

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-000653-WC

LESLIE HAZARD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE
WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-00081

TOYOTA MOTOR MANUFACTURING KENTUCKY, INC;
WORKERS' COMPENSATION BOARD; AND
HON. JOHN W. THACKER, ADMINISTRATIVE LAW
JUDGE

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: HOWARD AND VANMETER, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

GUIDUGLI, SENIOR JUDGE: The issues in this appeal are whether the Workers' Compensation Board (Board) failed to follow controlling precedent and whether it flagrantly erred in its evaluation of the evidence by finding that appellant Leslie Hazard's claims were barred by the statute of limitations. We affirm.

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

Hazard was employed by appellee Toyota Motor Manufacturing from 1994 until 2005. She worked primarily in the paint shop area of the plant, but also performed other line work duties. Over time, Hazard had numerous complaints of pain in her neck, back, arms, and hands. She attributed these complaints to her employment at Toyota. Hazard reported each complaint of pain to Toyota as required by company policy. The Industrial Health Services (IHS) doctors at Toyota treated Hazard for her injuries and recommended that she take time off from her present work and perform other duties until her complaints subsided. Eventually, IHS would refer Hazard to an outside physician because of her continuing complaints of pain. On June 29, 2004, Dr. Gregory Snider examined Hazard and found her to have suffered a 5 percent permanent impairment to her thoracic spine.

On January 17, 2006, Hazard filed a Form 102-OD claiming benefits for an occupational disease she suffered as a result of her employment with Toyota. Although filed as an occupational disease claim, this matter was actually litigated as an injury claim. The Administrative Law Judge (ALJ) awarded Hazard benefits for an “injury” that commenced on June 29, 2004. The ALJ further found that the statute of limitations did not apply to this action because Hazard was not informed that her condition was work-related until June 29, 2004, at the earliest. Toyota appealed those findings to the Board.

The Board issued an opinion reversing the ALJ's award. The reversal was based on the Board's finding that Hazard's own testimony indicated that she was aware

that her condition was work-related as early as March 9, 2000, and that an injury claim may not be converted into an occupational disease claim solely for the purpose of avoiding the statute of limitations. This petition for review followed.

Hazard argues that the Board failed to follow controlling caselaw in that its decision essentially required her to self-diagnose her injury and attribute that injury to her employment. Additionally, Hazard contends that the Board has flagrantly erred in its evaluation of the evidence in this case.

A decision of the Board will only be reversed by this Court if it has overlooked or misconstrued a controlling statute or has caused a gross injustice by a flagrant error in its evaluation of the evidence. *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). Although the ALJ is granted broad authority as factfinder, the Board may properly reverse the findings of the ALJ when the evidence compels a different result. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986).

We agree with Hazard that the law in this Commonwealth does not require a worker to self-diagnose her injury and attribute that injury to her employment. See *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615 (Ky. 2004); *Toyota Motor Mfg., Kentucky, Inc. v. Czarnecki*, 41 S.W.3d 868 (Ky.App. 2001). However, the Board correctly noted in its opinion that these cases are distinguishable from the present facts because Hazard was not required to self-diagnose her injury. Hazard's own testimony establishes that the doctors at Toyota informed her on numerous occasions that she had suffered a work-related injury that was becoming progressively worse. She also stated

that she was prescribed medication by these same doctors. Additionally, no evidence was presented of an occupational disease. This was clearly an injury case and an injury claim may not be filed as an occupational disease claim simply to avoid the statute of limitations requirement set forth in KRS 342.185.

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

ALL CONCUR.

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