

**Commonwealth Of Kentucky
Court of Appeals**

NO. 2004-CA-000047-WC

MARGARET LYNN WALKER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-97226

THE LEDGER-INDEPENDENT/
MAYSVILLE NEWSPAPERS, INC.;
HONORABLE DONNA H. TERRY,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, McANULTY AND MINTON, JUDGES.

GUIDUGLI, JUDGE. Margaret Lynn Walker (hereinafter "Walker") has petitioned this Court for review of the Workers' Compensation Board's (hereinafter "the Board") opinion affirming the Opinion and Order of the Administrative Law Judge dismissing her claim for benefits. She argues that the evidence of record compels a finding of permanent disability related to a January 6, 1999, slip and fall. We affirm.

Walker, currently a thirty-seven-year-old resident of Hillsboro, Ohio, worked as a photographer for The Ledger-Independent/Maysville Newspapers, Inc. (hereinafter "the employer".) On January 6, 1997, Walker went to a YMCA to take photographs for the newspaper. Upon exiting her vehicle, she slipped and fell in the parking lot. Although she continued to work and completed her assignment that day, she became unable to work by the end of January. She claimed to have injured her back and began experiencing vision problems, for which she sought medical and psychiatric treatment. Walker filed an Application for Resolution of Injury Claim on June 12, 2001, requesting total disability benefits. Following the entry of extensive proof,¹ the ALJ entered an Opinion and Order dismissing her claim, reasoning that although Walker had established that she sustained a fall at work, she had not established that her ongoing symptomatology was related to her 1999 slip and fall. The ALJ found that there was no organic basis for Walker's vision loss, and that if the loss was caused by a conversion reaction, that the reaction was not related to her work injury. Furthermore, the ALJ found that as to Walker's physical complaints, all objective tests were negative for any significant injury. Following the denial of her Petition for

¹ We shall not reproduce the medical proof in this case, as the ALJ provided excellent summaries of the medical and lay proof in the Opinion and Order. We note that the Board adopted this recitation in its opinion.

Reconsideration, Walker perfected an appeal to the Board, which affirmed the ALJ's dismissal.

In her Petition for Review, Walker continues to argue that her vision problems were caused by a conversion reaction, which in turn was caused by her work injury. Likewise, she asserts that her back and neck injuries are compensable. On the other hand, the employer argues that the evidence of record does not compel a different result, so that the ALJ's decision must be upheld.

We are cognizant of the limited nature of our review in workers' compensation cases. In Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992), the Supreme Court of Kentucky addressed its role and that of the Kentucky Court of Appeals in reviewing decisions in workers' compensation actions. "The function of further review of the WCB in the Court of Appeals is to correct the Board only where the [] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." Id., at 687-88.

We have thoroughly reviewed the record in this case, the opinions of the ALJ and the Board, as well as the parties' briefs, and have determined that the Board did not commit any error in affirming the ALJ's decision. Because we cannot improve upon the Board's well-reasoned opinion, authored by

Board Member Gardner, we shall adopt the following portion of that opinion as our own:

On appeal, Walker argues she is entitled to an award of permanent total disability benefits as a result of the work-related injury. Walker contends the medical proof submitted compels conclusions that she suffers from conversion reaction blindness, as well as permanent impairment and disability from neck and back injuries sustained as a result of the January 6, 1999 work-related fall. Walker points to evidence from Dr. Morentz that her psychological condition is causally related to the fall and Dr. Jones's opinion that her spinal and lower extremity injuries are related to the work accident. Walker discounts Drs. Nemann and Graulich's opinions regarding medical causation, pointing to the fact that she suffered no visual difficulties prior to the date of the injury and she did not receive any treatment for depression between July 9, 1998 and the date of the accident, nor did she miss any work on account of her depression. Additionally, Walker relies on that portion of Dr. Granacher's testimony that any preexisting major depression could not cause a conversion reaction. On this point, Walker contends Dr. Granacher, a psychiatrist, was more qualified to testify than Dr. Nemann, a psychologist, or Dr. Graulich, a medical doctor. In addressing the physical injuries, Walker accurately summarizes the opinions of Dr. Jones, but ignores Dr. Menke's opinion that Walker's complaints have no physiologic basis and that she does not qualify for any impairment rating.

On review, we believe Walker's appeal, though artfully presented, to be a factual re-argument of her case before the ALJ. For this Board to reverse the ALJ on the issue of causation would require us to substitute

our judgment as to the weight and credibility of the evidence, which is the sole province of the fact finder. KRS 342.285. Typically, when the causal relationship between the trauma and the injury is not readily apparent to a layman, the question is properly within the province of the medical experts. Elizabethtown Sportswear v. Stice, Ky.App., 720 S.W.2d 732, 733 (1986); Mengel v. Hawaiian-Tropic Northwest & Central Distributors, Inc., Ky.App., 618 S.W.2d 184 (1981). The burden of proof on this issue rests with Walker. Stovall v. Collett, Ky.App., 671 S.W.2d 256 (1984). Since Walker was unsuccessful, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in her favor. See Wolf Creek Collieries v. Crum, Ky.App., 673 S.W.2d 735 (1984); Snawder v. Stice, Ky.App., 576 S.W.2d 276 (1979). Compelling evidence is that which is so overwhelming that no reasonable person could reach the same conclusion reached by the fact finder. To justify reversal Walker must do more than rely on more favorable evidence that would support the result she seeks. REO Mechanical v. Barnes, Ky.App., 691 S.W.2d 224 (1985).

Here, while it is true Dr. Granacher did not believe Walker's diagnosis of preexisting major depression could cause a conversion reaction Drs. Nemann and Graulich's opinions were to the contrary. In resolving the issue, the ALJ was not only authorized but charged with the responsibility of sifting and weighing conflicting evidence, believing or disbelieving portions of the total proof to arrive at an ultimate conclusion. Brockway v. Rockwell International, Ky.App., 907 S.W.2d 166 (1995). On issues of fact, the ALJ's discretion is absolute and we lack the authority to tamper with the result unless Walker can demonstrate, which she has not,

that the evidence upon which the ALJ relied is so deficient that it is without probative value.

Dr. Nemann specifically stated that Walker's current psychiatric condition was related to an active condition of major depression. In accord with Dr. Nemann's opinion stands Dr. Graulich's report and review of the medical records, which demonstrated that as late as November 16, 1998, Walker was undergoing a significant continuation of her depression that had persisted since the postpartum state. He further noted that Walker was having difficulty coming off medication, her mother-in-law was dying of colon cancer, her mother and father had died that year, and there was additional situational stress of "new children" living at home. Dr. [Graulich] did not relate the diagnosis of conversion reaction to the work injury, but to the prolonged and significant psychosocial stressors Walker had been under. It is our opinion that the evidence adduced from Drs. Nemann, Graulich, and Menke constitute evidence of substance and relevant consequence sufficient to induce conviction in the mind of a reasonable fact finder. Transportation Cabinet v. Poe, Ky., 69 S.W.3d 60, 62 (2001).

For the foregoing reasons, the decision of the Administrative Law Judge is hereby AFFIRMED.

Because the Board did not commit any error in assessing the evidence or misconstrue or overlook any controlling precedent, we affirm. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685 (1992).

ALL CONCUR.

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