

RENDERED: MAY 26, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2006-CA-000111-WC

MARY SHOOPMAN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
CLAIM NO. WC-02-62854

ROSEDALE MANOR;
HONORABLE MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; MINTON, JUDGE; HUDDLESTON, SENIOR
JUDGE.¹

MINTON, JUDGE: Mary Shoopman petitions for review of a decision
of the Workers' Compensation Board affirming an administrative
law judge's decision to deny her claim for disability benefits.
This appeal simply involves an argument over the weight and
credibility of the evidence. And even though Shoopman points to

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by
assignment of the Chief Justice pursuant to Section 110(5)(b) of the
Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

evidence that conflicts with that relied upon by the ALJ, we must affirm because the ALJ's choices are supported by substantial evidence.

Shoopman worked for Rosedale Manor as a housekeeper and resident valet. The resident valet job required her to change bed linens and escort residents to the dining room. In November 2002, Shoopman allegedly suffered an injury to her back while making a bed. Because she was allegedly unable to perform all of her former duties, Rosedale Manor terminated Shoopman shortly after she was released from light duty work in the summer of 2003. Shoopman filed her claim for benefits in November 2004. Both sides submitted medical records and other evidence. In due course, the ALJ issued an opinion finding that Shoopman had not suffered a physical or psychiatric disability due to the November 2002 incident. The Board affirmed, after which Shoopman filed this petition for review.

Shoopman contends that the ALJ and Board erred in finding that she was not disabled from a work-related injury. Before we may examine her arguments on their merits, we must clarify the proper scope of our review. It is well-established that this Court's function in workers' compensation cases "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."² Furthermore, Shoopman, as the claimant, has the burden of proof on every element of her claim.³ Since the ALJ found against Shoopman, the issue on appeal is "whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in [Shoopman's] favor."⁴ In order to be compelling, evidence must be "so overwhelming that no reasonable person would fail to be persuaded by it"⁵

The ALJ is the fact-finder in workers' compensation cases, meaning that the ALJ alone "has the authority to determine the quality, character[,] . . . substance[,]"⁶ and weight of the evidence presented, as well as the inferences to be drawn from the evidence.⁷ So the ALJ "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."⁸ Thus, in our

² Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-688 (Ky. 1992).

³ Magic Coal Co. v. Fox, 19 S.W.3d 88, 96 (Ky. 2000).

⁴ Wolf Creek Collieries v. Crum, 673 S.W.2d 735, 736 (Ky.App. 1984).

⁵ Magic Coal Co., 19 S.W.3d at 96.

⁶ Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985).

⁷ Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329, 331 (Ky. 1997).

⁸ Magic Coal Co., 19 S.W.3d at 96.

limited function as a reviewing court, we may not "substitute [our] judgment" for that of the ALJ, nor may we render our own findings or direct the conclusions the ALJ shall make.⁹

Shoopman's main argument is that the ALJ erred by finding her to be neither physically nor psychologically disabled as a result of the November 2002 incident at work. We disagree with Shoopman's argument.

As to Shoopman's claim of physical disability, the ALJ relied upon Dr. Timothy Kriss's conclusion that Shoopman magnified her symptoms and suffered, at worst, a temporary musculoskeletal lumbar strain from the November 2002 incident. Shoopman, of course, disagrees with Dr. Kriss's conclusions; argues that he improperly read a previous MRI report; and points to the contradictory findings of other physicians. But as the Board cogently explained:

Dr. Kriss, in his report, set out his methodology for determining Shoopman's impairment and there is no direct evidence calling his methodology in to [sic] question. All of Shoopman's arguments . . . are in reality addressed to the weight and credibility to be assigned the evidence. The weight to be assigned any particular item of evidence is a question to be resolved by the fact finder—not this [Court]. . . . Dr. Kriss's evidence is substantial in nature and we are without authority to determine otherwise.

⁹ Wolf Creek Collieries, 673 S.W.2d at 736.

We agree with the Board that the ALJ was entitled to take into account all of the evidence, including any perceived imperfections in Dr. Kriss's methodology, in determining whether Shoopman was disabled. The fact that Shoopman presented evidence from other physicians supporting a finding of disability is an insufficient basis for reversal.¹⁰ Furthermore, we reject Shoopman's argument that the ALJ's decision is fatally flawed because he permitted Rosedale Manor to submit a late-filed supplemental report from Dr. Kriss. We agree with the Board that the fact that Dr. Kriss's supplemental report addresses psychiatric matters outside his realm of expertise goes to the weight, not the admissibility, of that report. In any event, this issue is immaterial because there is no indication that the ALJ relied upon Dr. Kriss's supplemental report.

As to Shoopman's psychological disability claim, the ALJ's conclusions are supported by the supplemental report of Dr. Robert Granacher, a psychiatrist. In his supplemental report, Dr. Granacher found that Shoopman suffered from severe symptom magnification and opined that Shoopman's current behavior was "due to an apparent chronic personality condition, unrelated to a work injury." Thus, Dr. Granacher concluded that he was "unable to find a causal connection between

¹⁰ Burton v. Foster Wheeler Corp., 72 S.W.3d 925, 929 (Ky. 2002).

Ms. Shoopman's current behavior and an alleged work-related injury." Although Shoopman takes issue with these findings and points to evidence that could lead to contrary findings, we find that the ALJ's decision that Shoopman did not incur a work-related psychological disability is supported by substantial evidence. And we may not disturb findings of fact based on substantial evidence.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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