

RENDERED: MAY 9, 2003; 2:00 p.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2002-CA-001993-WC

JAMES WILLARD BROWN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-61050

CABINET FOR FAMILIES AND CHILDREN;  
HON. LLOYD R. EDENS, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

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BEFORE: HUDDLESTON, PAISLEY, AND TACKETT, JUDGES.

PAISLEY, JUDGE: This is an appeal from an opinion of the  
Workers' Compensation Board affirming an opinion, order and  
award rendered by an Administrative Law Judge (ALJ). The ALJ  
found that appellant, James Willard Brown, was six percent  
functionally impaired due to cumulative trauma to his right  
hand. Appellant was awarded \$17.18 per week from October 1,  
2000, to December 31, 2001, and thereafter \$34.36 per week for

the remainder of the 425-week permanent partial disability payment period.

On appeal, appellant raises the same issues and arguments raised before the board, which eloquently and more than adequately addressed those issues. We therefore choose to adopt the board's opinion in its entirety, as follows:

James Willard Brown (Brown) appeals from an opinion, order and award rendered by Hon. Lloyd R. Edens, Administrative Law Judge (ALJ), awarding Brown workers' compensation benefits for an upper extremity injury sustained in the employ of Cabinet for Families and Children (Cabinet). On appeal, Brown argues the ALJ erred in disregarding the unrefuted evidence of Dr. Timothy Coleman.

Brown, born July 11, 1942, has a high school education and completed approximately three and one-half years of college. He began working for the Cabinet in June 1964 and retired on December 31, 2001. He stopped working January 4, 2001 and continued to receive his salary in the form of annual leave and sick leave benefits until December 31, 2001. Brown testified that since 1971 he worked for the Cabinet in quality control. He described his work as requiring him to write reports with a number two pencil. Brown stated he began experiencing pain in his right hand in the last week of September 2000. He explained that on Wednesday of that week he was in Louisville and was required to spend six hours writing up a report and began experiencing right hand pain. The following day he attended a meeting and performed no writing. On the next day he experienced pain in his right hand when he awoke and was unable to use his right hand to shave. The following week he was seen at Baptist

Regional Medical Center. At his hearing, Brown testified concerning the condition of his right hand. He testified he has pain and loss of grip strength. He stated he is able to hold a pencil and write for a maximum of five minutes.

Brown relied on evidence from Dr. Timothy Coleman, a neurologist who examined Brown on April 30, 2000 on referral from Dr. Mark Einbecker, an orthopedic surgeon specializing in hand disease. Dr. Coleman received a history of Brown's upper extremity problems and performed a physical examination. He diagnosed a multitude of problems including carpal tunnel syndrome, cervical spondylosis, lateral epicondylitis and writer's cramp. Dr. Coleman explained that writer's cramp is a specific example of a specific group of diseases known as occupational dystonias. People develop the disease from performing the same activity over and over again, which creates a sensation of cramping and drawing of the muscles. These symptoms usually come on after a brief period of activity in the extremity or muscle that has been used repetitively over the years. He explained it is a movement disorder that is not mediated through mechanisms in the brain that is not clearly understood. Writer's cramp is the prototype example of an occupational dystonia.

Dr. Coleman opined that Brown, from the standpoint of his usual occupation, was unable to use his hand on a sustained basis, rendering his hand inoperative for his job, thus indicating based on the American Medical Association Guide to the Evaluation of Permanent Impairment (Guides), a 100% non-functioning hand. Therefore, Dr. Coleman translated the 100% impairment of the hand into a 54% impairment based on the body as a whole pursuant to the Fifth Edition of the Guides. While Dr. Coleman believed the hand was totally nonfunctioning

from an occupational standpoint, he agreed on cross-examination that it was not totally nonfunctioning for daily life capacity and he did not say the hand did not function at all. Dr. Coleman also explained that Brown did not have a peripheral nerve disorder but rather, his condition was a central nervous system problem.

The Cabinet relied on medical evidence from Dr. Joseph L. Zerga, who examined Brown on November 12, 2001. Dr. Zerga received a history of the work injury and performed a physical examination. He also reviewed an EMG/NCV study of the right upper extremity and an MRI report pertaining to the cervical spine. Dr. Zerga's impression was mild carpal tunnel syndrome bilaterally. He indicated that the diagnosis explained some of Brown's symptoms of numbness in his right upper extremity, but did not explain his weakness. Dr. Zerga felt that since the weakness came on rather suddenly the possibility of other etiology, such as a vascular event, should be considered. He believed the carpal tunnel syndrome might well be work-related because of the great deal of writing Brown did on the job. Dr. Zerga assessed a 6% impairment to the body as a whole based on a sensory deficit to the right upper extremity. He opined Brown could return to work and it was possible that with appropriate treatment of his carpal tunnel syndrome, his impairment rating would decrease. Dr. Zerga reiterated that he was unsure the complaints of right hand weakness were due to carpal tunnel. He suggested an MRI Scan of the brain to rule out the possibility of a stroke.

On the issue of extent and duration, the ALJ chose to rely on the 6% impairment rating assessed by Dr. Zerga rather than the 54% impairment rating assessed by Dr. Coleman. The ALJ explained as follows:

Dr. Coleman relies upon a central nervous condition for the 54%, and Dr. Zerga bases his impairment rating upon sensory deficit. Having reviewed the opinions of these physicians, I note that Dr. Coleman essentially considers the Plaintiff's condition to equate to an amputation. In view of the Plaintiff's ability to perform some functional activities with his hand, I am persuaded that the Plaintiff's functional impairment is best represented by the 6% impairment rating assigned by Dr. Zerga.

The ALJ then found Brown could not return to the type of work he was performing at the time of his injury and applied the 1.5 factor pursuant to KRS 342.730(1)(c)1.

On appeal, Brown argues the ALJ erred in disregarding what he characterizes as the unrefuted evidence of Dr. Coleman. He submits that Dr. Coleman's diagnosis of dystonia is unrefuted, both in regard to the diagnosis and the related impairment pursuant to the Guides. Thus, he submits that the evidence from Dr. Coleman is so compelling that no reasonable person could fail to be persuaded by it and benefits should be based on Dr. Coleman's testimony.

Brown relies on Mengel v. Hawaiian-Tropic Northwest & Central Distributors, Inc., Ky. App., 618 S.W.2d 184 (1981), for the proposition that the ALJ may not disregard uncontradicted medical evidence. While this is a correct statement of the law, we do not believe the medical evidence in the herein claim is uncontradicted. Dr. Zerga assessed a 6% impairment rating, upon which the ALJ chose to rely, while Dr. Coleman made a different diagnosis and gave a higher impairment rating. It is axiomatic that the ALJ has

exclusive authority to make determinations as to the weight of particular evidence and the credibility of witnesses. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977). Furthermore, as the trier of fact, the ALJ may reject or accept any evidence before him and believe or disbelieve various parts of the evidence, including evidence from the same witnesses. Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977). The ALJ relied on the substantial evidence of Dr. Zerga's opinion and even if Dr. Coleman's diagnosis of dystonia could be considered uncontradicted, the ALJ provided a sufficient explanation for rejecting the impairment rating assessed by Dr. Coleman. See Commonwealth of Kentucky v. Kentucky Workers' Compensation Board, Ky. App., 697 S.W.2d 540 (1985). Thus, we disagree with Brown that the ALJ rejected unrefuted medical testimony and that the evidence compels a finding in his favor. Inasmuch as the ALJ's decision is supported by substantial evidence, we are without authority to find otherwise. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

Accordingly, the decision of the Administrative Law Judge is **AFFIRMED**.

The board's opinion is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Phyllis L. Robinson  
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BRIEF FOR CABINET FOR FAMILIES  
AND CHILDREN:

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