

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000988-WC

STEPHANIE CAREY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-81593

OSRAM SYLVANIA;
HON. MARCEL SMITH, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND KELLER, JUDGES; GRAVES,¹ SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Stephanie Carey petitions for the review of an opinion of the Workers' Compensation Board (Board), entered April 13, 2007, affirming the decision of an Administrative Law Judge (ALJ) denying her reopening for a psychological condition. We affirm.

¹ Senior Judge John W. Graves sitting as Special Judges by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

In 1990, Carey began working for Osram Sylvania (Osram) as an inspector and repair operator. In May 1999, Carey was injured at work while inspecting light bulbs at Osram's Versailles, Kentucky, plant. Carey required surgery as a result of the injury and was awarded benefits upon an *AMA Guidelines* permanent partial impairment rating of 25% assessed by Dr. Kenneth Graulich. The ALJ determined that Carey lacked the physical capacity to return to her former employment and thus applied the 1.5 multiplier of KRS² 342.730(1)(c)1 in effect at the time of the injury. Carey was released to return to work with no restrictions on February 20, 2000. She continued to work for Osram until December 20, 2000, when she left for maternity leave, but decided not to return. Thereafter, Carey worked part-time at her mother's florist shop running a cash register and arranging flowers.

In October 2005, Carey filed a motion to reopen, claiming an increase in disability due to her physical condition. In February 2006, she filed an amended motion to reopen to include a psychological condition. During the same time period, Carey was examined by Dr. Thomas Shurling, a psychologist, at the request of the Social Security Administration when she applied for social security disability benefits. Dr. Shurling performed a psychiatric evaluation and reviewed her medical records, including the work-related injury. Dr. Shurling determined that Carey suffered from major depressive disorder without psychotic features, chronic and recurrent, and pain disorder associated with depression due to the neck injury. Based upon these findings, Dr. Shurling assessed a 10% impairment.

² Kentucky Revised Statutes.

Carey was examined by Dr. Robert Granacher, at Osram's request, on April 24, 2006. Dr. Granacher conducted a face-to-face examination of Carey and determined that she was well groomed and “[did] not show any countenance of depression.” He diagnosed “mood disorder (major depression) currently in remission.” Dr. Granacher believed that Carey retained the mental capacity to return to full time work duties and assigned a 0% impairment as a result of the work injury.

In support of the reopening, Carey relied on Dr. Andrew Cooley, a psychiatrist who evaluated her on June 16, 2006, at her attorney's request. Dr. Cooley diagnosed Carey with major depression and mild/chronic pain syndrome and assessed a 10% impairment. Dr. Cooley disagreed with Dr. Granacher's opinion that Carey's “countenance and appearance” were inconsistent with depression.

After reviewing the evidence, the ALJ found that Carey did not suffer a worsening of her condition. Addressing Carey's psychiatric claim, the ALJ concluded:

I am more persuaded by the opinion of Dr. Granacher and find that [Carey] does not suffer an impairment from a psychological [or] psychiatric standpoint. [Carey's] reopening must therefore be denied.

Carey filed a petition for reconsideration that was denied on November 22, 2006.

Following the denial, Carey filed a timely appeal with the Board. On April 13, 2007, the Board affirmed the decision of the ALJ. This appeal followed.

Carey argues that the ALJ erred in relying upon the Osram's medical expert in determining that Carey did not suffer from a psychological impairment. Essentially, Carey contends that Dr. Granacher utilized non-objective medical evidence in reaching

the conclusion that Carey did not suffer a work-related psychological condition. We disagree.

Carey contends that she established a “prima facie case of a work-related psychological injury based upon the opinions of Dr. Shurling and Dr. Cooley.” Carey argues that both opined that she suffered a work-related psychological injury that resulted in a ten percent (10%) whole body impairment rating. Carey alleges that the opinion of Dr. Granacher flies in the face of such evidence and that the ALJ erred in relying upon his opinion because it was “based upon nothing more than his subjective interpretation of Carey's appearance after a short interview.”

After review of the record, we find nothing to suggest that Dr. Granacher relied solely upon Carey's appearance. In fact, Dr. Granacher did diagnose Carey with mood disorder, but noted that it was currently in remission. In making his diagnosis, Dr. Granacher must interpret his findings based upon his evaluation of the evidence before him. Under Carey's argument, any doctor's assessment could be thought of as subjective. The fact that Dr. Granacher offered a different opinion under his view of the medical evidence is of no consequence. Dr. Granacher also relied on the fact that Carey did not require any psychiatric care for her condition. Additionally, Dr. Granacher discussed Dr. Cooley's report and offered a disagreeing opinion that depressed mood is not the same as a depressive illness. Thus, we are of the opinion that Dr. Granacher's opinion was supported by objective medical evidence.

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).

Based on our review of the record, we believe the ALJ had substantial evidence to deny Carey's reopening. Accordingly, because there is substantial evidence to support the ALJ's findings, we must affirm the Board's decision.

The April 13, 2007, decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Charles W. Gorham
Lexington, Kentucky

BRIEF FOR APPELLEES:

Brian T. Gannon
Louisville, Kentucky