

RENDERED: January 30, 1998; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 96-CA-003277-WC

CONNIE BEVINS CHAPMAN

APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
NO. WC-95-033791

APPALACHIAN REGIONAL HOSPITAL;
ROBERT SPURLIN, Director of SPECIAL
FUND; MARK WEBSTER, Administrative
Law Judge; WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION

AFFIRMING

** ** * * * * *

BEFORE: COMBS, DYCHE and HUDDLESTON, Judges.

HUDDLESTON, JUDGE. In August 1993, Connie Bevins Chapman was exposed to carpet cleaning chemicals while working for Appalachian Regional Hospital. She sought medical treatment the day of the exposure, and was unable to return to work for two weeks. After she resumed working, Chapman continued to have difficulty breathing and was eventually treated by several physicians. Chapman filed a claim for workers' compensation benefits. In June 1996, an Administrative Law Judge found that Chapman's exposure to chemicals in carpet shampoo resulted in nothing more than temporary

breathing difficulties. The ALJ declined to make an award of disability benefits or of future medical expenses. The Workers' Compensation Board affirmed. Chapman's appeal to this Court challenges only the failure of the ALJ and the Board to award "reasonable and necessary medical benefits for her work-related injury."

The medical evidence which the ALJ considered reveals that Chapman has a long history of psychological and pulmonary problems. Dr. James W. Coleman had treated Chapman for chest congestion on several occasions prior to her one-time exposure to the chemicals contained in carpet shampoo. Dr. Coleman also examined Chapman on the day of her exposure to the chemicals. He was of the opinion that her prior problems constituted a pre-existing dormant disease which was activated by the chemical exposure. He also stated that it was possible for the chemical exposure to have worsened her bronchitis, but the exposure could not have caused it. Dr. Maan Younes testified that he could not be sure that the exposure to chemicals caused Chapman's symptoms. Dr. Judah Skolnik felt that Chapman had a form of asthma which might have been induced by exposure to the chemicals, but he concluded that the condition is controllable and reversible with treatment. Dr. S. A. Vyas stated that Chapman's hospitalization in 1996 was causally related to her chemical exposure. Dr. Arnold Ludwig, who has treated Chapman for several years, believed that Chapman's physical problems were a manifestation of problems in her social life.

The ALJ rejected Dr. Ludwig's testimony in light of the fact that Chapman's "psychiatric problems were in existence long before the shampoo incident" and were not caused by or exacerbated by the brief exposure to carpet shampoo. Based on the testimony of Drs. Coleman and Younes, the ALJ found that Chapman has "no permanent occupational disability as a result of her exposure to carpet shampoo." Based on the testimony of Dr. Coleman, the ALJ found that Chapman reached maximum medical improvement and could have returned to work on September 7, 1993, and consequently is not entitled to additional temporary total disability benefits. The ALJ declined to award future medical benefits because he felt that while Chapman's medical problems following exposure to chemicals contained in carpet shampoo may have caused temporary breathing difficulties, future problems could be eliminated by simply avoiding exposure to similar carpet shampoo. According to the ALJ, "[i]t was a temporary exacerbation that was relieved through medication."

The evidence before the ALJ was conflicting. When that happens, the weight and credibility to be given to the evidence is the exclusive province of the ALJ. Square D Co. v. Tipton, Ky., 862 S.W.2d 308 (1993). The ALJ has the sole responsibility to evaluate the quality, character and substance of the evidence presented. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). An ALJ's decision may be corrected by the Board or by this Court only when the ALJ has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the

evidence so flagrant as to cause a gross injustice. Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687 (1992); Fields v. Carbon River Coal Co., Ky.App., 920 S.W.2d 880, 883 (1996).

The determination by the ALJ that Chapman's reasons for not working were associated with her "nonwork-related" psychological problems is supported by the record. There was evidence of depression prior to the exposure and proof that Chapman's panic attacks and depression were caused by independent psychosocial stressors such as her former husband's abuse. Given the minimal effect that the ALJ assigned to the exposure as it relates to Chapman's health problems, it is not likely that the exposure caused her depression and panic attacks.

Substantial evidence supports each of the ALJ's findings. Because Chapman has failed to demonstrate that the ALJ committed an error in assessing the evidence so flagrant as to cause gross injustice or that he misinterpreted applicable law, the decision of the Board is affirmed.

Given our disposition of Chapman's claim for medical expenses, we need not address the Special Fund's argument that it is not liable for the payment of such expenses.

ALL CONCUR.

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