

Commonwealth Of Kentucky
Court of Appeals

NO. 2003-CA-000471-WC

LISA GAIL REINBOLD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-99-64366

FORD MOTOR COMPANY;
HONORABLE DONALD G. SMITH,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: PAISLEY AND TACKETT, JUDGES; AND HUDDLESTON, SENIOR
JUDGE.¹

TACKETT, JUDGE: Lisa Gail Reinbold (Reinbold) petitions for
review from an opinion of the Workers' Compensation Board
(Board), which affirmed an opinion and order of the
Administrative Law Judge (ALJ) awarding Reinbold reasonable
medical expenses, finding that her back and neck conditions were
related to a work injury while employed at Ford Motor Company

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of
the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution
and KRS 21.580.

(Ford) on August 20, 1999. However, the ALJ found Reinbold failed to show entitlement to income benefits, specifically finding that Reinbold had a prior active disability for her neck condition from a non-work related motor vehicle accident, which was aggravated by the work injury. The ALJ ruled that Reinbold had no impairment rating for the back condition, and that the impairment rating for the neck condition was preexisting and therefore, not compensable, all to which the Board agreed. Reinbold argues that the ALJ erred in finding that she sustained no impairment to her neck and back due to her work at Ford. We affirm.

Reinbold's background information shows that her date of birth was October 6, 1959, and that she successfully completed her high school education. Her employment history included work as a grocery store cashier and pricing manager. She began working for Ford on the assembly line on May 31, 1995. As a result of a motor vehicle accident on October 25, 1996, Reinbold sustained a non-work related cervical spine injury. She returned to work at Ford in December of 1996. However, in January 1997, she stopped working because of neck pain. On March 19, 1997, Dr. Steven Reiss performed a two-level cervical fusion surgery at C5-6 and C6-7.

Reinbold returned to Ford in July 1997. On August 20, 1999, while working at her sway bar secure position with an

overhead gun used to attach and tighten sway bars and shock brackets, she experienced pain in the low back and neck. She gave notice of a work injury and was seen by Dr. K.M. Farmer, the Ford plant physician. Reinbold initially returned to light-duty work for two weeks. When she was unable to do the light-duty work, Dr. Farmer ordered a CT scan. She remained off work until January 23, 2000. She returned to light duty work and was reassigned to a job she was able to perform. She performed that job for about a year and a half. When more job duties were added, she was assigned an even lighter job.

Medical evidence in the record consisted of reports and depositions from Drs. Ron Fadel and Daniel Wolens. Dr. Fadel concluded that Reinbold sustained a work-related injury in 1999. He assigned a 16% impairment to the body as a whole due to her work-related condition, apportioning 8% to the cervical spine and 8% to the lumbar spine. This impairment rating was made pursuant to the DRE Model of the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (AMA Guidelines). Dr. Fadel stated that he would restrict Reinbold from any activities that require repetitive extension and flexion of the cervical spine and would further restrict her from occasionally lifting more than ten pounds.

Dr. Wolens testified, on the other hand, that he believed Reinbold's cervical condition was predominantly caused by the 1996 motor vehicle accident and the subsequent cervical fusion and that the August 20, 1999 incident aggravated that condition. He assessed a 20% impairment to the cervical spine and a 0% impairment to the lumbar spine. He attributed none of the permanent impairment to the work incident. After Dr. Fadel's deposition was taken, Dr. Wolens returned for a second deposition. He testified that he took exception with Dr. Fadel's assessment of impairment. He testified that he considered the two-level fusion an active condition and that the condition was aggravated by her work duties. He did not believe that Reinhold's low back complaints were related to the work incident. He testified that he would restrict Reinbold from extreme cervical motion and heavy lifting, but that those restrictions would have been in place as a result of the cervical fusion following the motor vehicle accident.

The ALJ noted that the medical evidence was conflicting, but found the testimony of Reinbold and Dr. Fadel persuasive in that Reinbold's back condition was related to the work incident and therefore, medical expenses were awarded. However, the ALJ relied on Dr. Wolens' testimony with regard to Reinhold's cervical condition and concluded it was a re-injury of an active impairment. The ALJ also believed that Dr. Wolens

appropriately applied the AMA Guidelines under the particular circumstances, and that Reinbold had a 0% impairment to the lumbar spine.

Reinbold argues that the ALJ erred in relying on Dr. Wolens' testimony, because her CT scan shows acute herniation at L5-S1, which was due to the August 20, 1999 incident. As mentioned, the doctors' testimony conflicted on this issue. The record establishes that Dr. Wolens and Dr. Fadel disagreed as to how to apply the AMA Guidelines. Dr. Fadel assigned an 8% impairment rating to the lumbar spine injury while Dr. Wolens assigned a 0% impairment rating. The ALJ found that Dr. Wolens appropriately applied the Guidelines. We agree with the conclusion of the Board in addressing this claim:

We further note that in the case of FAB Steel, Inc. v. Myers, 2001-CA-001564-WC (Rendered February 15, 2002 and designated not to be published, the court addressed the appropriate manner for impeaching the methods under the Guides. In FAB Steel, the Court of Appeals adopted this Board's opinion that evidence of an impairment rating represents the calculations and opinions of an expert. Contrary expert opinions and/or skillful and vigorous cross-examination remain the practitioner's tools to overcome unfavorable expert opinions. Nevertheless, the differing expert opinions as to impairment ratings remain nothing more than conflicting evidence. While Reinbold argues that Dr. Fadel did a correct assessment of impairment rating pursuant to the Guides, as we have emphasized, the ALJ as fact finder retains the sole authority to judge the weight, credibility, substance,

and inferences to be drawn the [sic] evidence. Paramount Foods, Inc. v. Burkhardt, supra.

Assessment impairment ratings determined by experts are often in conflict. Multiple methods can be used to arrive at an impairment rating. Inasmuch as Reinbold would like us to accept Dr. Fadel's assessment, we believe, as did the Board, that the issue was one for the fact finder, the ALJ, in determining the weight and credibility of the evidence. The use of the AMA Guidelines is strictly a medical function. When medical evidence conflicts, the sole authority to determine whom to believe rests with the ALJ. Leeco, Inc. v. Adams, Ky. App., 920 S.W.2d 84, 85 (1996) citing Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977).

Reinbold next argues that the ALJ erred in relying on Dr. Wolens' finding that her neck condition was pre-existing. She bases this argument on the fact that she was able to perform her job without restrictions to her cervical spine or complaints of cervical pain for over 25 months following the fusion surgery. In consideration of the foregoing, we adopt the following portion of the Board's opinion as follows:

Under the 1996 Workers' Compensation Act, a partially disabling condition is not compensable unless it results in a permanent impairment rating under the Guides. KRS 342.0011(11)(b) and KRS 342.0011(11)(b)(35)(36). Partial disability is calculated by simply plugging that

impairment rating into the formula for computing a disability rating provided in KRS 342.730(1)(b). The "occupational disability" standards that existed prior to December 12, 1996, the effective date of the 1996 amendments, no longer applies for purposes of permanent partial disability awards. Thus, as here, if a claimant has suffered a prior non-work-related [sic] injury that results in an impairment rating, that impairment rating can not be part and parcel of a disability rating, even if the existing impairment is not vocationally limiting.

Dr. Wolens assessed a 20% impairment rating to Reinbold's neck injury. He attributed the entire impairment to the prior non-work related injury and believed that the work incident merely aggravated that prior injury. Our examination of the record demonstrates that Dr. Wolens reviewed Reinbold's medical records, specifically the operative reports from the cervical fusion, and the medical records related to the August 20, 1999 working injury, including the report of the CT scan ordered by Dr. Farmer at Ford. Dr. Wolens performed a physical examination of Reinbold and took her medical history. He testified that Reinbold's loss of range of motion was a direct result of her cervical fusion. He further testified that he would not apportion any of her impairment to the work injury because that injury only resulted in an increase in Reinbold's pain complaints. Dr. Wolens testified that there was no alteration in the anatomical structure of her spine, and the

loss of range of motion in her case was secondary to loss of the spinal function because of the cervical fusion. The doctor noted in his report that Reinbold did have a "small right paracentric disc herniation at C4-C5 that was not previously evident, this does not appear to be clinically significant as neither this patient's symptoms nor physical examination findings are consistent with such a pathological process." Dr. Wolens' report concluded that, "There is nothing in the medical record history, patient history, or physical examination that would suggest the presence of new onset pathology secondary to the reported injury." This was substantial evidence upon which the ALJ could rely to conclude that Reinbold did not sustain a compensable injury at Ford. Inasmuch as Reinbold was asymptomatic prior to aggravating the injury does not preclude such a finding.

Lastly, Reinbold argues that the ALJ erred in finding that she did not sustain an impairment to her low back because she no longer retains the physical capacity to perform the type of work she did prior to the injury. This argument cannot be distinguished from her previous one. As discussed above, Dr. Wolens' testimony was substantial evidence which supported the ALJ's determination that Reinbold's symptoms, no matter how restrictive after the August 20, 1999 injury, were an aggravation of the prior non-work related injury.

When reviewing decisions of the Board, our function is to correct the Board only where we perceive that 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." Western Baptist Hospital v. Kelly, Ky., 827 S.W.2d 685, 687-88 (1992). When a petitioner is unsuccessful before the fact finder, on appeal before the Board he must prove that the evidence compelled a finding in his favor. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). Because the ALJ's findings were supported by substantial evidence, the Board had no authority to alter the result. KRS 342.285. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

For the foregoing reasons the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

W. David Shearer, Jr.
Christopher G. Newell
Louisville, Kentucky

BRIEF FOR APPELLEE, FORD MOTOR
COMPANY:

Nancy E. Anderson
Wesley G. Gatlin
Boehl Stopher & Graves
Louisville, Kentucky

Donald G. Smith
Lexington, Kentucky