

RENDERED: July 28, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

**Commonwealth Of Kentucky**  
**Court of Appeals**

NO. 2005-CA-002281-WC

JACQUELINE BYRD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-03-02199

FORD MOTOR COMPANY;  
HON. JOHN B. COLEMAN,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD,

APPELLEES

OPINION  
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; KNOPF,<sup>1</sup> JUDGE; AND BUCKINGHAM,<sup>2</sup>  
SENIOR JUDGE.

BUCKINGHAM, JUDGE: Jacqueline Byrd petitions for review of an  
opinion by the Workers' Compensation Board which affirmed an

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<sup>1</sup> Judge William L. Knopf concurred in this opinion prior to his retirement effective June 30, 2006. Release of the opinion was delayed by administrative handling.

<sup>2</sup> Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

opinion and order by an administrative law judge (ALJ). We affirm.

Byrd began working for Ford Motor Company in May 1995. She performed various jobs on the engine assembly line. On November 15, 2001, Byrd was working in the fan install department when her leg was caught in a cord causing her to fall to the ground and several fans to fall from a table onto her back. She also alleged that she suffered from carpal tunnel syndrome in connection with her employment.

Byrd filed a claim for medical benefits in connection with a thoracic spine condition that she alleged resulted from the November 2001 incident as well as medical benefits for her carpal tunnel syndrome. After a hearing, the ALJ dismissed Byrd's claim for income and future medical benefits for her thoracic spine condition and future medical benefits for her carpal tunnel syndrome.

Regarding the thoracic spine condition, the ALJ relied on the opinion of Dr. Robert Jacob, an orthopedic surgeon, who performed an evaluation of Byrd at the request of the employer (Ford). Dr. Jacob felt that the thoracic spine condition was an incidental age-related problem and was not related to a work incident. Regarding Byrd's claim for benefits due to carpal tunnel syndrome, the ALJ relied on the opinion of Dr. Thomas Harter, Byrd's treating physician, who stated he felt Byrd would

have no impairment and no work restrictions in connection with that condition.

After the ALJ's opinion and order, Byrd appealed to the Board. In an opinion entered on October 7, 2005, the Board affirmed the ALJ's ruling. Byrd's petition for review herein followed.

Byrd's first argument is that the ALJ and Board erred in finding that she did not suffer a work-related injury to her thoracic spine in November 2001 because her employer failed to raise causation/work-relatedness or injury as contested issues. Thus, she argues that her employer failed to preserve these issues as matters to be determined by the ALJ. She argues that Dr. Jacob's opinion that her thoracic spine condition was not related to the injury but was age-related was an opinion on the issue of causation and that, therefore, the ALJ should have been bound by her employer's failure to preserve that issue. Thus, she maintains the ALJ was compelled to award her income and medical benefits for the condition.

Ford stipulated that Byrd sustained a work-related injury on the date in question. Further, it never listed causation/work-relatedness or injury as a contested issue to be decided by the ALJ. Citing Leslie County Fiscal Court v. Adams, 965 S.W.2d 152 (Kentucky 1998), Byrd notes that only the issues

that are listed as contested on the prehearing order may be subjected to further proceedings. See Id at 153-54.

We agree with the Board's analysis of this issue, which was as follows:

We find no merit in Byrd's argument that by stipulating to the occurrence of work-related injuries on specific dates, Ford waived any argument regarding the causation of Byrd's impairment. The stipulation contained in the January 10, 2005 benefit review conference order and memorandum states: "Plaintiff sustained work-related injury(ies) on 11-15-01, 11-13-03, 12-10-03 + cumulative alleged on 2-15-04." The stipulation into which Ford entered did not include a stipulation as to the precise nature of the injuries sustained.

Moreover, KRS 342.730(1)(b) established that for permanent partial disability benefits, the calculation is based upon the permanent impairment rating caused by the injury, as determined by the American Medical Association's Guides to the Evaluation of Permanent Impairment, latest edition available. The stipulation that an injury occurs on a specific date does not relieve the claimant of her burden to prove the resulting impairment from the injury. Byrd fails to appreciate the difference between causation of an injury and causation of impairment. Byrd failed to carry her burden of persuasion as to the extent of impairment resulting from the injury. The record falls short of compelling a finding in her favor on this issue. The ALJ did not apply too broad a definition of extent and duration. The ALJ clearly understood Byrd's position on the issue and rejected her argument. We find no error in his doing so.

Citing Cavin v. Lake Construction Co., 451 S.W.2d 159 (Ky. 1970), Byrd next argues that the ALJ and Board erred in the failure to award her future medical benefits for her thoracic spine condition even though no impairment was found and permanent partial disability benefits were denied. See id at 461-62. In light of the ALJ's finding that Byrd's thoracic spine condition was not work-related, this argument has no merit.

Finally, Byrd contends that the ALJ and Board erred in failing to award her future medical benefits for her carpal tunnel syndrome. Byrd had been diagnosed with carpal tunnel syndrome in 1995, and her symptoms resolved. She alleged a work-related condition from an alleged injury on November 3, 2003. Her treating physician, Dr. Thomas Harter, stated his opinion that she would have no impairment and no work restrictions from the condition. The ALJ denied benefits for the alleged injury, stating that he "is not convinced that she suffers from a permanent work-related condition caused by the alleged injuries of November 3, 2003."

Citing Robertson v. United Parcel Service, 64 S.W.3d 284, 286 (Ky. 2001), the Board held as follows:

Although Byrd argues that she would be entitled to medical benefits for her carpal tunnel syndrome, and attempts to distinguish the facts in her claim from those in Robertson v. United Parcel Service, supra,

by contending she did not have a "temporary flare-up" of symptoms, the record contains evidence that would support a finding that her carpal tunnel syndrome symptoms were, in fact, a temporary flare-up. Byrd had been diagnosed with carpal tunnel syndrome in 1995 and her symptoms resolved. Dr. Harter's opinion would support a finding that once again she had a flare-up and that her condition has resolved. The ALJ is not required to accept Byrd's testimony regarding her current condition even if uncontradicted. Bullock v. Gay, 177 S.W.2d 883 (Ky. 1944). With regard to Byrd's carpal tunnel claim, the ALJ specifically found at page 17 of his April 4, 2005 opinion and order that he, the finder of fact, was "not convinced that she [Byrd] suffers from a *permanent work related condition* caused from the alleged injuries of November 3, 2003." (Emphasis added.) The record in this matter falls far short of compelling a finding that Byrd is entitled to future medical benefits for her carpal tunnel syndrome.

We agree with the Board's analysis in this regard.

The opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, FORD MOTOR  
COMPANY:

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