

Commonwealth of Kentucky

Court of Appeals

NO. 2007-CA-002057-WC

PAULA COLLINGWOOD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-72785

KENTUCKY BAPTIST CONVENTION;
MARCEL SMITH, ADMINISTRATIVE LAW
JUDGE; AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: ACREE, VANMETER, AND WINE, JUDGES.

VANMETER, JUDGE: Paula Collingwood appeals a decision of the Workers' Compensation Board affirming in part and reversing in part an Administrative Law Judge's (ALJ's) decision with respect to Collingwood's injury claims. Finding no error, we affirm.

As noted by the Board in its opinion:

Collingwood suffered a work-related injury in [Kentucky Baptist Convention's] KBC's employ on September 1, 2005, when she tripped over an open lateral file drawer while carrying a 20 pound box of files into a storage room. Collingwood fell sideways onto her right hip and knee, twisting her left knee and catching herself with her right wrist. She experienced an abrasion to her right leg and a cut along her right knee cap. She immediately began to feel severe pain involving her right wrist and left knee as well. Shortly after the accident, Collingwood began to experience pain in her low back. She has not returned to work since the date of her accident.

Collingwood filed an application for benefits on March 1, 2006 alleging injuries to both knees, her right wrist, her right hip and her low back as a result of the incident. During the course of litigation before the ALJ, medical evidence was submitted from Dr. Richard A. Sweet, Dr. Richard Sheridan, Dr. Ronald C. Burgess, Dr. Eugene Jacob, Kleinert & Kutz, and Dr. Tsu-Min Tsai.

In the decision on the merits, relying on the expert medical opinion of Dr. Sheridan, the ALJ dismissed Collingwood's claim for benefits relative to her right knee, right hip and low back. Based upon the opinions of Dr. Sweet and Dr. Jacob, the ALJ determined Collingwood experienced compensable injuries to her right wrist and left knee. As a result of these injuries, the ALJ granted Collingwood an award of temporary total disability benefits from September 2, 2005 through January 10, 2006. The ALJ accepted the 2% impairment rating assessed by Dr. Sheridan relative to Collingwood's left knee, and awarded her benefits based upon a 1.3% disability rating. The ALJ however declined to enhance her award by the 3-multiplier pursuant to KRS 342.730(1)(c)1. Concerning Collingwood's entitlement to medical benefits pursuant to KRS 342.020, the ALJ ruled as follows:

The last issue for consideration are [sic]

medical benefits. KRS 342.020 KRS 342.020 [sic] requires employers to pay for the treatment, cure and relief of the effects of a work injury. Having found compensable injury only to the right wrist and left knee, I find that plaintiff is not entitled to medical benefits to any other body part. I am persuaded by Dr. Sheridan and Dr. Burgess and Dr. Sweet that no further treatment is reasonable or necessary to the right wrist or left knee.

Collingwood argues that the ALJ and the Board erred in 1) failing to apply a multiplier of three as set forth in KRS¹ 342.730(1)(c)(1) based on Collingwood's claim that she "does not retain the physical capacity to return to the type of work [she] performed at the time of injury[,]” and 2) failing either to find that her upper extremity injury was work-related, or to award continuing medical benefits therefor.²

On appeal, our standard of review of a decision of the Workers' Compensation Board "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.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). The burden of persuasion is on the claimant to prove every element of a workers' compensation claim. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky.App. 1984). When the claimant has been unsuccessful before the Board, our standard of

¹ Kentucky Revised Statutes.

² The Board reversed the ALJ with respect to Collingwood's claim for future medical benefits for injuries to her knee. KBC has not appealed that determination.

review is whether the evidence is so compelling as to require a finding in the claimant's favor. *Special Fund v. Francis*, 708 S.W.2d 641 (Ky. 1986). The ALJ, in its role as fact-finder, is free to judge the credibility of the testimony and may believe parts of the evidence and disbelieve other parts even though from that same witness or the same party's proof. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977). The ALJ is not denied the discretion to determine the credibility of witnesses and weigh the evidence merely because the evidence is uncontradicted. If such evidence is rejected, however, a reasonable explanation for the rejection of such evidence is required. *Commonwealth v. Workers' Compensation Board*, 697 S.W.2d 540 (Ky.App. 1985).

Having carefully reviewed the record in this matter, we do not find the evidence so compelling as to require a finding in Collingwood's favor on either issue. The judgment of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE
KENTUCKY BAPTIST
CONVENTION:

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