

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-000813-WC

SHARON SUMPTER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-60142

APPALACHIAN REGIONAL HOSPITAL, INC.
D/B/A WHITESBURG ARH HOME HEALTH;
HONORABLE IRENE STEEN, ADMINISTRATIVE
LAW JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS AND DYCHE, JUDGES; POTTER, SPECIAL JUDGE.¹

DYCHE, JUDGE: Sharon Sumpter brings this appeal from an opinion of the Workers' Compensation Board ("Board") which affirmed an opinion and award of the Administrative Law Judge ("ALJ") finding her to have an occupational disability from an injury to her neck, but denying her claim for total disability due to a back

¹Senior Status Judge John Woods Potter sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

injury and "psychological overlay" from the two traumatic injuries. We affirm.

Sumpter sustained her injury while adjusting the position of a bedridden patient on October 14, 1999. The alleged back injury did not arise until some time later, and there was gradual onset of the alleged psychological injury (depression from being unable to work or carry on with her normal life activities). There was extensive medical testimony in this case, and, after thoroughly sifting through the testimony, the ALJ accepted the KRS 342.315 university evaluator's determination that Sumpter suffered from a 12% functional impairment to her body due to the injury to her neck and shoulder. Sumpter's claim for further disability as a result of a back injury was denied.

There was also a KRS 342.315 university evaluation performed concerning her psychological claim, but the ALJ refused to give that evaluation presumptive weight. The ALJ thought that another psychological examination, performed at the request of the employer, was more persuasive, in that Sumpter was prone to symptom magnification and exaggeration of the existence or severity of any psychological problems, and the university evaluation made no mention of such factors. The ALJ made an observation from Sumpter's demeanor that she was perhaps jealous or resentful of the fact that she had to work to help support the family, while her husband was allowed to lounge around the house, due to his disability.

On appeal, Sumpter makes no serious argument that the evidence compels a finding of a work-related back injury and

concomitant total disability, and we therefore affirm the Board and ALJ on that issue. Paramount Foods , Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985).

She does complain that the ALJ was in error in failing to give the university evaluation presumptive weight concerning the psychological condition. She argues that the ALJ's rationale for making this choice was insufficient under Magic Coal Company v. Fox, Ky., 19 S.W.3d 88 (2000), and Thomas v. United Parcel Service, Ky., 58 S.W.3d 455 (2001). We find that there was sufficient testimony to rebut the report of the university evaluator, and that the ALJ properly and sufficiently stated her reasons for making the decision she did.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Susan Turner Landis
Johnnie L. Turner, P.S.C.
Harlan, Kentucky

BRIEF FOR APPELLEE APPALACHIAN
REGIONAL HOSPITAL, INC.:

Sherri P. Brown
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