

Commonwealth Of Kentucky

Court Of Appeals

NO. 2002-CA-001061-WC

HAZARD ARH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-02667

BRENDA STIDHAM; HON. ROBERT L. WHITAKER,
DIRECTOR OF SPECIAL FUND; RONALD MAY,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * ** **

BEFORE: EMBERTON, CHIEF JUDGE; JOHNSON, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: This is a petition for review from an opinion of the Workers' Compensation Board affirming the decision of the Administrative Law Judge finding claimant to be permanently and totally occupationally disabled as a result of a work-related heart attack. Upon reviewing the evidence, we adjudge there was substantial evidence to support the ALJ's findings. Hence, we affirm.

The claimant, Brenda Stidham, was born in 1956, has a high school education and has a previous work history as a

cook/cashier for several small restaurants, cashier at a K-mart store, and a deli worker at a grocery store. In 1988, she became employed by the petitioner, Hazard Appalachian Regional Hospital ("Hazard ARH"), as a janitorial worker. Stidham testified that on May 6, 1996, she reported to work at approximately 3:00 a.m., and as she was emptying and lifting heavy garbage sometime between 3:00 and 4:00 a.m., she began to experience chest and arm pain and began sweating. She then called her co-workers by radio and called her sister on the phone. Her co-workers transported her to the emergency room. Stidham was initially diagnosed at the emergency room as having muscle spasms and was sent home with a prescription for pain medication. Upon leaving the hospital, Stidham again began experiencing pain in her arm, whereupon her sister took her to see Dr. George Chaney who admitted her to the hospital. At this point, she was diagnosed as having a myocardial infarction. She eventually underwent cardiac catheterization and angioplasty at Central Baptist Hospital in Lexington, returning to work in the fall of 1996. Thereafter, Stidham continued to experience more chest and arm pain and eventually underwent a repeat cardiac catheterization and coronary bypass surgery in April of 1997, after which Stidham did not return to work.

Stidham's supervisor, Wade Lindon, testified that Stidham called him at approximately 4:00 a.m. on May 6, 1996, and told him that she was going to the hospital because of chest and arm pain that she began having while emptying the trash at work. Lindon testified that no incident report was filed because he

regarded Stidham's condition as an illness and Hazard ARH did not require filling out accident reports for illnesses. Lindon acknowledged that Stidham's work sometimes required her to do heavy lifting.

Stidham admitted in her testimony that she had previously experienced some arm pain while at home putting some soup cans away. However, she stated that that pain was not as severe as the pain she had on May 6, 1996. She also testified that she had been diagnosed with and treated for pericarditis in the early 1990's but that the pain and discomfort she had with that condition was different than she experienced in May of 1996.

Stidham filed her claim against Hazard ARH for workers' compensation benefits in December of 1997, alleging that her disability was the result of the work-related injury she sustained on May 6, 1996. The first opinion of the Administrative Law Judge ("ALJ") dismissed Stidham's claim on grounds that she failed to give her employer due and timely notice of her work-related injury. The Workers' Compensation Board (the "Board") reversed the ALJ's decision as to the failure to give notice. After an appeal to this Court, the Supreme Court ultimately affirmed the Board and remanded the case to the ALJ. On remand, the ALJ adopted the findings of his earlier decision with the exception of the findings related to notice. On the issue of work-relatedness of the initial injury, he relied on the opinion of Dr. Stephen Wagner, the university evaluator appointed pursuant to KRS 342.315, in finding that the heart attack Stidham suffered on May 6, 1996 was precipitated by the work she was

performing for her employer on that date, which aroused a pre-existing condition into disabling reality. However, the ALJ disregarded Dr. Wagner's opinion as to the work-relatedness of Stidham's ongoing medical problems and the extent and duration of her disability. Instead, the ALJ relied on the reports of Stidham's treating physicians as to these matters. Consequently, the ALJ found Stidham to be totally and permanently occupationally disabled. On appeal to the Board, the Board affirmed the ALJ. This petition for review from Hazard ARH followed.

Hazard ARH first argues that the ALJ erroneously failed to address the issue of whether the alleged "garbage-lifting" incident occurred. Hazard ARH claims that the ALJ made a finding of causation without first finding that the alleged work-related incident occurred. It is Hazard ARH's position that the incident in question did not occur and that it was actually the lifting of groceries at home which precipitated Stidham's heart attack. Hazard ARH points to certain medical records from May 6, 7, and 10, 1996 where there is no mention of any "garbage-lifting" incident and wherein it is noted that Stidham had a two-day history of chest pain which began when she was carrying groceries.

In reviewing the ALJ's opinion of November 28, 2001, we believe the ALJ did essentially conclude that the "garbage-lifting" incident occurred in finding as follows:

The ALJ is further persuaded by the view of the university evaluator that the acute myocardial infarction plaintiff suffered on May 6, 1996 was precipitated by the physical

effort she was performing in her job related duties.

The phrase "job related duties" was clearly a reference to the "garbage-lifting" incident, as that was the only evidence of work-related duties Stidham had performed on that date prior to being taken to the hospital.

It is the ALJ's job to determine the quality, character, and substance of the evidence presented. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). When the ALJ rules in favor of the claimant, so long as the ALJ's findings are supported by substantial evidence, a reviewing court will not disturb its ruling. Smyzer v. B.F. Goodrich Chemical Co., Ky., 474 S.W.2d 367 (1971). "Substantial evidence means evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men." Id. at 369.

The ALJ in the present case acknowledged the conflicting evidence on the issue of whether the work-related incident caused Stidham's heart attack. He specifically noted that the hospital records from Stidham's admission, from Central Baptist Hospital, and Dr. Chaney's follow-up records did not mention any work injury or that her symptoms began at work. The ALJ also considered Stidham's testimony that, although she had experienced some arm pain in the past, she began to sweat and have severe pain in her chest and arm which alarmed her enough to call for help when she was emptying heavy garbage at work on May 6, 1996. The ALJ also looked at the testimony of Stidham's supervisor, Wade Lindon, who testified that Stidham had called him at home at around 4:00 a.m. to tell him that she started

having chest pain while emptying garbage and was going to the emergency room. Lindon also confirmed that Stidham's job sometimes involved fairly heavy lifting. Finally, the ALJ found the report of the university evaluator, Dr. Stephen Wagner, to be most persuasive. He reported that in 1998 Stidham stated as part of her history that on May 5, 1996, she was picking up garbage weighing approximately 75 pounds and experienced pain in both arms and broke out in a sweat. Moreover, Dr. Wagner specifically opined that Stidham's heart attack was caused by her performance of work-related duties. "[I]t is well settled that the ALJ, as fact-finder, has the authority to believe part of the evidence and disbelieve other parts even if it comes from the same witness or the same adversary party's total proof." Brockway v. Rockwell International, Ky. App., 907 S.W.2d 166, 169 (1995) (citing Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977)). In our view, the above-stated testimony of Stidham, Lindon and the report of Dr. Wagner constituted substantial evidence to support the ALJ's finding that Stidham's heart condition was caused by the emptying of heavy garbage at work.

Hazard ARH next argues that the ALJ erroneously failed to accord presumptive weight to the opinion of the university evaluator, Dr. Wagner, regarding the cause of Stidham's medical problems subsequent to the heart attack. It was Dr. Wagner's opinion that although the initial heart attack was caused by Stidham's work-related activities, the subsequent progression of her coronary atherosclerosis, which necessitated coronary bypass surgery, and her neuropathic reflex sympathetic dystrophy (RSD)

were related to her underlying risk factors such as cigarette smoking and diabetes and not her work-related activities. He further believed that her 1996 work-related heart attack resulted in only a small amount of myocardial damage. Hazard ARH maintains that the ALJ was in error when he disagreed with these findings of Dr. Wagner.

KRS 342.315 provides for the appointment of a university evaluator to assess workers who have sustained occupational injuries or diseases. KRS 342.315(2) states in pertinent part:

The clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by arbitrators and administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When arbitrators or administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

The above statute has been construed so as to allow the ALJ to disregard the opinion of the university evaluator when evidence is introduced which rebuts that opinion. Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88 (2000). In disregarding Dr. Wagner's opinion as to the cause of Stidham's subsequent coronary problems and RSD, the ALJ stated:

While the adoption of the rule establishing university evaluators appears to have been a reasonable approach to obtaining totally unbiased medical opinions and has worked particularly well in cases involving lung diseases where the diagnosis of presence or absence of the disease can be determined by objective medical studies and the same is true in determining whether there is any pulmonary disability and if so, the most

likely cause. The reason for this is that one's lungs do not have their good days and their bad days and if the lungs are permanently scarred on Monday, they will remain so on each and every day thereafter and only one examination is required. Too, diseases such as coal workers' pneumoconiosis produce a quite different result on spirometric studies than other non-work related disease entities such as emphysema or asthma. The system of university evaluators is not quite as dependable in injury cases for two reasons. One is that the opinion of the university evaluator will be dependent in large part on that physician's personal experiences in treating injuries similar to the injury involved in the case in which he/she is appointed. Secondly, the conditions of patients who have been injured, whether by myocardial infarction or some other injury, may vary from day to day. Such a patient examined on Friday may not exhibit the same examination findings that were present on Monday. Because of this the treating physician often offers evidence from the superior vantage point of having seen and treated the patient on many occasions compared to the one examination of the university evaluator.

. . .

. . . As respects the other findings of the university evaluator the ALJ is persuaded that such other findings have been appropriately rebutted by those physicians who saw and treated plaintiff on more than one occasion. Accordingly, the ALJ is persuaded that plaintiff's bypass surgery and subsequent development of neuropathic pain with RSD are incidences that flowed naturally and as an incident of the initial work injury.

As can be seen from the above, the ALJ gave an extensive explanation as to why he was disregarding the opinion of the university evaluator on the issue of causation of Stidham's subsequent medical problems. Dr. Robert Hoskins, who examined Stidham in 1998, was of the opinion that Stidham's continuing

heart problems were the result of the rupture of the atherosclerotic plaque during the 1996 heart attack, which was caused by work-related physical activity. Hence, there was competent evidence which rebutted the opinion of the university evaluator pursuant to KRS 342.315(2) and Magic Coal Co., 19 S.W.3d 88.

The final argument of Hazard ARH is that the ALJ erred in disagreeing with the university evaluator as to the extent and duration of the injury. The ALJ found Stidham to be totally and permanently occupationally disabled as a result of her work-related heart attack. Dr. Wagner agreed with Dr. Chaney that Stidham's 1996 heart attack did not result in permanent damage. However, Dr. Wagner felt that restrictions should be placed on Stidham's activity and that she did not have the physical capacity to continue working at Hazard ARH. Dr. Hoskins disagreed with Dr. Wagner's conclusion that Stidham suffered only a small amount of myocardial damage. Further, Dr. Hoskins opined that Stidham could not return to her job at Hazard ARH or any job that required strenuous work, especially heavy lifting. Likewise, Dr. C.O. Agtarap, who examined Stidham in 1997, felt that Stidham's current heart problems and RSD were severe enough to produce restrictions. He stated that Stidham could not return to her work at Hazard ARH. He further maintained that she could not: do sustained hand work while seated for six to eight hours a day; do clerical or sales work while standing for six to eight hours a day; do any heavy lifting; or drive for six to eight

hours a day. He concluded that she was essentially unemployable for any type of sustained work activities.

Again, there was sufficient evidence to rebut the opinion of the university evaluator that the 1996 heart attack did not cause permanent damage. With regard to the extent and duration of her injury, it is the ALJ's function to determine the degree of functional disability when there is conflicting medical evidence and to translate functional impairment into occupational disability. Kentucky Carbon Corp. v. Dotson, Ky. App., 573 S.W.2d 368 (1978). In our view, the opinions of Dr. Hoskins and Dr. Agtarap constituted substantial evidence of probative value to support the ALJ's finding that Stidham was permanently and totally disabled.

For the reasons stated above, the opinion of the Board upholding the ALJ's decision is affirmed.

ALL CONCUR.

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