

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 1998-CA-002483-WC

LISA HOWARD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. 1996-07480

PINEVILLE COMMUNITY HOSPITAL;  
IRENE STEEN, ADMINISTRATIVE LAW  
JUDGE; AND THE WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
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BEFORE: GARDNER, KNOPF, AND McANULTY, JUDGES.

KNOPF, JUDGE: Lisa Howard appeals from a September 28, 1998, order of the Workers' Compensation Board upholding the dismissal of her petition for disability benefits. Howard contends that the Administrative Law Judge (ALJ) and the Board misconstrued compelling evidence that she has suffered the work-related onset of reflex sympathetic dystrophy (RSD) or a related and equally disabling psychiatric condition. Because we are not persuaded that the evidence compels the result Howard seeks, we affirm the order of the Board.

Having endured a childhood during which she was subjected to abuse and neglect, Howard achieved an associate degree in nursing, and in June 1995, she began working for the appellee, Pineville Community Hospital. At that time Howard was in her late twenties. In March 1996, she injured herself in the employee parking lot when she closed her car door upon her right hand. She was treated in the hospital's emergency room and sent home. Five (5) days later, the trauma seeming for the most part to have resolved, she was released to return to work. She experienced pain in her right hand and arm, however, such that she was unable to complete her first shift back. This pain, which Howard thereafter claimed prevented her from performing her job, persisted despite a series of pain-relief therapies. By May 1996, the doctor who had seen her originally and had since been treating her concluded that she was suffering from RSD, a sympathetic-nerve disorder that leads to a cycle of swelling and pain in the affected area. RSD is not a common condition, but doctors recognize trauma to be a potential cause. Her doctor referred Howard to the University of Kentucky Medical Center for further tests and treatment. There, apparently, a second doctor confirmed the RSD diagnosis and recommended more extensive pain management than had thus far been tried. Howard was also examined by a hand surgeon in Louisville and by two (2) psychologists. The surgeon was unwilling either to confirm or to deny the RSD diagnosis without additional information. Howard's score of zero (0) on a grip-strength test aroused his skepticism because even people with severely damaged hands almost always

have some grip strength. He also regarded Howard's car-door injury as insufficiently serious to have given rise to RSD. He recommended that Howard visit a certain pain-management clinic where she would be psychologically evaluated and that she see him again after that evaluation. Howard neither sought that particular psychological evaluation nor revisited this doctor.

The psychologists both noted that Howard was depressed and that her childhood had certainly been psychologically damaging. One of the psychologists, however, stated that his interview with her gave no reason to doubt her veracity or to question the RSD diagnosis.

Howard filed her petition for workers' compensation benefits in October 1996. She alleged that her hand and arm condition had rendered her totally and permanently disabled. In January 1997, pursuant to the appellee's request, another hand surgeon examined Howard and concluded that she was not suffering from RSD, but from a factitious disorder. Factitious disorders are physical symptoms or clusters of symptoms caused not by disease or trauma, but consciously by the patient in response to psychological factors. This doctor based his diagnosis on the facts that (1) he could discover no somatic reason for Howard's symptoms; (2) she had undergone extensive therapy for pain without experiencing any relief; (3) she had arrived for her examination wearing a JOBTS garment and showing signs of having wrapped her arm in a tourniquet, either of which could account for her hand's being swollen and would have been painful to someone with RSD; and (4) factitious disorders often occur in

people who have suffered the sort of abuse Howard endured as a child. The other hand surgeon and the psychologist who had earlier endorsed the RSD diagnosis both later reviewed their own reports in light of this evaluation, and agreed that factitious disorder was the most probable diagnosis. The psychologist also noted that Howard had misrepresented her background during the interview with him. The misrepresentation itself and the newly discovered facts about her past contributed to his reassessment of her disorder. He further opined that, if Howard suffered a factitious disorder and not RSD, she very likely was not disabled at all, and, to the extent that she was disabled, her disability resulted from her abusive upbringing, not from the work-place accident.

Relying expressly on the medical testimony just summarized, the ALJ found that Howard suffered from a factitious disorder and not from RSD. Finding further that the factitious disorder was not work related, the ALJ concluded that Howard was not entitled to disability benefits. Howard appealed to the Board and argued that the evidence did not support the finding of a factitious disorder, and that otherwise her condition, whether RSD or not, had been conclusively shown to be both disabling and work related. The Board, rejecting this argument, reasoned that, because she had introduced no proof of an alternative impairment, Howard had staked her claim on the existence of RSD. The ALJ's finding that Howard did not suffer from RSD therefore defeated her claim regardless of whether she suffered from a factitious disorder or from something else: if she suffered from a

factitious disorder, there was sufficient proof to uphold the ALJ's finding that it was not work related; if she suffered from something else, she had failed to introduce any evidence of what it might be and thus again had failed to establish work-related causation. It is from these determinations that Howard has appealed. She has modified her argument somewhat, and now contends that (1) a preponderance of the evidence supports her claim of having RSD; and (2) even if she suffers from a factitious disorder, that disorder is disabling and should be compensated under KRS Chapter 342.

Howard's first contention must be rejected because it misconceives this Court's authority to review the Board's factual determinations. Our standard of review is not whether we believe that Howard carried her burden of proof, but whether the proof is so strongly in Howard's favor that the Board could not, without gross injustice, have decided against her. This is by now a familiar rule and was recently reiterated as follows:

In order to prevail herein, [appellant]'s burden is heavy. Since the ALJ found against him and dismissed his claim, [appellant] was required to demonstrate to the Board that the evidence was 'so overwhelming as to compel a finding in his favor of permanent occupational disability.' Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418, 419 (1985). Furthermore, for evidence to be compelling, it must be 'so overwhelming that no reasonable person could reach the conclusion of the [old] Board [or ALJ].' Reo Mechanical v. Barnes, Ky. App., 691 S.W.2d 224, 226 (1985). He must persuade this court that '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.' Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

Mosely v. Ford Motor Company, Ky. App., 968 S.W.2d 675, 678

(1998). We are not persuaded that the Board committed any error, much less a flagrant error, in assessing the evidence in this case. If not overwhelming, the evidence of Howard's factitious disorder, as opposed to RSD, was at least compelling, and thus was more than sufficient to support the findings of the ALJ and the Board.

Nor are we persuaded that Howard's claim should be remanded for additional consideration of whether her factitious disorder is itself compensable under the Workers' Compensation Act. Although we agree with Howard that the question was not addressed during the administrative proceedings as thoroughly as it might have been, the ALJ nevertheless found, on the basis of substantial evidence (in particular the psychologist's testimony), that the work-place injury did not arouse or otherwise cause the factitious disorder, but merely provided an occasion for it. The Board affirmed this finding, even though it declined to rule whether the factitious disorder itself had been proved to exist. Howard bore the burden of proof on this issue. Mosley v. Ford Motor Company, *supra*. If at the hearing she found herself confronted by factual questions that she had not anticipated,<sup>1</sup> her recourse was to move the ALJ for a continuation or similar relief. Cornett v. Corbin Materials, Inc., Ky., 807 S.W.2d 56 (1991). Her failure to do so leaves us with nothing

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<sup>1</sup>At the time of Howard's petition, the Board's pre-hearing procedures were designed to prevent this problem. 803 KAR Chapter 25 § 8. Howard has not alleged that she was somehow denied the benefit of those procedures.

more to review than, as above, the sufficiency of the evidentiary record: Was the finding that Howard's factitious disorder is not work related flagrantly contrary to the evidence? We are not persuaded that it was. One of the psychologists testified expressly to that effect, and, while none of the other medical testimony concerning factitious disorders can be said to have ruled out work-relatedness quite so conclusively, neither did it at all contradict or otherwise disqualify the psychologist's opinion.

In sum, although we do not dispute Howard's assertion that, in appropriate circumstances, a factitious disorder can be disabling and hence compensable under the Workers' Compensation Act, we are not persuaded that she has established those circumstances in this case. The evidence can reasonably be thought to show that Howard's work-place hand injury was itself neither severe nor lasting; that it did not give rise to reflex sympathetic dystrophy; and that the persistent hand and arm problems Howard has experienced since the injury is probably a factitious disorder related to the abuse she suffered as a child, but in any event is not causally related to the work-place injury or otherwise to her work. The ALJ and the Board were thus within their broad discretion to determine the facts when they so found.

For these reasons, we affirm the September 28, 1998, order of the Workers Compensation Board.

ALL CONCUR.

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