

**Commonwealth Of Kentucky  
Court of Appeals**

NO. 2003-CA-000056-WC

TRIM MASTERS, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-78291

SHAWN CLARK; HONORABLE BRUCE  
COWDEN, JR., ADMINISTRATIVE LAW  
JUDGE; KENTUCKY WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

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BEFORE: BUCKINGHAM, DYCHE, AND JOHNSON, JUDGES.

DYCHE, JUDGE. Trim Masters, Inc., petitions for review of an opinion of the Workers' Compensation Board ("Board") affirming the Administrative Law Judge's opinion and award of temporary total disability benefits to Shawn Clark, and the payment of medical bills. We affirm.

Clark was employed by Trim Masters in May, 1999. In March, 2000, she began suffering from the symptoms of carpal tunnel syndrome. She had surgery on her right hand in May,

2000, and on the left in June of that same year. She returned to work immediately, but the symptoms reappeared, and she was off from work for a period of time that fall. In December of 2001, she was, at the order of her physician, taken off work for a non-work-related condition, after having surgeries for that ailment in January and May, 2001. She has not worked since then.

She filed this Workers' Compensation claim, and the ALJ found her to have a 13% functional impairment rating, which translated into a 16.25% occupational disability. The ALJ awarded her benefits for an additional period of Temporary Total Disability, and found that certain medical bills should be borne by the employer, who now contests those three parts of the award.

Trim Masters first asks the rhetorical question of whether the claimant bears the burden of proof in a Workers' Compensation action. The answer is "yes," and Clark has carried this burden. The ALJ chose to believe the testimony of Dr. O'Neill, who testified that he "would have" advised her to avoid repetitive work with her hands, if she had not already been off work for her non-work-related illness, and that she did not reach maximum medical improvement until July 26, 2001. This testimony, along with Clark's, is sufficient, if believed, to support the award.

The ALJ and the Board both were convinced that Daugherty v. Watts, Ky., 419 S.W.2d 137 (1969), supports the award in this case. That case holds that a worker "will not be deprived of compensation merely because of the existence of an independent, concurrent cause of disability." 419 S.W. 2d at 138. Although that case concerned two work-related causes of disability, we think the principle applies here, where there was a non-work-related cause of disability, in addition to the work-related cause.

The third contention of Trim Masters is that it should not be held liable for Dr. O'Neill's bills, as they were not submitted in accordance with the applicable regulations. Clark responds that Dr. O'Neill had not submitted a bill, as required for payment by the regulation, because Trim Masters had already indicated it would not pay, and that the ALJ's decision that the bill was compensable, as Dr. O'Neill was Clark's second physician, would trigger the bill, and require payment. The bill should be paid when submitted, as the ALJ's decision is supported by substantial evidence.

The final argument is that the ALJ's determination of a 13% impairment is not supported by the evidence. We again disagree. The ALJ stated that he was convinced by Dr. Rayes's testimony and the most recent EMG nerve conduction velocity study.

The award and the opinion are within the standards set down in Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992); there is no clear error in assessing the evidence and no misconstruction of statute or precedent. The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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