

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 22, 2023

CLAIM NO. 202100795, 202100756 & 202099700

MICHAEL HARDIN

PETITIONER

VS. APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

FORD MOTOR CO.
and HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and MILLER, Members.

STIVERS, Member. Michael Hardin (“Hardin”) seeks review of the February 16, 2023, Opinion and Order of Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”), resolving three injury claims he filed against Ford Motor Co. (“Ford”). Based upon the opinions of Dr. James Farrage, Hardin’s evaluating physician, and Dr. Thomas Loeb, Ford’s evaluating physician, the ALJ found Hardin sustained a May 26, 2019, temporary left elbow injury and a December 3, 2019, temporary low

back injury and awarded only a period of medical benefits for each injury since Hardin did not miss work due to either injury.¹ The ALJ also found Hardin did not sustain work-related neck and left arm injuries alleged to have been caused by cumulative trauma at work manifesting on March 15, 2020. Hardin also appeals from the March 22, 2023, Order sustaining in part and overruling in part his Petition for Reconsideration.

On appeal, Hardin argues the ALJ erroneously misinterpreted the lay and medical evidence pertaining to his alleged neck and left arm injuries.

BACKGROUND

On May 19, 2021, Hardin filed two Forms 101 alleging separate work-related injuries. Hardin alleged a work-related May 26, 2019, injury to his left elbow caused when he slipped and fell at work. Hardin also alleged a December 2, 2019, work injury caused by “fall, slip or trip, NOC” injuring his “low back lumbar area.” On May 26, 2021, Hardin filed a third Form 101 alleging a repetitive motion injury to multiple body parts. Hardin asserted this injury occurred “as a result of repetitive job duties, condition in left arm + neck became occupationally disabling.” By Order dated August 4, 2021, the ALJ consolidated the claims. As this appeal only pertains to the alleged March 15, 2020, work injury, we will not discuss in depth the evidence relating to the May 26, 2019, and December 3, 2019, injuries.

Hardin testified at a November 11, 2021, deposition and at the December 16, 2022, final hearing. Hardin’s deposition reveals he was born

¹ The December 16, 2022, Benefit Review Conference Order and Memorandum (“BRC Order”) reflects the parties stipulated to an alleged December 3, 2019, injury.

December 9, 1961, and is a high school graduate. He began working for Ford at the LAP plant on June 25, 2012, and in June 2018, was transferred to Ford's truck plant. Prior to working for Ford, he worked for Gateway Press for 26 years. Hardin testified he was performing the rag fill position on the assembly line on all three alleged injury dates.² He described his job duties as follows:

A: Well, the first thing I do, I would screw in two bolts into the grille. And then from there, I would go over and put the windshield wiper plugs together. From that, I would wait for the hoses to get filled up in the different area of the truck. It would be the windshield wiper fluid I take out first, and then the brake – power steering fluid, and then the radiator hose, and the radiator fill-up hose.

...

A: After that I would hit a button, sending the carrier back, and then I would go over there and hit – 75 percent of your trucks get a camera put in it. Scan the camera, throw it into the bed. On 70 percent of the trucks, the ACC unit gets done in the very front of the car, which is at the bottom of the car. And I had to bend down there and put a – it's a reader of it, and I had to adjust the reader down to the volume in which they wanted it at for that reading, and then I could get out of the way and go to the neck [sic] truck.

Q: So the truck would come to you, and the first thing you did was screw two bolts into the grille. Were you screwing them in like the grille plate or the –

A: It's a tool. It's a drill that drills them in there.

Q: Right. Were you having to install something with two bolts, or were you just having to make sure that they were tight?

A: No. I drilled them in there to make sure the grille was tight.

² During the November 11, 2021, deposition, the parties refer to the "rack fill" job Hardin performed. At the hearing, Hardin clarified the position at which he worked is known as the "rag fill."

Q: Okay. But you weren't actually having to place the grille on the truck, it was already on when it got to you?

A: It was already on.

Q: Okay. About how heavy is that gun that you are working with?

A: When you stick everything – the battery on it, I would say it's every bit of 11, 12, 13 pounds, in that range.

Q: Is it one that's suspended from the ceiling?

A: Oh, no, ma'am. You carry it with you.

Q: Okay. Your neck [sic] step was to put the wipers together?

A: The windshield wiper. It's just a little clamp that you clamp together, yes.

Q: Did you do both wipers?

A: It's just a clamp. It's what makes them connect so they can start working.

Q: Okay. And then you were responsible for removing the fluid hoses, you weren't responsible for filling them?

A: No, that's the guy in front of me. He puts them on; I take them off.

Q: About how heavy are those hoses?

A: Well, the first one weighs probably three to four pounds. The next two are probably 10 to 12, and the last one is 14.7.

Q: Okay. And you had to take all of them off?

A: The difference about that is that the trucks are different types. So when you're taking those last two off, you are looking at a different height of taking it off at a different angle every time. And that's 430 trucks a day.

Q: Okay.

A: And that's taking them hoses off 1,720 times each day.

Q: Then you were responsible for scanning a camera and placing it in the truck?

A: Yes. And that would go 75, 80 percent of the time.

Q: Were you actually installing the camera, or were you just like –

A: No, scanning them.

...

Q: That's okay. Go ahead.

A: Just scan the box and throw it in. And then the ACC in the front, bending down, putting the reader on that, and then screwing it to it, and that designated brains that it needed to be in. And that's at the bottom at the bumper. ...

Hardin was assigned the rag fill job upon transferring to the truck plant in June 2018 and he averaged working 42 hours weekly at that position. Following the March 2020 plant shut down, he returned to the same position performing the same duties. In late 2020, he left the rag fill position and began putting COVID masks in containers located inside the plant.³ Hardin performed the job until he underwent a second surgery on October 27, 2021. During the period he filled the containers with COVID masks, he worked 40 hours weekly at the same pay rate. He intends to return to work for Ford, as he wants to see the job he will be offered.

Following the May 26, 2019, left elbow injury the only work he missed was the rest of his shift. The next day he returned to the rag fill position.

³ On December 7, 2020, Hardin underwent neck surgery consisting of "anterior cervical discectomy with fusion C5-C7" performed by Dr. Thomas Becherer.

On December 3, 2019, he injured his lower back. He reported the injury during the shift following his injury. He did not miss any work on December 3, 2019, since it occurred approximately 30 minutes prior to the end of his shift. After he reported the injury the next day, Ford placed him on light duty. He missed no work as a result of this injury because he “worked through it.” Hardin explained he worked three days on light duty before Ford took a 12-day Christmas break.

Hardin described the March 15, 2020, injury as follows:

A: No, ma’am. My mother just died last year, the 27th, of dementia. And you don’t see it coming at first. You might think you know why she’s not remembering things, but you don’t see it. This is the same thing. This started out like a little irritating burning, but it – you just push it off. You are just like, okay, it’s not there. And then it keeps coming back and getting worse. And then when the tips of my fingers started burning, I knew I had a problem.

Q: You said it started out between your forefinger and thumb in between that web?

A: In the web, yes, ma’am.

Q: Is that on your left hand?

A: Yes, ma’am.

Q: And what started there? Pain? Numbness?

A: Numbness, and like the current running through there, like an electrical current.

Q: And how did your symptoms progress from there?

A: I started getting the electric current moving up the middle of my arm up to my elbow. And then I thought, well, here we go again. So from there on it just started getting worse. And I went in there and I seen him on 6/9 about it. And I talked to the doctor, and he said, well, I know more about carpal tunnel than this. He goes, I am going to have to send you to somebody. So

he ended up sending me to Kutz & Kleinert. When I got up there, the first thing they did was give me a shot in there because they called it something syndrome.

Q: Before we go through your medical treatment, I just want to make sure we've gone over everything in regard to the injury date. I guess I just want to make sure that nothing specific happened on March 15, 2020, why that date of injury on the 101?

A: That's probably the first time I realized something was going on in there.

Q: Okay.

A: It caught my attention with the burning in my fingertips. I mean, you are just itching it or something, or it may have a little rash or something. But when you get your fingertips burning, you know something's wrong.

Q: This was all in your left hand?

A: Yes, ma'am.

Q: Any reason you waited almost three months to report it to Ford?

A: Well, you had the month of COVID there that we was off. So when I went back in, and I started working again, and that vibrating in that tool that I shoot the bolts in with every day, and moving of the hoses, it just kept getting worse. And when it got to the point where it started shooting pain from my elbow up to my shoulder, that's when I went in and told the doctor, and that's when we had our conversation about it, and that's when he sent me to Kutz & Kleinert. But he's the one that told me that it may not be in my hand, that it could be in my neck, and that's where it turned out to be.

Hardin testified the March 15, 2020, injury affected his left arm and neck. He continued to work at the rag fill position approximately six or seven months after the injury. He was off work from December 7, 2020, the date of his first surgery, until late May 2021. On May 27, 2021, he began helping with COVID

procedures. Upon returning to work, he worked with light duty restrictions at the same wage rate. Hardin was off work from October 25, 2021, two days before the second surgery, through the date of his deposition. Both cervical surgeries were performed by Dr. Thomas Becherer who continues to treat him.⁴ He is not asserting a shoulder injury claim.

At the time of his deposition, Hardin was taking Oxycodone and a “spasm pill” due to the effects of his March 15, 2020, injury. He provided the following description of his neck problems:

A: Well, as I’m sitting here, my neck is getting stiff as a board. That’s why I’m moving around a little bit. Sometimes it feels like I’ve got an elephant on my neck, and it’s just like I can’t get the weight of it off.

Q: Any issues with your elbow?

A: It’s still doing the same thing it was doing before the operation.

Q: And what is that?

A: I mean, I just can’t lift with no weights with, anything that matters, you know. I have got two grandkids, and if I pick them up I have got to pick them up with my right arm. It just can’t hold the weight.

Hardin testified he has no lower back problems.

At the hearing, Hardin testified that he confirmed with Ford’s Human Resources Department he has worked at Ford’s truck plant since April 27, 2019. He reiterated that on the date of the three alleged injuries, he was working at the rag fill position.

⁴ Hardin was scheduled to see Dr. Becherer the day after his deposition.

Before Ford transferred him to the truck plant, Hardin worked on “front roof bowls” at LAP. Hardin provided a description of that job:

A: Well, you put in the front header. As you put in the front header, the guy across from you, it’s two-man teams. You both slide it in the front header. And then as the car, you go down; you put the roof bowls on. And then on the back end, you have a rear header that you put in. Both persons do it. And that’s a constant job all day long, too.

Q: Are you bending?

A: No. You’re going over a railing. You’re above the car. The two doors come in and the body comes up, and you’re putting that together so it doesn’t fall apart. That keeps the door -- the sides together.

Q: Does it require you to reach like out from your shoulders?

A: Yes, sir, every one of them. That’s how you get to the headers. You have to bend over the railing. It hits you right at your mid waist. And that’s constantly all the way through the car.

Q: Again, is the job repetitive and fast paced?

A: Yes, sir.

Q: How many vehicles would you be required to do a day?

A: Oh, over there, it was 850 to 875.

Q: Is that a fair and accurate description of the physical requirements of your job at LAP as a front roof bowl and also at your physical job duties as the rag fill at Kentucky Truck Plant?

A: Yes, sir.

Hardin believes he sustained neck and arm injuries due to cumulative trauma manifesting on March 15, 2020. He explained the significance of that date:

Q: Now, let's come to --- I filed a Form 101 on your behalf stating that as a result of your repetitive job duties on the assembly line, the condition in your neck and arm became occupationally disabling on March 15, 2020. What's significant about that date?

A: Well, that's where I started tingling in my forefinger and my thumb here.

Q: Was that a condition that grew progressively worse and worse?

A: Yes, sir. It started shooting pain up to my left elbow.

Q: Did you also report it to your supervisor?

A: Yes.

When he went to Ford Medical Department complaining of numbness in his hands, he was referred to Kleinert Kutz. At Kleinert Kutz, he received shots in his forearm. He was placed on work restrictions and underwent six weeks of physical therapy. Hardin testified nerve conduction studies revealed neck problems rather than hand problems. As a result, he went to Dr. Richard Pokorny who referred him to Dr. Becherer. Dr. Becherer continued his light duty restrictions and performed surgery on December 7, 2020. According to Hardin, the surgery consisted of "two discs replaced and a bone fusion titanium plate." Following the surgery, he underwent seven months of physical therapy. Hardin underwent a second surgery on October 27, 2021, which was followed by four months of physical therapy.

He was off work from December 7, 2020, until January 14, 2022. During that period he did not receive temporary total disability ("TTD") benefits. Hardin worked light duty until December 7, 2020. When he returned to work on

January 15, 2022, he did not perform his pre-injury job on the assembly line. He described his duties upon returning to work.

A: Well, ever since Covid come out, there's two of us. One guy does half the building, and I do the other half. And we walk out and fill in the masks. Go through the whole building which is probably a mile-and-a-quarter walk for me going out and coming back. And it's just – when you walk, my body, it aches. It just aches everywhere so.

...

Q: Now, do you work a standard 40-hour week?

A: Yes, sir.

Q: Do you get any overtime?

A: None.

In 2022, Dr. Becherer referred him to Dr. Steven Reiss. After obtaining the results of a myelogram and an EMG, Dr. Reiss recommended a third surgery which Hardin did not undergo because Dr. Reiss could not guarantee “a 100-percent fix for it.” Dr. Reiss obtained a Functional Capacity Evaluation and placed him on the following permanent restrictions:

A: Twenty-five pounds, total, both arms; 40-pounds pushing or pulling, no overhead work at all.

Q: Are you supposed to avoid repetitive work activities?

A: Yes, sir.

Although Hardin is capable of performing his current job, it is not permanent or a bid job. Thus, he can be bumped by an employee with more seniority if he or she has the same or greater work restrictions. Hardin has not earned his pre-

injury wages because he does not work overtime. Hardin identified his current symptoms and problems resulting from the alleged neck and arm injuries.

Q: Let's come now to your neck and your arm. Tell the Judge what type of symptoms and physical limitations you have with your neck and your arms?

A: Just moving my neck side to side is – I mean, I don't have much movement at all in it. Tilting forward or backward is practically none. Lifting anything, it's – I mean, that's why I have my restrictions that I do. I can't do nothing I used to do. I had – somebody had to come put a garage door –

...

Q: How would you describe the pain? Where's the pain located?

A: All the way through the lower back, up top in my shoulders, everywhere.

Q: And how would you –

A: It goes on everywhere.

Q: How would you describe your pain?

A: Shooting.

Q: Do you have it all the time? Is it constant?

A: It never goes away. It's always there. It will catch you. You do something wrong, it will let you know.

Q: Let's come back to work at this point in time. You're doing your job as the Covid mask distributor, whatever they call it. But let me talk to you about that. How do these injuries affect your ability to do that work?

A: Well, I don't have to do nothing over my shoulders. It's all shoulders or below. And it's not heavy. The bag probably only weighs two pounds. And all I'm doing is filling up the masks. When we first started of [sic] it, we did a lot of them. And now, we're only doing probably 20 percent. So the rest of the day, I just sit in a chair.

Q: And you also walk. Would you say you walk?

A: Yes, sir.

Q: And you have problems doing that part of the job?

A: Well, when you walk through the building, you come to a stop where a four-way is, there's a stop. I have to turn completely around so that I can see if there's a tow motor coming from behind me or not. And when I get halfway, three quarters done with it, turning back, going back, I'm really – I mean, it's a slow pace for me. I don't get in no hurry, that's for sure.

The March 15, 2020, injury prevents him from bowling or playing golf.

His neck symptoms only allow him to sleep four to five hours nightly. Currently, he takes Flexeril. Hardin's personal health insurance paid for his surgeries and treatment. Due to his restrictions and limitations, Hardin believes he is incapable of performing his pre-injury work activities on the assembly line. He also believes he is unable to perform any type of assembly line work or job he has held in the past.

Hardin works Friday, Saturday, Sunday, and Monday and then is off for three days. He described the symptoms he developed on March 15, 2020, as follows:

Q: You mentioned that you started having neck and hand, arm pain on March 15, 2020; is that correct?

A: Yes, ma'am.

Q: When you reported that to Ford Medical, how did you report that, just issues with your hands?

A: Yes, just the numbness that went through my forefinger and thumb.

Q: You didn't report any neck issues at that time?

A: No, ma'am, it wasn't bothering me then. It progressively did.

Q: When did you start noticing the issue in your neck?

A: Around 6:10 [sic].

Q: And you said you reported it at that time?

A: I had talked to the doctor that day.

Q: What doctor?

A: The Ford doctor.

The restrictions imposed by Dr. Reiss when he returned to work on January 15, 2022, have remained unchanged. He continues to perform the job handling the COVID masks and hopes to remain at that job.

The December 16, 2022, BRC Order identified the following contested issues: “Benefits per KRS 342.730, Work-relatedness/causation, Notice, Average weekly wage, Exclusion for pre-existing disability/impairment, Injury as defined by the ACT, Ability to return to work, and TTD.”

Relying upon the opinions of Drs. Farrage and Loeb, the ALJ found Hardin sustained temporary injuries on May 26, 2019, and December 2, 2019.⁵ In determining Hardin failed to meet the burden of proving he sustained neck and shoulder injuries due to repetitive work at Ford, the ALJ provided the following findings of fact and conclusions of law which are set forth *verbatim*:

Hardin failed to satisfy his burden of proving he sustained any left arm and neck injuries due to repetitive job duties at Ford. Hardin relies on the opinion of Dr. Farrage, which does not provide substantial evidence of an injury resulting from repetitive job duties. His opinion is based on an inaccurate and incomplete history, and it does not support any repetitive motion injury.

⁵ Concluding both injuries had resolved, the doctors did not assess an impairment rating for either injury.

Dr. Farrage's report does not support a repetitive motion injury. First, his report is based on an inaccurate account of the alleged injury. He does not even note a March 15, 2020 injury nor does he note the nature of the injury alleged by Hardin. Hardin alleged a repetitive motion injury with the development of symptoms which gradually progressed. Dr, Farage does not document the history of pain beginning in the hand and progressing up the arm that Hardin supplied in his testimony. His report contains no discussion of any repetitive job duties or gradual progression of symptoms, instead he notes a specific incident on November 30, 2020, that he notes aggravated the left arm symptoms and cervical involvement. This injury date is not mentioned in any other reports or in Hardin's own testimony. Additionally, Dr. Farrage's report does not contain any discussion of Hardin's work activities. Although, he indicates Hardin's overall clinical presentation and historical account are consistent with the proposed mechanism of injury, the mechanism of injury noted in his report is not the same mechanism alleged by Hardin. Again, his report documents a specific incident and does not discuss any repetitive work activities. Finally, when he discusses the axial loading and lateral shear forces experienced by the cervical spine, he states they resulted in an "acute" disc herniation, which would indicate a sudden onset not the gradual progression and repetitive cumulative injury alleged by Hardin. Dr. Farrage's report simply does not support any injury resulting from repetitive job duties.

Based on the foregoing, the ALJ finds that Hardin failed to satisfy his burden of proving he sustained any cervical injury related to his job duties on March 15, 2020.

The ALJ dismissed Hardin's claims for all three injuries. This prompted a Petition for Reconsideration from Hardin. Hardin first noted the ALJ incorrectly stated he was injured on December 2, 2019, when the injury actually occurred on December 3, 2019. Next, because the ALJ found he sustained May 26, 2019, and December 3, 2019, temporary injuries, Hardin asserted the ALJ

erroneously failed to award TTD benefits and medical benefits for each injury extending until he attained maximum medical improvement. Consequently, the ALJ must provide additional analysis and enter awards for each injury.

Hardin also contended the ALJ erroneously misinterpreted the lay and medical evidence in resolving his claim for repetitive neck and left arm injuries. Hardin argued the ALJ's reliance upon Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004) was misplaced. He requested the ALJ correct the error and enter the appropriate award. Hardin cited to his testimony regarding his repetitive job duties on the assembly line and how he believed those job duties resulted in cumulative trauma injuries. Hardin asserted that unlike in Cepero v. Fabricated Metals Corp., *supra*, he did not conceal or intentionally hide information from any of the physicians, and he requested the ALJ to identify what he concealed or intentionally hid from any of the physicians. Accordingly, as argued by Hardin, additional findings and analysis concerning the application of Cepero to this case were necessary. In Hardin's view, even though Dr. Farrage's report did not mention a March 15, 2020, date of injury, that date is important only for fixing the date notice is required and for clocking the statute of limitations for cumulative or repetitive injuries. Hardin maintained the ALJ erroneously rejected Dr. Farrage's opinions and conclusions.

The ALJ sustained Hardin's Petition for Reconsideration regarding his entitlement to medical benefits. The ALJ noted Drs. Farrage and Loeb agreed the injuries had resolved. Since Hardin missed no work due to the injuries, the ALJ

concluded he was not entitled to TTD benefits. Concerning Hardin's entitlement to medical benefits, the ALJ awarded the following:

With regard to medical benefits, Hardin is entitled to reasonable and necessary medical benefits related to the May 29, 2019 injury up to and including August 29, 2019 (three months post injury) and for the December 3, 2019 injury up to and including March 3, 2020 (three months post injury).

In overruling the remainder of Hardin's Petition for Reconsideration, the ALJ provided the following reasoning which is set forth *verbatim*:

The remainder of Hardin's petition is a rearguing of the facts. As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (KY 1993). The ALJ had the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (KY 1977). The ALJ explained her rationale and reasoning for finding Dr. Farrage's report was not substantial evidence proving a repetitive or cumulative trauma injury. In the last paragraph on page 8 of the opinion, the ALJ provides her multiple specific reasons for finding Dr. Farrage's opinion does not support a repetitive trauma injury. Finally, it is not that Hardin intentionally hid anything from any physician, but his history of a gradual injury is not consistent with the acute injury described and diagnosed by Dr. Farrage.

According to Hardin, the ALJ erroneously found Cepero applicable in attributing no weight to Dr. Farrage's opinions and Hardin's testimony. As he did in his Petition for Reconsideration, Hardin maintains the facts in the case *sub judice* are completely dissimilar to the facts in Cepero as he did not deceive the medical examiners. Thus, the ALJ's decision relative to Hardin's March 15, 2020, claim

should be vacated, and the claim remanded for the ALJ to fully consider the opinions of Dr. Farrage.

Hardin notes he consistently testified about the nature of his repetitive job duties on the assembly line. Hardin maintains he identified the repetitive job duties he believed were responsible for injuring his neck and arm. Hardin notes he identified March 15, 2020, as the date tingling in his fingers began to progressively worsen. Hardin asserts as follows: “Per Cepero, *supra*, what did the Petitioner conceal or intentionally hide from any of the physicians including Dr. James Farrage?” Hardin notes he alleged a cumulative trauma injury as opposed to a single trauma incident. Thus, March 15, 2020, is only relevant to the obligation to provide notice and for the clocking of the statute of limitations. Since the ALJ erroneously found Cepero to be applicable, Hardin maintains reversal is necessary for reconsideration of Dr. Farrage’s report and entry of additional findings and analysis on the issue of whether he sustained a work-related neck and shoulder injury while in the employ of Ford.

ANALYSIS

As the claimant in a workers’ compensation proceeding, Hardin had the burden of proving each of the essential elements of his cause of action for the alleged March 15, 2020, injury. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Hardin was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). “Compelling evidence” is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ.

REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility, and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ 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. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

In finding Hardin failed to prove he sustained neck and arm injuries due to cumulative trauma at work, the ALJ found Dr. Farrage's report unconvincing and unsupportive of the claimed March 15, 2020, injury as his opinion is based on an inaccurate and incomplete history. The ALJ noted Hardin alleged a repetitive motion injury with symptoms gradually progressing. Hardin's testimony is consistent with this allegation. During his November 11, 2021, deposition, Hardin testified March 15, 2020, is significant because his discomfort began in the webbing between his forefinger and thumb. He identified the discomfort as feeling like "an electrical current." As weeks went by, this sensation worsened and began running up his arm to his elbow. His fingertips also burned. He also identified his physical symptoms as "an irritating burning which keeps coming back and getting worse." Hardin explained that when the tips of his fingers started burning, he then knew he had a problem. That sensation continued to worsen until he reported it to Ford's Medical Department on June 10, 2020. As a result of his visit to Ford's Medical Department, he was sent to Kleinert Kutz. Hardin testified that although nothing specifically happened on March 15, 2020, he believed that was "the first time [he] realized something was going on in there." He explained the burning in his fingertips caught his attention and he identified the symptoms he experienced in his left hand when he went to Ford's Medical Department. At the hearing, Hardin testified March 15, 2020, is when he started having tingling in his forefinger and his thumb. That condition worsened to the extent the pain extended up his left arm to the elbow. On June 10, 2020, he reported his symptoms to Ford's Medical Department.

Upon comparing Hardin's testimony to Dr. Farrage's report, the ALJ correctly pointed out Dr. Farrage did not document a history of pain beginning in the hand progressing up his arm as Hardin testified. Also significant was Dr. Farrage's failure to document Hardin's repetitive job duties and his gradual progression of symptoms. Rather, Dr. Farrage noted a November 30, 2020, specific incident which "aggravated the left arm symptoms and cervical involvement." The ALJ also found significant Dr. Farrage's failure to mention the March 15, 2020, injury or address the nature of Hardin's alleged injury. Further, the November 30, 2020, injury date identified by Dr. Farrage as aggravating "the left arm symptoms and cervical involvement" is not mentioned in any other medical record or during Hardin's deposition and hearing testimony. Dr. Farrage's report contains no discussion of Hardin's repetitive work activity and symptoms developing as a result of these activities. The ALJ noted Dr. Farrage stated Hardin's overall clinical presentation and historical account were consistent with the proposed mechanism of injury. However, the mechanism of injury noted in Dr. Farrage's report is not the same mechanism Hardin alleged and about which he testified. Dr. Farrage's report documents a specific injury and does not discuss and identify repetitive work activities as the cause of the alleged work injury. Rather, Dr. Farrage opined Hardin experienced an "'acute' disc herniation" which implicates a sudden onset and as noted by the ALJ, "not the gradual progression and repetitive cumulative trauma injury alleged by Hardin." Thus, Dr. Farrage's report does not support Hardin's assertion he sustained a cervical and arm injury due to performing repetitive job duties.

A review of Dr. Farrage's August 18, 2021, IME report confirms the ALJ accurately interpreted his report. On the first page of his report, under the heading "History of Present Illness," Dr. Farrage indicates as follows: "[Hardin] reported another work incident on 11/30/20 in the course of using a vibrating power tool which aggravated the left arm symptoms and cervical involvement." After summarizing Hardin's medical treatment and the results of his examination, Dr. Farrage concluded as follows:

The patient's overall clinical presentation and historical account are consistent with the proposed mechanism of injury. The axial loading and lateral shear forces experienced by the cervical spine resulted in an acute disc herniation with associated neural impingement which brought his underlying cervical degenerative condition into disabling reality.

The ALJ demonstrated in-depth knowledge of Hardin's testimony and the opinions of Dr. Farrage set forth in his August 18, 2021, report.⁶ As noted by the ALJ, Dr. Farrage's report reveals he concluded Hardin sustained an acute disc herniation due to "the axial loading and lateral shear forces experienced by the cervical spine." In his report, Dr. Farrage does not opine Hardin sustained an injury due to cumulative trauma while working at Ford. More importantly, as noted by the ALJ, Dr. Farrage identifies a November 30, 2020, injury which is not supported by Hardin's testimony or any other medical record. During his deposition and at the hearing, Hardin made no mention of such an injury. Dr. Farrage's report does not reference March 15, 2020, as the date of injury or the date of manifestation of

⁶ Although Dr. Farrage provided another report dated June 6, 2022, he did not address causation. Rather, his report dealt more with the impairment rating attributable to the alleged cervical injury.

Hardin's symptoms. Further, Dr. Farrage did not identify nor discuss Hardin's developing symptoms which, as Hardin testified, continued to worsen after March 15, 2020, causing him to finally report those symptoms to Ford on June 10, 2020.

Moreover, although the ALJ did not cite to or reference any other medical opinions or records as support for her decision, the report and testimony of Dr. Loeb supports the ALJ's decision. In his October 19, 2021, IME report, Dr. Loeb identified Hardin's chief complaint as "neck pain with associated 'numbness' in the left upper extremity, particularly the 6th nerve root distribution which is the thumb, index, and long fingers." Hardin denied any current low back pain and had only mild residual left lateral elbow pain. Dr. Loeb believed the medical records do not document a specific injury on March 15, 2020. Rather, Hardin complained he began "developing numbness in his left upper extremity, particularly his left hand in the thumb, index, and longer fingers somewhere around the end of 2019 or the first of 2020." Dr. Loeb stated Hardin was very non-specific regarding the onset of symptoms and did not complain of neck pain until several months later. Dr. Loeb pointed out Hardin's medical records did not document a specific injury pattern to the cervical spine; rather, they reveal Hardin's symptoms basically originated approximately six or seven months prior to him reporting his problems on June 10, 2020. At that time, he was referred to Kleinert Kutz. Regarding the injury in question, Dr. Loeb proffered the following:

Confusing dates notwithstanding, there is no evidence in the records that Mr. Hardin experienced any injury to his cervical spine or left upper extremity as a result of any date, whether it have been June 10, 2020, or March 15, 2020. There simply is no documented injury pattern

to the cervical spine which has now led to one cervical spine surgery and a second soon to follow.

...

This all has developed from acquired genetic acquisition of a narrow spinal canal and premature degenerative disc disease at multiple levels with neurologic compromise at the left C6 and C7 nerve root levels, and there is absolutely no evidence objectively of any work-relatedness involved in the development of these findings and symptoms.

...

I would not anticipate him being at maximum medical improvement until at least one year after his upcoming surgical procedure which is a posterior decompression and possible fusion at the C5 through C7 levels. In my opinion, any permanent impairment that is calculated regarding this gentleman's cervical spine would be 100% due to a non-work-related condition.

...

There is no objective evidence anywhere in the medical records that this gentleman experienced any type of mechanism as described by Dr. Farrage. As far as I can tell, there is absolutely no evidence objectively of any direct or indirect injury to the cervical spine as a result of Mr. Hardin's work activities. I believe his entire symptom complex has occurred as a result of the natural course of his underlying multilevel degenerative disc disease with absolutely no causal relationship to his working environment.

On November 23, 2021, Hardin deposed Dr. Loeb who reinforced the opinions expressed within his report regarding the presence of a neck and arm injury due to cumulative trauma occurring at work. That testimony is as follows:

Q: All right. Now, let's talk about the March 15, 2020, to the left arm and the neck. What injury history did you receive from my client concerning the problem with his left arm and neck?

A: I didn't really receive any history or a mechanism of injury.

Q: Okay.

A: It's a bit confusing in that the time frame between the first part of 2020 and somewhere around June 10, 2020. I believe Mr. – well, I know what Mr. Hardin told me. He said he just had a progressive onset of symptoms involving mostly numbness in his left upper extremity which later evolved into neck pain.

Q: Okay, and so there was no single traumatic injury history reported to you?

A: Not that he reported to me, that's correct.

...

He could not give me an incident or a series of incidents that would have challenged his neck, cervical spine, and brought this asymptomatic permanent condition into reality. He just says it started. Well, that's the kind of history from a lot of folks that aren't in the work place. They come to see the doctor finally because they're in pain or they have other associated symptoms and in most cases spontaneous onset, so I tried to search for something in the work place that he could give me or something in the record that could tip us off as to what may have caused this and I can't find anything.

...

Q: Okay. Now, I'm going to ask you this question. You disagree with cumulative trauma you feel in this particular case?

A: Well, yeah. I've been able to find no objective evidence of cumulative trauma in this case. I did ask ... you're asking if I know the exact job he did, no, but I did ask Mr. Hardin what his routine was made up of. I asked him questions that centered around the use of his, you know, upper extremities, head, and neck, so on and so forth, and he didn't give me any clues as to what would be considered excessive or repetitive stress to the structures [sic] would have involved, caused him the most involvement, particularly that of the cervical spine.

Dr. Loeb believed Hardin had “garden variety multilevel degenerative disc disease that has been ongoing following a natural course and he started developing symptoms spontaneously.” With respect to Dr. Farrage’s causation opinion, Dr. Loeb testified as follows:

Q: Okay. So you might be familiar with this. Patient’s overall clinical presentation and historical account are consistent with proposed mode of injury. The axial loading and lateral shear forces experienced by the cervical spine resulted in an acute disc herniation. Are you familiar with the terms axial loading and lateral shear forces?

A: Yes. I –

Q: Go ahead.

A: I couldn’t find anything – there’s nothing in the record that would support that observation. I’m not sure why or where Doctor Farrage obtained that information. I looked in the records. I couldn’t find it. I talked to the claimant, to Mr. Hardin, and went over the types of things that might cause those forces. He couldn’t relate that to me. So if they’re there, I’d be happy to go look at where it’s coming from, but I couldn’t find it.

Q: What exactly are axial loading and lateral shear forces? What type of activities would that be?

A: Well, shear forces are like if you’re turning your head from side to side with – and lifting at the same time. You’re loading the spine or ... and we’re talking about repetitive stuff. Axial loading, let’s say you’re constantly having to look up or constantly looking down and the more violent types of injuries such as falls from let’s say you fall on your head or your neck from a height of ten feet. Well, nobody will even question that, but then you’re talking about getting injuries in the form of fracture, dislocations, or herniated discs, all kinds of things happen at once. Those are axial loads. Shear forces can occur in more violent terms, motor vehicle accidents, for example, but none of that applies to this case, so I don’t ... so when we’re talking about the type what [sic] Mr. James was referring to, repetitive forces of

this type, axial and shear, I couldn't get it from the patient, the claimant. I couldn't get it from the record, so I just had to assume they're not there. I looked.

Importantly, Ford's medical records reflect that on June 10, 2020,

Hardin appeared complaining of the following in his left hand and arm:

Person's Statement of Incident: I removed the hoses that fill up the trucks. At different angles the hoses weight anywhere from 5 pounds, up and my left arm is at different positions. It started originally around 6-7 months ago, but now it shoots down my left index finger and thumb, down my inner forearm and back toward my elbow.

Health Care Representative's Interpretation of the Statement: Left index finger pain, that radiates down in the medial aspect of the left forearm, into the elbow and shoots into his shoulder blade.

As pointed out by Dr. Loeb, within Ford's medical records there is no mention of March 15, 2020, as the date Hardin's left hand and arm symptoms manifested. Rather, those records reveal Hardin began experiencing symptoms at the end of 2019 or the first of 2020. Again, as pointed out by Dr. Loeb, there is no mention of a November 30, 2020, work incident aggravating the left arm symptoms and cervical spine as reported by Dr. Farrage.

This is also borne out by the October 14, 2020, Peer/Medical Record Review report by Dr. Kimberly D. Terry, a neurosurgeon who noted as follows:

The claimant reports that the symptoms started originally around 6-7 months prior to the 06/10/20 date of reported injury, and now the pain shoots down the left index finger and thumb, down the inner forearm and back toward the elbow.

...

The claimant did not report neck pain or symptoms on the reported date of injury. While the claimant reports

the symptoms into the left arm and hand were gradual and occurred 6-7 months prior, there was no report of cervical spine pain or radiation from the cervical spine. Therefore, as there was no acute injury to the cervical spine, or notation of gradual symptoms in the cervical spine similar to what was reported for the left upper extremity, the cervical evaluation is not related to the symptoms reported on 06/10/20.

A review of the medical evidence and Hardin's testimony demonstrates the ALJ had an accurate understanding of Dr. Farrage's report, the balance of the medical evidence, and Hardin's testimony. Just as important, the ALJ's comparison of Hardin's testimony to Dr. Farrage's report cannot be challenged. Consequently, the contents of Dr. Farrage's report supports the ALJ's determination Hardin did not sustain a cervical and arm injury due to repetitive to cumulative trauma occurring while in the employ of Ford. Dr. Farrage's report makes no mention of a cumulative trauma injury. Without question, Dr. Farrage attributes no significance to March 15, 2020, but rather identifies a November 30, 2020, injury which all other medical records fail to reference.

Even though the ALJ did not rely upon Ford's medical records or the opinions of Drs. Loeb and Terry, those records amply support a finding that Hardin did not sustain a cumulative trauma injury of any type manifesting on March 15, 2020. Hardin's burden on appeal is to demonstrate the evidence of record compels a different result. In this case, the medical evidence including Dr. Farrage's medical report does not compel a finding Hardin sustained a cumulative trauma injury manifesting on March 15, 2020. Since the ALJ's decision with regard to the issue raised on appeal is supported by substantial evidence, we are without authority to disturb the decision on appeal. Special Fund v. Francis, supra.

Finally, as alleged by Hardin, the ALJ did not conclude the facts in this case were similar to those in Cepero. As pointed out in her March 22, 2023, Order, the ALJ did not find Hardin intentionally hid information from any physician. Rather, Hardin's testimony concerning a gradual injury is not consistent with the "acute injury" described and diagnosed by Dr. Farrage. After reviewing Dr. Farrage's report, the ALJ concluded his opinions did not constitute substantial evidence supporting a finding of a repetitive or cumulative trauma injury. That being the case, the ALJ correctly concluded she was compelled to dismiss Hardin's claim for a cervical and arm injury due to cumulative trauma alleged to have manifested on March 15, 2020. Although Cepero dealt with a situation in which the claimant concealed information about his prior physical condition from various doctors, it stands for the proposition that an opinion concerning causation based on an inaccurate or incomplete medical history and unsupported by credible evidence cannot constitute substantial evidence.

In Cepero, the ALJ had relied upon a doctor's opinions based upon an inaccurate understanding of Cepero's medical history. Specifically, Cepero deliberately misled the doctor as to his medical history concerning a previous knee injury. Undeniably, the physician's history regarding causation was corrupt due to being substantially inaccurate or largely incomplete. The Kentucky Supreme Court noted this Board had reversed the ALJ concluding as follows:

The Board concluded that the opinions as to causation expressed in the medical reports of Drs. Changaris and Ballard were not of sufficient "fitness to induce conviction in the minds of reasonable men" because those opinions relied upon inaccurate or incomplete

information furnished by Appellant during their respective independent medical examinations.

Id. at 842.

As the Court of Appeals affirmed the Board, and the Supreme Court affirmed the Court of Appeals. The Supreme Court referenced the following:

("If the history is sufficiently impeached, the trier of fact may disregard the opinions based on it. After all, the opinion does not rest on the doctor's own knowledge, an essential predicate to make uncontradicted testimony conclusive.") (citations omitted), *superseded by statute on other grounds as stated in Smith v. Dixie Fuel Co., Ky.*, 900 S.W.2d 609, 612 (1995).

Id. at 843.

The history Dr. Farrage set forth in his report is not consistent with Hardin's testimony regarding the cause of his cervical problems. The ALJ relied upon Cepero to the extent she disregarded Dr. Farrage's opinions regarding causation, because his opinions were inconsistent with Hardin's testimony and balance of the medical evidence. Thus, Dr. Farrage's opinion could not constitute substantial evidence upon which the ALJ could base her decision. Further, the record does not compel the result Hardin seeks. We find no error in the ALJ's refusal to accept Dr. Farrage's opinions as substantial evidence.

Accordingly, the February 16, 2023, Opinion and Order and the March 22, 2023, Order ruling on the Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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