

Commonwealth Of Kentucky

Court Of Appeals

No. 1997-CA-002187-WC

FOOD EXPRESS

APPELLANT

v.

PETITION FOR REVIEW
OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-96-005492

LINDA MEADE;
SPECIAL FUND;
HON. RICHARD H. CAMPBELL,
JR.,
ADMINISTRATIVE LAW JUDGE; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: GUIDUGLI, JOHNSON and SCHRODER, Judges.

GUIDUGLI, JUDGE: Food Express appeals the Workers' Compensation Board's (Board) opinion which affirmed the Administrative Law Judge's (ALJ) award to Linda Meade (Meade) for a forty percent (40%) occupational disability. Food Express appeals claiming that Meade had failed to prove that she sustained a work-related injury and that there was insufficient medical evidence as to causation. Food Express contends that the ALJ's decision was not

based upon the evidence and thus, arbitrary and an abuse of discretion. Finding no error, we affirm.

Meade was born January 12, 1957, is a high school graduate but has no specialized or vocational training. She was employed by Food Express as a food preparer and kitchen worker whose duties included stocking and cleaning the dining areas and bathrooms of a fast-food facility (Burger King) to which she was assigned. On February 1, 1996, Meade was bringing containers of soft drink syrup from the stockroom when she suffered an onset of pain that extended from the left lower quadrant of her back into her abdominal area and left hip and leg. She informed her crew leader of the pain and left work unable to continue working that day. She has not returned to work.

By the late evening of February 1, 1996, the pain had become so severe that Meade sought treatment at the emergency room of the local hospital. Although admitted to the hospital, she left the next morning signing out against medical advise. Over the next two weeks she was treated at the regional hospital on two separate occasions for severe back pain and had an MRI performed. On February 19, 1996, Meade eventually came under the case of Dr. Leon J. Ravvin, a neurosurgeon, who diagnosed back and left leg pain due to an L4-5 disc herniation. The next day, February 20, 1996, Dr. Ravvin performed an L4-5 discectomy surgical procedure. The surgery also revealed a prominent central bulge at L1-2 and a spur to the left of L5-S1.

The ALJ, after reviewing the evidence from Meade including her testimony by deposition and at the hearing, as well as, the medical evidence from Dr. Ravvin and Dr. Daniel D. Primm, Jr., determined that Meade "indeed suffered a work related injury on February 1, 1996, while lifting and maneuvering cartons of soft drink syrup and, per the evidence from Dr. Ravvin, that such injury precipitated the L4-5 disc herniation, which accounts for her current impairment and limitations." The ALJ further concluded that Meade suffered a forty percent (40%) occupational disability.

Food Express appealed to the Board contending that there was a lack of medical evidence as to causation in the record which would require reversal of the ALJ's decision. Specifically, Food Express alleged that Meade did not initially tell anyone that the back pain was caused by a work injury. In fact, she denied sustaining any "injury" when giving a medical history at the two (2) hospitals. Dr. Primm, who performed an independent medical examination at the request of Food Express, stated that based upon the medical record as filed Meade's condition is not related to any work event.

However, the Board in affirming the ALJ found that the ALJ made findings relevant to the causation issue as follows:

Nevertheless, Dr. Ravvin's progress notes for his February 19, 1996 examination of plaintiff [Meade] reflects the following notation: 'She dates her symptoms to a work event which involved heavy lifting at Burger King on February 1, 1996. Further, plaintiff [Meade] explained that she initially thought

her back and leg pain was attributable to arthritis and that she did not want to report a work injury until she was certain one had occurred.

Based upon the ALJ's review of Dr. Ravvin's medical report, the Board found that:

The history given to Dr. Ravvin by Meade at the time of his initial examination, 18 days following the asserted work-related injury, was considered significant by the ALJ and we agree that to determine otherwise would diminish weight to be given to medical testimony which, by its very nature in determining causation, necessarily relies on historical information provided by a patient.

While Food Express argues that the evidence here clearly does not rise to the level necessary for establishing causation, we are mindful that the question of causation is generally reserved for a fact-finder, as long as the findings are supported by substantial evidence. Parker Seal Co. v. Russell, Ky., 487 S.W.2d 280 (1972). Substantial evidence has been defined as "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." Smyzer v. B. F. Goodrich Chem. Co., Ky., 474 S.W.2d 367 (1971). The question thus becomes whether the medical testimony as to causation provided sufficient support for the findings of the ALJ. Findings can be supported by direct, presumptive or circumstantial evidence, but there must be some legal proof. Blair Fork Coal Co. v. Blankenship, Ky., 416 S.W.2d 716 (1967).

* * *

The ALJ's conclusion that there was a causal nexus between employment and the herniated disc to Meade's back is supported by substantial evidence. Where the decision of the ALJ is supported by any evidence of substance, it may not be reversed on appeal. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986); Holman Enter. Tobacco Whse. v.

Carter, Ky., 536 S.W.2d 461 (1976); Miller's Lane Concrete Co., Inc. v. Dennis, Ky.App., 599 S.W.2d 464 (1980). Further, the ALJ, as fact-finder, has the sole authority to judge the weight, credibility, substance, and inferences to be drawn from the evidence. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985); Kentucky Carbon Corp. v. Dotson, Ky.App., 573 S.W.2d 368 (1978). Here, the ALJ was persuaded by the credible evidence from Meade in combination with the history provided to Dr. Ravvin, her operating surgeon, that the herniated disc, indeed, was causally related to the February 1, 1996 work-related incident in which she sustained a back injury.

On appeal, Food Express makes the same or very similar argument as it did before the Board. As stated in Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992), "[t]he function of further review of the WCB (Board) in the Court of Appeals is to correct the Board only where the the (sic) Court perceives the board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice."

We agree with the Board that the ALJ's conclusion that there was a casual nexus between employment and the herniated disc to Meade's back is supported by substantial evidence. Hence, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

H. Douglas Jones
Kenneth J. Dietz
Covington, KY

BRIEF FOR APPELLEE:

Eric C. Conn
Stanville, KY

BRIEF FOR SPECIAL FUND:

Benjamin C. Johnson

Louisville, KY