

RENDERED: June 17, 2005; 2:00 p.m.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court Of Appeals**

NO. 2005-CA-000141-WC

PATRICIA TILLMON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NOS. 01-01602-WC & 02-02167-WC

GENERAL MOTORS CORPORATION;  
HON. MARCEL SMITH,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: BARBER, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: Patricia Tillmon appeals from a December 23, 2004, order by the Workers' Compensation Board (Board) which affirmed an Administrative Law Judge's (ALJ) order dismissing her claim. Because there was substantial evidence supporting the ALJ's findings and conclusions, we affirm the Board's order.

At all times relevant to this appeal, Tillmon was employed as an assembly line worker for General Motors. In November 2001, Tillmon filed a workers' compensation claim alleging multiple dates of injury to her neck and upper extremities based on repetitive motion. The claim was ultimately settled on July 31, 2002, based on a 13% impairment rating. Shortly thereafter, Tillmon filed a second claim alleging that she had suffered a work-related back injury on August 9, 2002. Tillmon also claimed that she had suffered repetitive-motion injuries to her left hand, wrist, arm, and shoulder.

In support of her claim, Tillmon introduced medical evidence from Dr. William R. Schooley, Dr. Endraetta Watts, and Dr. Thomas Wolff. General Motors also relied on the deposition testimony of Drs. Schooley and Wolff, and introduced medical evidence presented in Tillmon's earlier claim. In 1994, Tillmon began to suffer pain in her right wrist, for which Dr. Schooley performed right carpal tunnel surgery in April 1995. Later that year, Dr. Schooley performed a cervical fusion at C5-6. Tillmon returned to work in January 1996 with restrictions.

In February of 2000, Dr. Schooley diagnosed Tillmon with ulnar neuropathy on the right side and an EMG was performed. She underwent right ulnar neuropathy surgery in April 2000, and she was released to return to work with restrictions in September 2000. Tillmon testified that she began to work left-handed after

the surgery, which thereafter began causing problems to her left upper extremity. In November 2001, Dr. Wolff performed surgery to repair her cubital tunnel syndrome and to remove a cyst. These conditions were the subject of Tillmon's earlier claim.

Tillmon returned to work in March of 2002, and she testified that she began to have problems with her left arm as of August 9, 2002. She continued to work until October, when she underwent surgery for the condition. Since that time, Tillmon has had additional surgeries to her left extremities and to her back.

The primary issue in this action concerns the difference in Tillmon's occupational disability on July 31, 2002, when the prior claim was settled, and her occupational disability at the time of her current claim. However, this case does not involve a re-opening of the prior claim. Rather, Tillmon alleges that she is now totally occupationally disabled as a result of her repetitive motion injuries and her back condition.

Dr. Schooley testified that Tillmon has suffered degenerative changes to her back since July 2002. When combined with the repetitive motion injuries, Dr. Schooley assessed a 25% impairment rating. Likewise, Dr. Watts, a neurologist, stated that Tillmon would not be able to return to work due to the carpal tunnel syndrome, even following the surgeries and with restrictions.

However, Dr. Wolff opined that Tillmon's occupational disability remained the same as it was at the time of her earlier claim, and he concluded she could return to work with the same restrictions as before. Furthermore, the independent medical evaluator, Dr. Richard Sheridan, did not believe that Tillmon's back condition was work-related. Based upon Dr. Wolff's testimony, the ALJ found that Tillmon suffered no additional disability due to the conditions in her left hand, wrist, arm, and shoulder. The ALJ also concluded that Tillmon's lower back condition was not work-related. The Board affirmed and this appeal followed.

Tillmon concedes that there was evidence to support the ALJ's conclusion, but nevertheless argues that this Court should set aside the ALJ's findings. However, the ALJ has the sole discretion to determine the quality, character, and substance of evidence.<sup>1</sup> As fact-finder, the ALJ, may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it came from the same witness or the same adversary party's total proof.<sup>2</sup> Where the party with the burden of proof was unsuccessful before the ALJ, that party must show that the

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<sup>1</sup> Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

<sup>2</sup> Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977).

evidence would compel a finding in her favor.<sup>3</sup> The Board may not substitute its judgment for that of the ALJ in matters involving the weight to be afforded to the evidence in questions of fact.<sup>4</sup>

While the Board noted some inconsistencies in the terminology used by the ALJ, the Board concluded that the ALJ's conclusions were supported by substantial evidence in the record. The Board also noted that, while Dr. Schooley had treated Tillmon for back problems since 1996, there was no claim that it was work-related until after the settlement of her first claim. Tillmon has failed to demonstrate that the Board has overlooked or misconstrued controlling statutes or precedent, or that it committed an error in assessing the evidence so flagrant as to cause gross injustice.<sup>5</sup>

Accordingly, the December 23, 2004, order by the Workers' Compensation Board affirming the ALJ's dismissal of Tillmon's claim is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Patricia A. Tillmon, *pro se*

BRIEF FOR APPELLEE

GENERAL MOTORS CORPORATION:

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<sup>3</sup> Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

<sup>4</sup> KRS 342.285.

<sup>5</sup> Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992).

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