

Commonwealth Of Kentucky

Court Of Appeals

NO. 1999-CA-001917-WC

LINDA CHILDERS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-72183

APPALACHIAN REGIONAL HEALTH CARE;
HONORABLE RONALD W. MAY,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: DYCHE, GUIDUGLI AND MILLER, JUDGES.

GUIDUGLI, JUDGE. Linda Childers (Childers) appeals from an opinion of the Workers' Compensation Board (the Board) dated July 30, 1999, which affirmed an opinion and award of the Administrative Law Judge (ALJ) dated June 1, 1999, which awarded benefits based on a 5% whole body impairment rating. We affirm.

On June 22, 1998, Childers filed an Application for Resolution of Injury Claim seeking benefits for a back injury and psychological problems stemming from a fall which occurred during the course of her employment with Appalachian Regional Health

Care (ARHC). Childers' claim was assigned to an arbitrator, and both sides submitted proof. Childers submitted medical records from Dr. Charles Smith, Dr. James Templin, and David Musker, M.A. ARHC submitted reports from Dr. Steven Lovejoy, Dr. David Shraberg, and Dr. Richard Sheridan.

Dr. Smith indicated in his narrative report and Form 107 that Childers had a compression fracture of the T7 vertebrae with 80-90% compression. Dr. Smith assigned an impairment rating of 20% and indicated that Childers should avoid lifting, bending, and reaching above her shoulders. Attached to Dr. Smith's records was a radiology report for a CAT scan read by Dr. Hans Dransfeld on August 11, 1997. Dr. Dransfeld interpreted the CAT scan as showing a T7 compression fracture with a 10% compromise of the spinal canal. In a letter to Dr. Smith dated February 13, 1998, Dr. Dransfeld stated:

I reviewed the radiographs on Linda Childers with plain films dated August 11, 1997 and CT scan of the dorsal spine from the same day. The vertebral body in question demonstrates 80 to 90% compression in height. The CT scan reveals approximately a 15% compromise of the AP dimension of the spinal canal by bony retropulsion.

Dr. Templin evaluated Childers at the request of her attorney on March 17, 1998. As part of his examination, Dr. Templin obtained his own x-rays. In his Form 107, Dr. Templin indicated that his x-rays showed a healed T7 compression fracture and a "severe old T8 compression" fracture. Dr. Templin further indicated that a CAT scan performed on August 11, 1997, showed an 80-90% compression fracture of the T8 vertebrae with a 10% compromise of the spinal canal. Dr. Templin assigned an

impairment rating of 20% based on his findings of "a Category IV thoracolumbar impairment due to vertebral body compression greater than 50%."

David Muskera performed a psychiatric evaluation of Childers on April 9, 1998. He diagnosed moderate to moderately severe generalized anxiety disorder with associated depressive features. In his opinion, Childers' condition was "residual to the injury and her having to cope with a chronic pain condition." Muskera also indicated that Childers would benefit from conservative psychiatric care. He assigned an impairment rating of 55%.

Dr. Lovejoy was Childers' treating physician. He began treating her shortly after her fall. He diagnosed a T7 compression fracture. A review of Dr. Lovejoy's office notes shows that Childers' condition gradually improved from September 4, 1997 through December 11, 1997, at which time he started physical therapy. In his office notes of January 22, 1998, Dr. Lovejoy indicated that Childers could possibly return to work in a month's time. However, on February 19, 1998, Dr. Lovejoy indicated that Childers complained of increasing back pain. At that time, he reinstated physical therapy. When Childers returned on March 19, 1998, she indicated that while her back pain had stabilized, she was unable to perform her former job. Dr. Lovejoy ordered one more month of physical therapy, and further indicated that he could offer no further treatment. Dr. Lovejoy released Childers to return to work as of March 20, 1998.

Dr. Sheridan evaluated Childers at the request of ARHC on August 11, 1998. He also reviewed the reports of Drs. Templin and Smith, Muskera's report, the CAT scan from August 11, 1997, and Dr. Dransfeld's letter of February 13, 1998. Dr. Sheridan apparently reviewed the CAT scan and x-ray films and found a compression fracture at T8 with an 80% collapse and 10% intrusion into the spinal canal. He was not sure whether the T8 fracture resulted from Childers' fall or predated it. Dr. Sheridan made no mention of a fracture at T7. He assigned an impairment rating of 20%, half of which he attributed to arousal of pre-existing scoliosis. Dr. Sheridan indicated that a bone scan was needed to determine whether the compression fracture of T8 was caused by her fall.

Dr. Shraberg performed a psychiatric evaluation of Childers at ARHC's request on August 10, 1998. Dr. Shraberg indicated that her psychological symptoms were minimal, and that she was not suffering from a disabling psychiatric disorder. According to Dr. Shraberg, any psychiatric problem Childers may have was related to stress from a work-related injury her husband sustained shortly after her fall and not her work-related accident. Dr. Shraberg further stated:

I would strongly disagree with Mr. Muskera's assessment of [an impairment rating] of 56. At this time, it is her husband's injury and inability to work which were not listed in the history Mr. Muskera obtained from Ms. Childers. Consequently, I believe his conclusions are inconsistent with the facts or [sic] his report and the circumstances of Ms. Childers' life at this time.

In a Benefit Review Determination dated October 8, 1998, the arbitrator assigned a 20% impairment rating due to Childers' back injury. He further indicated that based on Dr. Shraberg's report, Childers had failed to establish the existence of a psychiatric disability resulting from her injury. Finally, the arbitrator found that Childers was unable to return to her former job and referred her to the Department of Vocational Rehabilitation for further evaluation.

Childers subsequently sought a de novo review of her claim by an ALJ. Aside from relying on the previously submitted records of Drs. Templin and Smith and Musker's report, she also submitted records from Mountain Comprehensive Care Center which showed that she was being treated for depression.

ARHC deposed Dr. Templin as if on cross-examination on December 13, 1998. At his deposition, Dr. Templin testified that his x-rays showed a healed compression fracture at T7, an old compression fracture at T8, and several other compression fractures in the thoracic area. Dr. Templin further indicated that the CAT scan of August 11, 1997, referred to in his Form 107 showed 80-90% compression at T8. In Dr. Templin's opinion, the T8 fracture was not related to Childers' fall. In regard to Dr. Dransfeld's letter of February 13, 1998 to Dr. Smith, Dr. Templin testified that he assumed Dr. Dransfeld was referring to the level of compression at T7 because that was the vertebrae at issue.

Dr. Templin was then extensively questioned regarding his assignment of a 20% impairment rating based on a finding of a

Category IV impairment due to a vertebral body compression greater than 50%. He agreed that his Form 107 did not indicate the degree of compression of the fracture at T7. He further stated:

When I listed the impairment, I indicated that the compression fracture was felt to be greater than 50% at T7.

Dr. Templin agreed to go back and re-evaluate the x-ray to determine whether he was correct in assessing the degree of compression at T7 to be greater than 50%. He further testified that upon a further review of his file, "it's clearly evident that initially I provided a five percent impairment which would indicate to me that I interpreted it to be less than 25 percent." Dr. Templin agreed that if the degree of compression at T7 was less than 25%, the correct impairment rating would be 5%.

On January 19, 1999, ARHC sought leave to file an addendum report of Dr. Templin. In that report, Dr. Templin stated:

I am writing in follow-up to our deposition in late December. At that time there was a discussion concerning whether the T7 compression fracture (new compression fracture) was 20% or greater than 60%. I had originally read the x-rays dated 3/17/98 as showing the T7 compression fracture to be approximately 20% with the T8 compression fracture being severe, or greater than 60%. Dr. Hans G. Dransfeld had reviewed the x-rays and CT scan from St. Mary's Hospital and wrote a letter indicating the T7 vertebral body demonstrated 80-90% compression in height. During the deposition I was asked to review these studies to determine the exact percent or compression fracture applicable to the T7 vertebra. The x-ray I obtained on 3/17/98 was taken at Highlands Regional Hospital in Paintsville, Kentucky. It was interpreted by Dr. Don E. Pruitt of the

Highlands Regional Hospital in Prestonsburg as showing a 70% compression of T7.

I have reviewed the studies with Dr. Pruitt and both he and I agree that the T7 compression fracture is approximately 20% with the T8 compression fracture being 70% or greater. Based on this fact, the original 5% impairment provided [counsel for ARHC] would be applicable in this case.

Childers objected to the admission of the addendum report on the ground that it was based on hearsay due to the inclusion of Dr. Pruitt's findings. In an order entered February 5, 1999, the ALJ held:

The ALJ does agree with plaintiff that to the degree the report of Dr. Templin attempts to give the opinion of any physician other than himself, it cannot be considered. The portions of Dr. Templin's report of January 13, 1999 stating his own opinions will be considered.

In response to the admission of Dr. Templin's addendum report, Childers filed a report from Dr. Kedar Joshi, a radiologist. Based on his review of x-rays and the CT scan, Dr. Joshi opined that there was a 90% compression at the T7 level. It appears that Dr. Joshi did not review Dr. Templin's x-rays of March 17, 1998.

In an opinion and award dated June 1, 1999, the ALJ assigned an impairment rating of 5% for Childers' back injury. In doing so, the ALJ indicated that he relied on Dr. Templin's addendum report. This translated into a statutory disability rating of 3.75. As to Childers' psychiatric claim, the ALJ found that while she may have some depression stemming from her work-related injury and while she may be in need of psychiatric treatment, her psychiatric problems were not causing any

impairment or vocational disability. The ALJ's opinion was affirmed by the Board and this appeal followed.

Childers maintains that the addendum report of Dr. Templin should not have been admitted into evidence. Childers contends that Dr. Templin's addendum report is hearsay in that it constitutes only a recitation of the opinion of Dr. Pruitt in regard to the x-ray of March 17, 1998. A review of the addendum report shows that this argument is without merit. While Dr. Templin stated in the letter that he did review the films with Dr. Pruitt, he indicated that it was not only Dr. Pruitt's opinion but his own as well that the compression of the T7 fracture was only 20%. This is not a case where Dr. Templin indicated that the films were reviewed by Dr. Pruitt, who found the T7 compression to be 20%. Had that been so, Childers would be correct in arguing that the addendum report should not have been admitted. Since the addendum report clearly shows that Dr. Templin reviewed the studies himself and arrived at the same conclusion in regard to the level of compression at T7 as Dr. Pruitt, the ALJ did not abuse his discretion in admitting it into evidence.

Childers also contends that the ALJ erred in not awarding income benefits for her psychiatric claim. Childers maintains that where an award of medical benefits is made for psychiatric impairment, an award of income benefits must follow. We disagree, and adopt the following portion of the Board's opinion as our own:

We further find nothing improper with regard to the ALJ's decision to award psychiatric

medical treatment benefits only even though he concluded that at present Childers' psychiatric symptoms are producing no vocational disability. As stated above, the ALJ was free to believe those portions of Dr. [sic] Muskera's report outlining a need for ongoing psychological and psychiatric treatment and to also adopt those conclusions of Dr. Shraberg with regard to the occupational effects of Childers' present psychiatric condition, and the fact it has produced no measurable AMA impairment. Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977).

Having considered the parties' arguments on appeal, the decision of the Worker's Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE,
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