

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-001104-WC

GATEWAY PRESS, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-00-00413

TAMI CALDWELL; LLOYD R. EDENS,  
Administrative Law Judge; and  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
\*\* \*\* \* \* \* \* \*

BEFORE: COMBS, HUDDLESTON, and MILLER, Judges.

COMBS, JUDGE: Gateway Press, Inc. (Gateway), asks us to review an opinion of the Workers' Compensation Board (Board) rendered April 25, 2001. Kentucky Revised Statutes (KRS) 342.290. We affirm.

Tami Caldwell, a former employee of Gateway, filed a claim for workers' compensation benefits after she began experiencing pain and numbness in her upper extremities. Following a hearing, the Administrative Law Judge (ALJ) granted her benefits based upon a 15% permanent, partial disability rating. The ALJ found as follows:

At the time of her injury, [Caldwell] was working as a stitcher operator, which required her to place paper stock in pockets

and also to fan the stock in order to create air between sheets. She also worked as a catcher which required her to catch and bind printed materials with rubber bands. She stated that it was after she began dealing with thicker printed items that her hands became numb and she developed pain in her upper extremities. Dr. Oates initially diagnosed her condition as carpal tunnel syndrome. Dr. Kirzinger also noted generalized neuropathy and an overall slowing of conduction velocity in the forearms, both in median and ulnar nerve bilateral. I am persuaded by their findings, in light of the explanation and opinion of Dr. Stewart, and the described nature of her work that the Plaintiff's diagnosed carpal tunnel syndrome and ulnar nerve are injuries as defined by . . . statute.

\* \* \* \*

Dr. Stewart assigned the Plaintiff a 12% functional impairment to the body as a whole. Pursuant to KRS 342.730(1)(b), the 12% functional impairment is multiplied by a factor of 1.25, yielding a permanent disability rating of 15%. . . . I, therefore, find she was temporarily totally disabled until January 14, 2000, and thereafter suffered the 15% permanent disability rating assigned herein.

Opinion, Order and Award at 4-5. The ALJ rejected Gateway's argument that Dr. Stewart's impairment rating was not valid or probative for purposes of awarding permanent, partial disability benefits since the rating had been based upon the results of eight-month old EMG/NCV studies conducted by another physician.

Gateway appealed the ALJ's award to the Board. The Board affirmed. Gateway asks us to review that decision.

Gateway contends that the Board erred by concluding that the ALJ was entitled to rely on Dr. Stewart's assessment of a 12% impairment rating. According to Gateway:

The AMA Guides specifically provide that permanent impairment cannot be rated until the Plaintiff reaches MMI [maximum medical improvement]. While Dr. Stewart's evaluation occurred after the Plaintiff reached MMI, his impairment rating was based solely upon EMG/NCV studies conducted on September 16, 1999, four months before the Plaintiff reached MMI.

\* \* \* \*

It should therefore be obvious that Dr. Stewart's rating is not valid. . . .

Defendant's Petition for Reconsideration at 2. We disagree.

Since 1987, the legislature has required impairment ratings to be determined under the latest edition of the American Medical Association's Guides to the Evaluation of Permanent Impairment, (Guides). As the Board observed, the Guides are to be used and interpreted by physicians only in conjunction with the physician's examination of the patient and based upon his experience.

During his deposition testimony, Dr. Stewart emphasized that his findings were based not only upon a careful review of the objective medical studies but also upon his physical examination of Caldwell, a review of the history she reported, an evaluation of other relevant medical records, and an assessment of the symptoms she described. He also related how physicians interpret study readings slightly differently and how calculation methods can vary depending upon the doctor's background and training.

Dr. Stewart's assessment was a medical determination requiring medical expertise. We agree with the conclusion of the Board that there is no evidence to indicate that his assessment of a 12% impairment rating fails to conform to the Guides. Nor is there any suggestion that Dr. Stewart's assessment failed to conform to accepted medical standards. Consequently, we are not persuaded that the ALJ was required to ignore the assigned impairment rating. Gateway's argument included a scathing

criticism of Dr. Stewart's ability, techniques, and methodology. Gateway's assessment formed a part of the record considered by the ALJ, who had the sole discretion to accept or to discount the physician's opinion on this basis. See Watkins v. Ampak Mining, Inc., 834 S.W.2d 699 (1992).

The Board did not overlook or misapply controlling law or commit an error in assessing the evidence so flagrantly as to cause gross injustice when it concluded that the ALJ was entitled to rely on Dr. Stewart's impairment rating. Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685 (1992). Consequently, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Judson F. Devlin  
Louisville, KY

BRIEF FOR APPELLEE TAMI  
CALDWELL:

Christopher P. Evenson  
Louisville, KY