

RENDERED: JANUARY 23, 2009; 2:00 P.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001329-WC

CARL M. SARGENT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-85470

CHESAPEAKE ENERGY COMPANY;
HON. GRANT M. ROARK, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION BOARD APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON AND THOMPSON, JUDGES; LAMBERT,¹ SENIOR
JUDGE.

THOMPSON, JUDGE: Carl M. Sargent appeals from a decision of the Workers'
Compensation Board affirming an Administrative Law Judge's (ALJ) decision.

For the reasons stated herein, we affirm.

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On March 4, 2006, Sargent, an instrument mechanic at the Chesapeake Energy Company, was twisting a valve when he experienced a sharp pain in his neck. His treating physician, Dr. Coleman, ordered him off work until August 2006. After returning to work for a brief period, Sargent ended his employment on December 1, 2006. On June 14, 2007, Sargent filed a Form 101 for compensation for his work-related neck injury. Several months later, the form was amended to include claims for anxiety and depression arising from his work-related injury.

Subsequently, Sargent, during his deposition and hearing testimony, admitted that he experienced neck pain and tingling in his left arm prior to his most recent workplace injury. Further, he testified that Dr. Leon Ravvin performed back surgery on him in 1996, which required him to miss work. Sargent further admitted that he was involved in a work-related automobile accident in 2004, which resulted in a soft tissue injury and neck pain. Finally, Sargent testified that he had received medical treatment for emotional problems prior to May 4, 2006, and had been prescribed medicine to treat the condition.

In addition to Sargent's testimony, medical evidence was submitted at the hearing. The medical evidence was well summarized in the ALJ's opinion and order issued on December 26, 2007. The evidence included depositions and medical reports of several doctors and Sargent's testimony. Dr. Joseph Rapier

noted Sargent's history of neck pain resulting from three incidents. Despite treatment, he noted that Sargent often worked with neck pain.

After reviewing Sargent's medical history and diagnostic reports, Dr. Rapier opined that a history of multiple strains to the cervical spine had aggravated Sargent's pre-existing dormant degenerative disc disease. He assessed an eight percent impairment, equally dividing the impairment among Sargent's three neck injuries. Dr. Rapier concluded that Sargent did not retain the physical capacity to return to his previous employment.

Dr. Ronald Mann opined that Sargent's recent work-related injury was the cause of his complaints. Dr. Mann diagnosed Sargent as having major depression secondary to pain and loss of employment, cervical degenerative disc disease, among other things. He assessed a sixteen percent whole body impairment, including thirteen percent for the lumbar and eight percent for the cervical area. Finally, he opined that Sargent had no active impairment until he sustained his final work-related injury, and that he did not retain the physical capacity to return to his former employment.

Dr. Eric Johnson noted that Sargent had been diagnosed with depression in 2000 and 2001. He was diagnosed with chronic depression and anxiety in 2002 and with a major depressive disorder in 2003. Dr. Johnson opined that Sargent suffered from a pain disorder associated with psychological factors. While observing that Sargent had symptoms of depression for several years, he believed the most recent work-related injury exacerbated the pain disorder and

depression. He assessed a fifteen percent impairment with five percent relating to his prior medical condition.

Dr. Douglas Ruth diagnosed only a single episode of major depression and assigned a three percent psychiatric impairment. Dr. Ruth observed that Sargent's pre-existing psychiatric complaints were well-documented, and his physical limitations predated his more recent workplace injury. Citing that his examination did not reveal significant depression, Dr. Ruth opined that Sargent could return to work and disputed Dr. Johnson's impairment rating.

Dr. John Vaughan reported that Sargent's medical history was replete with treatment for chronic neck and lower back pain. For example, Dr. Vaughan noted that Sargent had visited with Dr. Coleman for neck and back treatment on thirty-nine occasions. He diagnosed a chronic cervical strain, cervical spondylosis, chronic lumbar strain, lumbar spondylosis, and post-laminectomy syndrome. He assigned a five percent impairment for the neck and a five percent impairment for the back, both impairments pre-existing the current work injury.

Dr. Henry Tutt's medical report, filed by Chesapeake Energy, noted that Sargent had a normal musculoskeletal and neurological examination. He further observed that Sargent's medical records indicated complaints of neck pain dating back to 2000. He noted that Sargent had a long history of depression and anxiety. He opined that he could not find any reason to prevent Sargent from returning to his prior employment.

Dr. Leon Ravvin testified by deposition on October 8, 2007. Dr. Ravvin performed a left L5-S1 laminectomy and discectomy on Sargent in November 1996. He opined that Sargent had a twelve percent impairment as a result of the lumbar surgery. On January 9, 2007, Dr. Ravvin reviewed an MRI, which showed degenerative changes in Sargent's cervical spine. He further noted that he saw nothing on the 2006 film identifying any additional harmful change in the structural integrity of the cervical spine. Dr. Ravvin assessed a seven percent impairment and attributed it to Sargent's pre-existing condition.

Following the hearing, the ALJ reviewed the evidence and concluded that Sargent did not suffer a work-related injury on May 4, 2006. The ALJ determined that Sargent's pre-existing condition resulted in his current condition. Further, the ALJ found that Sargent's pre-existing psychological condition, which required on-going medication, was the cause of his current psychological condition. The ALJ dismissed Sargent's claims for physical and emotional pain. The Board affirmed and this appeal followed.

Sargent contends that the ALJ's decision was not supported by substantial evidence. Specifically, Sargent contends that the ALJ mischaracterized Dr. Ravvin as his treating physician. He contends that this incorrect finding and his reliance on Dr. Ravvin's opinion cast doubt on the validity of the ALJ's entire decision. He further contends that Dr. Ravvin's focus on his back condition, which was not a part of the claim, made the ALJ's reliance on his medical opinion even

more problematic. Therefore, Sargent contends that the ALJ's decision should be reversed. We disagree.

When reviewing the affirmation of an ALJ's decision by the Workers' Compensation Board, we must decide, in light of the record, whether the evidence is so overwhelming as to compel a favorable finding for the appellant. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984). Our function, in reviewing such a decision, is to correct the Board when it "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 Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

Furthermore, the ALJ, as the finder of fact, has broad discretion to decide the quality, character, and import of the evidence and to draw reasonable inferences from the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). Additionally, a claimant's treating physician's testimony is not given greater weight than other medical evidence; rather, the ALJ is free to assign weight in a manner of his or her choosing. *Sweeney v. King's Daughters Medical Center*, 260 S.W.3d 829, 833 (Ky. 2008).

Although Sargent disagrees, the ALJ had the authority to assign greater weight to Dr. Ravvin's medical opinion. While he may have mischaracterized him as Sargent's treating physician, this factual finding has little import because there is no rule requiring deference to a treating physician's medical opinion. *Id.* Further, the ALJ's opinion and order state that Dr. Ravvin's

opinion regarding Sargent's neck condition was substantiated by the opinions of Drs. Tutt and Vaughan.

Further, Dr. Ruth opined that Sargent's psychological condition predated his workplace injury. His conclusion was supported by Sargent's history of emotional problems. While Sargent notes that Dr. Johnson disagreed, the ALJ was free to accept Dr. Ruth's finding over Dr. Johnson's. Accordingly, from the entire record, there was substantial evidence that Sargent's neck and psychological conditions pre-dated May 4, 2006. While he disputes this conclusion, Sargent has failed to establish that the evidence was so overwhelming as to compel a finding in his favor.

For the foregoing reasons, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Randy G. Clark
Pikeville, Kentucky

BRIEF FOR APPELLEE:

Greg Little
Lexington, Kentucky