

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-000209-WC

ELLA WILLIAMS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-01035

TOYOTA MOTOR MANUFACTURING KENTUCKY,
INC.; ROBERT L. WHITTAKER, Director
of SPECIAL FUND; J. LANDON OVERFIELD,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, EMBERTON AND GUIDUGLI, JUDGES.

EMBERTON, JUDGE: The appellant, Ella Williams, filed this petition for review from a decision of the Workers' Compensation Board which affirmed the ALJ's order dismissing her claim for workers' compensation benefits.

In 1991, Williams filed a workers' compensation claim against Toyota for carpal tunnel syndrome resulting from her employment which was settled in 1993 on the basis of twenty percent disability. Believing that Toyota failed to accommodate her disability, she filed a claim in federal court against Toyota

under the Americans with Disabilities Act which was also settled in 1993. After her return to work in December 1993, Williams was a quality control paint inspector, a job which she was able to perform satisfactorily. In the fall of 1996, she was moved to the body shop, where she performed a visual inspection of the hood and used a sponge to apply highlight oil to the side of the car. The present case was filed in May 1997, wherein she alleges that she developed problems in her shoulders and trapezius muscles in the back of her neck as a result of the repetitive work performed at Toyota.

Williams testified that she began having shoulder and neck pain shortly after she began work in the body shop and alleged that on September 9, 1996, she had a sudden onset of neck pain. She requested that she be examined at the on-site Toyota medical clinic. She testified that she continues to have pain but no longer attends physical therapy. Paul Mills, a disability management specialist at Toyota, testified that the body shop assignment was within the physical restrictions imposed on Williams.

Williams discontinued her employment at Toyota on December 6, 1996, and applied for a medical leave of absence. When she failed to provide the necessary documentation required by Toyota for medical leave, her application was denied and she was deemed to have voluntarily quit her employment.

The medical testimony included that from Dr. Kleinert who originally saw Williams in 1991 for carpal tunnel syndrome and continued to treat her for that condition until 1993. At

that time he assessed permanent work restrictions consisting of maximum lifting of twenty pounds, no frequent lifting or carrying of objects up to ten pounds, avoidance of repetitive use of both hands and arms, including flexion and extension of wrists and elbows, no overhead work, and no use of vibratory tools. He next saw her on November 21, 1996, when she complained of pain and numbness in the upper extremities. After various tests were conducted, Dr. Kleinert diagnosed possible mild thoracic outlet compression on the left side, equivocal on the right. His diagnosis was based primarily on Williams' subjective complaints and history. He placed similar restrictions on her work as he had done in 1992.

Dr. Kleinert examined Williams in December 1996, and referred her to Dr. Dimar. Dr. Dimar diagnosed a rotator cuff injury and referred Williams to Dr. Mark Smith, an orthopedic surgeon. Dr. Smith diagnosed an occupational cervical brachial disorder and assigned a five-percent disability to the body as a whole. He restricted her from any assembly line or light industrial work. Although he was unable to confirm any objective findings, Dr. Smith stated that it is not unusual for there to be a lack of objective findings for myofascial type pain.

Dr. Penix, who examined Williams at the request of Toyota, found that Williams' complaints were subjective and unrelated to her work at Toyota. He assigned no permanent impairment and placed no work restrictions on Williams.

In dismissing the claim the ALJ found that:

Plaintiff has failed to prove to the satisfaction of the trier of fact that she

has had a work-related injury of appreciable proportions or that her claimed malady is a result of her work for Toyota. The most important aspect of any claim is the credibility of the claimant. The undersigned has significant concerns about Plaintiff's credibility. There were some noted inconsistencies in her testimony but, more importantly, the undersigned was not particularly impressed with Plaintiff's credibility when he observed her testify at her hearing. In addition, Plaintiff's medical evidence leaves much to be desired. Both Drs. Kleinert and Smith have testified that their opinions as to Plaintiff's condition and their diagnoses rely almost exclusively on Plaintiff's subjective complaints. Dr. Smith did say that he found objective signs in the nature of muscle spasms but he was the only one to make such a finding. Dr. Kleinert's testimony is very equivocal as to what he thinks Plaintiff's condition is and what that condition is actually caused by. Plaintiff's medical evidence is also somewhat damaging to her claim in that the restrictions placed on her by Drs. Kleinert and Smith are almost identical to the **permanent** restrictions placed on her by Dr. Kleinert in 1992. Counsel for Plaintiff has made a Herculean effort at explaining away and reshaping the import of the medical and lay evidence. However, the fact remains that Plaintiff's credibility and the opinions of her treating physicians have caused the undersigned to find that she has not proven that she had a work-related injury in the fall of 1996 or that her work at Toyota has caused her to have an occupational disability related to symptoms in her shoulders, neck and upper extremities other than that which already existed as a result of her bilateral carpal tunnel syndrome. (Emphasis original).

Williams maintains that the ALJ failed to specifically state whether the dismissal of the claim was based on a finding that no work-related injury occurred or whether he found that she had no occupational disability. We find nothing inconsistent nor unclear in the ALJ's findings. The ALJ found that Williams had

not sustained a work-related injury of appreciable proportions which was supported by facts taken from the evidence. Big Sandy Community Action Program v. Chaffins, Ky., 502 S.W.2d 526 (1973).

Because of the inconsistencies in her testimony and conflicts with that of others, the ALJ had reservations about the credibility of Williams. As a result, he found unpersuasive the causation testimony given by physicians based on the history given to them by Williams. The weight and credibility to be given the testimony of any witness is within the discretion of the fact finder. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

The evidence in this case is far from conclusive as argued by Williams. Dr. Penix assigned no permanent impairment and released Williams to return to work. The evidence is not so overwhelming as to compel a finding in her favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985).

Williams' reliance on the "whole man" doctrine is misplaced. That doctrine provides, that when a subsequent injury independently causes a disability, the benefits for pre-existing disability from a prior award shall not be deducted from the most recent award. International Harvester v. Poff, Ky., 331 S.W.2d 712 (1959). The ALJ found that Williams did not suffer a work-related injury; thus, the "whole man" doctrine is not applicable.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leslie Rosenbaum
Lexington, Kentucky

BRIEF FOR APPELLEE TOYOTA
MOTOR MANUFACTURING, KENTUCKY,
INC.:

J. Douglas Jones
J. Follace Fields II
Covington, Kentucky

BRIEF FOR APPELLEE SPECIAL
FUND:

Benjamin C. Johnson
Louisville, Kentucky