

Commonwealth Of Kentucky
Court of Appeals

NO. 2015-CA-001762-WC

TOYOTA MOTOR MANUFACTURING,
KENTUCKY, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-06-94736

KATHY PRICHARD;
HON. WILLIAM J. RUDLOFF, ALJ; AND
KENTUCKY WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: D. LAMBERT, MAZE, AND VANMETER, JUDGES.

MAZE, JUDGE: Toyota Motor Manufacturing, Kentucky, Inc. (hereinafter
“Toyota”) petitions for review of a ruling of the Kentucky Workers’ Compensation
Board (“the Board”). Toyota argues that the Board erred in ruling that Appellee,

Kathy Prichard, was entitled to reopen a 2011 award despite requesting such relief more than four years after her original injury and claim. Toyota also argues that, notwithstanding the timeliness of her motion, Prichard failed to establish a worsening of her condition necessary to reopen her claim.

We read KRS¹ 342.125 and Kentucky law to indicate that Prichard's motion to reopen was timely. We further hold that, while far from overwhelming, the evidence Prichard presented in support of her motion to reopen constituted "objective medical evidence" of her worsened condition and was of sufficient substance to render the ALJ's decision to reopen the 2011 award proper.

Therefore, we affirm.

Background

On March 14, 2007, Prichard filed a claim with the Department of Workers' Claims contending that, on March 16, 2005, she sustained an injury to her neck as a result of work she performed on Toyota's assembly line at its Georgetown plant. Specifically, Prichard was diagnosed with a cervical strain and degenerative disc disease in her neck. An Administrative Law Judge (ALJ) approved an award of permanent partial disability benefits on November 13, 2007. This award was based upon a permanent impairment rating of eight percent. Prichard returned to work after her award; however, she continued to experience pain. In August 2008, Dr. James Bean performed surgery to fuse four of Prichard's cervical vertebrae.

¹ Kentucky Revised Statutes.

In April 2009, Prichard filed a motion to reopen her 2007 claim on the basis that her injury and resulting impairment had worsened. An ALJ other than the one who is party to this appeal granted the motion and, in September 2011, awarded Prichard an enhanced permanent partial disability rating of twenty-eight percent. However, the ALJ found that Prichard was not permanently disabled, in part because medical testimony indicated Prichard could still perform sedentary work and had suffered from other, non-work-related conditions.

Prichard continued to suffer pain, headaches, and impairment. After further evaluation of Prichard's condition, Dr. Bean stated in an April 2014 report that Prichard now had "an essentially immobile neck that would be unable to sustain routine neck movements in an employed position for a full day's work." Dr. Bean opined that these "changes" were permanent and that Prichard was now precluded from returning to even sedentary work. Dr. Bean also imposed additional restrictions on Prichard's physical movement.

On August 12, 2014, Prichard filed a motion to reopen the 2011 award based largely upon Dr. Bean's observation of her condition. After gathering medical evidence, the parties appeared for the benefit review conference on February 10, 2015, and for a final hearing on April 28 of the same year. At the hearing, Prichard was the lone witness and testified that the pain in her neck had increased and her cervical range of motion had decreased since the original award. She stated that she last worked in 2008. In addition to Prichard's testimony and her extensive medical history, the reports of Dr. James Bean, Prichard's

neurosurgeon, Dr. William Childers, her physician since 1999, and Dr. Timir Banerjee were before the ALJ at the time he made his decision. Dr. Bean's report and questionnaire attached to the motion to reopen stated that Prichard was now unable to perform even sedentary work. In a one-page letter dated April 2015, Dr. Childers largely concurred with Dr. Bean's conclusions, including that Prichard was unable to work due to chronic pain and need for strong pain-relieving medication. Toyota filed the report of Dr. Timir Banerjee, who ultimately concluded that, since his first examination of Prichard in 2009, Prichard's original condition and resulting impairment of eight percent were unchanged.

The ALJ entered an opinion and award on May 20, 2015, in which he found that Prichard had suffered a worsening of her cervical condition and was permanently disabled. The ALJ based his decision, in part, upon what he deemed the "persuasive, compelling[,] and reliable" medical evidence of Drs. Bean and Childers. Toyota moved the ALJ to reconsider. After a second thorough opinion and order, the ALJ overruled this motion. The Workers' Compensation Board affirmed the ALJ's decision, and Toyota now petitions for review of that order.

Analysis

Toyota offers two arguments in seeking reversal: that Prichard's motion to reopen was untimely and that the record contained insufficient medical evidence to support the ALJ's most recent award of benefits. We address these arguments in-turn.

I. Timeliness of Prichard's Motion to Reopen

The principle of finality of judgments applies to workers' compensation awards just as it does to court judgments. *See Hall v. Hosp. Res., Inc.* 276 S.W.3d 775, 779 (Ky. 2008). However, "certain post-award changes" may permit re-opening under certain circumstances. *Id.* KRS 342.125(3) states:

Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2, or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.

In *Hall, supra*, the Kentucky Supreme Court held that this statutory language provided not only for the reopening of an original award within the four-year limitations period, but also to the reopening of "any subsequent order granting or denying benefits." 276 S.W.3d at 785. The Court concluded that "[a]ny contrary interpretation leads to absurd results, as well as a violation of the clear spirit of the Kentucky Workers' Compensation Act." *Id.* (citing *Plummer v. Sharondale Coal Corp.*, 834 S.W.2d 708, 711 (Ky. App. 1992)).

On appeal, Toyota urges a "reversal" of *Hall*, or that we distinguish it factually from the case before us. For the reasons explained below, we decline to do the latter; and, try as we may, we are simply incapable of accomplishing the former. *See* SCR² 1.030(8)(a).

² Rules of the Supreme Court of Kentucky.

The claimant in *Hall* received an original award in July 1997 by virtue of a settlement and based upon a permanent partial disability rating of sixty percent. Following cervical disc fusion surgeries in 2000, Hall requested reinstatement of temporary total disability benefits, and the ALJ ordered reinstatement “until the plaintiff has reached maximum medical recovery.” 276 S.W.3d at 778. Hall reached maximum medical improvement in June 2002, and she filed to reopen her claim in November 2003. The employer argued that Hall’s motion was time-barred because more than four years had passed between the original award of 1997 and the date of his motion. The Supreme Court disagreed.

We are unable to find any meaningful distinction between these facts and the facts before us which might compel a different analysis or result from those in *Hall*. Toyota points to the fact that, unlike Prichard, Hall was receiving temporary total disability and awaiting maximum medical improvement at the time the four-year period from her original award expired; hence, Hall could not file to reopen, whereas Prichard could but elected not to. Toyota argues that this fact compels a different result. However, while the Court’s decision in *Hall* discussed Hall’s inability to seek re-opening prior to expiration of the four-year period, its decision did not rest exclusively, or even primarily, upon this fact. The precedential imperative of *Hall* is that a claimant may reopen “any subsequent order,” not just the original award. 276 S.W.3d at 785. The Court concluded this without resort to whether a claimant is unable to file within four years of an

original award, like Hall, or is able to but does not, like Prichard. As the Supreme Court's analysis did not rest primarily upon such a factor, neither will ours.

Instead, we rely upon the fact that, like Hall, Prichard received a second award of benefits. Though this September 2011 order found that Prichard was not permanently disabled, it did award her an enhanced permanent partial disability rating. Like Hall, Prichard was then entitled to file to reopen this award within four years, as the September 2011 award constituted "an order granting or denying benefits" as provided in KRS 342.125(3) and pursuant to *Hall*. For this reason, Prichard's August 2014 motion to reopen was timely.

Like the employer in *Hall*, Toyota also argues that the reading of KRS 342.125(3) adopted in *Hall* and followed herein renders the statute's four-year limitations period "meaningless" and permits successive motions to reopen *ad infinitum*.³ Like the Supreme Court, "[w]e do not succumb to this argument." *Hall*, 276 S.W.3d at 786.

In the case of motions to reopen to increase or decrease monetary benefits filed within the limitation period set out in KRS 342.125(3), it is unrealistic to even suggest that one could file motions to reopen every four years for the purpose of preventing the four year period of limitation from ever ending, as the motion to reopen must make a *prima facie* showing of sufficient grounds for an award....

Id. The existing evidentiary burden a claimant-movant must meet to reopen an award, as well as the financial and ethical implications imposed upon claimants

³ It is worth noting that, while employers may object to such measures, they are entitled to employ – and often benefit from – the same process, especially in the context of employer-filed motions to reopen for the purpose of asserting a medical fee dispute.

and counsel under KRS 342.320, KRS 342.310, and CR 11, combine to persuade us, like the Court in *Hall*, that such “*ad infinitum*” litigation is unlikely to materialize. At the very least, we are confident that the legal rigors already in place will continue to defeat non-meritorious claims and punish frivolous ones, while still providing recovery for claimants whose conditions have truly changed for the worse even years after an original award.

II. Prichard’s Burden Upon Reopening Her Claim

KRS 342.125(1)(d) states that an ALJ may grant reopening and review of an award based upon grounds which include, “[c]hange of disability as shown by objective medical evidence of worsening or improvement or impairment due to a condition caused by the injury since the date of the award or order.”

Toyota contends that no new objective medical evidence existed to support Prichard’s motion and the ALJ’s decision to reopen. It also argues that the ALJ decided the question based upon medical evidence which predated the 2011 opinion and award by a different ALJ. Ultimately, we disagree with Toyota’s arguments, as we observe that new and objective medical evidence existed to support the ALJ’s findings and conclusions.

In its award, the ALJ expressly relied upon select medical evidence to support its conclusion that Prichard met her statutory burden. The ALJ specifically cited “the persuasive, compelling[,] and reliable medical evidence from Dr. Bean, her treating neurosurgeon, as covered above, and the persuasive, compelling[,] and reliable medical evidence from Dr. Childers, her long-term treating physician”

Though the ALJ did not specify the precise document or documents from these doctors to which he was referring, the record before the ALJ contained the medical observations and conclusions, in various forms, of both Dr. Bean and Dr. Childers.

Crucially, both doctors concluded that, since the 2011 ALJ's opinion and conclusion to the contrary, Prichard was now unable to perform even sedentary work-related duties. It is true that Dr. Bean based his conclusion, in part, on a functional capacity evaluation (FCE) which predated the 2011 ALJ opinion and award. Toyota is critical of this as constituting medical evidence of a change in Prichard's condition; and, indeed, it would be troubling if this was the sole evidence upon which Prichard's motion and the ALJ relied. However, the record reflects that the ALJ's decision did not rely upon the 2011 FCE and that Dr. Bean provided other observations made after the 2011 opinion and award.

In his questionnaire, Dr. Bean stated his belief that although a 2013 MRI showed Prichard's cervical condition to be "radiographically unchanged," a worsening of Prichard's cervical condition had nevertheless occurred, based upon his personal observation of Prichard's condition and symptoms during an April 2014 physical evaluation. More specifically, Dr. Bean based his conclusion upon his observation that she had "no neck rotation, flexion extension." In his report, Dr. Bean also stated that he believed "these changes are permanent" and that, as of April 15, 2014, Prichard was unable "to perfor[m] continuous sedentary duty." This differed from his recommendation ahead of the 2011 ALJ opinion and award; and while they are far from overwhelming, these observations do constitute

“objective medical evidence” tending to demonstrate a worsening of Prichard’s original condition.

Finally, Toyota cites to Dr. Banerjee’s report as evidence that “no objective change exists.” However, given the sufficiency of the evidence Drs. Bean and Childers presented, this constitutes merely a battle of the experts the resolution of which is properly left to the ALJ as the individual privileged to view first-hand the totality of the evidence and the credibility of witnesses. *See Square D. Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993) (“Where, as here, the medical evidence is conflicting, the question of which evidence to believe is the exclusive province of the ALJ.”). We have already concluded that the testimony and evidence Drs. Bean and Childers presented constituted substantial evidence sufficient to satisfy Prichard’s statutory burden. Accordingly, the existence of conflicting medical evidence existed in the record, by itself, does not – indeed, it cannot – render the ALJ’s decision erroneous.

Conclusion

Like the Supreme Court in *Hall*, we read KRS 342.125(1) to provide for the reopening of any award, not just an original award, if the movant can satisfy the burden that statute imposes for reopening. For this reason, we conclude that Prichard’s 2014 motion to reopen was timely. Furthermore, the medical evidence she provided in support of her motion was sufficient to justify reopening the 2011 award under KRS 342.125(1)(d). The October 23, 2015, decision of the Workers’ Compensation Board is therefore affirmed.

ALL CONCUR

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