RENDERED: JANUARY 16, 2004; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-000970-WC

BETTY JO JONES — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-00-95224

SPEEDWAY/SUPERAMERICA, LLC;
HON. LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KNOPF, TACKETT, AND TAYLOR, JUDGES.

KNOPF, JUDGE. Betty Jo Jones appeals from an April 16, 2003, opinion of the Workers' Compensation Board (Board) that affirmed the June 28, 2002, Administrative Law Judge's (ALJ), opinion dismissing Jones's workers' compensation claim.

On appeal, Jones argues that the ALJ's dismissal of her workers' compensation claim was not supported by the evidence. To the contrary, she argues that the medical evidence

that she presented to the ALJ was so overwhelming it should have compelled a finding in her favor. Finding that the evidence did not compel a contrary result, we affirm.

In August of 1999, Betty Jo Jones began working for Speedway/Superamerica, LLC (Speedway) in the deli section of one of its stores in Corbin, Kentucky. According to Jones, on November 19, 1999, while walking back from stocking the hot dog grill, she injured herself when she slipped on either water or ice and fell. After the injury, Jones timely notified her supervisor. On March 20, 2001, she filed her workers' compensation claim. On June 28, 2002, the ALJ entered an opinion dismissing Jones's claim. While the ALJ found that Jones had suffered a work related injury as defined by KRS 342.0011, the ALJ concluded that Jones had reached maximum medical improvement by February 25, 2000, and that her injury was completely resolved. Unsatisfied with the ALJ's opinion, Jones appealed to the Workers' Compensation Board. The Board affirmed the ALJ, and Jones seeks review from this Court.

Jones argues that the ALJ erred because the evidence should have compelled a finding that the injury she suffered caused a permanent disability. Jones refers to the records of Dr. Thomas Doncaster, one of her treating physicians. According to an MRI report found in Doncaster's records, Jones had disc dehydration at L4-5 with a mild loss of height and a mild

diffuse disc bulge that caused a severe left neuroforamina encroachment.

Jones also refers to the opinion of Dr. William Lester. Lester opined that Jones should be restricted from lifting no more than ten pounds, from standing no longer than one hour and from sitting for no longer than twenty minutes. However, Lester did not assess an impairment rating for Jones.

Jones relies primarily on the opinion of Dr. Christa Muckenhausen, who evaluated Jones on July 18, 2001. Muckenhausen noted that Jones had tenderness and muscle spasms in the lumbosacral area, had a decreased range of motion and had sciatic groove tenderness. According to Muckenhausen, Jones had difficulty with her toe and heel gait and had problems squatting, bending, stooping, and getting on and off the examination table. Muckenhausen diagnosed Jones with a lumbrosacral injury with radiculopathy and with disc bulges at L4-5 with indentation of the thecal sac. Muckenhausen opined that Jones had suffered a thirteen percent whole body impairment. Muckenhausen opined that Jones should be restricted to lifting a maximum of less than ten pounds and that she should not sit or stand for more than three hours at a time.

Jones also argues that since the ALJ found that she suffered a work related injury, she was entitled to ongoing medical coverage to be paid by Speedway. Jones cites KRS

342.020 and argues that an employer shall pay for the cure and relief from a work related injury. Since she experienced a work related injury, Speedway should pay for any ongoing medical expenses because even though the ALJ found her injury was completely resolved, it might flare up sometime in the future.

When we review decisions of the Worker's Compensation Board, we will reverse the Board only when we determine that it has overlooked or misconstrued the controlling law or so flagrantly erred in evaluating the evidence that it has caused gross injustice.[1] Where, as in the case sub judice, the ALJ has ruled against the claimant, who had the burden of proof, we will reverse only where the evidence compelled a finding in the claimant's favor.[2]

In making his decision, the ALJ relied on the opinions of Dr. Russell Travis and Dr. Leon Ensalada. Dr. Travis performed an independent medical examination of Jones on Speedway's behalf. According to Travis, Jones complained of diffuse back pain. Travis reviewed the reports of both a CT scan and an MRI performed on Jones and opined that a myelogram of Jones's lumbar region was normal. She had minimal facet

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[1] Daniel v. Armco Steel Company, Ky. App., 913 S.W.2d 797, 798 (1995).

[2] Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986); See also Lee v. International Harvester Company, Ky., 373 S.W.2d 418 (1963).

defect at L4-5 with no evidence of abnormality. He noted that neither L3-4, L4-5, nor L5-S1 showed any significant disc herniation or any evidence of nerve root compromise. He concluded that Jones had no objective findings that justified her complaints and that she showed signs of symptom magnification. Travis opined that Jones had reached maximum medical improvement and required no further treatment. He assigned Jones a zero percent impairment and opined that she could return to her former work without restrictions.

Dr. Ensalada did a comprehensive review of Jones's medical records that pertained to her injury. After reviewing the records, Ensalada could find nothing that would account for Jones's symptoms. The records did not reveal any focal disc herniation, foraminal stenosis, or nerve root impingement. Ensalada opined that there was no objective medical evidence that Jones had suffered a harmful change to the human organism as a result of the November 14, 1999, injury. Based on this lack of evidence, Ensalada concluded that Jones did not have an injury as defined by KRS 342.0011(1). Ensalada also disagreed with the method Muckenhausen used to calculate Jones's impairment rating. Ensalada agreed with Dr. Travis that Jones had reached maximum medical improvement on February 25, 2000, and that she was capable of returning to her former work without any restrictions.

According to the Supreme Court of Kentucky:

> When the decision of the fact-finder favors the person with the burden of proof, his only burden on appeal is to show that there was some evidence to support the finding, meaning evidence which would permit a fact-finder to reasonably find as it did.[3]

However, the high court continued and stated:

> If the fact-finder finds against the person with the burden of proof, his burden is infinitely greater. It is of no avail in such a case to show that here was some evidence of substance which would have justified a finding in his favor. He must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled "clearly erroneous" if it reasonably could have been made.[4]

Since the ALJ ruled against Jones, to prevail on appeal, she must show that the evidence presented to the ALJ was so overwhelming that it would have compelled a finding in her favor.[5] While the evidence she presented could have justified a finding in her favor, the character and quality of her evidence did not rise to such a level to have compelled a finding in her favor. If her evidence were uncontradicted, perhaps it would compel such a finding. However, the opinions of both Travis and

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[3] Special Fund v. Francis, supra at 643.

[4] Id.

[5] Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418, 419 (1985).

Ensalada contradict Jones's evidence. In Kentucky jurisprudence, the fact-finder, not the appellate court, has the exclusive authority to determine the quality, character, and substance of the evidence presented to it.[6] Therefore, the ALJ, as the fact-finder, was well within his authority when he relied upon the testimony of Travis and Ensalada. Because Jones's evidence did not compel a contrary result; the ALJ's findings were supported by substantial evidence; and the Board did not misconstrue the law, this Court affirms the Board's opinion.

Regarding Jones' second issue that she is entitled to ongoing medical expenses, this Court defers to the Board:

> [W]e believe that too falls under the auspices of weight and credibility of the evidence. KRS 342.020 provides for payment of medical expenses for the cure and/or relief of a work-related injury. Additionally, there are circumstances in which no permanency from an income benefit standpoint may be found and, yet, there are ongoing medical expenses. See Cavin vs. Lake Construction Co., Ky., 451 SW2d 159 (1970). However, we have frequently noted the entitlement to ongoing medical expenses is factually dependent. Simply because it has been found there is a work-related injury does not necessarily mandate an award for medical expenses to infinity. In the instant action, the ALJ concluded and was supported in that conclusion by two credible physicians that whatever physical injury had been sustained was completely resolved prior to the Opinion and Order. In circumstances such as this, we believe the ALJ is

[6] Id.

> authorized to conclude, as did the ALJ herein, that no award for ongoing medical expenses is either appropriate or necessary.[7]

For the foregoing reasons, this Court affirms the April 16, 2003, order of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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[7] Opinion of the Workers' Compensation Board, April 16, 2003 at 5-6.