

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001908-WC

AMAZON.COM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-01214

JEANNIE COLVIN; HONORABLE WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: DIXON, J. LAMBERT AND NICKELL, JUDGES.

NICKELL, JUDGE: Amazon.com (Amazon) appeals from an opinion of the Workers' Compensation Board (Board) which affirmed an award of permanent total disability (PTD) benefits to Jeannie Colvin by Administrative Law Judge (ALJ) William Rudloff. Amazon argues the ALJ's findings were not based on

substantial evidence and the Board erred in affirming the judgment of the ALJ. Finding no error, we affirm.

Colvin, an Amazon employee, was injured at work in two separate incidents, sustaining injuries to her left shoulder and both hands. She filed for workers' compensation benefits soon thereafter. She later moved to amend her claim to include a neck injury suffered the same day as the shoulder injury.

Amendment was allowed by the ALJ assigned to the matter, Hon. Jeannie Miller.

On April 1, 2013, ALJ Miller entered an opinion and award finding Colvin had injured her shoulder and neck. ALJ Miller awarded Colvin permanent partial disability (PPD) benefits and medical benefits. ALJ Miller gave Colvin a 7% impairment rating based on the opinion of Dr. Warren Bilkey.

On September 10, 2014, Colvin filed a motion to reopen alleging her condition had worsened since the time of the award. She sought a determination as to whether she was 100% occupationally disabled. The case was assigned to ALJ Rudloff. Colvin testified both by deposition and at a hearing held on March 25, 2015. Colvin also introduced the following evidence: a report from Dr. Bilkey and records and reports from the Frazier Rehabilitation Institute, Bluegrass Orthopaedics & Hand Care, Western Kentucky Diagnostic Imaging, Louisville Bone & Joint, Dr. Sanjiv Mehta, Flaget Memorial Hospital, Crossroads Family Medicine, Dr. Jerome Dixon, and Taylor Regional Hospital. Amazon introduced

the reports and deposition of Dr. Richard Dubou and a number of medical records and reports from the original claim.

ALJ Rudloff discussed the relevant evidence in his opinion, ultimately finding Colvin's condition had worsened and she was now entitled to an 11% whole person permanent impairment rating. ALJ Rudloff also found Colvin was permanently and totally disabled. He based his finding on the testimony of Colvin and the records and reports of Drs. Mehta and Bilkey. The Board later affirmed ALJ Rudloff's opinion and award of PTD benefits. This appeal followed.¹

A workers' compensation award may be reopened due to a "[c]hange of disability as shown by objective medical evidence of worsening or improvement of impairment due to a condition caused by the injury since the date of the award or order." Kentucky Revised Statutes (KRS) 342.125(1)(d). "The function of further review of the [Board] in the Court of Appeals is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as

¹ Neither party's brief complies with Kentucky Rules of Civil Procedure (CR) 76.12(4)(c). That rule requires briefs to contain ample citation to specific pages of the record. In this case, the briefs contained a few citations to individual documents found in the record, but did not indicate the page numbers where these documents could be found. "CR 76.12(4)(c) grants this Court great discretion over the imposition of sanctions for failure to comply with its provisions. Any sanction 'must be commensurate with the harm caused and the severity of the defect, as determined on a case-by-case basis.'" *Walker v. Commonwealth*, 503 S.W.3d 165, 171 (Ky. App. 2016) (citation omitted). Even though this Court was required to sift through a record containing over 2,000 pages, we decline to sanction either party and will review the case on the merits.

to cause gross injustice.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

KRS 342.285 designates the ALJ as the finder of fact. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985), explains that the fact-finder has the sole authority to judge the weight, credibility, substance, and inferences to be drawn from the evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986), explains that a finding that favors the party with the burden of proof may not be disturbed if it is supported by substantial evidence and, therefore, is reasonable.

AK Steel Corp. v. Adkins, 253 S.W.3d 59, 64 (Ky. 2008). “Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men.” *Smyzer v. B. F. Goodrich Chemical Co.*, 474 S.W.2d 367, 369 (Ky. 1971). “Although a party may note evidence which would have supported a conclusion contrary to the ALJ’s decision, such evidence is not an adequate basis for reversal on appeal.” *Whittaker v. Rowland*, 998 S.W.2d 479, 482 (Ky. 1999) (citation omitted).

On appeal, Amazon argues the award of PTD benefits was not warranted by the evidence and Colvin’s condition had not worsened. We disagree.

The opinions of ALJ Rudloff and the Board set forth the extensive medical evidence submitted and considered in this case. ALJ Rudloff specifically relied on the opinions of Drs. Mehta and Bilkey in making his findings. Dr. Mehta, Colvin’s treating orthopedic surgeon, diagnosed her with degenerative disc

disease, mild carpal tunnel syndrome, partial thickness rotator cuff tear, arthritis, and left upper extremity complex regional pain syndrome. Dr. Mehta's records indicated Colvin was to be permanently off work and may need to seek disability due to her pain.

Dr. Bilkey, who performed an independent medical exam for Colvin's initial award, also performed another exam upon this reopening. He found, since the last exam, Colvin had acquired chronic pain affecting the neck and left upper extremity, as well as accompanying headaches. He also indicated she was at maximum medical improvement and was now at an 11% whole person permanent impairment rating.

Dr. Dubou disagreed with the findings of Drs. Mehta and Bilkey. He believed Colvin had subjective upper extremity pain without objective findings of nerve compression or complex regional pain syndrome. Dr. Dubou diagnosed Colvin with a transitory shoulder strain and opined her condition had improved since her original disability award.

The ALJ and Board also heard testimony from Colvin. She testified since the original award, she now suffers from muscle spasms in her neck, left shoulder, and hand. She also testified she is still experiencing daily pain in her neck, left shoulder, and left arm. In addition, she stated she would be happy to

return to work, but doubted she could due to pain. Further, she believed she was experiencing more frequent bouts of pain than before her original award.

We believe Colvin’s testimony and evidence establishes the requisite substantial evidence to support the findings of ALJ Rudloff and the Board. The evidence from Drs. Mehta and Bilkey showed Colvin was experiencing serious pain and her impairment rating had increased from 7% to 11%. Colvin also testified she did not believe she could return to work due to her extreme pain. “A worker’s testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured.” *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000) (citing *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979)). While Amazon disagrees with this evidence and provides contrary medical evidence, its proof is insufficient to prevail on appeal. *Whittaker*, 998 S.W.2d at 482.

Based on the foregoing, the decision of the Board is affirmed.

ALL CONCUR.

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