

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000020-WC

LUCILLE ADKINS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-80582

ST. CLAIRE MEDICAL CENTER;
HON. DONNA TERRY, ADMINISTRATIVE
LAW JUDGE; WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

** ** *

BEFORE: ABRAMSON, ACREE, AND WINE, JUDGES.

WINE, JUDGE: Lucille Adkins (Adkins) petitions for review of a December 12, 2006 opinion by the Workers' Compensation Board (Board), which affirmed an administrative law judge's (ALJ) opinion awarding her no income benefits. Adkins argues the ALJ's findings regarding the cause of her injury were clearly erroneous. But while the evidence

could support a contrary conclusion, we agree with the Board that the ALJ's decision was supported by substantial evidence. Thus, we affirm.

Adkins began working as a certified nurses' assistant (C.N.A) for St. Claire Medical Center (St. Claire) in 1990. Her duties included going to patients' homes and caring for their personal needs as well as doing some light housekeeping. Adkins was working at a patient's home on July 27, 2004, mopping the floor when she slipped and injured her knee.

Adkins was initially treated at St. Claire where she complained of mild knee pain and was given medication and crutches and advised to follow up with her family doctor. She missed a couple of days' work before returning the following Tuesday, August 2, 2004, doing the same job as an aide taking care of patients in their home. Adkins also followed up with further treatment from her family physician, Dr. Vinnette Little. During a follow-up office visit for knee pain, as well as for depression, anxiety, and obesity problems, Dr. Little noted that Adkins told him her knee problem resulting from a fall had completely resolved. That same day, August 13, 2004, Dr. Little found no problems with Adkins' knee but recorded her complaints of generalized joint pain, specifically stiffness in her hands, ankles, and shoulders due to probable osteoarthritis. Dr. Little also recorded symptoms of forgetfulness and fatigue.

Although Adkins did not seek further treatment for her knee and she continued working, she testified that she felt her condition was worsening following her

return to work. Adkins testified that she began to fall behind on her assignments but continued to work her regular job and the same number of hours per week.

On November 10, 2004, Adkins was involved in a non-work-related automobile accident. Adkins again saw Dr. Little who diagnosed rib fractures, a clavicle fracture, a possible pneumothorax, as well as depression. Dr. Little prescribed pain and anti-depressant medications. Adkins was off work due to the car accident until January 2005 when she returned to work. Adkins received treatment at Cave Run Clinic on November 11, 2004, by Dr. Mary Phillips, whose records indicated that Adkins had suffered a resolution of her pneumothorax, the left clavicle fracture would need orthopedic surgery, and she would suffer pain from the rib fractures for approximately six weeks. Adkins also saw orthopedic surgeon Dr. Cynthia Schneider for several months following the car accident before she returned to work.

Adkins testified that after she returned to work doing the same job for the same number of hours, she experienced a psychological episode in February 2005. She testified she was worn out, struggling with knee pain and depression and characterized the event as a “mental breakdown” on her medical intake form. Medical records indicate she had been treated for depression in the past. Dr. Schneider saw Adkins on March 3, 2005, during a time when she was off work due to a nervous breakdown. At this appointment Adkins indicated she wanted the clavicle plate surgically removed. Dr. Schneider’s report indicates from her standpoint, Adkins was able to return to work.

On April 14, 2005, eight months after the July 27, 2004 work injury, Adkins saw orthopedic surgeon Dr. Laura Reese for her ailing knee. Dr. Reese diagnosed patellofemoral degenerative disc disease and chondromalacia, as well as internal derangement and effusion of the right knee. Dr. Reese injected Adkins' knee with Kenalog and Lidocaine and suggested physical therapy and a home exercise program.

Adkins returned to Dr. Reese's office on November 1, 2005, saying she was unable to continue the home exercises or physical therapy due to the increased right knee pain. During this visit when Adkins told Dr. Reese that she believed she had struck her knee during the November 2004 car accident, Dr. Reese diagnosed Adkins with osteoarthritis of the knee, most pronounced at the patellofemoral joint, concluding that her symptoms were aggravated by her fall at work on March 17, 2006. Dr. Reese also concluded that Adkins would not reach maximum medical improvement until she had surgery and that she had been temporarily totally disabled from returning to work as a home health aide since July 2004. While Dr. Reese testified on cross-examination that she did not compare the range of motion in the uninjured left knee to the range of motion in the right knee, she could tell based on her experience that the right knee lacked the full 130° extension, which is normal.

Although, Dr. Reese recommended arthroscopic surgery, St. Claire's workers' compensation insurance carrier refused to authorize this surgery.

Dr. Philip Corbett did an independent medical examination on May 19, 2005, and reviewed Adkins' medical records. While Adkins was only able to give Dr. Corbett a nonverbal demonstration of her work injury, he was able to conclude that Adkins hyperextended her knee at work on July 27, 2004. Dr. Corbett's diagnosis was degenerative joint disease of the right knee with evidence of atrophy, chondromalacia, and probable medial meniscal pathology. He indicated that the degenerative joint disease was preexisting and constituted a harmful change in the human organism that was recorded for the first time when the fall occurred. Because Adkins forgot to bring her MRI scan for him to view, Dr. Corbett could not definitely state how the work injury aggravated the preexisting condition. However, he speculated that the work injury may have caused Adkins' preexisting degenerative joint disease to result in a meniscal tear and become symptomatic. Dr. Corbett would allow Adkins to return to work as previously employed but avoid repetitive squatting, kneeling, and crawling.

Adkins denies having told Dr. Little that her knee problems had resolved on August 13, 2004. She continues to have pain and swelling in her right knee, for which she receives injections from Dr. Reese. However, Adkins states that these injections provide only limited relief.

The ALJ noted that while Adkins denied she told Dr. Little that her knee problems had completely resolved on August 13, 2004, her memory was not clear on many other items during her deposition, so it was possible that she forgot she made the comment. The ALJ also noted that Adkins' complaints in August of 2004 were only

generalized joint pain and stiffness in her hands, ankles, and shoulders as well as fatigue and forgetfulness. However, Adkins sought no further treatment for the effects of the work injury for months and was able to return to work with no restrictions.

The ALJ rejected Dr. Reese's opinion that the work injury had caused an aggravation or exacerbation of the underlying arthritic condition because Dr. Reese did not have the benefit of reviewing Adkins' full medical history when she stated that opinion. The ALJ also rejected Dr. Reese's conclusion that Adkins had been temporarily totally disabled at all times after the fall since she was able to return to her regular job for several months following the work injury and only stopped working after she was in the car accident. Based upon Dr. Little's records and Adkins' medical history, the ALJ concluded that Adkins' knee injury on July 27, 2004, was temporary in nature and not the proximate cause of a permanent change in her knee. As such, the ALJ awarded no income benefits and determined Adkins was only entitled to reasonable and necessary medical treatment for her right knee injury from July 27, 2004, through August 13, 2004. On appeal, the Board affirmed, and Adkins now petitions for review of the Board's decision.

As she argued before the Board, Adkins again contends that the ALJ clearly erred in finding that her knee injury had resolved and further abused her authority in disregarding the testimony of Dr. Reese. In response, St. Claire argues the ALJ's findings were based on compelling evidence that Adkins' injury from the fall at work was temporary and had resolved. While there is evidence in support of either

determination, we cannot say that the ALJ clearly erred by accepting Dr. Little's conclusion.

The Board correctly set out the standard of review as follows:

It is axiomatic that a claimant in a workers' compensation claim bears the burden of proving each essential element of her cause of action. *Snawder v. Stice*, 576 S.W.2d 276 (Ky.App. 1979). Since Adkins, the party with the burden of proof, was unsuccessful before the ALJ, the issue on appeal is whether the evidence compels a contrary conclusion. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984). Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. *REO Mechanical v. Barnes*, 691 S.W.2d (Ky.App. 1985). So long as any evidence of substance supports the ALJ's opinion, it cannot be said the evidence compels a different result. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky 1986). It is not enough for Adkins to merely show that some evidence supports her position. See *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46 (Ky. 1974). As long as the ALJ's opinion is supported by evidence of substance, the Board may not reverse. *Special Fund v. Francis, supra*.

The ALJ, as fact finder, has the sole authority to determine the weight, credibility, substance and inferences to be drawn from the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985). Where the evidence is conflicting, the ALJ may choose whom and what to believe. *Pruitt v. Bugg Brothers*, 547 S.W.2d 123 (Ky. 1977). The ALJ has the discretion to reject any testimony and believe or disbelieve parts of the evidence, regardless of whether it comes from the same witness or the same party's total proof. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky. 1977). The Board may not substitute its judgment for that of the ALJ in matters involving the weight to be afforded the evidence in questions of fact. KRS 324.285(2).

In this case, the ALJ's conclusion was clearly supported by the assessment offered by Dr. Little. Adkins maintains that the ALJ erred by relying on Dr. Little's

August 13, 2004 report because in that report she relied on Adkins' statement that her knee condition had resolved. Adkins argues such reliance is inappropriate because her opinion cannot take the place of a doctor's opinion.

But as the Board correctly observed, the ALJ has the sole authority to determine the weight and character of the evidence. Adkins herself acknowledges that Dr. Little's report indicates that she stated that her knee condition had resolved. Dr. Little's notes on Adkins were devoid of any complaint Adkins had of knee pain on August 13. Besides complaints of generalized joint pain with stiffness in the hands, ankles, and shoulders, Dr. Little noted no other location that Adkins was experiencing stiffness. Moreover, Dr. Little stated she thought Adkins had osteoarthritis, also related weight bearing joint pain as a result of her being overweight. Finally, Dr. Little did not indicate anything in her notes that Adkins was having any current problems with her knee due to a work-related injury. Even Dr. Little's notes from November 10, 2004, make no mention that Adkins complained of a work-related knee injury. And while Adkins insists she had a meniscal tear, the evidence is not so clear. Adkins' MRI on April 2, 2005, read negative for tear of the meniscus. Moreover, as noted by the Board, such evidence if found would not compel a finding that the tear was caused by the work injury. Based upon the medical records and Dr. Little's reports, the ALJ could reasonably conclude that Dr. Little agreed with Adkins that her knee condition had resolved.

Furthermore, we agree with the Board that the ALJ did not abuse her discretion in rejecting the opinion of Dr. Reese. As the Board correctly noted, much of

the history which Dr. Reese received was incomplete or incorrect. In reaching the conclusion that Adkins was temporarily totally disabled since the work injury on July 27, Dr. Reese relied on information that Adkins had been unable to return to work as a home health aide after that date. But the evidence clearly shows that Adkins was released and returned to work a few days later and without restrictions up until the time of the motor vehicle accident. In addition, Adkins received no further treatment for several months after returning to work. The ALJ found that these facts, among others, weighed heavily against the credibility of Dr. Reese's opinion regarding causation.

The function of our review is to correct the Board only when "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." *Western Baptist Hospital v. Kelly*, 827 S.W.2d 687-88 (Ky. 1992). It was well within the ALJ's discretion to assess Adkins' credibility and the relative probative value of the opinions of Drs. Little and Reese. While there is some evidence supporting Adkins' claim, we agree with the Board that the evidence does not compel a result in Adkins' favor.

Accordingly, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, ST. CLAIRE
MEDICAL CENTER:

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