

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000089-WC

RHONDA COOMER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC97-02227

FRUIT OF THE LOOM, INC.;
HONORABLE J. LANDON OVERFIELD,
ADMINISTRATIVE LAW JUDGE, AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GARDNER, HUDDLESTON AND KNOX, JUDGES.

GARDNER, JUDGE: Rhonda Coomer appeals from an opinion of the Workers' Compensation Board which affirmed an opinion and order of the Administrative Law Judge. The ALJ determined that Coomer failed to prove that she sustained a work-related injury while in the employ of Fruit of the Loom (FOL). We affirm the opinion of the board.

Coomer began employment with FOL in 1987 as a seamstress/machine operator. In 1993 or 1994, she began experiencing stiffness in her neck. She reported the problem to

FOL and was sent by the company to Dr. Chambers, who treated her with muscle relaxers and injections. The problem apparently diminished or dissipated, but reoccurred in late 1995.

On April 16, 1997, Coomer experienced a burning sensation between her shoulder blades after work. Two days later, her arm began hurting to the point that she could not raise it above her head, and shortly thereafter her neck began to hurt. The problem was reported to FOL, and upon examination by Dr. John Kilgallin she was prescribed medication. FOL placed her in a position of limited duty.

Shortly thereafter, Coomer experienced numbness and discoloration of her right arm and hand. She subsequently received evaluation and treatment from four doctors including her family physician and referral doctors. At the recommendation of Dr. Monin (her family physician), she stopped working in June, 1997. Four months later she was laid off by FOL as part of a plant-wide reduction in workforce.

Coomer then filed a petition alleging a work-related injury and seeking workers' compensation benefits. The matter went before the ALJ, where Coomer offered the statements of co-workers who testified as to the heavy and repetitive nature of work at FOL. Coomer also offered medical evidence from Drs. Kilgallin, B.J. Parson, and Magdy El-Kalliny in support of her claim. The reports of these doctors supported Coomer's claim to varying degrees. Dr. Kilgallin's report was perhaps most helpful in that it stated that Coomer's condition was caused by an event or exposure in the work environment.

In response, FOL offered the reports of Dr. Narashimha Reddy and Dr. Kasden. Both found degenerative disc disease and/or disc herniation, and both concluded that the condition was not work-related.

Upon considering the proof, the ALJ opined that though Coomer was a credible petitioner, the medical evidence did not support her claim of work-relatedness. He noted that neither Dr. Parson nor Dr. El-Kalliny expressed an opinion as to the work-relatedness of Coomer's condition, and that Dr. Kilgallin, though credible, was not a specialist.

The ALJ concluded that Coomer's condition was not work-related and he dismissed her claim. The board affirmed the ALJ's opinion, and this appeal followed.

The question for our consideration is whether the ALJ improperly concluded that Coomer failed to prove that her condition was work-related. Specifically, Coomer directs our attention to those portions of the record and medical evidence which support her claim of work-relatedness, and she argues that when the whole case is considered the ALJ was compelled to enter a finding of work-relatedness. In response, FOL directs our attention to the testimony supportive of its position, the petitioner's burden of proof before the ALJ and on appeal, and the ALJ's authority to determine what evidence to believe when presented with conflicting evidence.

We have closely examined the record, the law, and the arguments of counsel, and cannot find the board erred in affirming the opinion of the ALJ. It is well-established that

where the evidence is conflicting, the ALJ has the sole authority to determine which evidence to believe. Eaton Axle Corporation v. Nally, Ky., 688 S.W.2d 334 (1985); Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977). In the matter at bar, the ALJ was presented with conflicting evidence on the issue of work-relatedness, and found the medical evidence supporting FOL's argument to be more persuasive. So long as this determination is supported by any evidence of substance, it cannot be said that a different result was compelled. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). The reports of Drs. Reddy and Kasden constitute evidence of substance.

On the issue of burden of proof, the question on appeal is whether the record is so overwhelming as to compel a finding in Coomer's favor. Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). It is insufficient to show that evidence exists upon which the ALJ could have reached a different result. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1974). Coomer has presented evidence upon which the ALJ could have, but did not, reach a decision in her favor. Clearly, this alone does not form a sufficient basis upon which we may disturb the ALJ's opinion. Accordingly, we must affirm.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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BRIEF FOR APPELLEE FRUIT OF
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