

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-000150-WC

STAPLES, INC., AS INSURED
BY RSK COMPANY INSURANCE

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-01707

DIANNE C. KONVELSKI; HON. DONNA H.
TERRY, ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: BARBER, BUCKINGHAM, AND MILLER, JUDGES.

BUCKINGHAM, JUDGE: Staples, Inc., petitions for our review of an opinion of the Workers' Compensation Board (Board) which affirmed an opinion and award by an administrative law judge (ALJ) to Dianne C. Konvelski for benefits for a permanent total occupational disability as a result of an injury to her right arm and psychological conditions allegedly related to that injury. We affirm.

Konvelski was the general manager of the Staples office supply store in Bowling Green, Kentucky. On January 16, 1997,

Konvelski was injured when a plastic box filled with office supplies fell on her outstretched right arm. She sought medical treatment two days later and was diagnosed with a right arm contusion that would require considerable time to heal. She also sought treatment from her family physician and a chiropractor due to continuing pain.

Approximately one year after the injury, Konvelski consulted an orthopaedic surgeon, Dr. Phillip Singer. Dr. Singer's diagnosis was that Konvelski had suffered a right forearm contusion previously but that she could return to work without formal restrictions. He also noted that there was a psychological component to her symptoms because of her exaggerated pain at the slightest touch. He stated he would defer to a psychiatrist for confirmation on that issue.

Konvelski was referred by Dr. Singer to Dr. Erdogan Atasoy, a specialist in hand surgery. Dr. Atasoy ordered physical therapy, trigger-point injections, scalene muscle injections, and medication, and he diagnosed right thoracic outlet compression, myofascitis, and right rotator cuff and bicipital tendinitis as the result of the work injury. Like Dr. Singer, Dr. Atasoy detected a psychological problem and referred Konvelski to a psychiatrist, Dr. William Kornfeld.

Dr. Kornfeld diagnosed Konvelski with major depression, post-traumatic stress disorder, and generalized anxiety disorder. He attributed her psychological problems to the work injury and its financial consequences. Konvelski was also examined by Dr. Robert Weiss, a Nashville neurosurgeon, at the request of

Staples. Dr. Weiss found no objective evidence of any neurologic disease or neurosurgical problem. Additionally, two of Konvelski's coworkers testified that she was a stable, hard-working manager who regularly performed physical tasks prior to the injury, but that she became irritable and difficult to please and was frequently reduced to tears because of the pain in her arm after the injury.

Based upon the facts and evidence presented, the ALJ awarded Konvelski benefits for a permanent total occupational disability as a result of an injury to her arm and psychological conditions related to that injury. Staples appealed to the Board alleging that the injury was not supported by objective medical findings and that the psychological injury was not a direct result of the physical injury. The Board affirmed the decision of the ALJ, and this petition for review followed.

"[W]here the party with the burden of proof was successful before the ALJ, the issue on appeal is whether substantial evidence supported the ALJ's conclusion. . . ."
Whittaker v. Rowland, Ky., 998 S.W.2d 479, 481 (1999), citing Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986). Although Staples has not precisely phrased the issue as such, the issue is whether there was substantial evidence to support the ALJ's findings. Specifically, we must examine whether there was substantial evidence that the injury determination was supported by objective medical findings and that the psychological injury was a direct result of the physical injury.

KRS¹ 342.0011(1), in relevant part, defines "injury" as any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. . . . "Injury" when used generally . . . shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury.

The ALJ determined that

Konvelski obviously sustained a contusion which was documented by Urgent Care records on January 18, 1997[,] and which resulted in a large bruise or hematoma observed by a lay witness. Therefore, she clearly sustained an injury as defined by KRS 342.0011(1) as amended December 12, 1996. It is further clear from the records of Dr. Singer and Dr. Atasoy that Konvelski also developed a psychological condition as the result of the right upper extremity injury and it is the combination of the two problems which has caused her current occupational disability.

"Objective medical findings" as used in KRS 342.0011(1) is defined in KRS 342.0011(33) as "information gained through direct observation and testing of the patient applying objective or standardized methods." The evidence indicates that there was unquestionably a work-related injury that occurred on January 16, 1997. Konvelski experienced immediate and continuing pain in her right arm and was diagnosed with a right arm contusion two days after the incident. Dr. Atasoy noted in his initial exam of Konvelski that she exhibited symptoms of tenderness and pain in her right arm and shoulder. He utilized physical therapy, injections, and medication in treating Konvelski. He diagnosed

¹ Kentucky Revised Statutes.

her with thoracic outlet compression, myofascitis, and right rotator cuff and bicipital tendinitis as a result of the injury. Staples argues that the injury was not supported by objective medical findings, yet they offered no expert testimony to refute the treatment offered by the physicians.

In addition, Staples claims that objective medical findings were lacking because an MRI, CT Scan, etc., were not performed. There is no requirement that objective medical findings must consist of such technical diagnostic studies. The language of the statute requires only observation and objective or standardized testing. See KRS 342.0011(33). We agree with the Board that it was reasonable for the ALJ to conclude that Dr. Atasoy's diagnosis was based upon standardized methods current in the treatment of that condition, especially given Dr. Atasoy's expertise in the treatment of thoracic outlet compression.

Concerning Staples' contention that the evidence was lacking concerning whether Konvelski's psychological injury was directly related to the work injury, we likewise agree with the ALJ and the Board. We again note that the current statute requires that an "injury" shall only include a psychological, psychiatric, or stress-related change in the human organism when it is a "direct result" of the physical injury. KRS 342.0011(1). The ALJ found that "Dr. Kornfeld reiterated that direct causal relationship over and over during his testimony." Although Staples argues that Dr. Kornfeld was unaware of whether Konvelski's symptoms with her arm were due to an actual physical problem, we agree with the Board that his reliance upon the

diagnosis of thoracic outlet compression by Dr. Atasoy did not invalidate his conclusion that her psychiatric condition resulted from that injury.

We will not second-guess or correct the Board unless we perceive that it "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 Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992). Because we find no such errors in this case, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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