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Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001677-WC

JEFFERSON COUNTY PUBLIC SCHOOLS/JEFFERSON COUNTY BOARD OF EDUCATION — APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-97428

MARY ALICE STEPHENS; HON. DONNA H. TERRY, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: GUIDUGLI, McANULTY, AND SCHRODER, JUDGES.

McANULTY, JUDGE: Jefferson County Public Schools (hereinafter JCPS) appeals the opinion of the Board of Workers' Compensation which affirmed an award of benefits to appellee Mary Alice Stephens following a fall at her place of employment. The accident occurred when Stephens was walking to the bathroom and, while transitioning from a carpeted floor to a tile floor, lost her footing and fell, fracturing her left hip. The Board

affirmed the finding of the Administrative Law Judge (ALJ) that Stephens' injury arose out of her employment. JCPS argues that the ALJ misconstrued uncontradicted medical evidence regarding the cause of Stephens' fall and had no basis to find that her fall was not idiopathic. We affirm the decision of the Board.

An unexplained fall by an employee raises a rebuttable presumption that the injury arose "out of" the employment, which may be negated by other evidence. Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898, 900 (Ky. 1971). When an employee at work suffers a fall for which the reason is undetermined, there is a natural inference that the work had something to do with it in the sense that had the employee not been at work the injury probably would not have occurred. Id. However, a fall that results from the presence of a personal risk to the employee is considered an idiopathic fall and the resulting loss is assigned personally to the employee. Id. at 902, citing Larson, Workmen's Compensation Law, § 12.14.

Without evidence to rebut the presumption of work-relatedness, the Board cannot find for the employer. However, if the employer comes forward with sufficient evidence that work was not a contributing cause to raise a substantial doubt, the rebuttable presumption is reduced to a permissible inference, in which case the Board may either find or decline to find that work was not a contributing cause. Id. at 900-901.

In this case, the ALJ rejected the conclusion that Stephens' fall was idiopathic, and concluded, "This appears to be simply a fall near the juncture of a change in walking surfaces and was not caused by presyncope, syncope or loss of consciousness." In affirming, the Board concluded that this was *neither* an unexplained fall nor an idiopathic fall because the ALJ found that the cause of the fall was the movement from an uncarpeted floor to a tiled floor.

We reject the Board's analysis on this, but affirm its result. The function of our review is to correct the Board only where this Court perceives that the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause a gross injustice. Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992). We believe that if one accepts the ALJ's conclusions, this must be considered an unexplained fall. Stephens could not explain why, on this one occurrence of moving into the hallway and onto the tile floor, she fell. She stated that she did not know whether there was anything on the floor. She did not say that she slipped or tripped on the tile or on anything on that surface.

If it was ordinary for people in a workplace to fall when moving from carpet to tile, we may be able to say that the movement from carpet to tile explained this fall. However, it

was not shown to be a regular consequence of moving from carpet to tile that one would fall. Thus, if there is no more concrete explanation than that for the fall, it would have to fit under the category of an unexplained fall. We therefore disagree with the Board's conclusion that this was neither an unexplained nor idiopathic fall. It must be considered one or the other.

Following the established analysis for falls under Workman, Stephens' fall on the job created a presumption that the fall was work-related. JCPS presented medical evidence to show that the fall was idiopathic, that is, personal to Stephens. JCPS cited the EMS record in which Stephens reported that she had a sudden onset of spots before her eyes and felt weak, and then started to fall. The report stated that she did not pass out completely. The hospital's emergency room record reported that Stephens said she felt dizzy with spots in front of her eyes; she remembered the impact and did not lose consciousness.

The hospital discharge summary by Dr. Ray reported that, though she denied losing consciousness, Stephens had a "flash of darkness in her vision that was just an instant in time." Dr. Ray concluded that there was "no etiology really found for her presyncopal episode other than just possible

orthostasia. Of note, though, she has not been orthostatic while here."[1]

JCPS also cites the neurology consult which reported that Stephens experienced a sudden darkening of vision and reached to catch herself, but fell, and fractured her hip. The neurologist seemed to conclude that Stephens had lost consciousness because her report stated that Stephens "came to upon hitting the floor." The doctor reported no weakness, numbness or tingling, and no further events and no history of seizures. The neurologist reported that Stephens had had blackout spells in the past but none within the past nine years or so and the evaluation for this in the past was negative. Her impression was "fall with an episode most consistent [with] presyncope, nontypical of seizure or TIA."

JCPS believes the above evidence conclusively establishes that the fall was idiopathic. JCPS concludes that the cause was personal to Stephens in that the medical diagnosis was presyncope, including reports of spots before the eyes and weakness. JCPS complains that the ALJ's opinion is erroneous in stating that there was no evidence of a syncopal episode, and in asserting that Dr. Ray ruled out the only evidence of a syncopal

[1] Presyncope is defined in Taber's Medical Dictionary as: "Near fainting; the sensation that one is about to pass out." Orthostatic is defined as: "Concerning or caused by an erect position." Orthostasia is not listed, but orthostatic hypotension is defined as: "Hypotension occurring when a person assumes an upright position after getting up from a bed or chair."

episode when he noted that the patient had not been orthostatic while in the hospital. The ALJ considered JCPS's arguments regarding these facts in a motion to reconsider, but did not alter the result.

The ALJ opinion was technically correct in that syncope was not diagnosed – but presyncope, or "near fainting," was. Further, we agree with JCPS that Dr. Ray's opinion did not rule out presyncope or syncope by stating that Stephens had not been orthostatic while hospitalized, since his discharge summary stated that she had had a "presyncopal episode." However, we do not find that this alters the result in this case.

The other evidence before the ALJ was Stephens' deposition testimony in which she reported, "When I came off the carpet into the hallway, I lost my footing. I don't – and I just fell." She remarked that she did not know why she fell and did not know if there was anything on the floor. She said she had moved off the carpet onto the tile. She called for help immediately. She could not remember anything about the treatment she received. However, she denied ever having had blackout spells, or sensations of dizziness or of the room going dark. She rejected the idea that any medication she was taking could have been a source of dizziness. She reported that she had not had any falls or injuries since the date of the fall at work.

JCPS asserts that this was self-serving testimony which failed to rebut the medical evidence in this case. However, the ALJ felt that Stephens' denial of dizziness or of blackout spells in the past was sufficient to rebut the medical testimony and support the inference of work-relatedness. We conclude that it was within the ALJ's discretion to choose what to believe among this evidence. As fact finder, the ALJ has the sole authority to determine the weight, credibility, and substance of the evidence and to draw reasonable inferences from it; the ALJ has the discretion to choose whom and what to believe. Transportation Cabinet v. Poe, 69 S.W.3d 60, 62 (Ky. 2001).

The ALJ did not place credence in the medical testimony because it was based on the history Stephens related to the medical professionals. The Board stated in its opinion, "Moreover, her testimony regarding her medical history prior to the fall and the history related to her by her physicians after the fall calls into question the accuracy of the diagnoses related to syncope." (Board Opinion p.8) It was within the ALJ's authority to question the diagnoses:

> When a medical opinion is based solely upon history, the trier of fact is not constricted to a myopic view focusing only on the physicians' testimony. Other testimony bearing on the accuracy of the history may be considered. . . . After all, the opinion does not rest on the doctor's

> own knowledge, an essential predicate to make uncontradicted testimony conclusive.

Osborne v. Pepsi-Cola, 816 S.W.2d 643, 647 (Ky. 1991). The Board noted that even uncontradicted medical testimony may be ignored if the ALJ gives a reasonable explanation for doing so, citing Commonwealth v. Workers' Compensation Board of Kentucky, 697 S.W.2d 540 (Ky. App. 1985) and Collins v. Castleton Farms, Inc., 560 S.W.2d 830 (Ky. App. 1977). It appears that the Board felt a reasonable basis was established by the ALJ's conclusion that the medical opinions were based on a history which Stephens asserted was not accurate.

A determination of the Board on the factual issue of whether the claimant sustained an injury arising out of or in the course of employment is conclusive unless the total evidence was so strong as to compel a contrary finding, or "so persuasive" that it was clearly unreasonable for the Board not to be convinced by it. Wells v. Kentucky Appalachian Industries, Inc., 467 S.W.2d 365 (Ky. 1971). We do not believe the evidence in this case compels a finding of an idiopathic fall. Certainly the medical evidence did not come to a consensus as to what occurred. While they collectively reported presyncope and visual disturbances, they did not establish that is what caused Stephens' fall. Thus, we do not agree that the

medical reports compelled a conclusion that Stephens had some personal risk which caused her fall.

We believe the ALJ properly determined that the employer did not thoroughly rebut the presumption of work-relatedness in this instance. When the rebuttable presumption of work-relatedness is reduced to a permissible inference, as in this case, the Board may find or decline to find that work was a contributing cause of the accident. Workman, 462 S.W.2d at 900. We believe the absence of definitive medical evidence to explain the cause of the fall justifies the permissible inference that the fall was work-related. Although others may come to a different conclusion, the Board was permitted to reach its particular conclusion under the facts. Thus, we do not agree that the Board has committed an error in assessing the evidence so as to cause gross injustice in this case, and we affirm the conclusion reached by the Board under Western Baptist.

Finally, JCPS argues that the ALJ's decision to apply "the three multiplier" was not supported by substantial evidence. JCPS primarily asserts the facts of this case do not comport with other cases finding the three multiplier, and argues that the fact that Stephens requires assistance with the more strenuous aspects of her job "alone does not constitute substantial evidence of her eligibility for the three multiplier." We believe it is clear from the ALJ's

determination that the need for assistance was not the only evidence of eligibility for the three multiplier; the whole of the ALJ's findings constituted substantial evidence to support her conclusion. Thus, we find no error.

For the foregoing reasons, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:	BRIEF FOR APPELLEE:
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