Gibson's own expert, Dr. Burke, diagnosed an acute injury, an opinion the ALJ was also free to reject.

"Injury" is defined for purposes of the Workers' Compensation Act as "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings." KRS 342.0011(1). Simply put, "a harmful change to

a worker's body that is caused by work is an 'injury' for the purposes of Chapter 342." *Commonwealth, Transp. Cabinet v. Guffey*, 42 S.W.3d 618, 621 (Ky. 2001).

The records of Dr. Hunt and Dr. Kiefer both describe Gibson as suffering a work injury on November 8, 2023.

Dr. Burke, as previously stated, diagnosed an acute cervical injury, which he described as an aggravation of a pre-existing dormant spondylosis of the cervical spine that was aroused into disabling reality with a left radiculopathy (pinched nerve) in the C7 distribution by the November 8, 2023, injury, resulting in a 16 percent impairment. Dr. Burke's diagnosis is in accordance with the type of injury defined in *McNutt Construction/First General Services v. Scott*, 40 S.W.3d 854 (Ky. 2001), as follows: "Where work-related trauma causes a dormant degenerative condition to become disabling and to result in a functional impairment, the trauma is the proximate cause of the harmful change; hence, the harmful change comes within the definition of an injury." *McNutt*, 40 S.W.3d at 859.

Dr. Magone, by contrast, did not believe Gibson sustained a permanent work injury, opining instead that the work incident was a "temporary exacerbation of an ongoing chronic condition." This diagnosis also falls within the definition of a work-related injury, under *Robertson v. United Parcel Service*, 64 S.W.3d 284 (Ky. 2001). In *Robertson*, a work-related incident caused the claimant

to suffer temporary symptoms of his nonwork-related spondylolisthesis, and it required medical treatment. The Court held that those symptoms qualified as an "injury" for purposes of KRS 342.0011(1). *Robertson*, 64 S.W.3d at 286.

We agree with the Board that the medical experts, including Dr. Magone, all opined that Gibson sustained a work injury of some kind, under the definition found in KRS 342.0011(1), and as construed in our case law. It is well-established that "an ALJ has sole discretion to decide whom and what to believe, and may 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." *Thompson Catering*, 701 S.W.3d at 545–46. However, "[w]here the question at issue is one which properly falls within the province of medical experts, the fact-finder may not disregard the uncontradicted conclusion of a medical expert and reach a different conclusion." *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). "[P]arties to a workers' compensation dispute are entitled to findings based on a correct understanding of the evidence of record, and where it is demonstrated the ALJ held an erroneous understanding of relevant evidence in reaching a decision, courts have authorized remand for further findings." *Lexington Fayette Urban Cnty. Government v. Gosper*, 671 S.W.3d 184, 208 (Ky. 2023) (citing *Whitaker v. Peabody Coal Co.,* 788 S.W.2d 269, 270 (Ky. 1990)).

Under the authorities set forth above, the ALJ was not free to reject this undisputed medical evidence. Therefore, the Board did not err in vacating and remanding for entry of an opinion finding that Gibson sustained a work-related injury.

As the next step, the Board directed the ALJ to review the evidence and determine whether Gibson's work-related injury was acute or the result of cumulative trauma. But the ALJ already considered both of these theories in her initial opinion, and on reconsideration.

In her initial opinion and order, the ALJ found that Dr. Burke's diagnosis of an acute injury did not correspond to the cumulative injury pled in Gibson's Form 101 and dismissed his claim on that basis. On reconsideration, however, the ALJ did analyze whether Gibson had sustained an acute injury. The ALJ found that Gibson's description of his activities on the date of injury, November 8, 2023, operating the forklift and looking upwards to stack boxes, was simply part of his routine work, not a distinct traumatic or acute occurrence. The ALJ also cited records from Bluegrass Orthopaedics and Dr. Kiefer showing that Gibson had a history of similar neck and upper extremity complaints dating back to 2022, and diagnostic imaging from 2023 and 2024 showing progressive degenerative disc disease and spondylosis. "If the ALJ finds against the party having the burden of proof, the appellant must show that the ALJ misapplied the

law or that the evidence in her favor was so overwhelming that it compelled a favorable finding." *Estate of Perkins by Perkins v. North American Stainless*, 724 S.W.3d 738, 749 (Ky. 2025) (citing KRS 342.285; *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986)). The ALJ's conclusion that Gibson did not suffer an acute injury is supported by substantial evidence and the evidence in favor of an acute injury is not so overwhelming that it would compel a different finding.

The ALJ also considered whether Gibson suffered a cumulative injury. Initially, as the Board noted, she rejected this theory solely on the basis of Dr. Burke's diagnosis of an acute injury. Upon reconsideration, she elaborated on her reasoning and explained that she relied on Dr. Magone's opinion that what occurred on November 8, 2023, was a temporary exacerbation of a non-work-related underlying condition. As the finder of fact, the ALJ was entitled to rely on Dr. Magone's opinion. "[A]n ALJ has sole discretion to decide whom and what to believe, and may 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." *Thompson Catering*, 701 S.W.3d at 545–46. As explained in *Robertson*, it is possible for a claimant to suffer a work-related injury or "temporary flare-up of symptoms" whose effect is transient and results in no permanent disability or change in the claimant's pre-existing condition. *Robertson*, 64 S.W.3d at 286-87.

To summarize, the Board correctly held that the ALJ erred in dismissing Gibson's claim, because the ALJ disregarded the uncontradicted medical evidence that he suffered a work-related injury. The ALJ appropriately considered whether Gibson's injury was acute or the result of cumulative trauma, and concluded, in reliance on the opinion of Dr. Magone, that it was a temporary exacerbation of an underlying, progressive, non-work-related condition. As in *Robertson*,

> the evidence and the ALJ's opinion make it clear that the only harmful change that the claimant experienced as a result of the work-related incident was a temporary flare-up of symptoms of the pre-existing, nonwork-related condition. In other words, the ALJ concluded that the claimant suffered a work-related injury but that its effect was only transient.

Robertson, 64 S.W.3d at 286.

Under these circumstances, if the injury "resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis . . . [he] was not entitled to income benefits for permanent, partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident." *Id*.

CONCLUSION

For the foregoing reasons, the Board's holding that the ALJ erred as a matter of law in finding that Gibson did not suffer a work-related injury is affirmed. The portion of the Board's order that directed the ALJ to make further findings regarding whether the injury was acute or cumulative is reversed.

The case is remanded and the ALJ is directed to enter an amended opinion and award finding that Gibson sustained a work injury, in accordance with the ALJ's prior findings based on the opinion of Dr. Magone, and to make an award of any appropriate medical and income benefits in accordance with that finding.

ALL CONCUR.

BRIEF FOR APPELLANT:

Denise M. Davidson
Hazard, Kentucky

BRIEF FOR APPELLEE BILLY GIBSON:

Charles W. Gorham
Lexington, Kentucky