

RENDERED: July 8, 2005; 10:00 a.m.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2004-CA-002067-WC

KIM BRYANT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-03-97834

DOLLAR GENERAL CORPORATION;  
HON. JAMES L. KERR, ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \* \* \*

BEFORE: GUIDUGLI AND TAYLOR, JUDGES; EMBERTON, SENIOR JUDGE.<sup>1</sup>

TAYLOR, JUDGE: Kim Bryant petitions us to review an opinion of the Workers' Compensation Board entered September 10, 2004, affirming the Administrative Law Judge's (ALJ) finding that she

---

<sup>1</sup> Senior Judge Thomas D. Emberton sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes 21.580.

did not suffer work-related injuries on September 16, 2002, and December 3, 2002.

Appellant was employed by the Dollar General Store as a manager. She first started working for the Dollar General Store on July 13, 2002. On September 10, 2002, appellant tripped at her home and dislocated her right shoulder. She was seen in the emergency room at Norton's Southwest Hospital. A closed manipulative reduction was performed, and she was released. Later that night, appellant's right shoulder became dislocated while sleeping. She again returned to Norton's Hospital where a second closed reduction of the right shoulder was performed. This time, she was admitted to the hospital. On September 12, appellant suffered another dislocation of the right shoulder while being moved by a nursing assistant. As a result, a third closed reduction of appellant's right shoulder was performed that day.

Appellant returned to work at the Dollar General Store in a brace. On September 16, appellant allegedly suffered a work-related injury. While working in the brace, appellant testified that she hit the end of her right arm on the display rack while turning to answer the phone and suffered an aggravation of her injury. Subsequently, the MRI revealed a "small SLAP tear" in her shoulder, and a stabilization surgical procedure was performed on September 23. She thereafter

underwent physical therapy and returned to work two days later in a brace. On December 3, 2002, appellant was working alone when she allegedly fell while reaching for some merchandise in the stock room injuring her right shoulder. Appellant did not return to work after the December 3 incident.

Appellant filed an application for workers' compensation benefits seeking permanent occupational disability benefits as a result of the alleged work-related injuries on September 16, 2002, and December 3, 2002. The issues of causation and pre-existing condition were issues of significant dispute. The ALJ found that appellant did not suffer work-related injuries on September 16, 2002, and December 3, 2002. Rather, the ALJ found that appellant suffered from a "pre-existing non [sic] work-related condition". The ALJ dismissed appellant's claim. Being unsatisfied with the ALJ's decision, appellant sought review in the Workers' Compensation Board (Board). The Board eventually affirmed the ALJ's decision, thus precipitating our review.

Appellant brings two allegations of error before this Court:

1. Whether the Administrative Law Judge erred in not awarding temporary total disability benefits and medical treatment with regard to the incident of December 3, 2002, having found that it was a temporary exacerbation of a pre-existing [sic] non-work [sic] related condition.

2. Whether the Administrative Law Judge erred in not addressing whether or not the September 16, 2002 [sic] incident was a temporary exacerbation of a pre-existing [sic] non-work [sic] related condition.

Appellant's Brief at 2.

In its opinion, the Board succinctly discussed these issues, and we adopt its well-reasoned opinion herein:

[T]he ALJ began his analysis of Bryant's claim by correctly noting that a work-related traumatic event must be the proximate cause of a harmful change in the human organism in order for the work-related event to constitute an "injury", as that term is defined in KRS 342.0011(1). He then noted that Bryant's position that the opinions of Dr. Warren Bilkey, an independent medical evaluation ("IME") physician, and Dr. David Caborn, a treating surgeon, established causation, and should be given greater weight than contrary medical opinions in the record. The ALJ then clearly found: "Nonetheless, the Administrative Law Judge finds more persuasive the opinions of Dr. [Gregory] Gleis and Dr. [Edward] Tillet, also a treating physician, that plaintiff's current condition is not work-related." (Slip opinion, at p. 6). Bryant does not claim in either of her two arguments on appeal that the opinions of Dr. Gleis and Dr. Tillet do not constitute substantial evidence to support a finding that Bryant's condition is not work-related.

The ALJ, in addition to expressly relying on the opinions of Dr. Gleis and Dr. Tillet, specifically addressed two incidents at work which Bryant maintained were the proximate cause of change in the human organism. In addressing those two incidents, the ALJ further explained:

. . .The plaintiff argues in her brief that when she struck the merchandise with her brace on September 16, 2002 [sic] the blow was so significant to dislocate her shoulder. However, the plaintiff had undergone three reductions of that same shoulder less than a week prior to the work-related event. One of those dislocations occurred while plaintiff's [sic] was sleeping, and another occurred while plaintiff was being moved by a hospital nursing assistant. It seems significant to the undersigned that it apparently did not take much force to dislocate plaintiff's shoulder. While plaintiff presents herself as [sic] being almost problem free in November of 2003, she had parascapular problems on November 19, 2002 [sic] which was about two weeks prior to her fall at work on December 3, 2002. At that time her shoulder was clinically located but plaintiff was having parascapular winging. She continued to have scapular dyskinesia thereafter with dislocation of the shoulder again on April 22, 2003. It appears to the undersigned that the scapular problems are not related to the December 3, 2002 [sic] incident. Further, plaintiff's shoulder did not dislocate after the December 3, 2002 [sic] incident. Thus, it does not appear to the undersigned that the December 3, 2002 [sic] incident was anything more than a temporary exacerbation of plaintiff's pre-existing [sic] non work-related condition. For these reasons, the Administrative Law Judge agrees with the opinions of

Dr. Tillett [sic], a treating physician, and Dr. Gleis, an evaluating physician, that plaintiff's two incidents at work did not result in a work-related injury as defined by KRS 342.0011(1) and plaintiff's workers compensation claim must be denied.

The clear import of the foregoing explanation is that the events at work on September 16, 2002 [sic] and December 3, 2000 [sic] were not the proximate cause of Bryant's condition. Again, we deem it significant that the paragraph in which the explanation is contained begins with the observation that a work-related traumatic event must be the proximate cause of a harmful change in the human organism in order for the work-related event to constitute an "injury", as that term is defined in KRS 342.0011(1).

Once the ALJ determined that Bryant's "two incidents at work did not result in a work-related injury, there was nothing further for him to address.[]" If a temporary flare-up in the symptoms of a pre-existing [sic] non-work [sic] related condition is not proximately caused by a work-related event, the employer incurs no liability under KRS Chapter 342. Robertson v. United Parcel Service, Ky.[sic], 64 S.W.3d 284 (2001), which Bryant cited in her petition for reconsideration but omitted from her appellate brief, does not hold otherwise.

Contrary to Bryant's position on appeal, the ALJ was not required to expressly find that an event at work on September 16, 2002 [sic] was a temporary exacerbation of a pre-existing [sic], non-work [sic] related condition. The ALJ found that the events at work on September 16, 2002 [sic] and on December 3, 2002 [sic]

"did not result in a work-related injury as defined by" KRS 342.0011(1). This finding was sufficient, in light of the ALJ's explanation, to reasonably ascertain the basis for the ALJ's decision. Shields v. Pittsburg and Midway Coal Mining Co., Ky.App.[sic], 634 S.W.2d 440 (1982).

We also reject Bryant's appellate argument that the ALJ was required to award TTD [temporary total disability] and medical benefits because the ALJ found that an event at work on December 3, 2002 [sic] was a temporary exacerbation of a pre-existing [sic], non-work [sic] related condition. Not every event which exacerbates a condition equates to the proximate cause of that condition. The clear import of the ALJ's analysis, read *in toto*, is that the events at work on September 16, 2002 [sic] and December 3, 2002 [sic] were not the proximate cause of Bryant's condition.

Workers' Compensation Opinion at 2-6(footnote omitted).

We agree with the Board's opinion upholding the ALJ's finding that the accidents on September 16 and December 3 were not the proximate cause of appellant's present condition. We also conclude there was sufficient evidence in the record to support the ALJ's findings that appellant's injuries were not work related. In fact, the great weight of the evidence supports the finding that appellant suffered from a preexisting and nonworking-related condition that was at best, temporarily exacerbated by the subsequent accidents. Consequently, the ALJ correctly determined that appellant was not entitled to temporary total disability or medical benefits. Accordingly, we

are of the opinion that the Workers' Compensation Board properly affirmed the ALJ's opinion dismissing appellant's claim.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Wayne C. Daub  
Louisville, Kentucky

BRIEF FOR APPELLEE:

Kevin W. Weaver  
STURGILL, TURNER, BARKER &  
MOLONEY, PLLC  
Lexington, Kentucky