

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000316-WC

INSTEEL WIRE PRODUCTS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-76323

CHARYL CRADDOCK;
HON. LLOYD R. EDENS,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND TACKETT, JUDGES.
TACKETT, JUDGE: Insteel Wire Products ("Insteel") petitions
this Court to review an opinion of the Workers' Compensation
Board ("Board") entered on January 14, 2004. In the Board's
opinion, it affirmed an opinion, order, and award of the Hon.
Lloyd R. Edens, Administrative Law Judge ("ALJ") entered on
August 4, 2003.

The ALJ had determined that Charyl Craddock ("Craddock"), a former employee of Insteel, did not retain the physical capacity to return to the type of work that she had performed at the time of her work related injury. After making this determination, the ALJ applied the three-multiplier found in KRS 342.730(1)(c)1 to enhance Craddock's benefits. The ALJ also ordered Craddock to be evaluated by the Department of Vocational Rehabilitation at Insteel's expense. Finally, the ALJ awarded Craddock medical benefits to treat her depression that was caused by her injury.

In Insteel's petition for review, the company argues that uncontroverted evidence shows that after her injury Craddock returned to the same type of work that she did before her injury. Based on this uncontroverted evidence, Insteel insists that the ALJ erred when it applied the three-multiplier to Craddock's award. Insteel also argues that, since Craddock retained the physical capacity to return to the same type of work, she was not eligible for vocational rehabilitation. So the ALJ erred when he referred her for vocational rehabilitation. Insteel also argues that Craddock's depression was not caused by her injury. Since her depression was not related to her injury, Insteel concludes that the ALJ erred when it awarded her medical benefits. Contrary to Insteel's assertions, substantial evidence supported the ALJ's decision.

Therefore, this Court affirms the Board's opinion, which affirmed the ALJ's decision.

Charyl Craddock began working for Insteel Wire Products in January of 1996. By 2001, she was the purchasing and safety manager for the company's Hickman plant. On the morning of April 12, 2001, Craddock's supervisor asked her to count the number of steel rods that had been delivered to the plant. The rods were on the back of a large flatbed truck. To count the rods, Craddock was forced to climb onto the truck's bed. After finishing the job, Craddock jumped down. When Craddock landed, she twisted her left ankle and her left knee bent completely sideways. Craddock immediately felt intense pain and could not get up. A co-worker took Craddock to a local emergency room.

A few months after the emergency room visit, Craddock began to receive treatment from Dr. Spindler. When Dr. Spindler first examined Craddock, he initially diagnosed her with an ACL rupture and a lateral meniscus tear. He performed arthroscopic surgery to release the scar tissue that had built up in her left knee. After the surgery, Dr. Spindler diagnosed Craddock with an S/P anterior cruciate ligament tear in her left knee and with arthrofibrosis. At Craddock's insistence, he released her back to work without any restrictions. But, later in September of 2002, Dr. Spindler restricted Craddock from walking more than

two hours at a time with a maximum of four hours each day. He restricted her to lifting no more than forty-nine pounds occasionally. And he restricted her from jumping, climbing, and repetitive lifting. He also opined that Craddock was ten percent functionally impaired.

After the surgery, Craddock began intensive physical therapy to regain the use of her knee, but she soon became very depressed because of the constant pain she was experiencing and the slow rate of improvement. On July 12, 2002, Craddock meet with Dr. Shurling, a psychologist. Dr. Shurling examined Craddock and diagnosed her with major depressive disorder, recurrent and moderate. Even though he noted that she had prior incidents of depression, Dr. Shurling concluded these incidents had been resolved well before the time of her injury. Dr. Shurling stated unequivocally that Craddock's depression was caused by her work related injury. He opined that Craddock suffered from a fifteen percent functional impairment due to depression.

Craddock filed a workers' compensation claim in December of 2002. Later, she amended her claim to include depression. As stated above, the ALJ found in Craddock's favor. Insteel appealed to the Workers' Compensation Board but the Board affirmed the ALJ's decision. Now Insteel petitions this Court for review.

FIRST ARGUMENT: APPLICATION OF THE THREE-MULTIPLIER

Insteel points out that KRS 342.730(1)(c)1 provides that if an employee has suffered a work related injury and as a result no longer retains the physical capacity to return to the type of work that the employee performed at the time of the injury, then the employee's permanent partial disability benefits will be multiplied by three. According to Insteel's interpretation, KRS 342.730(1)(c)1 does not require an employee to retain the physical ability to return to the exact same job with the exact same duties. According to Insteel, the statute merely requires the employee to retain the physical capacity to do the same type of work.

Insteel insists that Craddock retained the ability to return to the same type of work. To support its claim, Insteel points out that Craddock returned to work as the company's purchasing and safety manager. It points to her testimony during the final hearing and claims that she testified that the majority of her work was done on computer. In addition to Craddock's testimony, the company also points to the testimony of Reed Vernon ("Vernon"). Vernon was Craddock's former supervisor and he testified on Insteel's behalf. He testified that Craddock's job was mostly sedentary. Insteel claims that Craddock's testimony and Vernon's testimony constitute uncontroverted evidence that because she retained the capacity

to do computer work, she retained the capacity to do the same type of work that she did at the time of her injury. Based on this uncontroverted evidence, Insteel concludes that the ALJ erred when it applied the three-multiplier to Craddock's benefits.

When reviewing one of the Board's decisions, this Court will only reverse the Board's decision when it has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence that it has caused gross injustice. Daniel v. Armco Steel Company, Ky. App., 913 S.W.2d 797, 798 (1995). To properly review the Board's decision, this Court must ultimately review the ALJ's underlying decision. Where the ALJ has found in favor of the employee, who had the burden of proof, this Court must determine whether the ALJ's findings were supported by substantial evidence. Special Fund v. Francis, Ky., 708 S.W.2d 641, 643 (1986); See also Wolf Creek Collieries v. Crum, Ky., 673 S.W.2d 735 (1984). The Supreme Court of Kentucky has defined substantial evidence as, "some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people." Smyzer v. B.F. Goodrich Chemical Co., Ky., 474 S.W.2d 367, 369 (1971). In other words, substantial evidence is, "evidence which would permit a fact-finder to reasonably find as it did." Special Fund v. Francis, supra at 643. And as the fact-finder,

the ALJ, not this Court and not the Board, has sole discretion to determine the quality, character, and substance of the evidence. Whittaker v. Rowland, Ky., 998 S.W.2d 479, 481 (1999), quoting Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985); See also Snawder v. Stice, Ky. App., 576 S.W.2d 276 (1979). Not only does the ALJ weigh the evidence but the ALJ may also choose to believe or disbelieve any part of the evidence, regardless of its source. Whittaker v. Rowland, supra at 481, quoting Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15, 16 (1977).

At the final hearing, Craddock testified that she spent the majority of her time doing computer work, placing orders, and managing the company's inventory. Transcript of the Record ("TR") at 323. As part of her managerial duties, she was responsible for ordering new parts and shelving them as they arrived. TR at 324. According to Craddock, maintaining the parts room was the major part of her job. TR at 326. To do this job, she routinely lifted objects between thirty and forty pounds. But when she returned to work she could no longer routinely lift that much weight. TR at 324. According to Craddock, maintaining the parts room required her to routinely climb to stock the top shelves and to kneel to stock the bottom shelves. TR at 326. But when she returned to work, she could no longer climb or kneel. TR at 326. Craddock testified that

as safety manager she was required to do a walking safety tour of the plant on a regular basis. But after the injury, she was no longer capable of doing the safety tour. TR at 325.

Vernon, who testified for Insteel, testified that after Craddock returned to work, the company accommodated Craddock's physical limitations as much as possible. TR at 361. He testified that before Craddock was injured, she routinely lifted items in excess of fifty pounds. TR at 362. But after her injury, Vernon or a janitor or another supervisor would carry and shelve the new parts that Craddock could not lift. TR at 361-362. Vernon testified that, before her injury, Craddock routinely climbed and knelt in order to stock the parts room. TR at 370-371. But after her injury, he never saw her do either. TR at 371.

According to the Supreme Court of Kentucky, "[i]f the evidence indicates that a worker is unlikely to be able to continue earning a wage that equals or exceeds the wage at the time of injury for the indefinite future, the application of [KRS 342.370(1)](c)1 is appropriate." Fawbush v. Gwinn, Ky., 103 S.W.3d 5, 12 (2003). Craddock testified that she was no longer physically able to perform the major part of her job, maintaining the parts room. Along with Craddock's testimony, Vernon also testified that Craddock could no longer maintain the parts room as she did before her injury. In addition, as the

Board noted, Dr. Spindler opined that Craddock was no longer physically capable of performing her various job duties on an indefinite basis. All of this constitutes substantial evidence that supported the ALJ's decision that Craddock no longer retained the physical ability to do the same type of work that she did before her injury. And given this substantial evidence, the ALJ's decision to apply the three-multiplier was reasonable.

SECOND ARGUMENT: ELIGIBILITY FOR VOCATIONAL REHABILITATION

According to Insteel, since Craddock clearly retained the physical capacity to perform the same type of work that she did at the time of her injury, then she was not entitled to vocational rehabilitation benefits under KRS 342.710. But, as previously discussed, the ALJ's finding that Craddock lacked the physical capacity to return to the same type of work was supported by substantial evidence. Since she could not do the same type of work as before, she was eligible for vocational rehabilitation. Thus, the ALJ's decision to refer Craddock to vocational rehabilitation was reasonable.

THIRD ARGUMENT: CAUSE OF CRADDOCK'S DEPRESSIVE DISORDER

Insteel insists that the ALJ's finding regarding Craddock's depression was not supported by substantial evidence. Insteel points out that Dr. Shurling and Dr. Shraberg, two psychologists, examined Craddock. Dr. Shurling examined

Craddock and diagnosed her with a major depressive disorder, recurrent. He also found that she had suffered various depressive episodes prior to her injury. But he opined that these past episodes had been resolved long before Craddock's work related injury. He also opined that the work related injury had triggered Craddock's current depressive disorder. Sometime after Dr. Shurling's examination, Dr. Shraberg examined Craddock on Insteel's behalf. He diagnosed Craddock with a major depressive disorder, recurrent, as well. But he believed that her current depressive disorder had been caused by the various traumatic events that had occurred throughout Craddock's life.

Insteel argues that because both Drs. Shurling and Shraberg used the word "recurrent" in their diagnoses, Craddock's depressive disorder must have existed prior to her work related injury. According to Insteel, this constitutes substantial evidence that Craddock's depression was not caused by her injury. In reality, Insteel is asking this Court to ignore Dr. Shurling, who was only one of the experts upon which the ALJ relied, in favor of Dr. Shraberg, Insteel's expert. But this Court is prohibited from making such a choice. Only the ALJ can weigh the quality, character, and substance of the evidence. Whittaker v. Rowland, 998 S.W.2d at 481. The ALJ considered all the evidence and chose to rely upon Dr.

Shurling's diagnosis and opinion. As the fact-finder, the ALJ had the discretion to make this choice and to rely upon Dr. Shurling's opinion. Id. But the ALJ did not just rely on Dr. Shurling's opinion. The ALJ also relied on the opinion of Mr. Runyon, who has a master's degree in psychology. Mr. Runyon examined Craddock and opined that she was suffering from situational depression but he noted that she was responding well to anti-depressants. In addition, the ALJ relied on Craddock's own testimony. Craddock testified that she felt very depressed since the surgery because of the constant pain and the fact she could no longer support her family. She testified that she had trouble sleeping and concentrating, although she admitted that medication had helped these problems. Obviously, this constituted substantial evidence. Given this evidence, the ALJ's decision to award Craddock medical benefits to treat her depression was reasonable.

CONCLUSION

This Court finds that all of the contested decisions made by the ALJ in this case were supported by substantial evidence. Since the ALJ's decisions were supported by substantial evidence, the ALJ did not err. Thus, the Board correctly affirmed the ALJ's opinion, order and award. Since the Board neither misconstrued the law nor erred in evaluating

the evidence, this Court affirms the Board's opinion of January 14, 2004.

ALL CONCUR.

BRIEF FOR APPELLANT:

David L. Murphy,
Louisville, Kentucky

BRIEF FOR APPELLEE CHARYL
CRADDOCK:

Jackson W. Watts
Versailles, Kentucky