

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000400-WC

DEBORAH MONTGOMERY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-91917

TRANSIT AUTHORITY OF RIVER CITY;
SPECIAL FUND; HONORABLE MARK
WEBSTER, ADMINISTRATIVE LAW
JUDGE; WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: BUCKINGHAM, GARDNER AND KNOPF, JUDGES.

GARDNER, JUDGE: Deborah Montgomery (Montgomery) appeals from an opinion of the Workers' Compensation Board (the board) affirming the decision of the Administrative Law Judge (ALJ). On appeal to this Court, Montgomery argues that the board erred by not remanding her case to the ALJ with directions to award her increased temporary total disability benefits. After reviewing the decisions of the board and the ALJ as well as the record

below, this Court has found no error and thus affirms the board's opinion.¹

We have closely examined the board's opinion and hereby adopt it in relevant part:

Petitioner, Deborah Montgomery ('Montgomery'), appeals from an opinion and award rendered by the Hon. Mark C. Webster, Administrative Law Judge ('ALJ'), on September 29, 1997. The ALJ awarded her a six-day period of temporary total disability ('TTD') benefits as a result of work-related injury she sustained on May 14, 1996 while in the employment of respondent, TARC, but found that the injury resulted in no permanent occupational disability. He awarded her medical treatment for the cure and relief from the effects of her injury but relieved TARC from paying any medical expenses obtained outside of its managed care system. On appeal, Montgomery contends that the ALJ erred in relieving TARC of the obligation to pay medical expenses incurred outside its managed care system and in failing to award her further TTD benefits.

Montgomery injured her back while lifting a wheelchair onto a TARC bus on May 14, 1996. She has a history of previous injuries, both work related and nonwork related, including injuries to her back causing her to miss periods of work in the past. After the instant injury, she drove herself to Jewish Hospital, was treated, given medication, and eventually referred to Dr. Snowden, whom she described as the company doctor. He took her off work for 13 days and then returned her to work with no restrictions.

Montgomery subsequently injured her index finger in August of 1996 while attempting to unlatch another wheelchair. She was eventually treated by Drs. Kutz and

¹Montgomery argued before the board below that the ALJ erred by denying her medical expenses incurred, because she saw physicians outside the employer's managed health care plan. She has not raised this issue before this Court; therefore, we will not address it.

Kleinert for this problem and taken off work from August 1996 until October 9, 1996 at which time she was released to return to work with the restriction of wearing a splint. She went back to work on October 10, drove an hour or so, and then determined she could not do it any more because of pain in her finger and back. She returned to work again in May 1997 and worked through July 9, 1997.

At the time of her administrative hearing on August 28, 1997, Montgomery was still employed by TARC but off work, being treated by her family physician, Dr. Horton. At that hearing, she testified Dr. Horton did not want her to go back on the bus and had given her off-work slips for various periods of time from August 1996 and including one on August 4, 1997. In addition to treating with Dr. Snowden for her back condition, she has also treated with her family physician, Dr. Horton, and Drs. Catalano and Pestruska, to whom Dr. Horton referred her. She testified that she began treating with Dr. Horton after Dr. Snowden prescribed Flexeril for her and released her to return to work without restrictions, despite her telling him that she could not take the Flexeril and still drive.

When asked if she was aware TARC had a managed care system that had been setup for the purpose of her getting medical treatment, Montgomery responded negatively but later confirmed she knew that there were certain doctors she was to see it [sic] there was a work-related problem and that that is why she went to see the company doctor. She also confirmed that Dr. Horton was not in the managed care system, testifying at her administrative hearing that, 'They have some where you can go see the company doctor, and if you don't agree to what he says, you can see your own doctor but still be covered under workers' comp.'

The ALJ, relieving TARC of the obligation to pay for treatment received outside of its managed care system, stated:

On page thirty-five of her deposition, Montgomery testified that she knew there was a managed care component to the company's

workers' compensation insurance, but she chose to go outside of the system in order to treat with Dr. Horton. I really have no proof other than her testimony that there was a managed care system, and I therefore discount her testimony. Since I have found that she has proved that the injury suffered on May 14, 1996, was work related, the employer is relieved from paying medical expenses obtained outside the managed care system.

In summarizing Montgomery's testimony, the ALJ indicated that although he was not sure Montgomery knew the difference, she testified that she was aware Dr. Horton was not a participating physician in the company's managed care system.

In addressing the extent and duration of Montgomery's disability, after finding that she was entitled to six days of TTD because of the 13 days she missed immediately after her work injury, he stated:

From that point on, the main problem was her finger. Then somehow in October, the back and the finger become [sic] disabling. I find that any back pain she suffered in and after October was not related to the slight incident in May but instead a continuation of her longstanding back problems. Dr. Banerjee found no disability and gave no restrictions. I therefore will find that she has no occupational disability even though I found above that she has proven that her back injury was an injury which was related to her work.

In contending she should have received further periods of TTD, Montgomery contends that merely because Dr. Banerjee testified the permanent impairment from which she suffered did not arise from a work injury did not mean the ALJ could not find TTD based upon other medical evidence of record. The ALJ, based upon Dr. Banerjee's testimony, found Montgomery had no occupational disability from her work-related injury. He

believed the May 1996 incident was a temporary aggravation of her previous history of back pain and did not cause any permanent changes. The evidence presented by Dr. Banerjee is evidence of substance in support of the ALJ's finding that the May injury resulted in no permanent occupational disability and that her problems with her back in October of 1996 and thereafter were not related to the May incident. There is, therefore, evidence of substance in support of the ALJ's finding on the issue of TTD, and the evidence referred to by Montgomery does not compel an award of additional TTD benefits. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

For the foregoing reasons, this Court affirms the opinion of the Workers' Compensation Board.

ALL CONCUR.

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