

Commonwealth of Kentucky
Court of Appeals

NO. 2010-CA-000799-WC

DAY HOLDING/NURSE STAFFING

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-09-94579

ROBERTA ROGERS; HON.
GRANT S. ROARK,
ADMINISTRATIVE LAW
JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; LAMBERT, JUDGE; HENRY,¹ SENIOR
JUDGE.

TAYLOR, CHIEF JUDGE: Day Holding/Nurse Staffing (Day Holding) petitions
this Court to review an opinion of the Workers' Compensation Board (Board)

entered March 3, 2010, affirming the Administrative Law Judge's (ALJ's) award

¹ Senior Judge Michael L. Henry 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.

of permanent partial disability benefits to Roberta Rogers based upon 10 percent functional impairment following a work-related injury. We affirm.

Resolution of this case centers upon one issue – whether the ALJ’s finding that Rogers suffered a 10 percent functional impairment as a result of a work-related injury was supported by substantial evidence of a probative value. Day Holding contends that the evidence is lacking and that the Board erred in concluding otherwise. Specifically, Day Holding argues that the ALJ erroneously relied upon the medical opinion of Dr. Warren Bilkey. Day Holding points out that Dr. Bilkey opined that Rogers suffered a 10 percent functional impairment but, simultaneously, admitted that Rogers had not reached maximum medical improvement (MMI). Under Kentucky Revised Statutes (KRS) 342.730, Day Holding argues that the American Medical Association’s Guidelines (AMA Guidelines) must be utilized by a physician in formulating functional impairment and that the AMA Guidelines mandate that a claimant reach MMI before considering functional impairment. As Dr. Bilkey believed that Rogers had not reached MMI, Day Holding maintains it was clear error for the ALJ to rely upon the doctor’s opinion of functional impairment.

It is well-established that a physician’s opinion as to a claimant’s functional impairment must conform to the AMA Guidelines. KRS 342.730(1)(b). It is also recognized that the ALJ is the sole fact-finder and in that role may choose

to accept portions and disregard other portions of an expert witness' testimony.

Copar, Inc. v. Rogers, 127 S.W.3d 554 (Ky. 2003).

In this case, the Board reasoned that the ALJ accepted only the portion of Dr. Bilkey's opinion dealing with Rogers' functional impairment and rejected the doctor's opinion as to MMI. The Board noted that the ALJ could have inferred from Dr. Meneffe Seay that Rogers reached MMI approximately one month before Dr. Bilkey examined Rogers. It was this exam that would form the basis of Dr. Bilkey's opinions as to Rogers' functional impairment and MMI.

Considering the record as a whole, we conclude that evidence of a probative value supported the ALJ's finding that Rogers was entitled to an award of permanent partial disability benefits based upon a 10 percent functional impairment. Thus, the Board did not err by affirming the ALJ's award. *W. Baptist Hospital v. Kelly*, 827 S.W.2d 685 (Ky. 1992).

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Walter E. Harding
Louisville, Kentucky

BRIEF FOR APPELLEE:

Ched Jennings
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