

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000900-WC

TINA TEETER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-00-67095

UNITED PARCEL SERVICE; WORKERS'
COMPENSATION BOARD; AND HON. IRENE STEEN,
ADMINISTRATIVE LAW JUDGE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; POTTER, SENIOR JUDGE.¹

TAYLOR, JUDGE: Tina Teeter seeks review of an opinion of the Workers' Compensation Board entered April 1, 2005, affirming the Administrative Law Judge's (ALJ) dismissal of her claims for workers' compensation benefits as a result of two separate injuries. We affirm.

¹ Senior Judge John W. Potter 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.

Teeter was allegedly injured on two separate occasions while working for United Parcel Service (UPS). The first injury was purportedly sustained on September 8, 2000, when she was moving package containers from a dolly to a static rack on rollers. The other injury allegedly occurred on October 15, 2002, when she was placing boxes on a conveyor belt. The first injury resulted in an onset of pain in her neck and right shoulder; the second injury affected her left shoulder.

As a result of the injuries, Teeter filed two claims for workers' compensation benefits alleging she suffered permanent disability as a result of the injuries. On October 20, 2004, the ALJ entered an opinion and order dismissing Teeter's claims. The ALJ found that Teeter failed to prove she suffered from work-related injuries which caused permanent disability. The ALJ further found that Teeter was not entitled to future medical expenses for treatment from Dr. Michael Cassaro. Being unsatisfied with the decision of the ALJ, Teeter sought review in the Workers' Compensation Board (the Board). By opinion entered April 1, 2005, the Board affirmed the ALJ, thus precipitating our review.

Teeter initially contends the ALJ erred by failing to award her a 12% and a 7% permanent disability impairment ratings based upon the opinion of the university medical evaluator. Essentially, Teeter argues the ALJ erred by failing to award

benefits based upon the impairment ratings assigned by the university medical evaluator.

As pointed out by the Board, the law is well-settled that a petition for reconsideration must be filed contesting the ALJ's finding of fact to preserve the issue for appellate review. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky.App. 2000).

In this case, Teeter filed a petition for reconsideration but only alleged the ALJ erred by failing to award future medical expenses. As Teeter failed to specifically contest the ALJ's finding that Teeter did not suffer permanent impairment as a result of the alleged work-related injuries, this issue was not properly preserved for appellate review.

Teeter also asserts the ALJ committed error by finding that she was not entitled to future medical expenses for Dr. Cassaro's ongoing treatment. Under Kentucky Revised Statutes (KRS) 342.020, medical expenses reasonably necessary for the cure and relief of a work-related injury are compensable. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993).

In her opinion and order, the ALJ specifically found:

As we know, Dr. Cassaro has treated Plaintiff with multiple injections of various kinds and Plaintiff stated that she went every two weeks for these injections and would not be able to maintain her

ability to work were it not for these injections. Dr. Cassaro felt that Plaintiff should continue with his injection treatment for the next 3-5 years.

The evidence from the Defendants is very much different from Dr. Cassaro's opinions, especially the deposition from Dr. Baker which speaks volumes of his thoughts on Plaintiff's current treatment. In addition, he also commented about the various complaints that Plaintiff had, as well as her inconsistent efforts during the FVC, particularly her grip tests. Dr. Baker was very concerned that when he lightly palpated Plaintiff's neck on the right side, she experienced pain and symptoms in her right foot. Likewise, when he flexed Plaintiff [sic] right arm, she experienced numbness in all five fingers of that hand. He additionally felt that headaches would not be a regularly associated problem from a shoulder injury. Instead, he felt that Plaintiff's headaches would more likely be the result of tension.

Due to the diversity of the medical evidence in this claim, this ALJ chose to send Plaintiff for a university evaluation, which was performed by Dr. Martyn Goldman. His overall opinion was that Plaintiff did indeed have a functional impairment to both shoulders, but that it was not related to the injuries herein. Additionally, he commented on the ongoing treatment Plaintiff was receiving from Dr. Cassaro and felt these to be totally unnecessary. I noted that in addition to the various MRI's Plaintiff had had of her shoulder, she also underwent EMG/NCV studies, which were normal, and MRI's of her cervical and thoracic spine, which were also normal.

Additionally, I am persuaded, in spite of Plaintiff's testimony to the contrary, that her ongoing treatment with Dr. Cassaro is medically unnecessary and unreasonable.

Based upon the evidence submitted by Dr. Robert Baker and Dr. Martyn Goldman, we are of the opinion the ALJ's finding that the ongoing medical treatment of Dr. Michael Cassaro was medically unnecessary and unreasonable is supported by substantial evidence of a probative value. Therefore, we cannot say the Board committed error by affirming the ALJ's decision to deny Teeter compensation for future medical treatment with Dr. Cassaro.

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

VANMETER, JUDGE, CONCURS.

POTTER, SENIOR JUDGE, CONCURS IN PART, DISSENTS IN PART, AND FILES SEPARATE OPINION.

POTTER, SENIOR JUDGE, CONCURRING IN PART AND DISSENTING IN PART: I concur with the majority in upholding the Board's denial of expenses for future medical treatment by Dr. Cassaro. However, I would emphasize that the majority applied the principle that "medical expenses reasonably necessary for the cure and relief of a work-related injury are compensable." It did not address Board Member Young's contention that those injuries must cause a permanent impairment before future medical benefits can be awarded.

I believe that the Board improperly held that abbreviated nature of Teeter's petition for reconsideration

prevented the Board from considering whether the ALJ's finding that there was no disability was supported by the evidence. Only errors which are "patent on the face of the award" need be reargued by a motion to reconsider to preserve them for appeal. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985)(failure to make findings of an essential fact).

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