

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000342-WC

JUDY EDWARDS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-73126

WALGREENS; HONORABLE ANDREW
MANNO, ADMINISTRATIVE LAW JUDGE;
AND WORKER'S COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: ACREE, HOWARD, AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Judy Edwards appeals from the decisions of Administrative Law Judge (ALJ) Andrew F. Manno and the Workers' Compensation Board denying her claim for permanent partial disability benefits and future medical benefits. For the reasons set forth herein, we affirm.

Edwards was injured on June 19, 2004, during the course and scope of her employment at Walgreens. Walgreens filed a Form 111 acknowledging an injury and

preserving for further adjudication the issue concerning the extent and duration of any compensation owed to Edwards.

At the administrative hearing, Edwards testified that she went to the emergency room on July 6, 2004. She stated that she went to Dr. Winders, who referred her to Dr. Chris Shields. She also saw Dr. Rinkoo Aggarwal who gave her epidural injections and prescribed physical therapy. She testified that at the time of the hearing she was taking a high dosage of Ibuprofen to deal with any pain.

Edwards further testified that her left leg goes numb when she sits for more than ten to thirty minutes. Additionally, she stated that she is only able to stand thirty-five minutes to an hour before her back begins to hurt. She also contends that she can lift a half-gallon of milk without back pain.

Edwards last worked on July 3, 2004. She received temporary total disability from July 20, 2004 through September 8, 2005. Edwards received a letter from Walgreens terminating her as of July 3, 2005, because she had not returned to work. Edwards stated that she had not looked for work because of her limited physical abilities.

The medical record of Dr. Christopher B. Shields dated July 15, 2004, was one of a series of medical reports filed into evidence at the hearing. Shields noted that Edwards complained of bilateral lumbar pain with the left side being more severe than the right, left-sided buttock pain, pain at the lateral aspect of the thigh and calf, and numbness at the dorsal aspect of her left foot. After examination, Shields diagnosed evidence of an L5 radiculopathy on the left by history with findings of a lumbar disc

protrusion at the L5-S1 interspace bilaterally, although more pronounced on the left than the right. He recommended Edwards undergo a lumbar MRI. He prescribed Motrin, Baclofen, and Tylenol 3. He noted she should remain off work until July 30, 2004.

An additional medical report by Dr. S. Pearson Auerbach dated March 28, 2006, was filed into evidence. After review of her medical history and an examination, Auerbach expressed concern about whether Edwards had a lumbar strain or a disc injury related to degenerative change. He noted that she had remained disabled for a year and a half and had been using patches for timed-release delivery of pain-relieving medication for the past six months or more. Auerbach was concerned that Edwards might be addicted to the patches. He also noted that there had been no change in Edwards' complaints for the past six or eight months and opined that she was at maximum medical improvement.

Auerbach was unsure whether he was able to answer what her problem was or the continued complaint of disabling pain. He questioned whether Edwards was dependent on the patches or if there were related emotional problems. He observed that Edwards had a past history of panic attacks and had indicated that there had been nothing recently. He diagnosed degenerative joint disease lower lumbar area and chronic lumbar strain as a result of the work injury. He assessed an 8% impairment and noted she was medically disqualified from returning to her pre-injury work activities as a meat and frozen food worker.

The medical report of Dr. Gregory E. Gleis dated March 18, 2005, was filed into evidence as well. After reviewing the medical records and performing an examination, Dr. Gleis diagnosed a lumbar strain with development of left leg radiculopathy symptoms consistent with L5 and S1. He noted no muscle spasm but some muscle guarding. He opined that she would not reach maximum medical improvement for at least three and probably twelve months post injury. Furthermore, he advised she was not capable of returning to her prior job at the time of his report but could return to a sedentary job. He noted that reasonable restrictions for Edwards would be alternating between sitting and standing as needed, maximum occasional lifting between mid-thigh and shoulder level up to twenty pounds, avoidance of lifting below knee level, kneeling, squatting, reaching overhead, or work on ladders.

Finally, the medical report of Dr. Michael M. Best dated May 11, 2006, was filed into evidence. After reviewing the medical reports and an examination, he noted that Edwards demonstrated four out of five positive Waddell findings for non-physiologic pain/symptom magnification. He indicated that she had no objective signs of radiculopathy, no loss of reflex, no atrophy by measurement, and no sensory deficit in an anatomic nerve root distribution. Dr. Best noted submaximal efforts with minimal elevation of heart rate during Functional Capacity Evaluation and even noted inconsistency of effort when sitting in a chair performing hand-gripping tasks, which he opined further validated symptom magnification.

Dr. Best agreed with Dr. Aggarwal that Edwards had reached maximum medical improvement. Dr. Best assessed a 0% whole person impairment. He also noted no significant clinical findings, no documented alteration in structural integrity, no other indication of impairment related to injury or illness, and no fractures. He opined that there was absolutely no objective evidence that would demonstrate that a harmful change had occurred as a result of the work injury of June 19, 2004. He advised that she was able to return to work with no restrictions following a transition from medium duty to full duties due simply to deconditioning.

ALJ Manno made the following findings of fact and conclusions of law. First, he found that Edwards sustained a work-related injury on June 19, 2004, while employed by Walgreens. After careful consideration of the evidence, Manno determined that Edwards has a 0% permanent impairment. Although Edwards has subjective complaints of pain, Manno opined that in light of the medical evidence presented that there was a lack of objective findings to support a finding of permanent impairment. Therefore, Manno determined that Edwards was entitled to a period of TTD benefits from July 15, 2004, through September 8, 2005, and medical expenses from the date of injury to May 11, 2006, the date of Dr. Best's report.

Edwards appealed these findings to the Workers' Compensation Board, and they affirmed Administrative Law Judge Manno's decision. Edwards hereby appeals.

Edwards argues that the Board erred in permitting ALJ Manno to deny an award of any permanent partial disability benefits or future medical benefits in light of the finding that she had a compensable work injury. We disagree.

The issue on appeal is whether the evidence is so overwhelming as to compel the result Edwards seeks as a matter of law. *See Snawder v. Stice*, 576 S.W.2d 276 (Ky.App. 1979); *Wolfe Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984). 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. 1977). It is not enough to show that there is some evidence that would support a contrary conclusion. *McCloud v. Beth-Elkhorn Corporation*, 514 S.W.2d 46 (Ky. 1974). Additionally, so long as the ALJ's opinion is supported by any evidence of substance, the Court of Appeals should not reverse. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986).

Edwards' argument is without merit. The medical reports entered into evidence offered a variety of opinions on the duration, severity, and precise diagnosis of Edwards' injury. Contrary to Edwards' argument, however, the issue is not as clear as stating that she has a compensable injury and therefore is entitled to permanent partial disability payments. It is uncontested that she *had* a compensable injury. The issue is the extent and duration of any compensation owed to Edwards.

ALJ Manno's Findings of Fact and Conclusions of Law are clear and thorough. The evidence that he weighed the various medical reports against one another

in making his determination. We will not now reconsider the merits of this case as that is not our role in this case. The record indicates that ALJ Manno's findings were supported by substantial evidence, therefore he was within his discretion in making the determination not to award permanent partial disability benefits or future medical benefits.

Accordingly, we affirm the ALJ Opinion, Award, and Order and the Workers' Compensation Board's affirmation thereof.

ALL CONCUR.

BRIEF FOR APPELLANT:

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