

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-001781-WC

ULESS MILLS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-00215

CTA ACOUSTICS, INC.;
HON. ANDREW F. MANNO,
ADMINISTRATIVE LAW JUDGE;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ABRAMSON AND VANMETER, JUDGES; KNOPF,¹ SENIOR JUDGE.

VANMETER, JUDGE: Uless Mills petitions for the review of an opinion of the Workers' Compensation Board, which affirmed the decision of an Administrative Law Judge (ALJ) dismissing Mills's psychological claim because he did not prove that he sustained a work-related psychological injury. For the following reasons, we affirm.

¹ Senior Judge William L. Knopf sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Mills began working for CTA Acoustics, Inc. in 1973. While delivering paperwork to each of the plant assembly lines on February 20, 2003, Mills heard an explosion, saw a large fireball, and was hit on the right side by the wind from the explosion, resulting in an immediate hearing loss in his right ear. Mills testified that the wind blew concrete blocks from the wall of the building but did not hit him fully because he was behind some of the machines in the factory. Several of Mills's coworkers suffered severe burns from the explosion, to the point that Mills could not recognize them. In the days after the explosion, a number of them died.

Mills reported to Dr. Glen Baker, his family doctor, on the day of the explosion complaining of hearing loss. He returned to work three or four days later and continued to work in the same position until October 28, when he began experiencing chest and back pain and was taken to the hospital by ambulance. He never returned to work at CTA or anywhere else.

Mills filed workers' compensation claims alleging hearing loss and psychological injury relating to post-traumatic stress syndrome (PTSD), depression, and anxiety. After a hearing, the ALJ awarded Mills the medical expenses he incurred as treatment for his hearing loss. However, the ALJ did not award Mills any income benefits for his hearing loss, and he dismissed Mills's psychological claim after finding that it was not based on a work-related injury. The Board affirmed the ALJ's award, and this petition for review followed. On appeal, Mills challenges the ALJ's decision only insofar as his claim for psychological injury was dismissed.

Mills argues that the ALJ erred by holding that his psychological injury was not work-related. More specifically, Mills contends that the ALJ erred by relying upon Dr. Douglas Ruth's opinion in so holding, as Dr. Ruth did not address Mills's argument that his psychological injury was a result of the explosion. Instead, Mills argues, Dr. Ruth simply opined that his psychological injury did not result from his hearing loss.

As Mills was unsuccessful in persuading the ALJ that his psychological injury was work-related, the question before this court is "whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor." *See Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984). Compelling evidence is that which is "so overwhelming that no reasonable person could reach the same conclusion as the ALJ." *Toyota Motor Mfg., Kentucky v. Czarnecki*, 41 S.W.3d 868, 871 (Ky.App. 2001) (citing *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky.App. 1985)). In order to determine whether the evidence compelled a finding in Mills's favor, we begin by setting forth the evidence pertinent to his psychological claim.

After Mills was taken from work to the hospital on October 28, complaining of chest and back pain, doctors ruled out any heart-related causes for his symptoms. Instead, Mills was diagnosed as having had a panic attack, and he was referred to follow up with a psychiatrist, Dr. Shahzad Shahmalak. In his initial evaluation report, Dr. Shahmalak recorded Mills's history as follows:

He says that he has been under very much stress recently at work because he says that he has worked for Certain Teed for 17 years and then that company was sold to CTA and altogether has worked for this corporation for 30 years and for the past 11 years he has been working Quality Insurance

Department and now his job is being advertised on the board. He says also his wife has overheard that one of the administrators of the place has told to a woman employee to apply for his job because she has a very good chance to get it. The patient in the midst of all these problems, a woman who works with him in the same department and was 54 years of age, died on Friday and that has added to his stress and sadness. He feels depressed, hopeless, helpless, worthless and useless. Thoughts of suicide have crossed his mind but he does not have any thoughts of suicide today and he never had any plans to kill himself. The patient says that he has been feeling nervous and depressed since his father died six years ago. He says his father was found in his car and was shot to death. Apparently, it was ruled as a suicide but the patient does not believe that and thinks that somebody killed him. The patient feels very nervous, stressed out, very insecure about his job.

In the report's past medical history section, Dr. Shahmalak noted that Mills's family doctor had been prescribing him Xanax for the past six or seven years since his father's death. In the same section, Dr. Shahmalak made his only reference to the CTA explosion: "patient was in the explosion of CTA several months ago and he said after that he has had diminished hearing in the right ear." Dr. Shahmalak ultimately diagnosed Mills with severe major depressive disorder, with the current stressor being his employer's advertisement of his job and the fear of losing his job. He recommended counseling, which Mills underwent.

The remaining evidence related to Mills's psychological claim was summarized by the ALJ and reported by the Board as follows:

DR. WILLIAM WEITZEL

Dr. William D. Weitzel performed a psychiatric evaluation of Mr. Mills and prepared a report dated June 29, 2004 and a Form 107-P dated June 30, 2004. Dr. Weitzel

obtained a history of Mr. Mills' exposure to the explosion and events which followed subsequent to the explosion. He noted that Mr. Mills was not physically injured, although he complained of emotional problems, including anxiousness and depression. Mr. Mills insisted that he was unable to return to his former occupation. Dr. Weitzel reviewed [certain] medical records He diagnosed post traumatic stress disorder and major depression, single episode, moderate to severe. He opined that Mr. Mills was experiencing a 30% permanent partial and collective functional impairment from a psychiatric disorder or condition, 5% of which resulted from a pre-existing, active psychiatric disorder or condition. He opined that a 25% impairment results from the psychiatric disorder due to the events in question. He noted results of the Rey's 15 Item Memory test were positive for malingering. He considered the IQ results to be unreliable. He noted the results of the M-FAST was positive for malingering. The PDSQ results were unreliable since Mr. Mills did not complete the test. The MMPI results were skewed toward symptom exaggeration and cannot be trusted. He noted Mr. Mills made an apparent attempt to make his situation worse than he experienced. However, he noted Mr. Mills fits the criteria for post traumatic stress disorder even without embellishment.

DR. ANDREW COOLEY

A psychiatric evaluation report prepared by Dr. Andrew Cooley dated April 21, 2005 was filed into evidence. Dr. Cooley obtained a history of Mr. Mills' injury, past medical history, past psychiatric history, family history and social history. Dr. Cooley reviewed [certain] medical records Dr. Cooley diagnosed probable posttraumatic stress disorder, probable major depressive disorder and malingering.

Dr. Cooley opined that Mr. Mills has an undetermined whole body psychiatric impairment due to his diagnosis of probable PTSD as well as possible depression. He noted if Mr. Mills does have any impairment from a possible major depression and Post Traumatic Stress Disorder, it would be due to the accident in question. He noted that he did not assign an impairment rating due to the diagnosis of malingering, but indicated Mr. Mills had an undetermined

impairment. Dr. Cooley suspected that Mr. Mills needed treatment for depression and PTSD but was unable to say exactly to what extent given the problems with malingering. Dr. Cooley noted gross evidence of malingering on the standardized mental assessment. He noted Mr. Mills was more significant for malingering in his office than in Dr. Weitzel's office. Examination was consistent with mild depression.

In a report dated August 8, 2005, Dr. Cooley re-examined Mr. Mills and diagnosed posttraumatic stress disorder, major depressive disorder, symptom exaggeration and personality disorder, not otherwise stated with dependent personality traits. He opined that Mr. Mills has a class III Moderate 25% whole body psychiatric impairment due to his diagnosis of PTSD as well as major depression due to the accident in question. He noted no malingering pattern following treatment and medication stabilization.

DR. ROBERT GRANACHER

A psychiatric examination report prepared by Dr. Robert Granacher dated October 19, 2005 was filed into evidence. Dr. Granacher examined Mr. Mills on October 19, 2005, obtained a history of Mr. Mills' injury, past medical history, past psychiatric history, family history, social history and employment history and reviewed [certain] medical records He noted that Mr. Mills has had three hospitalizations since the explosion, one occurring in 2003 and two in 2005. Dr. Granacher diagnosed posttraumatic stress disorder, due to the workplace explosion on February 20, 2003 and panic disorder, with panic attacks, pre-existing and present since about 1990. He opined that Mr. Mills has a workplace-induced posttraumatic stress disorder with 15% Class II whole body as a result of the explosion on February 20, 2003.

DR. DOUGLAS RUTH

A psychiatric evaluation report prepared by Dr. Douglas D. Ruth on June 28, 2005 was filed into evidence. Dr. Ruth obtained a history of Mr. Mills['] injury, medical treatment history, family history, education and employment

history and reviewed [certain] medical records . . . as well as x-rays, an MRI scan, audiograms, spirometry and laboratory studies. Dr. Ruth diagnosed malingering and anxiety disorder, not otherwise stated. He noted Mr. Mills' symptoms were incompatible with a diagnosis of post-traumatic stress disorder. Utilizing the AMA Guides, Fifth Edition, Dr. Ruth assessed 4% for a Class 2, mild psychiatric impairment. Dr. Ruth noted that the only work-related physical injury Mr. Mills asserts is that of a hearing impairment. He opined that the entirety of Mr. Mills' psychiatric impairment was due to a pre-existing, active emotional disorder. He indicated Mr. Mills was exaggerating his symptoms and functional limitations. He noted no psychological restrictions. He noted Mr. Mills lives alone and cares for himself.

On October 20, 2005, Dr. Ruth reviewed the second psychiatric examination of Uless Mills performed by Dr. Cooley on July 1, 2005. Dr. Ruth concluded that Dr. Cooley's re-examination of Mr. Mills demonstrated that Mr. Mills was again malingering and did not document psychiatric symptoms and psychiatric impairment attributable to the work incident on February 20, 2003. He indicated Mr. Mills' description of symptoms were not typical of bonafide symptoms of PTSD but resembled symptoms of someone being PTSD. Dr. Ruth noted testing found Mr. Mills exaggerated symptoms.

In a letter dated November 10, 2005, Dr. Ruth noted that he reviewed the psychiatric examination of Mr. Mills by Dr. Granacher. Dr. Ruth disagreed with Dr. Granacher on several respects and noted that Dr. Granacher did not describe any psychiatric symptoms arising from a physical injury sustained in the work incident of February 20, 2003. He disagreed with Dr. Granacher's failure to assign an impairment rating to Mr. Mill[s'] pre-existing psychiatric impairment. Dr. Ruth noted that Dr. Granacher did not address the numerous indicators of malingering which were documented in prior examinations, did not explain the spurious findings by the Kaufman Brief Intelligence Test and only administered the MMPI-2 test. Therefore, he disagreed with Dr. Granacher's conclusions arising from the examination.

In a supplemental report dated November 18, 2005, Dr. Ruth reviewed a record from ARH in Hazard and noted that Mr. Mills was admitted to the psychiatric unit at ARH on October 8, 2005. He noted that Mr. Mills had been charged with assault after striking his brother-in-law following a dispute at the home of Mr. Mills' sister. Dr. Ruth noted that Mr. Mills was arrested and taken to Laurel County Detention Center, but while there reported that he had suicidal thoughts since the explosion at CTA and was taken to Appalachian Regional Hospital where he was admitted. Dr. Ruth opined that Mr. Mills' hospitalization was precipitated by malingering of suicidal thoughts in order to gain his release from incarceration. He further opined that Mr. Mills' incarceration was necessitated by the family dispute. He opined that the incarceration and hospitalization were not related in any fashion to his work incident.

With regard to Dr. Ruth's report, we agree with Mills that he "missed the mark" by discussing whether Mills's psychological injuries arose from his hearing problem, as Mills never argued that his psychological injuries arose out of his hearing problem. Nor did Mills have to base his psychological claim on his hearing loss in order for it to be compensable. *See Lexington-Fayette Urban County Government v. West*, 52 S.W.3d 564, 566-67 (Ky. 2001) (harmful psychological change must directly result from a physically traumatic event). Still, we do not believe that the ALJ erred by relying upon Dr. Ruth's report in finding that Mills did not suffer a work-related psychological injury. Dr. Ruth ultimately diagnosed Mills with malingering and anxiety disorder (not otherwise specified). He did not, however, diagnose Mills with PTSD. Indeed, he even stated in his report that the symptoms Mills reported were incompatible with PTSD. Further, Dr. Ruth expressly opined that Mills's psychological impairment resulted entirely from a preexisting, active emotional disorder.

Finally, a finding that Mills suffered a work-related psychological injury is not compelled. As set forth above, the ALJ properly relied upon Dr. Ruth’s opinion for the proposition that Mills’s psychological impairment was not the direct result of a work-related injury. Further, several doctors found malingering or exaggerated symptoms. And, of course, there was evidence that Mills was being treated for depression and anxiety prior to the explosion at CTA. In particular, the Board noted in its opinion that Mills had been taking Xanax since 1990, occasionally supplemented with other antidepressants, particularly after his father’s death in 1996. While there was evidence to support a contrary conclusion, the ALJ “has the sole authority to judge the weight, credibility and inferences to be drawn from the record.” *See Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997). The evidence simply did not compel a finding in Mills’s favor.

The Workers’ Compensation Board’s opinion, affirming the decision of the Administrative Law Judge, is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CTA
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