

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001623-WC

PATRICIA GLAHN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-87182

CASTELLINI COMPANY;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER, DYCHE, AND MINTON, JUDGES.

BARBER, JUDGE: Appellant, Patricia Glahn (Glahn), petitions for review of a decision of the Workers' Compensation Board (WCB) that affirmed a determination by the Administrative Law Judge (ALJ) that her work injury of September 3, 2002 while employed by Appellee, Castellini Company (Castellini), was unrelated to her claims of arm, neck, and back pain, as well as headaches and psychiatric problems resulting therefrom. Following a review of the record, we affirm.

Glahn began working for Castellini on October 2, 2000 on their potato/citrus line. Glahn's work duties consisted of hanging bags of oranges or potatoes, dumping bags of oranges or potatoes, and running the potato machine.¹ She was also required to operate fork lifts, a riding dolly, a hand dolly, and a reach truck. The position was physically demanding requiring Glahn to lift fifty to one-hundred pound bags.

Glahn alleged four work injuries while employed by Castellini. The first injury occurred on October 16, 2001. Glahn alleged that, while lifting a fifty pound bag of potatoes, she injured the left side of her neck, left shoulder, and left arm.² The second injury occurred on December 10, 2001. Glahn alleged her left hand was crushed by a conveyor belt causing harm to her left hand, arm, shoulder, and neck.³ On April 3, 2002, Glahn alleged she developed a hernia lifting produce.⁴ Lastly, Glahn alleged she injured her right shoulder, right arm, and right side of her neck on September 3, 2002 while lifting heavy boxes from overhead.⁵ Glahn was allowed to amend her Form 101 on April 26, 2004 to include psychological injuries incurred as a result of her alleged physical injuries.

¹ Information taken from Glahn's March 22, 2004 deposition.

² Description taken from Glahn's Worker Compensation Form 101.

³ Description taken from Glahn's Worker Compensation Form 101.

⁴ Description taken from Glahn's Worker Compensation Form 101.

⁵ Description taken from Glahn's Worker Compensation Form 101.

A hearing was held before Administrative Law Judge Marcel Smith (ALJ) on December 9, 2004. Glahn testified on her own behalf and Albert L. Cates, vice president of human resources and continuous improvement, testified on behalf of the employer.⁶ Glahn submitted medical records from St. Elizabeth Business Health Center, Dr. Hasan, Dr. Grefer, Dr. Roebker, and Dr. Kelly.⁷ Castellini submitted medical records from Dr. Wolens, Dr. Sheridan, Dr. Madrigal, and Dr. Hasan, as well as, the transcript from Glahn's March 22, 2004 deposition.⁸

The ALJ issued her Opinion and Award on February 8, 2005. The ALJ relied upon the medical opinions of Dr. Roberto Madrigal⁹ and Dr. Richard Sheridan.¹⁰ Specifically, the ALJ found that Glahn's psychological, cervical, thoracic, lumbar, and headache complaints were not related to any work injury. The ALJ further relied upon Dr. Sheridan's impairment ratings of Glahn, which she adjusted pursuant to KRS 342.730(1)(b) and (c)(2). Glahn requested the ALJ to reconsider her Opinion and

⁶ Mr. Cates testimony was limited to the description and availability of a position for Glahn at Castellini.

⁷ Information taken from Hearing Order dated December 9, 2004.

⁸ Information taken from Hearing Order dated December 9, 2004.

⁹ The ALJ relied upon Dr. Madrigal in relation to the psychological claims only.

¹⁰ The ALJ relied upon Dr. Sheridan in relation to the physical claims only.

Award; however, said request was denied March 2, 2005. Glahn then appealed to the WCB.

The WCB issued its Opinion July 12, 2005 that affirmed in part, vacated in part, and remanded. The WCB vacated the ALJ's finding that Glahn retained the physical capacity to return to the type of work she performed at the time of her September 3, 2002 injury and remanded for additional fact finding on that issue.¹¹ The remainder of the ALJ's Opinion and Award was affirmed by the WCB. Following the issuance of the WCB opinion, Glahn appealed to our court.

Glahn presents two arguments in her appeal: (1) the ALJ's reliance on the opinions of Dr. Madrigal and Dr. Sheridan was clearly erroneous and (2) the WCB did not address the deficiencies within the medical reports that the ALJ relied upon and, instead, created new law which exceeded their appellate authority. We first examine what medical evidence was submitted in this matter before analyzing Glahn's arguments.

Substantial medical evidence was submitted by each party in this matter. Each party submitted evidence from Dr. Samer S. Hasan, orthopedic surgeon. Dr. Hasan performed surgery on Glahn's right shoulder February 21, 2003 to repair damage from the September 3, 2002 accident. In his Form 107, Dr. Hasan assigned a 1% permanent whole body impairment to Glahn for her

¹¹ This portion of the WCB Opinion was not appealed by either party.

right shoulder and opined that the September 2002 injury was the cause of her complaints related to her right shoulder.¹² Dr. Hasan further opined that Glahn had reach maximum medical improvement in her right shoulder in his November 11, 2003 physician notes.

Glahn submitted records from Dr. John Kelly, headache and pain specialist. Glahn was referred to Dr. Kelly by Dr. Hasan for evaluation of neck and right shoulder pain, numbness in both hands, headaches, and spasms.¹³ Glahn was given a permanent whole body impairment of 8% for the cervical myofascial syndrome and cervicogenic headaches by Dr. Kelly in his Form 107.¹⁴ He further opined that the September 3, 2002 injury was the cause of her complaints. Glahn testified that she did not like the treatment she was receiving from Dr. Kelly. As a result, Glahn remained under Dr. Kelly's care for less than two months.

Glahn also submitted records from Dr. Michael A. Grefer, orthopedic surgeon, whom she began treatment with October 27, 2003.¹⁵ Dr. Grefer diagnosed Glahn with cervical, thoracic and lumbar disc disease with spurring present, mild

¹² Dr. Hasan completed the Form 107 on November 13, 2003.

¹³ Information taken from Dr. Kelly's June 24, 2003 progress notes.

¹⁴ Dr. Kelly deferred to Dr. Hasan to determine a rating for the right rotator cuff tear.

¹⁵ Dr. Grefer was Glahn's treating physician at the time of the hearing.

radiculopathy, and primarily spinal strain and sprain.¹⁶ Dr. Grefer attributed a 21% permanent whole body impairment to Glahn for her cervicothoracic and lumbosacral spine.¹⁷ Dr. Grefer also found that Glahn's complaints were due to her work accident of September 3, 2002 and aggravation of pre-existing dormant degenerative disk disease.¹⁸

In support of her psychological injury claim, Glahn submitted medical records from David L. Roebker, licensed psychologist.¹⁹ Dr. Roebker interviewed and evaluated Glahn on May 4, 2004 and found her to be totally and occupationally disabled from returning to her previous work position, as well as any other type of work position, even sedentary type work. Dr. Roebker found Glahn to have depression to a major degree caused by her work-related injuries and assigned her a permanent whole body impairment of 20% on his Form 107.

Additionally, Glahn submitted medical records into evidence from Saint Elizabeth Business Health Services, including physical therapy records.²⁰ We now turn to the medical evidence submitted by Castellini in this matter.

¹⁶ Diagnosis taken from Dr. Grefer's memo dated October 27, 2003.

¹⁷ Information taken from Dr. Grefer's Form 107 dated March 16, 2004.

¹⁸ Information taken from Dr. Grefer's Form 107 dated March 16, 2004.

¹⁹ David L. Roebker also has a Ph.D.

Castellini submitted medical evidence from Dr. Richard Sheridan who performed two independent medical examinations (IME) on Glahn. Dr. Sheridan interviewed and examined Glahn at his office on January 2, 2003 and February 17, 2004. Following the first IME, Dr. Sheridan opined that Glahn had not yet reached maximum medical improvement for her September 3, 2002 injury.²¹ Dr. Sheridan diagnosed a partial tear of Glahn's right rotator cuff with aggravation of pre-existing degenerative dormant acromioclavicular joint arthritis of the right shoulder. Dr. Sheridan further agreed with Dr. Hasan's recommendation for surgery to repair Glahn's right shoulder. Dr. Sheridan was unable to give Glahn a permanent partial impairment rating due to the impending surgery.

Following the February 17, 2004 IME, Dr. Sheridan opined that Glahn was at maximum medical improvement and attributed a 0% impairment rating for the October 16, 2001; December 10, 2001; and April 10, 2002 injuries.²² Dr. Sheridan

²⁰ St. Elizabeth Business Health Services is the provider that Castellini first takes employees to for treatment following an injury.

²¹ According to his report, Dr. Sheridan also reviewed the following data received: 1) reports by Dr. Hasan; 2) reports from St. Elizabeth Business Health Center physical therapy department; 3) MRI report of the right shoulder dated October 31, 2002; and 4) reports from St. Elizabeth Business Health Center.

²² According to his report, Dr. Sheridan also reviewed the following data received: 1) first report of injury dated October 19, 2001; 2) first report of injury dated December 11, 2001; 3) reports from St. Elizabeth Business Health; 4) first report of injury dated September 3, 2002; 5) operative report of Dr. Hasan dated February 21, 2003; 6) reports by Dr. Hasan; 7) reports by Dr. John Kelly; 8) MRI report of the cervical spine dated

also opined that Glahn had reached maximum medical improvement for the September 3, 2003 injury, but attributed a 10% permanent partial impairment rating for the right upper extremity, which equated to a 6% permanent whole body impairment. According to Dr. Sheridan, the headaches, cervical pain, depression, and anxiety were not directly related to the September 3, 2002 injury.

Dr. Sheridan also made two addendum reports, dated March 16, 2004 and March 25, 2004. In the March 16, 2004 addendum report Dr. Sheridan reviewed the EMG and nerve conduction study report dated February 12, 2004 and stated that review of the data did not change the opinions rendered in his February 17, 2004 report. The March 25, 2004 addendum dealt with Glahn's claim related to her low back.²³ Dr. Sheridan stated that Glahn did not complain of her low back during the history rendered by him in his exams of January 2, 2003 or February 17, 2004. He opined that any low back complaints were not related to any of the four work injuries and did not give her an impairment rating for her spinal complaints.

To rebut Glahn's psychological complaint, Castellini submitted the report of Roberto Madrigal, licensed

September 16, 2003; 9) reports by Dr. Grefer; 10) physical therapy notes; and 11) his report dated January 2, 2003.

²³ According to his report, Dr. Sheridan also reviewed the following data received: 1) reports by Dr. Grefer from March 16, 2004 and October 27, 2003 to February 23, 2004; 2) physical therapy reports; and 3) bone scan report dated January 20, 2004.

psychologist.²⁴ Dr. Madrigal examined Glahn on May 12, 2004.²⁵ Dr. Madrigal opined that Glahn did not suffer from a major depressive disorder or any type of pain disorder; however, he did find that Glahn had suffered from alcohol abuse, which was in remission. He further found that Glahn's past alcohol abuse was not related to any of the four work-related injuries.

An addendum report by Dr. Madrigal dated May 20, 2004 was also submitted by Castellini. Dr. Madrigal stated he reviewed the report of Dr. Roebker.²⁶ Dr. Madrigal acknowledged the thoroughness of Dr. Roebker's evaluation, but disagreed with his conclusions. Dr. Madrigal specifically stated that the MMPI-2 he administered to Glahn did not support the presence of any psychopathology. Dr. Madrigal opined that Glahn's symptoms represented a normal reaction to a life setback, but failed to rise to the level of major depressive disorder.

Castellini also submitted a medical report from Dr. Daniel Wolens. His report merely recommended that the insurance company deny an additional MRI for Glahn. This concluded the

²⁴ Roberto Madrigal also has a Ph.D.

²⁵ Dr. Madrigal's May 14, 2004 letter to Castellini's counsel does not state what additional documents he reviewed in arriving at his conclusions.

²⁶ Also in the record (Defendant's Reply to Plaintiff's Motion to Strike the Medical Report of Dr. Madrigal) is the letter Castellini's counsel sent to Dr. Madrigal along with attached medical records (approximately sixty items) related to Glahn's four injuries. Glahn did not file any responsive document questioning the authenticity of Defendant's Reply.

medical evidence submitted in this matter. We now turn to examine Glahn's first argument presented in this appeal.

Glahn first contends that the ALJ's reliance on the opinions of Dr. Madrigal and Dr. Sheridan was clearly erroneous. We have previously examined the medical evidence submitted by each party related to Glahn's various claims, so we next turn to the ALJ's Opinion and Award which states:

Findings of Fact & Conclusions of Law

The issue of the extent and duration of [Glahn's] compensable disability requires determination of whether headaches, cervical, thoracic, lumbar and psychological complaints are causally related to any of [Glahn's] four alleged work injuries. I have considered the lay and medical evidence, not only as summarized herein, but in its entirety. With regard to psychological complaints, I am more persuaded by the medical opinions of Dr. Madrigal. I find that psychological complaints are not related to any work injury. Dr. Madrigal did an appropriate exam and medical opinions are well supported by objective medical findings and by [Glahn's] history. With regard to physical complaints, I am more persuaded by the opinions of Dr. Sheridan who did an exam that yielded objective medical findings that support his opinions. [Glahn] points out numerous times in various medical records where [Glahn] makes various complaints. However, any diagnosis based merely on complaints of symptoms but not supported by objective medical findings is insufficient for the purposes of KRS Chapter 342. Gibbs vs. Premier Scale Co., Ky., 50 S.W.3d 754 (2000). In the present case, the objective findings do not persuade me that there is a work related cervical, thoracic, psychological, lumbar or headache related injury. I find that those complaints are not work related.

. . . .

I am more persuaded by Dr. Sheridan's impairment ratings, 0% for the October 16, 2001 injury, 0% for the December 10, 2001 injury, 0% for the April 3, 2002 injury and 6% for the partial rotator cuff tear on September 3, 2002. His objective medical findings on physical exam are corroborated by medical records and test results.

The ALJ then rendered her award in accordance with her findings.²⁷

The claimant bears the burden of proof and the risk of nonpersuasion before the fact-finder with regard to every element of a workers' compensation claim. Magic Coal Company v. Fox, 19 S.W.3d 88, 96 (Ky. 2000). In order for that burden to be sustained, no less than substantial evidence of each element of the claim must be introduced. Id. Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the mind of reasonable people. Id. Although substantial evidence is sufficient to support an essential finding of fact, it will not necessarily require a favorable ruling, even in instances where the contrary evidence is less than substantial. Id. Only evidence which is so overwhelming that no reasonable person would fail to be persuaded by it will compel a particular

²⁷ The ALJ awarded temporary total disability in the amount of \$277.57 per week to Glahn for the weeks of September 4, 2002 through October 6, 2002 and from November 7, 2002 through September 21, 2003. The ALJ also awarded Glahn permanent partial disability beginning September 22, 2003 in the amount of \$14.16 per week.

finding. Id. Therefore, since Glahn was unsuccessful in her burden of proof, 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. Wolf Creek Collieries v. Crum, 673 S.W.2d 735, 736 (Ky. 1984).

Compelling evidence is defined as evidence so overwhelming that no reasonable person could reach the conclusion of the ALJ. Webster County Coal Corp. v. Lee, 125 S.W.3d 310, 316 (Ky.App. 2003). The ALJ has the sole authority to determine the weight, credibility, and substance of the evidence and to draw reasonable inferences from the evidence. Transportation Cabinet v. Poe, 69 S.W.3d 60, 62 (Ky. 2001), see also KRS 342.285. The ALJ has the discretion to choose whom and what to believe. Id., (citing Pruitt v. Bugg Brothers, 547 S.W.2d 123, 125 (Ky. 1977)). The ALJ, as fact-finder, may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Burton v. Foster Wheeler Corp., 72 S.W.3d 925, 929 (Ky. 2002), (citing Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977)). Although a party may note evidence which would have supported a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479, 482 (Ky. 1999).

Following a review of the record, we believe the medical evidence submitted by Glahn is not of a compelling nature. While another ALJ may have relied upon the medical opinions submitted by Glahn in rendering a decision in her favor, that alone is insufficient to warrant a reversal. Further, we believe the medical opinions of Dr. Madrigal and Sheridan constitute substantial evidence to support the ALJ's decision. Dr. Sheridan and Dr. Madrigal each performed an examination upon Glahn.²⁸ Dr. Sheridan specifically lists all documents he reviewed in each opinion he provided, including those claimed omitted by Glahn.²⁹ Dr. Madrigal's medical opinion is not in the ideal form. Dr. Madrigal's May 14, 2004 opinion is in the form of answers only; however, this was explained further by Castellini when it filed its reply to Glahn's motion to strike Dr. Madrigal's report.³⁰ Glahn's motion to strike was

²⁸ Dr. Sheridan, in fact, performed two examinations of Glahn.

²⁹ Glahn claims the reports of Dr. Hasan and St. Elizabeth Business Health were omitted from the records Dr. Sheridan reviewed prior to his opinion. The January 2, 2003 IME report from Dr. Sheridan specifically states he reviewed "reports by Dr. Samer Hasan"; "reports from St. Elizabeth Business Health Center Physical Therapy Department"; and "reports from St. Elizabeth Business Health Center." The February 17, 2004 IME report from Dr. Sheridan specifically states he reviewed "reports from St. Elizabeth Business Health"; "an operative report dated 2/21/03 by Dr. Samer Hasan"; "reports by Dr. Samer Hasan"; and "physical therapy reports." The March 25, 2004 IME report from Dr. Sheridan specifically states he reviewed "physical therapy reports." Each of these are in addition to other data reviewed that is not listed because it is not at issue in this case.

³⁰ Glahn filed no responsive pleading to Castellini's reply which attached its original May 7, 2004 letter to Dr. Madrigal which listed the questions asked as well as copies of all medical records forwarded. The records consisted of approximately sixty items, including records from Dr. Roebker and Terry

overruled by the ALJ on June 15, 2004. Dr. Madrigal also supplemented his original report on May 20, 2004 to reflect that he reviewed the report of Dr. Roebker and administered a MMPI-2 to Glahn during his examination, but that his opinion of Glahn's psychological complaints not being work-related remained unchanged.³¹ Therefore, we do not believe the ALJ was clearly erroneous and affirm.

Glahn's second argument is that the WCB did not address the deficiencies within the medical reports that the ALJ relied upon and, instead, created new law which exceeded its appellate authority. Glahn's argument focuses primarily upon the WCB's interpretation of Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004). In response to Glahn's arguments in her appeal, the WCB stated as follows:

We find the remainder of Glahn's appeal, however, to be largely a factual re-argument of the case.³² Essentially, Glahn requests this Board to substitute its judgment for that of the ALJ. This is not the Board's function. See, KRS 342.285;

Hirschfeld. The May 7, 2004 letter and attachments were not submitted into evidence at the hearing.

³¹ Dr. Madrigal also states "There is apparently no question that claimant suffered at some point from an Alcohol Abuse, but **Dr. Roebker mentions some contradicting information gathered from Ms. Hirschfeld's notes and reports and Ms. Glahn's report that are similar to the ones I found** (although I did not specifically noted in my report) . . . (Emphasis added.) It appears that Dr. Madrigal did review other medical data, but does not list any other specific records reviewed.

³² The first issue addressed by the WCB was the portion of the ALJ opinion which was vacated and remanded for additional fact finding. As stated earlier, that portion of the WCB Opinion was not appealed by either party.

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

. . . .

Glahn's appellate reliance on Cepero v. Fabricated Metals Corporation, 132 S.W.3d 839 (Ky. 2004) is misplaced. In Cepero, the claimant clearly concealed from doctors a significant nonwork-related knee injury that had required him to be wheelchair bound for a period of two or three months and for which surgery had been recommended. . . .

. . . .

The Cepero case involved medical opinion erroneously premised on the claimant's egregious omission of directly relevant past medical history. The holding in Cepero does not require the rejection of all opinions in all cases in which a medical history allegedly contains inaccurate or incomplete information. The inaccuracies must rise to such a level that no reasonable fact finder could find any probative value in the medical opinion at issue.

In the present appeal, Glahn's argument about the completeness of the medical histories which may have been available to Dr. Sheridan and Dr. Madrigal simply goes to the weight to be assigned by the finder of fact to the opinions of Dr. Sheridan and Dr. Madrigal. It is clear from the reports generated by Dr. Sheridan that he interviewed and examined Glahn. Moreover, it is clear from the first paragraph of Dr. Sheridan's March 25, 2004 supplemental report that his opinion about whether Glahn had sustained a work-related low back injury had a basis in the history Glahn, herself, related to Dr. Sheridan when he examined her. It is certainly reasonable to infer Glahn had no motivation to conceal the nature or extent of her alleged injuries when she was examined by Dr. Sheridan, who

conducted an independent medical examination for Castellini.

It is equally clear from Dr. Madrigal's reports that Glahn appeared at Dr. Madrigal's office for a psychological evaluation; that Dr. Madrigal's evaluation included independent administration by him of the MMPI-2; and that Dr. Madrigal reviewed the psychological evaluation report from David Roebker, Ph.D., dated May 13, 2004. Glahn could have further explored the completeness of Dr. Madrigal's examination during discovery if she truly believed his reports were irrefutably incredible. We decline to engage in such speculation on appeal.

It is well-established that the function of this Court in reviewing the WCB "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." AK Steel Corp. v. Childers, 167 S.W.3d 672, 675 (Ky.App. 2005), (citing Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992)). We must determine whether the WCB misconstrued a controlling precedent established in Cepero. We believe that the WCB did extend the holding of Cepero beyond that established by the Supreme Court. The Supreme Court specifically held that "[W]here it is irrefutable that a physician's history regarding work-related causation is corrupt due to it being substantially inaccurate or largely incomplete, any opinion generated by that physician on the issue of causation cannot constitute

substantial evidence. Medical opinion predicated upon such erroneous or deficient information that is completely unsupported by any other credible evidence can never, in our view, be reasonably probable." Cepero, supra 132 S.W.3d at 842. We believe the WCB should not have extended the holding in Cepero in its Opinion, but that extension fails to warrant a reversal.

We believe Cepero is not applicable to the instant case, because it is **refutable** that Dr. Sheridan's or Dr. Madrigal's history regarding work-related causation is corrupt due to it being substantially inaccurate or largely incomplete. The completeness of these two medical reports is the very thing that is in dispute. In Cepero, it was undeniable that some of the submitted medical reports contained incomplete information due to the claimant's failure to advise the physicians of a prior injury. That is not the situation in this instance.

Dr. Sheridan and Dr. Madrigal each performed an examination upon Glahn.³³ Dr. Sheridan specifically lists all documents he reviewed in each opinion he provided, including those claimed omitted by Glahn. Dr. Madrigal's medical opinion is not in the ideal form, but we are unable to agree that it constitutes the same type of report at issue in Cepero. The report at issue in Cepero was missing vital information related

³³ Dr. Sheridan, in fact, performed two examinations of Glahn.

to the claimant's prior injuries. The instant case is factually dissimilar.

Dr. Madrigal's May 14, 2004 opinion is in the form of answers only; however, this was explained further by Castellini's counsel when it filed its reply to Glahn's motion to strike Dr. Madrigal's report. Dr. Madrigal did supplement his original report on May 24, 2004 to reflect that he reviewed the report of Dr. Roebker and administered a MMPI-2 to Glahn during his examination, but that his opinion of Glahn's psychological complaints not being work-related remained unchanged.³⁴ As stated earlier, we believe both Dr. Sheridan's and Dr. Madrigal's opinions as to causation were supported by substantial evidence.

We agree with the WCB that the completeness of the medical reports was more appropriate for investigation during the discovery process, not the appellate process. Although our reasoning differs somewhat from that of the WCB related to Glahn's Cepero argument, the result shall remain the same. Hence, we affirm.

³⁴ Dr. Madrigal also states "There is apparently no question that claimant suffered at some point from an Alcohol Abuse, but **Dr. Roebker mentions some contradicting information gathered from Ms. Hirschfield's notes and reports and Ms. Glahn's report that are similar to the ones I found** (although I did not specifically noted in my report) . . . (Emphasis added.) It appears that Dr. Madrigal did review other medical data, but does not state any other specific records.

Based on the foregoing, the decision of the WCB is affirmed.

ALL CONCUR.

BRIEFS FOR APPELLANT:

Gregory N. Schabell
Florence, Kentucky

BRIEF FOR APPELLEE:

J.L. Sallee, Jr.
David D. Black
Cincinnati, Ohio