

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001060-WC

COSSETTA STEPHENS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-82363

OSRAM SYLVANIA;
HONORABLE HOWARD E. FRASIER,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT, MOORE, AND NICKELL, JUDGES.

NICKELL, JUDGE: Cossetta Stephens filed her claim for workers' compensation benefits based on an incident and resulting injuries that occurred on January 29, 2004, during the course and scope of her employment with Osram Sylvania. The Administrative Law Judge (ALJ) found that Stephens had suffered an injury as defined by Kentucky Revised Statutes (KRS) 342.0011(1).¹ However, the ALJ rejected Stephens'

¹ KRS 342.0011(1) states:

contention as to the proper diagnosis of that work-related injury.² An award was made for a period of temporary total disability (TTD), permanent partial disability (PPD) benefits, and medical treatment for the cure and relief of the diagnosed work-related injury.³ On appeal, the Workers' Compensation Board (“Board”) affirmed the ALJ's decision in its opinion, dated April 14, 2006. This appeal followed, and we affirm the

“Injury” means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. “Injury” does not include the effects of the natural aging process; and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. “Injury” when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

² One of Stephens' several treating physicians, Dr. E. Atasoy, submitted a diagnosis of thoracic outlet compression (which is swelling and inflammation resulting in a narrowing of the thoracic outlet space) and recommended a controversial surgery consisting of a first rib resection and scalenectomy following weight loss. Based on this diagnosis, Dr. Atasoy gave Stephens a permanent partial impairment rating of 18%. However, based on the totality of the objective medical evidence, including the medical opinions expressed by several other physicians, the ALJ found the diagnosis of Stephens' compensable work-related injury to be chronic pain syndrome.

³ This portion of the award was made pursuant to the requirement set forth in KRS 432.020(1), which states in relevant part:

In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. . . .

Board.

Although KRS 342.085 permits the appeal of the ALJ's decision to the Board, it further provides that such decision is “conclusive and binding as to all questions of fact” and prohibits the Board from “substitut[ing] its judgment for that of the administrative law judge as to the weight of evidence on questions of fact.” KRS 342.090 limits the scope of our review to that of the Board and also to errors of law arising before the Board.

On appeal, Stephens contends the ALJ erred in finding she did not suffer from thoracic outlet compression as this issue was not properly presented for adjudication. While Stephens agrees the ALJ properly found that her injury fell within the definition set forth in KRS 342.0011(1), she disagrees with the decision regarding her ultimate diagnosis. Certainly, logic and reason demand that a trier of fact be free to determine the exact identity, nature, and cause of a medical condition prior to finding whether it is consistent with a particular statutory definition of a compensable injury. Thus, Stephens' argument to the contrary lacks merit.

The Supreme Court of Kentucky, in *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985), held the fact-finder, rather than the reviewing court, has sole discretion “to determine the quality, character and substance of the evidence presented. . . .” Furthermore, where there is conflicting medical testimony, an ALJ, as the finder of fact, may reject any testimony and believe or disbelieve various parts of the evidence. *See Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky. 1977). So long

as the ALJ's decision is supported by substantial evidence, the fact that contrary evidence in support of an opposite finding was presented is insufficient to reverse on appeal.

McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

In the case sub judice the ALJ received evidence from no less than four board certified orthopaedic surgeons⁴ and one other physician⁵ regarding the identity, nature, and cause of the compensable work-related injury Stephens sustained, together with the resulting medical impairment and physical limitations, if any. Moreover, the ALJ heard testimony from Stephens about the painful and debilitating effects of her injuries and course of treatment. Dr. Atasoy was the sole surgeon to diagnose Stephens with thoracic outlet compression, recommend surgical intervention, assign an 18% AMA impairment rating, and impose permanent physical restrictions related to that condition. In contrast, the other physicians diagnosed Stephens' work-related injury as chronic pain syndrome, assigned no more than a 3% AMA impairment rating,⁶ imposed no significant permanent physical restrictions, and specifically rejected Dr. Atasoy's diagnosis and proposed treatment, particularly his recommendation of rib resection and scalenectomy.

⁴ Dr. David Dome, one of Stephens' past treating physicians, was deposed by Osram Sylvania, and the deposition was presented to the ALJ. Dr. Martyn Goldman and Dr. Mark Gladstein each completed independent medical evaluations (IME) of Stephens at Sylvania's request and their reports and/or depositions were also submitted. Dr. Atasoy's deposition was also entered into the record.

⁵ The medical records of Dr. Kevin Perdue were entered into the record. Although numerous other physicians were mentioned in the record as having treated Stephens for her injuries, none of their records were presented to the ALJ.

⁶ These three physicians gave impairment ratings of 0%, 1-2%, and 3%, respectively.

Again, “[w]here, as here, the medical evidence is conflicting, the question of which evidence to believe is the exclusive province of the ALJ.” *Square D Company v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993) (citing *Pruitt v. Bugg Brothers*, 547 S.W.2d 123 (Ky. 1977)). Furthermore, on review the “question to be considered is whether there is substantial evidence which will support the finding of the Board.” *McCloud*, 514 S.W.2d at 47 (citing *Smyzer v. B.F. Goodrich Chemical Company*, 474 S.W.2d 367 (Ky. 1971)).

Our review indicates the totality of the evidence bears a reasonable relation to the ALJ's findings, and that his decision was supported by substantial evidence. Thus, the Board's affirmation of the ALJ's opinion was not clearly erroneous. More specifically, the Board did not err in upholding the ALJ's factual determination that (1) Stephens' compensable work-related injury was chronic pain syndrome and not thoracic outlet compression, (2) Stephens' award of permanent partial disability benefits should be based on the AMA impairment rating and physical restrictions associated solely with the diagnosed chronic pain syndrome, and (3) Stephens' future medical treatment relating to a thoracic outlet compression, and specifically including the rib resection and scalenectomy recommended by Dr. Atasoy, was non-work-related and therefore non-compensable. In short, the ALJ's opinion was well-founded in evidence, law, and logic.

KRS 432.020 requires employers to pay only for those medical treatments reasonable and necessary for the cure and relief of a work-related injury. Thus, the ALJ

granted Stephens the right to recover payment from Osram Sylvania (and/or its insurance carrier) for treatment to her right upper extremity,

“as may be reasonably required at the time of her injury and thereafter during disability; however, the [ALJ] finds that the proposed rib resection and scalenectomy are not reasonable and necessary for the treatment of her injury.”

Stephens would have us assign error to the ALJ's finding that the employer shall not be liable for the cost associated with the rib resection and scalenectomy recommended by Dr. Atasoy. While Stephens is correct in stating that the ALJ's holding prospectively forecloses compensability for medical treatments intended for the cure or relief of any thoracic outlet compression, the ALJ's finding that the work-related injury was limited to chronic pain syndrome was, nevertheless, supported by substantial evidence. Since the surgery proposed by Dr. Atasoy was intended for the cure and relief of a thoracic outlet compression, which the ALJ's finding specifically excludes as non-work-related, it logically follows that the proposed surgery is non-compensable pursuant to the statutory framework of KRS Chapter 342. Obviously the ALJ's opinion does not preclude Stephens from continuing treatment for a thoracic outlet compression with Dr. Atasoy or ultimately submitting herself for the rib resection and scalenectomy he recommends, though her employer in this claim and/or its workers' compensation insurance carrier shall not be responsible for payment for same.

For these reasons, we affirm the opinion of the Board which upheld the original determination of the ALJ.

ALL CONCUR.

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BRIEF FOR APPELLEE OSRAM
SYLVANIA:

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