

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2003-CA-002704-WC

PLASTIC PRODUCTS COMPANY, INC.,  
AS INSURED BY UNDERWRITERS'  
SAFETY AND CLAIMS

APPELLANT

V. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
CLAIM NO. WC-00-71250

JEFF HOOTS;  
HONORABLE DONALD G. SMITH,  
ADMINISTRATIVE LAW JUDGE;  
WORKERS' COMPENSATION BOARD;  
AND PLASTIC PRODUCTS COMPANY, INC.,  
AS INSURED BY LIBERTY MUTUAL  
INSURANCE COMPANY

APPELLEES

OPINION  
AFFIRMING

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BEFORE: GUIDUGLI, McANULTY, AND MINTON, JUDGES.

MINTON, JUDGE: Plastic Products Company, Inc. ("PPC") seeks review from a November 19, 2003, Opinion of the Workers' Compensation Board ("Board"). An Administrative Law Judge ("ALJ") ordered PPC to compensate Jeff Hoots, a former PPC employee whom the ALJ found had been injured on the job. The

Board affirmed the decision of the ALJ and PPC appealed. We affirm.

#### **BACKGROUND SUMMARY**

Hoots is a 32 year-old man who began working for PPC in 1994 as a press operator and material handler. He worked until July 27, 2000, when he suffered a debilitating work-related injury. Hoots has been unemployed since that time.

Hoots's injuries are manifold, ranging from a hernia to head, neck, and back injuries. He was injured while working at PPC on September 24, 1998; December 1, 1998; June 20, 2000; and July 27, 2000. Hoots was also involved in a non-work-related car accident in March 1999. After each injury, Hoots was examined and treated by a physician. Although he was always released to return to work, Hoots was placed on certain restrictions regarding the amount of weight he could lift and pull.

The issue on appeal only involves the July 2000 injury. Hoots alleges his injury occurred when he was pulling a heavy load of boxes. He began to experience back pain, chest pain, and numbness in his left arm and was taken to the hospital. The human resources department at PPC was aware of Hoots's injury; however, Hoots did not fill out a report at the

time of the accident. He did not formally report the July 2000 incident until February 2, 2001.

The ALJ found that Hoots's injuries were work-related and adjudged the July 2000 injury to have left him 12 percent impaired. The ALJ also found that Hoots had given PPC proper and timely notice of his injuries. He ordered PPC to pay benefits to Hoots for the July 2000 incident at the rate of \$94.84 per week for a period not to exceed 425 weeks. PPC was additionally required to pay Hoots's medical expenses and for his vocational evaluation by the Department of Workers' Claims.

The Board affirmed the ALJ's findings of facts and conclusions of law. This appeal follows.

#### **THE JULY 2000 INJURY**

PPC first argues there was not substantial evidence to support the finding that Hoots suffered a work-related injury on July 27, 2000. Specifically, PPC claims the ALJ should not have relied on the testimony of Hoots and Dr. O.M. Patrick. We disagree.

It is well settled that "the ALJ, as fact-finder, has the sole authority to judge the weight, credibility and inferences to be drawn from the record."<sup>1</sup> The decision of the ALJ may be appealed to the Board; but "[n]o new evidence may be

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<sup>1</sup> Miller v. East Kentucky Beverage/Pepsico, Inc., Ky., 951 S.W.2d 329, 331 (1997).

introduced before the Board, and the Board may not substitute its judgment for that of the ALJ concerning the weight of evidence on questions of fact."<sup>2</sup> The role of this Court in reviewing decisions of the Board "is to correct the Board only when we perceive that the Board has overlooked or misconstrued controlling law or committed an error in assessing the evidence so flagrant as to cause gross injustice."<sup>3</sup>

If a decision is made in favor of the claimant, the question on appeal "is whether the decision . . . is supported by substantial evidence[.]"<sup>4</sup> The term "substantial evidence" has been defined as "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men."<sup>5</sup>

When, as in this case, there is conflicting medical testimony, it is within the province of the ALJ to decide whom to believe.<sup>6</sup> The ALJ "has the right to believe part of the evidence and disbelieve other parts of the evidence whether it

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<sup>2</sup> Smith v. Dixie Fuel Co., Ky., 900 S.W.2d 609, 612 (1995).

<sup>3</sup> Daniel v. Armco Steel Company, L.P., Ky.App., 913 S.W.2d 797, 798 (1995), *quoting* Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-688 (1992).

<sup>4</sup> Wolf Creek Colleries v. Crum, Ky.App., 673 SW2d 735, 736 (1984).

<sup>5</sup> Smyzer v. B.F. Goodrich Chemical Company, Ky., 474 S.W.2d 367, 369 (1971).

<sup>6</sup> Copar, Inc. v. Rogers, Ky., 127 S.W.3d 554, 561 (2003); *see also*, Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123, 124 (1977).

came from the same witness or the same adversary party's total proof."<sup>7</sup>

PPC argues the ALJ should not have relied on the testimony of Hoots and Dr. Patrick but, rather, should have focused on the testimony submitted by Hoots's other examining doctors. In support of this argument, PPC claims Dr. Patrick was given an inaccurate medical history for Hoots. PPC also alleges Dr. Patrick was the only physician to whom Hoots described his July 2000 injuries. With regards to Hoots's testimony, PPC claims Hoots's statement, "sometime during that day I herniated the discs in my back,"<sup>8</sup> was not sufficient to rise to the level of "substantial evidence."

Dr. Patrick examined Hoots on March 23, 2002. He stated that in his opinion, Hoots had a "12% impairment partial permanent functional to the body as a whole."<sup>9</sup> Dr. Patrick also stated that with reasonable medical probability, Hoots's July 2000 injury was the cause of his medical complaints.<sup>10</sup> Although the other physicians who examined Hoots agreed he had sustained

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<sup>7</sup> Snawder v. Stice, Ky.App., 576 S.W.2d 276, 280 (1979); *see also*, Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15, 16 (1977).

<sup>8</sup> Brief for Appellant at page 8.

<sup>9</sup> Medical Report of Dr. O.M. Patrick, Record, page 318.

<sup>10</sup> *Id.* at page 319.

back injuries, no other doctors related Hoots's injuries to the July 2000 incident.

As discussed, the ALJ decides whom to believe when there is conflicting medical testimony.<sup>11</sup> So long as the ALJ's decision is supported by substantial evidence, neither the Board nor this Court will interfere with the findings. There is ample evidence to conclude that the Board's reliance on Dr. Patrick's testimony was based on substantial evidence. Although Dr. Patrick's findings regarding the relationship between Hoots's injuries and the July 2000 incident differed from the findings of other testifying physicians, it is the ALJ's role to decide whom to believe. In this case, the ALJ chose to believe Dr. Patrick. While the ALJ's conclusion is not the only inference possible, it is supported by substantial evidence.<sup>12</sup> Therefore, we are not persuaded by PPC's request to reverse this finding of fact.

It was also the ALJ's choice to believe the testimony of Hoots. The evidence supplied by Hoots can aptly be deemed "substantial." Therefore, the ALJ's reliance on his testimony was proper.

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<sup>11</sup> Pruitt, *supra*.

<sup>12</sup> Daniel, *supra*.

**TIMELY NOTICE**

PPC's second argument is that Hoots did not give proper and timely notice of the July 2000 incident. PPC claims the ALJ should have relied on the testimony of Mary Jane Tungate and Jimmy Lockett, two PPC employees who denied Hoots's claim that he had given them notice of his injuries. We disagree.

KRS<sup>13</sup> 342.200 states, "[w]ant of notice or delay in giving notice shall not be a bar to proceedings under this chapter if it is shown that the employer, his agent or representative had knowledge of the injury . . . ." Again, we note the well-settled rule that the Board will not substitute its findings for those of the ALJ.<sup>14</sup> The role of this Court in reviewing the Board's decision is solely to ensure there has not been manifest injustice.<sup>15</sup>

The Board affirmed the ALJ's finding that Hoots's notice of his injury to PPC was proper. In its opinion, the Board wrote:

While Plastic Products points to evidence in the record that certainly would have supported a finding that timely notice was not given . . . that is not the standard of review on appeal. The ALJ found Hoots credible concerning his version of the giving of notice. This Board is without authority to substitute its opinion for that

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<sup>13</sup> Kentucky Revised Statutes.

<sup>14</sup> Daniel, *supra*.

<sup>15</sup> *Id.*; see also, Western Baptist Hospital v. Kelly, *supra*.

of the ALJ in matters of fact; therefore, the ALJ's findings may not be set aside.<sup>16</sup>

We agree with the Board. The ALJ found Hoots notified Tungate of his injury on July 27, 2000, before leaving to seek medical treatment. The ALJ also found Hoots completed an injury report in February 2001 relating to the July 27, 2000 incident. The injury report indicated Hoots had notified his supervisor on the date of his injury. The ALJ decided this evidence was sufficient to hold that Hoots had given PPC proper and timely notice. The evidence relied upon by the ALJ in making this decision was substantial. Therefore, we are not inclined to reverse the findings of fact.

For the foregoing reasons, the November 19, 2003, decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Carl M. Brashear  
Lexington, Kentucky

BRIEF FOR APPELLEE JEFF HOOTS:

Jeffrey J. Paige  
Louisville, Kentucky

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<sup>16</sup> Opinion of the Workers Compensation Board, November 19, 2003, at 15-16.