

RENDERED: August 2, 1996; 2:00 p.m.
NOT TO BE PUBLISHED

96-CA-0611-MR

GENEVA RICHARDSON

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
 THE WORKERS' COMPENSATION BOARD
 CLAIM NO. 91-18539

UNIVERSITY OF LOUISVILLE; the
SPECIAL FUND; HON. THOMAS A. NANNEY,
Administrative Law Judge; and the
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: Combs, Gardner, and Gudgel, Judges.

Gudgel, Judge. This is a petition for review from a decision of the Workers' Compensation Board (Board) rendered on February 2, 1996, affirming an opinion of an Administrative Law Judge (ALJ), dismissing appellant's claim for benefits on the ground that her present disability is not work-related and actively pre-existed her alleged work-related injury.

The appellant reported the onset of severe pain in her right wrist while carrying files at work. She subsequently filed a

claim for benefits for permanent disability. In denying the claim, the ALJ concluded as follows:

Addressing first the issue of causation and work-relatedness of plaintiff's hand condition, the medical evidence taken as a whole, combined with the testimony of plaintiff, reveals that the bulk of the plaintiff's disability is not related to any on-the-job injury, but is, instead related to her debilitating physical condition brought about by her long term use of prescription steroids.

The ALJ further stated that "[e]ssentially, the evidence establishes that the plaintiff had a prior active condition of severe osteoarthritis prior to the incident at work and that this incident merely aggravated the condition." The ALJ primarily relied upon the medical testimony of Dr. Banerjee, who testified that appellant's prolonged steroid use for asthma caused arthritic changes and osteoarthritis that pre-existed the on-the-job incident. On appeal the Board affirmed the ALJ's decision. This petition for review followed.

Appellant contends that the ALJ erred by finding that her condition was not work-related. We disagree.

The claimant in a workers' compensation claim has the burden of proof and risk of persuasion, and if unsuccessful, the question on appeal is whether the evidence is so overwhelming upon consideration of the record as a whole as to compel a finding in the claimant's favor. See Snawder v. Stice, Ky. App., 576 S.W.2d 276 (1979); Wolf Creek Collieries v. Crum, Ky. App., 673 S.W.2d 735 (1984). Compelling evidence is that which is so overwhelming that no reasonable person could reach the same

conclusion reached by the finder of fact. REO Mechanical v. Barnes, Ky. App., 691 S.W.2d 224 (1985).

A review of the record and, particularly, the evidence cited by the Board reveals that the ALJ was not compelled to find in favor of the claimant. The appellant's argument is primarily directed at the weight the ALJ should have accorded certain evidence as opposed to the issue of whether that evidence was sufficient to support the ALJ's finding. It is within the ALJ's authority to judge the weight, credibility, substance and inference to be drawn from the evidence. See Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Moreover, the mere fact that the appellant continued to work at her normal job prior to the incident does not compel a finding that she suffered no prior active disability. Griffin v. Booth Mem. Hosp., Ky., 467 S.W.2d 789 (1979). In short, we are convinced that the evidence as a whole does not compel a finding in appellant's favor.

The decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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