

Commonwealth Of Kentucky
Court of Appeals

NO. 2004-CA-002397-WC

JUDY MEADE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-83744

MCDOWELL APPALACHIAN REGIONAL
HOSPITAL; HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: GUIDUGLI, McANULTY, AND MINTON, JUDGES.

McANULTY, JUDGE: Judy Meade (Meade) petitions this Court for review of a decision of the Workers' Compensation Board which affirmed the denial of her claim for permanent compensation benefits for a work-related injury to her cervical spine. The Administrative Law Judge (ALJ) had determined that any functional impairment Meade had was pre-existing and active and was not caused by the incident at work. Thus, the ALJ dismissed her claim for permanent partial disability benefits.

On appeal to the Workers' Compensation Board (Board), the Board adopted the ALJ's summary of the evidence and concluded that her appeal was merely a re-argument of the facts below. The Board concluded that the evidence was conflicting and there was substantial evidence in the record to support the ALJ's conclusions. The ALJ had discounted evidence from treating physicians that a portion of the injury was caused by the lifting incident at work. Nevertheless, the Board noted there was substantial evidence to support the ALJ's findings -- from Dr. Goodman, who did a records review, and Dr. Sweeney who testified in deposition that he was treating Meade for an active cervical spine condition prior to the date of the incident. Thus, the Board concluded that the evidence in Meade's favor was not so overwhelming as to compel a different result.

The scope of our review of the Board is only to correct the Board where this Court perceives it has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice. Western Baptist Hosp. v. Kelly, 827 S.W.2d 685 (Ky. 1992). Meade does not demonstrate that there was any error in assessing the evidence, but simply disagrees with the conclusions drawn from the evidence. While the ALJ agreed that Meade was disabled and could not return to her employment, the ALJ concluded that this was due to a pre-existing active

condition rather than a pre-existing dormant condition. The ALJ as fact finder has the sole authority to judge the quality, character and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308, 309 (Ky. 1993). Where the medical evidence is conflicting, the question of which evidence to believe is the exclusive province of the ALJ. Id.

Furthermore, while Meade cites various cases, she does not make the argument, pursuant to Western Baptist, that the ALJ or the Board erroneously applied the law to the facts of this case. Thus, we find that Meade is not entitled to any relief under our review of the Board's decision.

ALL CONCUR.

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