

RENDERED: AUGUST 4, 2006; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth Of Kentucky
Court of Appeals

NO. 2005-CA-002196-WC

PEGGY ENGLEMAN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-68091

RUMPKE; HON. DONNA TERRY,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

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BEFORE: COMBS, CHIEF JUDGE; KNOPF,¹ SENIOR JUDGE; MILLER,²
SPECIAL JUDGE.

COMBS, CHIEF JUDGE: Peggy Redmon-Engleman petitions this Court for review of a decision of the Workers Compensation Board which affirmed the ALJ's denial of her claim of a worsening of a work-related injury. On appeal, she argues that the Board erred in failing to rule that the findings of the university evaluator in

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

² Retired Judge John D. Miller sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

the original case should have been given presumptive weight. She also contends that *res judicata* should apply to dictate that result at this juncture since she was found to have a work-related injury in the original case. We disagree with both arguments. Therefore, we affirm.

In 1998, Peggy received workers' compensation benefits after suffering a work-related injury to her lower back. In August 2003, she filed a motion to re-open the claim, alleging a worsening of her condition related to the 1998 injury. In October 2003, Dr. Glassman and Dr. Raque, her treating physicians, performed a myelogram that revealed a disc bulge in her lower back. In April 2004, a decompression and spinal fusion surgery was performed. Peggy asked Dr. Glassman to sign a certification form that her condition was related to the work injury. He complied with that request but also checked a box on the form that indicated that he did not perform ratings.

After a hearing, the ALJ held that Peggy had not established that her current condition was a worsening of the previous work-related injury and denied additional benefits. She objected to these findings and requested a new hearing and new findings. She argued that by signing the certification, Dr. Glassman had expressed the opinion that the current disc bulge was a worsening of the 1998 injury. The ALJ denied her motion, and the Board affirmed the ALJ's holding. This appeal followed.

On a re-opening, the claimant must show that any increased disability or change of condition is the direct result of the original injury for which benefits were awarded. Sky Top Coal Co. v. Roark, 407 S.W.2d 411 (Ky. 1966). On appeal, Peggy argues that the ALJ should have given presumptive weight to the opinion of university evaluator Dr. Timothy Prince. In her original case, Dr. Prince performed an evaluation and stated that her impairment was due in part to a pre-existing dormant condition, a pars defect that was activated by the 1998 injury. Dr. Prince found the pre-existing condition dormant but activated by the work-related injury, and Peggy argues that his finding should have been given presumptive weight over the opinions of two independent medical evaluators, Dr. Wolens and Dr. Jacob.

Noting her history of motor vehicle accidents prior to the 1998 injury, Dr. Woolens said that the 1998 work injury could not be considered directly related to her current condition but that it was merely additive to the effects of other events. Dr. Jacob found no connection between the current complaint and the 1998 injury.

The claimant bears the burden of proving the elements of her case and carries the risk of non-persuasion. Snawder v. Stice, 576 S.W.2d 276 (Ky.App. 1979). Where a claimant appeals an unfavorable decision, the standard on appeal is whether the

evidence **compelled** a contrary result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky.App. 1984). In order for evidence to meet this rigid standard, it must be so overwhelming that no reasonable person could have reached the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky.App. 1985). The presence of some evidence in the record that would support a contrary conclusion is not sufficient for the claimant to prevail. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). As long as any evidence of substance supports the ALJ's opinion, it cannot be said that the evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

In the case before us, Peggy asks this Court to interpret her evidence in a manner particularly favorable to her by holding that the opinion of Dr. Prince carried presumptive weight over that of the two other examining physicians. There is no authority for such an interpretation. On a re-opening, a claimant alleging a worsening of a work-related injury must demonstrate the causal link between the current complaint and the injury for which she originally received compensation. While clearly persuasive in the original case, the medical opinion of Dr. Prince does not carry presumptive weight as to establish that future back injuries necessarily relate to the 1998 injury because of the dormant condition that became active at that time.

The evidence presented by Peggy did not persuade the ALJ that her current complaints were definitely linked to the 1998 injury. The ALJ's finding was supported by substantial evidence -- primarily the opinion of Dr. Jacob, who concluded that the injury was **not** related to the previous injury. The ALJ had the prerogative of electing to rely on that evidence. We cannot substitute our judgment for that of the ALJ. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985), Francis, supra.

The decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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