

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-001416-WC

TRACY HAYNES

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-97-65709

KROGER; HON. MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: ABRAMSON, GUIDUGLI, AND VANMETER, JUDGES.

GUIDUGLI, JUDGE: On April 17, 2005, Tracy Haynes filed an application for resolution of a knee injury she alleged occurred while she was working at Kroger on May 6, 1997. The Administrative Law Judge found that Haynes had failed to prove her present complaints in 2005 were causally related to her 1997 work injury. On motion for reconsideration, the ALJ made an additional finding that Haynes did not suffer any permanent impairment from the original injury. The Workers' Compensation

Board affirmed the ALJ, and Haynes has petitioned this Court for review. We affirm.

On May 6, 1997, Haynes was working full-time as a bank teller at First Farmers Bank and part-time at Kroger. She slipped and fell on a wet floor at Kroger and injured her knee. Haynes had two surgeries performed on her knee by Dr. David Richards. The first surgery was on July 21, 1997, to repair a torn meniscus. She underwent a second surgery on March 28, 1998, to repair a loose body in her knee that was causing her excruciating pain. Following the second surgery, she recuperated and returned to work at both jobs without restrictions. Eventually, she left her employment at Kroger (in 1998) and the bank (in 2001) and began working as a monitor technician at a regional hospital where she is still employed.

Haynes began having pain in her knee again in April 2004. She sought treatment with Dr. Billy Parsons. Dr. Parsons advised Haynes that she would eventually need a total knee replacement if it were true that previously she had had the entire meniscus removed. However, the only medical treatment Dr. Parsons provided was an injection to the knee. Following the injection, she was released and needed only to follow-up if necessary. Dr. Gary Bray performed an independent medical examination and opined that Haynes had no permanent impairment, did not need additional surgery, and that she had reached

maximum medical improvement six months after the second surgery in 1998.

Based upon the record and testimony before her, the ALJ determined that the claim was timely filed due to a tolling of the statute of limitations, but that the claim should be dismissed because Haynes had failed in her burden to show her 2004 complaints were causally related to the May 6, 1997, fall at work. Kroger sought reconsideration, asking the ALJ to make a finding that Haynes suffered no permanent impairment from the original injury. In an order entered January 17, 2006, the ALJ amended the original opinion and order to include the following finding:

I find that plaintiff did not suffer any permanent impairment from the original injury. I am persuaded by the opinion expressed by Dr. Richard[s] that plaintiff did not have any permanent restrictions nor would she have any permanent impairment at the time of his exam in 1998.

Haynes then appealed to the Board. She argued that the ALJ erred in relying on Dr. Bray's report, which she claims was based upon an inaccurate history. Haynes contends that her present knee injury and her weight gain are directly related to her initial fall and subsequent surgeries. Kroger responded and argued that the ALJ's opinion was supported by substantial evidence in the record and the evidence did not compel a finding in favor of Haynes. The Board agreed with Kroger and affirmed

the ALJ. In doing so, the Board reviewed the arguments of Haynes, the medical evidence presented, and the standard of review applicable to the appeal, and held:

On appeal, Haynes argues the ALJ erred in finding her current condition was unrelated to her work injury and in finding that she had no impairment as a result of her injury. Haynes argues the opinion of Dr. Richards does not support the ALJ's conclusions since Dr. Richards rendered his opinion at a time when Haynes had not yet reached maximum medical improvement. Further, Dr. Richards only stated that he did not anticipate restrictions or a permanent impairment. Haynes also argues the ALJ's reliance on the opinion of Dr. Bray is misplaced. Dr. Bray indicated that he did think the previous partial meniscectomy, due to the work-related injury, made Haynes knee at risk for further injury. Further, Haynes argues Dr. Bray had an inaccurate history since he stated she had "significant trauma with her second injury" and "several injuries and surgeries since." Haynes argues Dr. Bray obviously was under the impression that the need for the second surgery in 1998 was due to a separate and distinct injury that happened at home. Haynes contends the records from Dr. Richards clearly indicate that, after Haynes['] first surgery, there was a loose body in the knee and it was this loose body that caused the need for the second surgery. Dr. Richards' office note of April 2, 1998 confirmed that a loose body was found. Dr. Bray assigned a 1% impairment which was directly related to her original injury. Haynes argues that her weight gain was obviously a direct consequence of her work-related injury which necessitated surgeries. Since the weight gain is a direct and natural consequence, so would be the current condition for which another surgery had been recommended. Haynes argues there is

absolutely no evidence that her current condition is the result of anything but the work-related injury she sustained on May 6, 1997, and the surgeries required as a result.

Hayes had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky.App. 1979). Since Haynes was unsuccessful before the ALJ, her burden on appeal is to show the evidence compels a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky.App. 1984). It is not sufficient for Haynes to demonstrate that there is some evidence which could support a finding in her favor. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). In order to reverse the finding of the ALJ, it must be shown that the evidence was so overwhelming that no reasonable person could reach the same conclusions as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224, 226 (Ky.App. 1985).

The ALJ has the sole authority to determine the weight, credibility, substance and inferences to be drawn from the evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). The ALJ may believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, *supra*. To reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support her findings. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). This Board may not substitute its own judgment for that of the ALJ as to the weight of the evidence on questions of fact. KRS 342.285(2).

We believe the evidence in this claim falls short of compelling a finding that Haynes suffered impairment as a result of the 1997 injury. While Dr. Bray, who evaluated Haynes in 2005, assessed a 1% functional impairment rating as a result of having a partial meniscectomy performed and related that impairment to the original injury, the ALJ was not bound by that impairment rating. Dr. Bray's opinion seemed to indicate that an impairment rating was automatic under the AMA Guidelines. However, Dr. Richards' opinion would appear to contradict that believe. Dr. Richards, who performed both surgeries, was in a better position to judge the effect of the injury and the subsequent surgeries. He indicated no impairment was anticipated in his April 2, 1998 report. Further, there was no indication in Dr. Richards' May 5, 1998 treatment note that he had changed his view regarding the lack of impairment. Indeed, at that time, he provided Haynes with a release to return to her work at Kroger as of May 20, 1998 without restrictions. The May 5, 1998 note indicated Haynes was to return as necessary if any problems arose. By Haynes['] own testimony, no problem arose for more than five years. The ALJ could reasonably conclude that the 1997 injury produced no impairment by 1998.

From the time Haynes had recovered from her surgery until she began having problems again in 2004, Haynes had gained 60 pounds. Dr. Bray stated her current condition was based on subsequent injuries and weight gain as much as the original injury she sustained. Haynes points to no evidence relating her weight gain to the injury or the surgeries that were performed but, rather, asks the Board to assume a connection. We do not believe the evidence compelled a finding that Haynes' current

complaints were related to the original work injury.

Although Haynes raises questions about the accuracy of the history received by Dr. Bray, it is the ALJ's function to determine the sufficiency of the evidence. Certainly, if the history relied upon by the physician is sufficiently impeached by the evidence, the ALJ may reject the physician's opinion, although she is not required to do so. Osborne v. Pepsi-Cola, 816 S.W.2d 643 (Ky. 1991). Although Haynes disagrees with Dr. Bray's reference to "significant trauma with her second injury" and "several injuries and surgeries since," we do not believe those statements, if incorrect, would require the ALJ to completely reject Dr. Bray's opinions. It appears from Dr. Bray's report that what he refers to as the second injury is the incident where Haynes bent to pick up a phone at her home in 1998, which caused her to seek medical treatment for the loose body in her knee. It can be inferred from Dr. Bray's report that he believes there was some type of injury in 2004 when Haynes' previously essentially asymptomatic condition again became symptomatic. Again, we note Haynes own testimony confirms she had no need for medical treatment for a period of approximately five years. We believe the ALJ could properly rely upon Dr. Bray's report in concluding that Haynes' current complaints are not related to the 1997 work injury.

Accordingly, the decision of Hon. Marcel Smith, Administrative Law Judge is hereby **AFFIRMED** and this appeal is dismissed.

Haynes then petitioned this Court for review.

Haynes basically makes the same arguments to this Court as she did to the Board. She contends that Dr. Bray's

assignment of a 1% impairment rating as a result of the injury entitles her to an award. And she maintains that "there is absolutely no evidence that [her] current condition is the result of anything but the work-related injury she sustained on May 6, 1997 and the weight gain due to the change in her activities of daily living due to the problems with her knee." Haynes' brief, p. 4. Both parties agree that Western Baptist Hospital v. Kelly, 827 S.W.2d 685 (Ky. 1992), sets forth the well-established precedent for appellate review. In Western Baptist Hospital, the Supreme Court of Kentucky stated that "[t]he function of further review of the [Board] in the Court of Appeals is to correct the Board only where the Court perceives 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." Id. at 687-88. The Court went on to say that if the view the fact-finder took of the evidence is neither patently unreasonable nor flagrantly implausible, then the case does not merit further review. That is the situation herein.

While Haynes would like the ALJ, the Board, or this Court to agree with her interpretation of the facts and medical evidence, her interpretation is not the only conclusion that can be drawn from the evidence. To reverse a decision of the ALJ, it must be shown that there was no substantial evidence of

probative value to support her findings. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Having thoroughly reviewed the record, we agree with the Board that Haynes has failed in her burden to show that the evidence compelled a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky.App. 1984).

For the foregoing reasons, the opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE, KROGER:

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