

# Commonwealth Of Kentucky

## Court Of Appeals

NO. 2001-CA-000561-WC

ALICE M. CHANEY

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-98-68397

COMMONWEALTH OF KENTUCKY, KENTUCKY  
STATE POLICE; HON. DONALD G. SMITH,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING  
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BEFORE: JOHNSON, MILLER AND SCHRODER, JUDGES.

JOHNSON, JUDGE: Alice M. Chaney has petitioned for a review of an opinion rendered by the Workers' Compensation Board on February 14, 2001, which affirmed the opinion and award of the Administrative Law Judge (ALJ), which denied Chaney's claim for permanent total disability benefits. Having concluded that the the claimant has failed to establish that the evidence in her favor was so compelling as to require a decision in her favor as a matter of law, we affirm.

Chaney, who was born on July 3, 1959, was employed by the Kentucky State Police for approximately 18 years as a state

trooper, public relations officer, and detective. For the final 12 years of her employment, Chaney was primarily assigned to homicide cases and other death investigations. Many of her investigations involved gruesome and violent crimes.

In 1993, Chaney began experiencing psychological problems related to the stress of her job. She often experienced bouts of crying, had trouble sleeping, and lost her appetite. Chaney began receiving medical treatment for stress and anxiety in 1995, and over time her psychological condition has worsened. Chaney has alleged that sexual harassment by her supervisors and the stress of investigating homicide cases have caused her mental condition.

On August 30, 1998, Chaney fell from a sidewalk at the Kentucky State Police post where she was employed, injuring her right ankle. She sought medical treatment and was diagnosed with a severe sprain. After missing several weeks of work due to her injury, Chaney returned to work with minimal physical restrictions.

After returning to work, Chaney's psychological condition increasingly declined. On June 2, 1999, Chaney left her position with the state police due to overwhelming depression, stress, and anxiety. However, according to Chaney's own testimony, her psychological condition and her ankle injury were unrelated.

On January 4, 2000, Chaney filed an application for resolution of injury claim seeking permanent total disability benefits. She claimed that both her ankle condition and her psychological condition contributed to her disability. On

October 3, 2000, the ALJ dismissed the psychological component of Chaney's disability claim and assigned her ankle injury a permanent partial disability rating of 1.5%, which was based on a 2% impairment rating and a factor of .75.<sup>1</sup> In addition to reasonable medical costs, the ALJ awarded Chaney permanent partial disability benefits of \$5.24 per week for a period of 425 weeks. On February 14, 2001, the Workers' Compensation Board affirmed the decision of the ALJ. This petition for review followed.

Chaney contends that the ALJ's findings of fact were clearly erroneous and that the evidence compels a decision in her favor. Chaney asserts that she can no longer pursue her career in law enforcement because of her weakened ankle and her depressed mental condition. While she acknowledges that her physical impairment may be mild, Chaney argues that it nonetheless disqualifies her from pursuing her line of work, which she claims is highly rigorous.

Our review of the disposition of Chaney's claim by the ALJ and the Workers' Compensation Board is very limited. "The function of further review of the WCB in the Court of Appeals is to correct the Board only where the . . . 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."<sup>2</sup> The ALJ, as the finder of fact, has the sole authority to determine the quality,

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<sup>1</sup>Kentucky Revised Statutes (KRS) 342.730(1)(6).

<sup>2</sup>Western Baptist v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992).

character, and substance of the evidence.<sup>3</sup> For a party with the burden of proof who was unsuccessful before the ALJ to prevail on review, the party must demonstrate that the evidence was "so overwhelming, upon consideration of the entire record, as to have compelled a finding in [her] favor."<sup>4</sup> Compelling evidence is evidence "so overwhelming that no reasonable person could reach the conclusion" which is being challenged.<sup>5</sup>

In regard to Chaney's mental disability, the Kentucky General Assembly in 1994 amended KRS 342.0011(1) to provide that a psychological injury is not compensable unless "it is a direct result of a physical injury." This statute was applied in Staples, Inc. v. Konvelski,<sup>6</sup> where the Board, this Court and the Supreme Court of Kentucky affirmed an ALJ's findings that the claimant was totally disabled by the combination of an arm injury and resulting psychological conditions. Unlike the case sub judice, in Staples, the ALJ found that the claimant sustained an injury to her right arm and that two of her treating physicians believed "she had developed a psychological condition as a result of the injury to her right arm, and [the ALJ] concluded that the combination of the two problems resulted in a total occupational disability." Based on the testimony of the claimant's psychiatrist, "the ALJ concluded that the psychological condition

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<sup>3</sup>Square D Co. v. Tipton, Ky., 862 S.W.2d 308, 309 (1993).

<sup>4</sup>Wolf Creek Collieries v. Crum, Ky.App., 673 S.W.2d 735, 736 (1984).

<sup>5</sup>REO Mechanical v. Barnes, Ky.App., 691 S.W.2d 224, 226 (1985).

<sup>6</sup>Ky., 56 S.W.3d 412, 415 (2001).

was a direct result of the physical injury and, therefore, was compensable.”<sup>7</sup>

In Lexington-Fayette Urban County Government v. West,<sup>8</sup> the claimant was successful in appealing an adverse decision by the ALJ and obtaining a remand from the Board for further consideration by the ALJ of whether her post-traumatic stress disorder was compensable. In affirming this Court, which had affirmed the Board, the Supreme Court concluded “that if the first in a series of traumatic events involves physical trauma, and that event is a direct and proximate cause of a harmful change in the human organism, the harmful change may be compensable.”<sup>9</sup> West, who was also a former police officer, suffered from post-traumatic stress disorder after she had been “physically assaulted by a knife-wielding suspect that she was attempting to apprehend.”<sup>10</sup> It was undisputed that her psychological disorder “became increasingly symptomatic following additional work-related incidents involving psychological trauma[.]”<sup>11</sup> The Supreme Court stated:

An event that involves physical trauma may be viewed as a “physical injury” without regard to whether the harmful change that directly and proximately results in physical, psychological, psychiatric, or stress-related. But in instances where the harmful change is psychological, psychiatric, or stress-related, it must directly result from

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<sup>7</sup>Id. at 415.

<sup>8</sup>Ky., 52 S.W.3d 564 (2001).

<sup>9</sup>Id. at 567.

<sup>10</sup>Id. at 564-65.

<sup>11</sup>Id. at 565.

the physically traumatic event. We view an incident that is described as a "full-fledged fight" in which a police officer and suspect are scuffling and rolling on the ground as an event that involves physical trauma, in other words, as a physically traumatic event.

A question then arises concerning whether each traumatic event in a series of such events must involve physical rather than mental trauma in order to authorize compensation for a resulting psychological, psychiatric, or stress-related change. KRS 342.0011(1) contains no explicit requirement to that effect and indicates only that the harmful change must be "the direct result of a physical injury." We conclude, therefore, that if the first in a series of traumatic events involves physical trauma, and that event is a direct and proximate cause of a harmful change in the human organism, the harmful change may be compensable.<sup>12</sup>

The case sub judice is distinguishable from West since Chaney's ankle injury is the only "event that involves physical trauma" and her harmful change which is psychological, psychiatric, or stress-related did not directly result from the physically traumatic event involving her ankle.

During her hearing before the ALJ, Chaney freely admitted that her psychiatric condition was independent of her work-related ankle injury. Furthermore, while the medical evidence from Chaney's treating physician, Dr. James B. Noble, indicated that her long-term depression and anxiety with underlying stress was a direct result of her employment, he did not connect her psychiatric problems to her ankle injury. Chaney's psychiatrist, Dr. Benjamin B. Storey, diagnosed her as suffering from depression with mixed anxiety, but he also did not link her psychiatric condition to her ankle injury.

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<sup>12</sup>Id. at 566-67.

Additionally, Reba Moore, a psychologist who performed an independent psychological evaluation of Chaney, diagnosed her with post-traumatic stress disorder, severe, and depressive disorder, but she did not connect these psychological problems to Chaney's ankle injury. Thus, the evidence of record does not compel a finding that Chaney's psychological condition is a direct result of the physical injury to her ankle. Accordingly, under Kentucky law as amended in 1994, the ALJ had no alternative but to dismiss Chaney's claim for psychological disability, and the Board and this Court have no authority to set aside that decision.

In regard to Chaney's claim relating to her ankle injury, we similarly find that the ALJ's findings were supported by substantial evidence. Following her ankle injury, Chaney returned to work with few limitations. Chaney ably performed her duties until she was overwhelmed by depression and anxiety in June of 1999. Although Dr. Calvin Johnson, an orthopaedist who performed an independent medical evaluation of Chaney, placed certain restrictions on Chaney's physical activities due to residual pain in her ankle, nothing in his report suggests that she could not perform her duties as an officer for the Kentucky State Police. Therefore, we must conclude that the ALJ's finding that Chaney was entitled to a 2% impairment rating for her permanent ankle condition was supported by substantial evidence.

The record as a whole overwhelmingly demonstrates that Chaney is totally disabled due to her psychological condition not her ankle injury. However, under KRS 342.0011(1) her psychological disability is non-compensable because it did not

result from a physical injury. While the state of the law since the amendments in 1994 places injured persons such as Chaney in the unfortunate position of not being compensated for some work-related disabilities, it is within the authority of the Legislature to set such public policy and the executive and judicial branches of government are limited by those legislative enactments.

For the foregoing reasons, the opinion of the Workers' Compensation Board affirming the opinion and award of the ALJ is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Otis Doan, Jr.  
Harlan, Kentucky

BRIEF FOR APPELLEE, KENTUCKY  
STATE POLICE:

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