

Commonwealth Of Kentucky

Court of Appeals

NO. 2007-CA-002204-WC

DEBRA WOODS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-00328

LOUISVILLE PLATE GLASS CO., INC.;
HON. GRANT S. ROARK, ADMINISTRATIVE
LAW JUDGE; WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION AFFIRMING

** ** * * * * *

BEFORE: MOORE AND WINE, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

WINE, JUDGE: Debra Woods petitions for review of an opinion of the Workers' Compensation Board ("Board") which affirmed an order by the administrative law judge ("ALJ") dismissing her claim against her employer, Louisville Plate Glass Co., Inc., ("Louisville Plate Glass"). Woods argues that the ALJ clearly erred in finding that she had failed to prove that her carpal tunnel syndrome was work-related. While the

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

evidence on this question was conflicting, we agree with the Board that this conclusion was supported by medical evidence of record. Hence, we affirm.

Woods began her employment with Louisville Plate Glass in 1998. At the time of her claimed injury, Woods' job duties were to assemble window frames. This entailed connecting four metal pieces with pins to make a frame. She would perform this activity eight hours a day while standing. She estimated that she put together about 500 units a day and that the metal pieces were in front of her on a table. She described this activity as requiring the constant use of her hands.

Woods testified that on August 9, 2004, she noted having pain in both hands. She stated that she had noticed some pain in her hands for about a year leading up to this date. Woods reported the condition to her supervisor on August 18. Louisville Plate Glass referred her to Dr. Raymond Shea, who examined Woods on August 23. In November 2004, Woods began treatment with Dr. Margaret Napolitano of Kleinert & Kutz Hand Center. Dr. Napolitano performed surgery on April 22, 2005, to her right wrist and elbow. After the surgery, Woods was released to return to work with restrictions in June 2005. However, she did not return to work until September 6, 2005, and even then she continued to have pain in her hands while performing her job duties even as accommodated. On September 8, 2005, Woods was terminated from her employment with Louisville Plate Glass, after no reasonable accommodations could be made.

The contested issues on Woods' claim included sufficiency of notice, whether Woods suffered an injury under the Act, extent and duration of impairment, and causation/work-relatedness of the condition. In support of her claim, Woods relied on the

medical records and reports of Dr. Napolitano and Dr. Tsu-Min Tsai, who is also with Kleinert & Kutz. Dr. Napolitano diagnosed Woods with bilateral carpal tunnel syndrome and bilateral pisotriquetral arthritis. She believed that these conditions were aggravated by Woods' work. Similarly, Dr. Tsai diagnosed carpal tunnel syndrome, mononeuritis multiplex and lateral epicondylitis of the elbow. He reported a date of injury as August 9, 2004, to both extremities due to repetitive use. Dr. Tsai put Woods' total whole body impairment at 3% pursuant to the 5th Edition of the American Medical Association's *Guides to the Evaluation of Permanent Impairment* ("AMA Guides"). Of this 3% impairment rating, 1% was due to the left upper extremity and 2% was due to the right upper extremity. Dr. Tsai also stated that the condition was work-related.

Louisville Plate Glass relied on a medical report by Dr. Morton Kasdan, who performed an independent medical evaluation in August 2006. After examining her and reviewing her medical records, Dr. Kasdan concluded that Woods' diagnosis was pain that was not completely explained on the basis of an objective examination. Dr. Kasdan further noted that although Woods might have some findings of tennis elbow, this would not explain Woods' other subjective symptoms. Dr. Kasdan also stated that Woods' physical examination did not indicate that there was an impairment of function and that the objective electrodiagnostic studies were within normal limits. Dr. Kasdan added that he did not believe Woods has shown that her condition was caused by her work activities. Dr. Kasdan put Woods' impairment of function according to the *AMA Guides* at 0%.

After reviewing the medical and lay testimony, the ALJ dismissed Woods' claim for benefits. In particular, the ALJ found Dr. Kasdan's opinion to be the most

credible on the issue of causation. The ALJ characterized the testimony of Woods' physicians as somewhat equivocal on the issue of causation, whereas Dr. Kasdan stated that Woods' condition was not causally related to her job duties. Consequently, the ALJ concluded that Woods' condition was not work-related and thus not compensable.

On appeal, the Board affirmed, concluding that Dr. Kasdan's medical report provides substantial evidence to support the ALJ's conclusion on causation. The Board also rejected Woods' argument that the ALJ applied an improper standard of proof. This petition for review followed.

The sole question in this petition for review involves the sufficiency of the evidence supporting the ALJ's finding as to causation. Since Woods, the party with the burden of proof before the ALJ, was unsuccessful, the issue on appeal is whether the evidence compels a different conclusion. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (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 224, 226 (Ky.App. 1985). The ALJ has the sole authority to judge the weight, credibility, substance and inferences to be drawn from the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). Where the evidence is conflicting, the ALJ has the sole authority to believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977). 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). The function of this Court's review of the Board "is to correct

the Board only where the Court perceives 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 685, 687-88 (Ky. 1992).

Woods argues that the ALJ mischaracterized the opinions of her physicians on causation as equivocal. In particular, she notes that both Dr. Napolitano and Dr. Tsai attributed her condition to her job duties. She also contends that Dr. Kasdan’s opinion about causation was unreasonable given that her job duties clearly required extensive and repetitive use of her hands. Consequently, Woods contends that the ALJ clearly erred in accepting Dr. Kasdan’s opinion over those of her physicians.

In affirming the ALJ, the Board found that Dr. Kasdan’s report constituted substantial evidence on the issue of causation. As the Board noted, Dr. Kasdan stated that he could find no objective explanation for Woods’ pain and thus could not assess any functional impairment. As to the issue of causation, Dr. Kasdan accurately described Woods’ job duties, and he acknowledged that these duties required extensive repetitive use of her hands. But he concluded that “[t]he wide variety of tasks she performed in her job did not indicate that she had epidemiological evidence to support an occupational injury or disease.” He did not identify any other potential cause for her symptoms.

In contrast, both Dr. Napolitano and Dr. Tsai stated explicitly that they believed Woods’ condition was work-related. Louisville Plate Glass contends that these opinions were merely conclusory. While that may be so, they were not equivocal, contrary to the ALJ’s characterization. Furthermore, Dr. Kasdan’s opinion was no less conclusory.

Nevertheless, the ultimate issue in this case concerns the weight to be given to medical evidence as to causation. In the absence of any clear showing that Dr. Kasdan's opinion was based on improper criteria,² we cannot say that the ALJ clearly erred in accepting his report over those of Woods' physicians. Consequently, this Court is without authority to disturb the ALJ's finding on causation.

Accordingly, the October 5, 2007, opinion of the Workers' Compensation Board affirming the ALJ's April 2, 2007, order dismissing Woods' claim is affirmed.

ALL CONCUR.

² We note that Dr. Kasdan has previously expressed the opinion that repetitive motions over long periods of work can never cause injury. He has stated that all "repetitive motion injuries" are actually manifestations of degenerative conditions determined wholly by heredity. *See Brown-Foreman Corp. v. Rice*, No. 2003-CA-001532-WC, 2004 WL 406088 (Ky.App. 2004). The Kentucky Supreme Court has criticized this approach as being "unrealistic and unnecessarily restrictive." *Haycraft v. Cohart Refractories*, 544 S.W.2d 222, 225 (Ky. 1977). But while Woods referred to these views in her pleadings before the ALJ and the Board, she did not introduce Dr. Kasdan's prior testimony or attempt to impeach his opinion with these statements. Since the statements are not part of the record in this petition for review, we may not consider them in determining the sufficiency of the evidence.

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