

# Commonwealth of Kentucky

## Court of Appeals

NO. 2006-CA-001962-WC

DOROTHY KNIGHT

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-04-94276

TECO; HON. A. THOMAS DAVIS,  
ADMINISTRATIVE LAW JUDGE; AND  
THE WORKERS' COMPENSATION BOARD

APPELLEES

### OPINION AFFIRMING

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BEFORE: NICKELL AND TAYLOR, JUDGES; PAISLEY,<sup>1</sup> SENIOR JUDGE.

TAYLOR, JUDGE: Dorothy Knight petitions this Court to review an August 9, 2006, opinion of the Workers' Compensation Board (Board) affirming the Administrative Law Judge's (ALJ) dismissal of her claim for workers' compensation benefits. We affirm.

The relevant facts were succinctly set forth by the Board as follows:

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<sup>1</sup> Senior Judge Lewis G. Paisley 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.

Knight was born on May 10, 1951, and is a resident of Hazard, Kentucky. She has a twelfth grade education and is certified as a nurse's aide in CPR and first aid. Knight suffered a nonwork-related back injury in March 1997, while taking out the trash at home. She subsequently missed time from work and [was] treated for that condition with a variety of medical doctors. Since 1997, prior to the injury that is the subject of this claim, Knight was also treated for complaints of cervical and thoracic pain, left shoulder, and left wrist and hand pain.

Knight worked as a janitor, receptionist, and accounts payable clerk for Perry County Coal from 1998 until the company was acquired by TECO on November 15, 2000. She continued in TECO's employ until sustaining a work-related injury to her low back while lifting at work on February 16, 2004. She has not worked anywhere since that time.

On August 8, 2005, Knight filed a Form 101, Application for Resolution of Injury Claim, alleging work-related injuries to her mid and lower back and left shoulder. Knight further alleged the development of work-related left carpal tunnel syndrome, cumulative work-related trauma involving her back, neck and left hand, and secondary depression and anxiety. The application listed February 16, 2004, as Knight's date of injury.

Knight's claim was assigned to the ALJ for adjudication upon the merits.

The parties stipulated that Knight suffered a work-related injury on February 16, 2004.

The issues presented for adjudication by the ALJ were: (1) extent and duration of disabilities; (2) average weekly wage; (3) underpayment of temporary total disability benefits; (4) payment of past, present, and future medical benefits related to Knight's anxiety and depression; (5) existing active impairment; and (6) TECO's liability for

unpaid medical bills. Considering the evidence as a whole, the ALJ entered an opinion dismissing Knight's claim. In support thereof, the ALJ found:

The ALJ believes the most important finding in this claim is that the objective medical evidence shows less wrong with the Plaintiff than she contends. It is possible that the Plaintiff suffered a work related injury on February 16, 2004 and that there resulted a degree of psychological consequences from the accident or resulting impairment. The Defendant/employer has acknowledged the injury. The propounded expert evaluations though should, as close as possible, reflect the reality of the claimant's condition and the resulting degree of impairment. The Plaintiff's submitted IMEs [independent medical exam] are in the opinion of the ALJ, to extreme.

The Plaintiff has the burden of proof in this regard. Caudill v. Maloney's Discount Store, Ky., 70 S.W.2d 15 (1977).

It is possible that the Plaintiff's perception of pain is amplified by her psychological condition, but in the ALJ's opinion there is not substantive proof of this. The Plaintiff in her proof has problems relating her alleged conditions to her work injuries. . . .

. . . .

After preparing the report, Dr. [Michael] Best reviewed additional evidence that indicated to him that the Plaintiff's conditions were all pre-existing and the February 16, 2004 injury had no continuing effect on her condition. The 5% whole person impairment rating he had given the Plaintiff was attributed to a condition that pre-existed her February 16, 2004 injury.

. . . .

**The ALJ does not believe that the Plaintiff has met her burden of proof for any impairment related to her work for TECO. Given the existing record, the ALJ**

**believes that the most appropriate conclusion that can be drawn from it is that Ms. Knight suffered a temporary exacerbation of pre-existing problems for which she had a pre-existing and active impairment.** The Plaintiff's current psychological condition cannot be attributed to her work. Dr. Andrew Cooley, the Defendant's IME, assessed a 10% psychiatric impairment. He attributed that to Plaintiff's underlying physical condition and indicated that it should be apportioned in the same manner as her underlying physical impairment. **The ALJ believes from the record that there is not enough evidence to show that her present physical condition is due to her work injury or any cumulative trauma work injury.** The Defendant/employer, TECO, would not be responsible for any medical bills or treatment related to the Plaintiff's psychological condition.

**The ALJ does not find that the Plaintiff has any permanent impairment or any permanent disability as a result of either her February, 2004 work injury or any cumulative trauma and that this claim should be dismissed. As it has been determined that the Plaintiff has no work related impairment, residual impairment or otherwise any lasting effect of a work related injury, the Plaintiff's claim for total occupational disability should be dismissed. . . .**

Being dissatisfied with the ALJ's opinion, Knight sought review with the Board. By opinion entered August 9, 2006, the Board affirmed the ALJ's dismissal of Knight's claim. Our review follows.

Knight contends that the ALJ committed error by rejecting the “uncontradicted medical evidence of cumulative trauma.” In support thereof, Knight cites this Court to the medical opinion of Dr. James Templin as is found in a Supplemental Form 107-I, which reads as follows:

1. Based on the history you received from Dorothy Knight contained in your Form 107-I, do you have any

opinion as to whether or not the work requirements of Dorothy's job as a receptionist/janitor would have contributed to her present back and shoulder problems?

Yes X No \_\_\_\_\_

COMMENTS: \_\_\_\_\_

2. Would the type of work that Ms. Knight did have subjected her to wear and tear on her back and shoulders, or cumulative trauma? Yes X No \_\_\_\_\_

COMMENTS: \_\_\_\_\_

3. Is it medically probable that Ms. Knight suffers from a condition at least partially caused by cumulative trauma? Yes X No \_\_\_\_\_

COMMENTS: \_\_\_\_\_

4. Do you believe that the type of work that Ms. Knight did can accelerate the degenerative process in the back, shoulders, and both knees? Yes X No \_\_\_\_\_

COMMENTS: \_\_\_\_\_

5. Does your impairment rating in this case include cumulative trauma?

Yes X No \_\_\_\_\_

6. Have all of your opinions been stated in terms of reasonable medical probability?

Yes X No \_\_\_\_\_

7. Is the cumulative trauma you diagnosed in this case a substantial contributing factor in the impairment rating you gave the patient? Yes X No \_\_\_\_\_

COMMENTS: \_\_\_\_\_

Knight points out that there was no other physician to testify regarding the issue of cumulative trauma; thus, the ALJ was bound to accept Dr. Templin's opinion upon this issue.

It is axiomatic that a claimant in a workers' compensation claim bears the burden of proving each essential element of the cause of action. *Burton v. Foster Wheeler Corp.*, 72 S.W.3d 925 (Ky. 2002). As Knight carried the burden of proof and was unsuccessful before the ALJ, she must now demonstrate that the evidence is so overwhelming as to compel a finding in her favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984). Moreover, it is within the sole province of the ALJ to judge the weight and credibility of evidence.

In the Supplemental Form 107-I, Dr. Templin is asked if his impairment rating included cumulative trauma, and he answered in the affirmative. In another question, Dr. Templin is asked if it was medically probable that Knight's condition was "at least partially caused by cumulative trauma." And again, Dr. Templin answered in the affirmative. However, the portion of her impairment rating that was causally due to the cumulative trauma was never addressed by Dr. Templin. In the Supplemental Form 107-I, Dr. Templin appears to opine that Knight's "present back and shoulder problems" are at least partially caused by cumulative trauma but again failed to allocate an

impairment rating as to each. As Dr. Templin's opinion upon cumulative trauma is incomplete and fails to apportion specific impairment ratings, we reject Knight's contention that the ALJ erred by failing to adopt it.

Knight also argues that the ALJ committed error by failing to award certain medical expenses. Knight's argument upon this issue consist of two sentences. And, Knight fails to specify to this Court what medical expenses she is seeking reimbursement from the employer. Without more specificity, we are simply unable to review this issue upon its merits.

We view Knight's remaining contention to be moot.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

James D. Holliday  
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BRIEF FOR APPELLEE TECO:

Jeffrey D. Damron  
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