

RENDERED: APRIL 21, 2006; 2:00 p.m.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-001965-WC

RUTH WALKER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-96864

CABINET FOR HEALTH SERVICES;
HON. JAMES L. KERR, ADMINISTRATIVE
LAW JUDGE; and WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BUCKINGHAM, HENRY, AND VANMETER, JUDGES.

VANMETER, JUDGE: Ruth Walker filed this pro se petition for review from an opinion entered by the Workers' Compensation Board (Board) affirming an administrative law judge's (ALJ's) opinion denying Walker's claim for benefits. For the reasons stated hereafter, we affirm.

Walker has been employed as a registered nurse at various clinics and hospitals since the 1970's. The extensive medical evidence adduced below shows that in 1994, Walker was

diagnosed as having a latex allergy which apparently developed from her exposure to surgical gloves. The condition worsened in 1998 after a latex drain apparently was used in her mouth during a dental procedure. Walker later was awarded damages as the result of a class action lawsuit relating to her exposure to defective latex products.

Meanwhile, from early 1995 until November 2001, Walker was employed as a research nurse by appellee Cabinet for Health Services (CHS). She was employed simultaneously as a nurse by the Frankfort Regional Medical Center, which was not named as a party to this proceeding. Walker's present occupational disease claim, which was filed in November 2002, is based on the assertion that while she was employed by CHS, Walker worked in a mold and chemical-contaminated building which caused her to suffer from the "[t]oxic effects of chemical exposure."

Extensive evidence was adduced before the ALJ regarding Walker's work history, allergies, chemical exposure and physical symptoms, as well as regarding possible health hazards in the CHS building and the steps which were taken to remedy those hazards. The ALJ made the following findings:

16. The parties have preserved causation/work-relatedness as an issue. Plaintiff has alleged numerous problems including chronic fatigue, watery eyes, dyspnea, chest tightness, fibromyalgia, shoulder pain, bilateral thumb pain, headaches, dizziness, memory loss and

nausea. She acknowledges prior latex allergies but states that her latex problems did not become systemic until the fall of 1998. Actually, plaintiff's entire case centers around the testimony of Dr. Rea who has diagnosed the plaintiff with toxic encephalopathy, reactive airway disease, chemical sensitivity, chronic fatigue, and fibromyalgia. He has assessed a 28% impairment but conceded in his deposition that 2%-5% of plaintiff's condition is the result of pre-existing latex allergies. He further testified that plaintiff's work place exposure resulted in the development of neurotoxicity and chemical sensitivity. The Administrative Law Judge totally discredits Dr. Rea's testimony for multiple reasons. First, Dr. Rea points out in numerous patient histories that plaintiff's symptoms began in 1998 while working at a hospital. For reference, see Dr. Rea's December 4, 2001 letter addressed "To Whom It May Concern," second paragraph. Plaintiff testified that she had concurrent employment at the Frankfort Regional Medical Center in 1998. While Dr. Rea stated in his deposition that he was aware that she was simultaneously working at a hospital, he could not give dates in respect to that and it does not appear that he considered whether plaintiff had any type of chemical exposures there which led to neurotoxicity and chemical sensitivity. In addition, Dr. Rea has a significant financial interest in treating plaintiff as he has stated it is impossible in Kentucky to obtain the type of treatments which he has recommended he perform. Also, Jerry Taylor testified in some detail about the abatement procedures to cure the mold situation, including the steps to seal the areas where the mold was being removed as well as the negative air flow but Dr. Rea seems to think that plaintiff's exposures were rampant while she worked for the defendant-employer. When the totality of the circumstances is considered, including Dr. Rea's faulty history, Dr.

Rea's failure to consider plaintiff's concurrent employment and Dr. Rea's financial stake in the outcome of this matter, the Administrative Law Judge determines that Dr. Rea's opinions lack credibility and are of little or no value to the undersigned in considering this case.

17. While Drs. Garrett and Collins diagnosed chemical sensitivity, multiple extrinsic allergies, including latex, multiple food allergies and asthma, it is noted that plaintiff completed an exposure history for them on October 26, 2001 and under dates of employment, she reflects employment at the Frankfort Regional Medical Center as a staff nurse in the intensive care unit from 1994 to the present. There, she acknowledges exposure to printer ink and latex when she enters the hospital or goes anywhere other than the intensive care unit. Drs. Garrett and Collins, Dr. Branch and Dr. Smith do not otherwise specifically address causation. That leaves Dr. Robert W. Powell as a medical witness. He diagnosed patient with a history of atopia including the latex allergy intolerance to multiple environmental products and foods. Dr. Powell further did not state within a reasonable medical probability that plaintiff's exposures for the defendant-employer resulted in her diagnosis. He did mention problems with printer ink historically but noted that plaintiff is not symptom free even totally away from printer ink because she has multiple allergies. Further, plaintiff told Drs. Garrett and Collins that she was exposed to printer ink at Frankfort Regional Medical Center also. Based upon Dr. Powell's comments and plaintiff's history, the Administrative Law Judge further cannot conclude that Dr. Powell presents the requisite causation testimony to tie plaintiff's employment to her symptoms.

18. In summary, the Administrative Law Judge finds that plaintiff has failed to meet her burden of proof as to a causal connection between her employment and the various conditions she has alleged in this claim. The Administrative Law Judge agrees with the defendant-employer which argued in its brief that plaintiff's own proof is detrimental to her case. Plaintiff completed a latex allergy information sheet around 1999 and it is noted that the plaintiff then complained on page 31 of her questionnaire of asthma, nausea, diarrhea, headache, weakness, tiredness and heavy feeling in her chest. She related all of her symptoms to allergies which she further related to increased sensitivity after development of the latex allergies. While plaintiff trivializes the latex glove class action law suit in this forum, it further brings into question plaintiff's present problems and their relationship to her . . . employment with the defendant-employer. As the result of the above, that the plaintiff has failed to meet her burden of proof on the issues of causation/work-relatedness and her claim shall be dismissed.

19. The Administrative Law Judge having determined that plaintiff has failed to meet her burden of proof on the issue of work-relatedness/causation, all other issues are rendered MOOT.

The ALJ dismissed Walker's claim.

Walker then appealed to the Board, which reviewed and summarized the evidence in its thirty-page opinion before rejecting Walker's arguments. The Board noted that although there was evidence which could have supported a finding for Walker, the ALJ did not act arbitrarily by rejecting Dr. Rea's opinions. More specifically, the Board stated:

The ALJ was not convinced Dr. Rea had an accurate understanding of Walker's exposure. The ALJ stated it appeared Dr. Rea believed Walker's exposures were rampant while she worked for CHS. If Dr. Rea were not aware of the abatement procedures that Taylor testified to, including the negative airflow, that would clearly constitute an inaccurate history that could, in the view of the ALJ, so undermine Dr. Rea's opinion regarding causation that the ALJ could reject that opinion. Where the evidence establishes that a physician's opinion as to causation is based upon an inaccurate past medical history, the fact finder may reject that opinion as lacking in reliability and probative value. Osborne v. Pepsi-Cola, 816 S.W.2d 643 (Ky. 1991). The ALJ, and not this Board, has the role of fact finder. We are without authority to reweigh the evidence and reach a conclusion contrary to that of the ALJ. The ALJ could reasonably find Dr. Rea's opinions lacking in probative value. As noted by the ALJ, Drs. Garrett, Collins, Branch and Smith did not specifically address causation. The remaining doctor, Dr. Powell, diagnosed a history of atopia, including the latex allergy, intolerance to multiple environmental products and foods. He did not state within a reasonable medical probability that Walker's exposures at CHS resulted in her diagnosis. Once the ALJ discredited Dr. Rea's opinion on causation, he was simply left with no medical opinion to support a finding of causation/work relatedness. Since Walker already had the latex allergy and had been exposed to printer ink at the Frankfort Regional Medical Center, a specific medical opinion tying causation to her work at CHS was necessary. Absent the opinion of Dr. Rea, that burden could not be met. The evidence, thus, falls far short of compelling a finding in favor of Walker on the issue of work relatedness/causation.

The Board therefore affirmed the ALJ's decision and dismissed the appeal.

Walker then sought review by this court, filing a forty-three page pro se petition which primarily consisted of a retelling of the evidence. Although the petition failed to set forth any clear and concise statement of either the legal issues or the reasons why this court should grant relief, as required by CR 76.25(4)(c), Walker implicitly contended that the evidence was such as to entitle her to relief. We cannot agree.

As noted by the Board, Walker's burden on appeal as an unsuccessful claimant was to show that the evidence was so overwhelming as to compel a finding in her favor.¹ However, as the fact finder the ALJ was vested with the sole authority "to determine the quality, character and substance of the evidence."² Moreover, the ALJ could "believe part of the evidence and disbelieve other parts," whether provided by the same or by different witnesses.³ So long as any substantive evidence supported the ALJ's opinion, it may not be set aside.⁴ Further, this court's role on review is to correct the Board only if it "overlooked or misconstrued controlling statutes or precedent,

¹ *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984).

² *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985).

³ *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

⁴ *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986).

or committed an error in assessing the evidence so flagrant as to cause gross injustice.”⁵

Here, after reviewing the totality of the evidence, we must agree with the Board that the ALJ did not act arbitrarily by rejecting the opinions of Dr. Rea or the other evidence which supported Walker’s claim that her condition was caused by events related to her employment with CHS. Regardless of whether the evidence could have supported Walker’s claim, it clearly did not compel a finding in her favor as to causation. Hence, the Board did not err by affirming the ALJ’s denial of Walker’s claim.

The Board’s order is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Ruth Walker, pro se
Lawrenceburg, Kentucky

BRIEF FOR APPELLEE CABINET FOR
HEALTH SERVICES:

K. Lance Lucas
Edgewood, Kentucky

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