RENDERED: November 21, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 97-CA-0272-WC

ELEANOR ELAINE HUNDLEY — APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
NO. WC-92-000079

R. R. DONNELLEY & SONS, COMPANY;
ROBERT E. SPURLIN, DIRECTOR
OF SPECIAL FUND;
HON. IRENE STEEN,
ADMINISTRATIVE LAW JUDGE; and
WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: GARDNER, GUIDUGLI and JOHNSON, Judges.

GUIDUGLI, JUDGE. Eleanor Elaine Hundley (Hundley) petitions for review of an opinion of the Workers' Compensation Board (WCB) affirming the opinion and dismissal rendered by the Administrative Law Judge (ALJ). We affirm.

Hundley alleged that she suffered a "pop" in her left wrist on July 15, 1991, while lifting at her place of employment, R. R. Donnelley & Sons. Hundley sought medical treatment and was treated by Dr. Hamner. Hundley experienced pain and swelling which improved when she was off work for several days in a row. Hundley developed a ganglion cyst near her left wrist which was

removed in November, 1992, by Dr. Sajadi. After the surgery, Hundley complained of decreased range of motion.

In June, 1993, Hundley had surgery for a compressed nerve in her left wrist. After that surgery she lost movement and had numbness in her thumb and forefinger, pain and swelling increased, and her left wrist range of motion was further decreased. In February 1993, Hundley had a left carpel tunnel release and her condition improved somewhat and she was released to light duty six to eight weeks later. Hundley continues to allege a variety of ailments including, left pronator teres syndrome, left cubital tunnel syndrome, right carpal tunnel syndrome and bilateral epicondylitis.

The medical testimony presented a range of AMA impairment ratings. Hundley's treating physician, Dr. Tsai, increased his 3% impairment rating for her injuries and conditions to 15% after the formal hearing before the ALJ. Dr. Einbecker, who performed an independent medical examination (IME) on behalf of the Special Fund and employer, assigned Hundley a 6% impairment rating, with 4% of that impairment pre-existing. Dr. Hargadon performed an IME of Hundley and assigned a 6% impairment. During her time off work, Hundley received $19,310.93 in temporary total disability and $22,479.72 in medical expenses were paid on her behalf.

The ALJ found that "based upon the record as a whole, it is the finding of this ALJ that Plaintiff has not sustained an occupational disability as a result of her work-related injury of

7/15/91." The WCB affirmed the ALJ's opinion and dismissal by opinion rendered January 10, 1997. Hundley bases this appeal on the contention that there is "no evidence to support a finding of no occupational disability."

On appeal, Hundley must show that the evidence was so overwhelming as to compel a finding in her favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). As long as the ALJ's determination is supported by any evidence of substance, it cannot be said that the evidence compels a different result. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). Hundley must show this Court that the WCB overlooked or misconstrued a controlling statute or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice. Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 684, 687-88 (1992).

The sole issue presented by this appeal is what weight must be given to the medical evidence presented to the ALJ. Medical evidence, while probative, is not determinative on the issue of occupational disability. Hudson v. Owens, Ky., 439 S.W.2d 565 (1969). The mere assignment of a functional impairment is not in and of itself a mandate to assign or not assign a percentage of occupational disability. Cook v. Paducah Recapping Service, Ky., 694 S.W.2d 684 (1985). Simply stated, the Board was correct in holding that the law does not mandate some degree of occupational disability be awarded in this case. Miller's Lane concrete Co., Inc. v. Dennis, Ky. App., 599 S.W.2d

464 (1980). Based upon the medical testimony presented there was no error in the ALJ's decision not to award further surgical benefits to Hundley.

Because there was evidence of substance to support the ALJ's decisions, it cannot be said that the evidence compels a result different from the ALJ's determination. Special Fund v. Francis, supra. For the foregoing reasons, we affirm.

GARDNER, JUDGE, CONCURS.

JOHNSON JUDGE, DISSENTS AND FILES A SEPARATE OPINION.

JOHNSON, JUDGE, DISSENTING. I respectfully dissent. I would vacate the Board's opinion and remand for specific factual findings by the ALJ. The ALJ's findings were very limited and failed to explain the basis for her decision. Her findings were as follows:

> Based upon the record as a whole, it is the finding of this ALJ that Plaintiff has not sustained an occupational disability as a result of her work-related injury of 7/15/91. She has returned to work successfully for the past two years, and has only mild restrictions from the physicians herein. It further seems unlikely that Plaintiff's various and sundry maladies in **both** of her arms and shoulders would be the result of the "pop" in her left wrist. Dr. Hargadon's assessment that many of Plaintiff's symptoms may be peripheral neuropathy resulting from the diabetic condition may perhaps be more in line with reality.
>
> As to the additional surgeries contested by the Defendant Employer, same shall not be the responsibility of the Defendant Employer, based upon the testimony of Dr. Hargadon that they would not relieve Plaintiff's symptoms [emphasis original].

From these scant findings, it is impossible to determine if the claim was denied because the ALJ found that Hundley did not experience an occupational disability or because her occupational disability was not work related.

I am of the opinion that the ALJ's decision suffers the same inadequacies as the Board decisions reversed by this Court in Kentland Elkhorn Coal Corporation v. Yates, Ky.App., 743 S.W.2d 47 (1988), and Shields v. Pittsburg and Midway Coal Mining Company, Ky.App., 634 S.W.2d 440 (1982). In Yates the claimant was found to be suffering from pneumoconiosis by the Board. This Court in holding the factual findings to be inadequate stated:

> In that the question of medical disability was sharply disputed, it was again incumbent upon the Board to set forth a specific factual basis for its finding that the appellee did, in fact, suffer from pneumoconiosis. As stated by the circuit court in Shields, supra: "the litigants are entitled to at least a modicum of attention and consideration to their individual case." At p. 444.
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> In effect, the Shields court held that if the issue of whether the claimant suffers from pneumoconiosis is sharply disputed by numerous physicians, the litigants should have the benefit of knowing the factual basis for the Board's determination that he does, in fact, suffer from it. Here, the Board's finding was woefully inadequate.

743 S.W.2d at 49-50.

As this Court stated in Shields, supra:

> It is not the intention of the Court to place an impossible burden on the Workers' Compensation Board (now ALJ) but only to point out that the statute and the case law require the Board (now ALJ) to support its conclusions with facts drawn from the

> evidence in each case so that both sides may be dealt with fairly and be properly apprised of the basis for the decision.

634 S.W.2d at 444.

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