

RENDERED: August 16, 1996; 2:00 p.m.
NOT TO BE PUBLISHED

NO. 96-CA-0548-WC

KROGER COMPANY

APPELLANT

V. ON PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-92-021282

BARBARA C. BROWN; WILLIAM O.
WINDCHY, ACTING DIRECTOR OF SPECIAL
FUND; GEORGE S. SCHUHMAN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING

* * * * *

BEFORE: COMBS, GARDNER and GUDGEL, Judges.

GARDNER, JUDGE. The Kroger Company (Kroger) appeals from an opinion of the Workers' Compensation Board (the board) affirming a decision of the Administrative Law Judge (ALJ) which held that Barbara Brown (Brown), an employee of Kroger, was permanently and totally disabled from a work-related injury. We affirm the board's opinion.

Brown had worked for Kroger for many years. On March 4, 1992, she tripped over a forklift and fell, hurting her right arm, hand and wrist. Numerous physicians testified in the case. It was determined that she suffered from reflex sympathetic dystrophy. The ALJ, in an opinion dated September 29, 1995, found that Brown sustained a reflex sympathetic dystrophy which

was attributable to her work related injury of March 4, 1992. He concluded as well that she was 100% occupationally disabled. He further ruled that Brown did not have a prior active occupational disability. He concluded that her condition did not involve a previously dormant condition which had been aroused into a state of disabling reality, and thus attributed the entire injury and award to Kroger. Kroger appealed to the board which affirmed in a decision of February 2, 1996.

On appeal to this Court, Kroger contends that the ALJ clearly erred because it relied on evidence from physicians who had received inaccurate medical information from Brown and that the only credible evidence showed that Brown had suffered from similar problems with her arm and wrist prior to 1992, thus requiring apportionment of the award between Kroger and the Special Fund. We have uncovered no error.

There was substantial evidence presented before the ALJ to support his conclusion that Brown was 100% occupationally disabled as a result of her March 1992 accident. See Union Underwear Co., Inc. v. Scarce, Ky., 896 S.W.2d 7 (1995); Smyzer v. Goodrich Chemical Co., Ky., 474 S.W.2d 367 (1971). The ALJ determines the quality, character and substance of the evidence presented, and the reviewing court may not substitute its judgment. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). In the instant case, there was sufficient evidence even subtracting the testimony objected to by Kroger to support the ALJ's findings on disability and apportionment. The board

applied the correct standard of review, and we decline to disturb its decision. See Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 735 (1992).

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

ALL CONCUR.

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