

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-001833-WC

MAGBULA PUHOVAC

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-67283

HIGHLAND CLEANERS, INC.;
WORKERS' COMPENSATION BOARD; AND
JOHN B. COLEMAN, ADMINISTRATIVE
LAW JUDGE

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, KELLER AND MOORE, JUDGES.

MOORE, JUDGE: Honorable John B. Coleman, Administrative Law Judge (ALJ), entered an Opinion and Order in favor of Appellee, Highland Cleaners, Incorporated, the employer of Appellant, Magbula Puhovac. Puhovac appealed the ALJ's Opinion to the Kentucky Workers' Compensation Board. In her appeal to the Board, she argued that the medical evidence relied upon by the ALJ was so

deficient that it failed to meet the standard of substantial evidence. The Board affirmed the opinion of the ALJ, concluding that the ALJ's evidentiary findings were not so unreasonable that they should be reversed as a matter of law.

Before this Court, Puhovac argues the Board erred in affirming the ALJ's reliance on the opinions of two doctors, Dr. Martyn Goldman and Dr. Robert Sasser. Based on their testimony and reports, the ALJ found that Puhovac had a pre-existing, active condition and as a result, sustained no recoverable injury. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND

On July 24, 2006, Puhovac filed a workers' compensation claim against Highland Cleaners. In her claim, she alleges she sustained multiple injuries, during the course and scope of her employment, on November 23, 2004, when she was struck by a company delivery van while it was backing up. At the time she was hit, Puhovac was outside at the back of Highland Cleaners smoking a cigarette while on break. The driver¹ testified that the van was moving about two to three miles per hour; that he had only let off the brakes; and that he had not touched the gas pedal. The ALJ found the driver's testimony credible, concluding that Puhovac was hit at a very low rate of speed. Puhovac's own testimony is contradictory regarding whether or not she continued to smoke her cigarette after the contact with the van. However, the impact did not knock her down; nor did the van run over her.

¹ The truck driver, Elmir Mujanovic, is Puhovac's nephew.

Puhovac alleges injuries from this accident consist of those to her head, neck, back, arm, and hip, and she claims that she suffered from dizziness and nausea. She further maintains that as a result of the accident, she no longer can work and that her life has been reduced to basically sleeping and lying in bed. She has seen multiple doctors since the incident.

Once Puhovac reported the accident, her supervisor, Wanda Wilburn, accompanied Puhovac to seek medical treatment at the First Immediate Care Center, located across the street from Highland Cleaners. Puhovac was diagnosed with acute cervical myofascial strain and right shoulder contusion by the physicians at First Immediate Care. Puhovac was then transported from First Immediate Care to the University of Louisville Hospital. She was diagnosed with cervical strain, shoulder contusion and head contusion. She was instructed to rest; use ice for pain to her shoulder; and take Motrin every six to eight hours for pain.

Approximately a week after the incident, Puhovac visited her family physician's office, where both Dr. William Sasser and Dr. Walter Dixon have treated her over the years. She was examined on this occasion by Dr. Dixon.² Puhovac informed Dr. Dixon of pain in the right side of her head, her right shoulder and her right hip. He diagnosed her with a concussion, dizziness, headaches, abdominal pain, nausea and pain in her right side, right hip and right shoulder. Dr. Dixon subsequently prescribed medication for Puhovac's pain,

² Dr. Dixon and Dr. Sasser worked out of the same office immediately following Puhovac's accident. Since that time, however, Dr. Dixon has subsequently left the practice.

referred her to a neurologist, and provided her with excuses to be absent from work.

The record includes a letter from Dr. Dixon dated November 30, 2005, regarding Puhovac's condition. He opined that as a result of the accident, Puhovac suffered a

contusion and multiple soft tissue trauma and no doubt muscular skeletal type of injury which has put an exacerbation [sic] on her back, lower back, right shoulder, and hip areas. . . . Patient also sustained a head injury and she may have even lost a block of memory as a result of that injury. . . . In my mind the patients [sic] condition definitely was exacerbation [sic] because prior to that injury she was working her regular job with minimal if any complaints. . . . Around spring of 2005 patient also developed some medical emergencies including the possibilities of a stroke and also chest pressure which necessitated evaluations. . . . Patient continues to suffer from chronic soft tissue injuries subsequent to the accident dated November 23rd, 2004.

From the citations to the record given to this Court by the parties, it is difficult to determine when Puhovac first saw a neurologist. At some point she was seen by neurologist Dr. Charles Oates. A note in the record dated October 3, 2005, by Dr. Oates stated that Puhovac would be off work for three months due to a work related injury. A second note from Dr. Oates, dated May 19, 2006, stated that

Magbula Puhovac had a severe injury after being hit by a car. She has post-concussion syndrome causing memory loss, dizziness, [sic] unsteady walking. She has multiple injured body parts. She is on multiple medications that

may cloud her memory. She will have significant problems in memorizing information for citizenship.

The administrative record contains an electrodiagnostic report from Dr. Vasudeva Iyer, dated August 3, 2005. His report included his impression as follows: “[e]ssentially normal study with normal motor and sensory conduction in the right upper and lower extremities. No denervation or myopathic changes were seen upper or lower extremity muscles.”

On January 20, 2005, Dr. Gregory B. Nazar, a neurosurgeon, after examining Puhovac, wrote a letter to Dr. Dixon regarding his evaluation of her. He reported that Puhovac’s diagnosis was consistent with soft tissue injuries in the form of a lumbar and cervical sprain/strain. He believed her best option was to continue with anti-inflammatory medications and physical therapy.

Puhovac was also seen by Dr. Jeffrey Popham, an orthopedic surgeon, beginning on July 20, 2005. According to his records, Puhovac self reported that she had no pain prior to the November 2004 accident. He treated her for cervical, thoracic and lumbar strains. Puhovac reported visual disturbances, dizziness, trouble walking, chest pain, and pain in the entire right side of her body. Dr. Popham noted that Puhovac’s left lower leg is approximately 1.25 inches shorter than the right. He prescribed Flexeril and Prednisone as needed and provided off-work slips for Puhovac from July 20, 2005 through February 1, 2006. He also referred her to see Dr. Steve Carter, a chiropractor. Dr. Popham noted that

throughout Puhovac's visits with him, he saw little improvement and there was "little [he] could do. [They] have to simply let her body heal itself."

Puhovac, while under the care of Dr. Popham, had a bone scan performed. The first two phases of the bone scan showed no abnormal activity. On the third phase a small area of mildly increased activity was seen in the area of Puhovac's right third rib, but the cause and significance were unclear.

In his opinion, Dr. Popham felt that Puhovac was at maximum medical improvement and there was nothing more he could do for her pain because there was no discrete orthopedic lesion. He referred her to Dr. Larry Peters of Pain Management.

Dr. Carter began treating Puhovac on September 20, 2005. He reported that Puhovac has a severe musculoskeletal injury due to the November 2004 accident. He also noted that she had a complicated injury due to the severity and other resulting medical illnesses.

On April 6, 2006, Dr. Christopher Nelson, by referral from Dr. Sasser, performed a pain re-evaluation on Puhovac, which included an MRI. Puhovac had seen Dr. Nelson previously on March 23, 2006, for a pain evaluation. Her diagnosis was cervical facet syndrome; cervicogenic headache; cervical degenerative disc disease; and myofascial pain syndrome.

Dr. Theodore M. Wandzilak, an ophthalmologist, also evaluated Puhovac. Puhovac complained of decreased vision since the November 2004

accident. Dr. Wanzilak noted that an MRI revealed Puhovac had a stroke, but it was not known if the stroke was before or after the accident.

Dr. John Nehil completed an independent medical examination of Puhovac on July 5, 2006. He summarized his report noting that Puhovac had a year and a half history of neck and lower back pain that developed following the work related accident. Puhovac's evaluation revealed an underlying disc disease in both the cervical and lumbar spine. He felt that the November 2004 accident brought her degenerative disc disease of the lumbar spine and cervical spine into "disabling reality." Using the 5th Edition of the AMA Guidelines, Dr. Nehil gave Puhovac a ten percent combined impairment to the body as a whole. Regarding her neck injury, Dr. Nehil felt she had a five percent impairment to the body as a whole "taken from DRE Cervical Category II." Regarding her back pain, Dr. Nehil felt Puhovac had a five percent impairment to the body as a whole taken from the DRE Lumbar Category II. He concluded that she could not perform work that would require her to stand for more than an hour at a time. She could only perform work that allows her to stand and sit on an intermittent, regular basis through the day where she would be able to change positions. Dr. Nehil advised that Puhovac should avoid any type of repetitive twisting with her neck; she should avoid repetitive bending and twisting with her lower back; and she should not lift more than fifteen pounds.

Additionally, on October 30, 2006, Puhovac submitted to examination by Dr. Goldman, an independent medical examiner. At that time, Dr. Goldman

reviewed Puhovac's medical history and records and conducted a physical examination. After a careful and thorough review of Puhovac's records and physical examination, Dr. Goldman determined that Puhovac had a pre-existing and active condition of chronic pain syndrome that affected her neck and back. Subsequently, he concluded Puhovac did not sustain an injury as a result of the November 23, 2004 incident.³ He determined that Puhovac's subjective complaints were inconsistent with his objective clinical and diagnostic findings.

Puhovac has a considerable amount of medical records from the year 2000 through the time when her claim was evaluated by the ALJ. Puhovac was involved in automobile accidents in 2001 and 2002. She had a MRI of her spine in February of 2002. It showed early degenerative disc disease at the L4-5 and L5-S1 levels. She had a very minimal annular bulging disc at L4-5 and a small right-sided disc protrusion present at L5-S1.

³ Injury is defined in K.R.S § 342.0011(1) to mean:

any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. "Injury" does not include the effects of the natural aging process, and does not include any communicable disease unless the risk of contracting the disease is increased by the nature of the employment. "Injury" when used generally, unless the context indicates otherwise, shall include an occupational disease and damage to a prosthetic appliance, but shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury[.]

Dr. B.O. Rand, saw Puhovac in 2002, after a consultation was requested by Dr. Sasser. His records include that in April of 2002, Puhovac had sustained pain in her

head, neck, mid and low back, legs bilaterally down to the ankles, and arms bilaterally from her shoulders to her hands. There is also tingling in both arms and legs to the ankles with tingling in both hands. She describes her pain as constant in her head, neck, and back. Her leg and arm pain is intermittent. She relates that her pain is severe. Her pain is worse with lying down, getting up, bending, with prolonged standing, and with urinary frequency. Nothing makes her pain better. There is tingling of both arms and legs as well as weakness in her arms and hands. She has urinary frequency, but denies any bowel dysfunction. When ambulating [sic] she notes weakness and that her legs give out on her when walking.

She has been seen by Dr. Sasser. She has been evaluated with an MRI of the neck and back on 2/22/02, and a CT scan of the rain [sic] at Louisville Imaging on 1/24/02. She has been treated with two months of physical therapy by Dr. Sasser which did not help, as well as medications which did not help.⁴

Also after her 2001 automobile accident, Puhovac was treated at the pain clinic at Norton Suburban Hospital in April of 2002. The records from the pain clinic include that Puhovac reported that her lower back pain had been increasing in severity since her 2001 accident. She reported bilateral lower extremity and hip pain with paresthesia occasionally in both thighs and some weakness of her “lower extremity” at times. She received two epidural injections at the pain clinic to relieve her pain.

⁴ A.R. at p. 171.

Puhovac's medical records before and after the 2004 incident include those of Dr. Sasser and Dr. Dixon, her family physicians. Dr. Sasser noted, both in his medical records and again at deposition, that during the time period of 2000 through late 2002, Puhovac was diagnosed and treated for chronic pain management. Dr. Sasser explained that when a patient is treated for chronic pain management, the patient's symptoms are expected to continue permanently.

Specifically, Dr. Sasser testified in his deposition as follows:

Q. Okay. What I'm trying to figure out from your point of view, Dr. Sasser, is between the period of time we've discussed, from I guess 2000 through, you know, the late 2002 and then some additional complaints in 2003 but then none until 2004, what I want to know from you is from your standpoint, do you think that prior to this incident in November of 2004 that Magbula had a chronic and active neck and low back condition that was

—

A. Sure.

Q. -- being treated by this office?

A. Oh, yes.

Q. You're pretty definite in your opinion that [sic] in that regard?

A. Yes.

Q. What -- you mentioned earlier that when you made referrals to pain management and the notes label it chronic, this is a condition in the neck and the back that you expected to continue indefinitely?

A. Yes.

Q. Did that appear to be what in fact happened?

A. Correct.

Q. Is it then accurate to say that this incident occurring November of 2004 could have served as a temporary exacerbation of that preexisting chronic, active neck and back condition?

A. Yes.⁵

⁵ A.R. at pp. 312- 313.

And, on cross examination by Puhovac's attorney, Dr. Sasser testified that

Q. . . . So, Doctor, would it be fair to say that as far as presenting problems go, the last time that she presented to you before the 11-23-04 work-related incident was 5-14-02?

A. Correct.

Q. -- for that neck and back pain?

A. Yes.

Q. Okay. So basically she didn't present for neck and back pain for it looks like about a two-and-a-half year period –

A. That's correct.

Q. --is that correct?

A. Yes.

Q.. Okay. So prior to 5-14-02 after she was presented to you on fairly regular basis –

A. Yes, sir.

Q. -- for neck and back pain? And then after –

A. I don't know where she was.

Q. Right. Then, again, after 11-4—or excuse me, 11-30-04, after that point in time she again started presenting regularly –

A. Correct.

Q. --to you for neck and back pain? So basically there was a two-and-a-half year period where she wasn't presenting to you for neck and back pain?

A. That's correct.

* * *

Q. Okay. Now, you testified earlier that it was your opinion that her condition was continuous and active?

A. Yes.

Q. Is that your opinion still despite the fact that she hadn't seen a doctor for two and a half years or hadn't presented to you for two and a half years for neck and back pain prior to her injury in this case?

A. Well, I can only tell you every time I've seen her [sic].

Q. Okay.

A. She's complained of – it may not be neck or back but it's pain somewhere.

Q. Right. But—

A. She also complains a lot of belly pain.

Q. But as far as neck and back condition, do you have any documentation that was active at the time of her –

A. No.

Q. --injury?

A. No.

Q. Okay. And you don't have any information that was active for the two years prior to that injury, do you?

A. That's correct.⁶

Highland Cleaners' attorney, on re-direct questioning, asked Dr. Sasser the following:

Q. . . . But you'll agree with me that following January of 2002 you continued to treat neck and low back pain –

A. Yes.

Q. -- for months specifically and had an MRI done and a CT scan done here in February of '02 then continuing on into April of '02. I think you're still diagnosing in the office neck pain, back pain, and chronic pain, chronic disk problems?

A. Yes.

Q. Correct? So as I understand, again when you reached the level at this office of somebody treating for a chronic problem, entering chronic pain management, do you expect that their symptoms are going to continue permanently?

A. Essentially, yeah.

Q. Because a person comes to your office and doesn't necessarily present specifically for those conditions at an office, it might be a sore throat or a burn of their thigh, does that necessarily mean that they're no longer having the neck or back problem?

⁶ A.R. at pp. 319-323.

A. No. It's just not – they didn't complain of them.⁷

In sum, Dr. Sasser described Puhovac as having a chronic and permanent pain condition prior to the November 2004 incident. He considered that this condition would continue permanently and that the incident in November 2004 may have temporarily aggravated her pre-existing chronic condition.

In her deposition testimony, Puhovac stated that she was in an automobile accident in November of 2001. She stated that her neck pain after that accident was “just short” and “after the few massage (sic), was good to me.”⁸ She testified she did not experience neck or back pain after the 2001 accident although she attended physical therapy.

Puhovac's testimony about her injuries sustained in the 2001 accident is contradicted by the medical records of the doctors who treated her at that time, including Dr. Rand and Dr. Sasser. Their records include that Puhovac reported her pain as severe and that neither physical therapy nor medication were helping her.

Puhovac also testified to the second automobile accident in September of 2002. She called receiving injections in her back after the accident from Dr. Rand. From Dr. Rand's records, these injections appeared to have been administered after the 2001 automobile accident.

⁷ A.R. at pp. 324-325.

⁸ A.R. at p. 120.

Regarding the 2004 work-related accident, Puhovac testified that she suffered injuries to her right shoulder, right side, head, eye, back and neck. She stated her condition was much better at the time of her deposition than it was at the time of her accident. At the time of her deposition, she was seeing a chiropractor twice a week, taking twelve or thirteen medications and seeing a neurologist. Dr. Sasser was her family physician at the time. Puhovac testified that she did not take any medications prior to the accident at work.

At the hearing before the ALJ in this matter, Puhovac testified that she feels pain all the time and her neck, eye, spine, low back, whole right arm and right leg hurt. She also testified that she has problems with balance and cannot sit or walk for long periods of time. Puhovac testified that she takes pain and depression medication. She testified that she cannot do anything anymore. She stated that her life is basically reduced to sleeping and lying in bed. She does drive small distances.

The ALJ included a summary of all the medical evidence in his Opinion and Order. He primarily relied on the opinion of Puhovac's family physician, Dr. Sasser and independent medical examiner, Dr. Goldman, in dismissing Puhovac's claim. The ALJ also concluded that Puhovac was hit at a very low rate of speed by the van. The Workers' Compensation Board affirmed the ALJ's Opinion, despite the fact that the Board disagreed with the reliance on Dr. Goldman's opinion. The Board nonetheless concluded that the opinion of Dr.

Sasser, Puhovac's family physician, constituted substantial evidence. We turn now to this court's standard of review.

II. STANDARD OF REVIEW

When reviewing the Board's decisions, this Court will only reverse when the Board 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*, 913 S.W.2d 797, 798 (Ky. App. 1995). To review the Board's decision properly, we must ultimately review the ALJ's underlying opinion. If the ALJ found in favor of the employee, who had the burden of proof, then we must determine whether the ALJ's findings were supported by substantial evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986); *see also Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. 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 men." *Smyzer v. B.F. Goodrich Chemical Co.* 474 S.W.2d 367, 369 (Ky. 1971) (citation omitted). In other words, substantial evidence is "evidence which would permit a fact-finder to reasonably find as it did." *Francis*, 708 S.W.2d at 643. As the finder of fact, the ALJ, not this Court nor the Board, has the sole discretion to determine the quality, character and substance of the evidence. *Whittaker v. Rowland*, 998 S.W.2d 479, 481 (Ky. 1999) (citing *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985)). 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*, 998 S.W.2d at 481 (citing *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977)).

III. ANALYSIS

The question on appeal before this Court is whether or not there was substantial evidence to support the ALJ's dismissal of Puhovac's claim. The ALJ reviewed and summarized the multitude of medical evidence in the record, which contained several contradictory medical evaluations. In his final analysis and conclusion, the ALJ referenced the medical records of Dr. Sasser and of the independent medical examiner, Dr. Goldman, when he concluded the van that struck Puhovac did not cause a harmful change in the human organism as evidenced by objective medical findings. *See* KRS 342.0011(1). Because Puhovac has the burden of proving each element of her claim to the ALJ and the ALJ found she was unsuccessful, the question before this court is whether or not the evidence compels a different conclusion. *Wolf Creek Collieries*, 673 S.W.2d at 736.

DR. GOLDMAN

The ALJ relied upon the opinion of Dr. Goldman and his determination that the incident of November 23, 2004, caused no harmful change to Puhovac's condition and did not result in any functional impairment of her. Citing *Cepero v. Fabricated Metals Corp.*, 132 S.W.3d 839, 842 (Ky. 2004), Puhovac argues that the ALJ's reliance on Dr. Goldman's conclusions cannot

constitute substantial evidence because Dr. Goldman's opinion was based on a substantially inaccurate medical history.

To make her point, Puhovac specifically references a medical record from Dr. Sasser upon which Dr. Goldman relied. This particular medical record had a handwritten date of March 24, 2006, which upon review could easily be mistaken for March 24, 2004. The parties later agreed, during the course of Dr. Sasser's deposition, that the date was, in fact, March 24, 2006. However, Dr. Goldman's review of the records evidences he believed the date read March 24, 2004, which was inaccurate. Specifically, in Dr. Goldman's report, he notes a medical record with a date of "3/24/2004" where Puhovac complained of neck and shoulder pain and an MRI of the cervical spine was ordered. In his report, Dr. Goldman wrote "Answers to Specific Questions" as follows:

Q: "In your opinion, are the symptoms Puhovac complains of presently in her neck and low back more accurately caused exacerbations of a pre-existing condition, given her prior treatment and prior motor vehicle accident to the same areas?"

A: It is my opinion that her current symptomatology is due to the normal aging changes in her cervical and lumbar spine, which were symptomatic prior to this injury of 11/23/04, for a period of some four years, from September 2000 through at least March 2004."

Accordingly, Dr. Goldman's reference to a March 2004 medical record is inaccurate, making it appear as though Puhovac was actively in treatment for back pain from September 2000 through March 2004. The deposition

testimony of Dr. Sasser, however, clarified that the date of the record was actually March of 2006. And, this clarification was noted and apparently taken into consideration by the ALJ in his Opinion and Order.⁹

Despite the inaccurate date of the medical record as reported by Dr. Goldman, his ultimate determination that Puhovac had a prior existing condition is nonetheless supported by other evidence in the record, including the records and deposition of Dr. Sasser. Medical evidence illustrates that Puhovac suffered from chronic pain and sought treatment for chronic pain management prior to the date of the incident. Even though Dr. Sasser did not specifically treat Puhovac for neck or back pain for a period of two and one-half years before the 2004 incident, he testified that Puhovac had been previously diagnosed with chronic pain and he expected that this was a permanent diagnosis. He also testified that every time he saw her, including the two and one-half years before the 2004 incident, she always complained of pain somewhere. Dr. Sasser's testimony is highly relevant, given that the medical records from Puhovac's other treating physicians for the 2004 incident do not indicate that they had treated her before then nor that they were aware of her prior diagnosis of a chronic pain condition.

Dr. Goldman performed a thorough evaluation of Puhovac's medical records from the year 2000 through the time he conducted his own physical examination. Despite the discrepancy with the evaluation dated March 24, 2006, looking at the objective medical and clinical evidence of his own physical

⁹ A.R. at p. 609.

evaluation, he concluded that Puhovac's subjective complaints did not align with the objective medical evidence in her case. Accordingly, notwithstanding the inaccurate medical record citation, Dr. Goldman believed Puhovac's subjective complaints were inconsistent with the objective medical evidence presented.

Specifically, he concluded as follows:

Q: In your opinion, are Ms. Puhovac's subjective complaints consistent with your objective clinical and/or diagnostic findings?

A: No.

The question before us is in light of the inadequate medical record relied on partly by Dr. Goldman and in light of Dr. Sasser's records, does substantial evidence exist to support the ALJ's decision? Substantial evidence is defined as "evidence which would permit a fact-finder to reasonably find as it did." *Francis*, 708 S.W.2d at 643. As the fact-finder, the ALJ has the sole discretion to determine the quality, character and substance of the evidence. *Whittaker*, 998 S.W.2d at 481.

The ALJ, as the fact-finder, has discretion to pick and choose which evidence he deems credible to rely upon. *Whittaker*, 998 S.W.2d at 481. In this instance, given Dr. Goldman's independent examination and ultimate opinion that Puhovac's subjective complaints were inconsistent with medical evidence, we cannot say that the ALJ's reliance upon Dr. Goldman's opinion is unreasonable. This is especially so wherein Dr. Sasser's medical records and testimony support

that Puhovac had a pre-existing condition of chronic pain and always complained of pain somewhere in her body every time he saw her.

The ALJ determined that Dr. Sasser's opinion that Puhovac's chronic pain condition in her neck, shoulders, back and head were pre existing and active prior to the November 23, 2004 incident, to be credible. As both a treating physician and a family physician who had seen Puhovac over a number of years, Dr. Sasser's opinion and testimony provides a foundation of substantial evidence to support the ALJ's decision. This is especially so given that Dr. Sasser saw Puhovac for diagnosis and treatment within a week of the incident.

Because Dr. Sasser was a treating physician and also a family physician of Puhovac, it is easy to comprehend the reason for the ALJ's reliance upon his records and testimony more so than other physicians who have treated Puhovac only occasionally at best. Thus, we cannot say the ALJ's reliance upon the records and testimony of Dr. Sasser is unreasonable.

Moreover, much of Puhovac's testimony concerning her prior automobile accidents and resultant medical treatment was inconsistent with the medical records submitted for the ALJ's review. Additionally, the ALJ determined that Puhovac was hit by the van at a very low rate of speed, certainly indicating that he did not believe the evidence supported a finding that the incident could have caused the severe injuries of which Puhovac complained.

The record contains contradictory evidence as to the extent and severity of Puhovac's injuries as a result of being stricken by the van. Given that

the ALJ is the finder of fact, so long as his interpretation of the evidence is reasonable, his findings cannot be disturbed on appeal. Accordingly, because Dr. Sasser and Dr. Goldman's medical reports and testimony provide a reasonable foundation for the decision of the ALJ, we will not disturb his conclusions on appeal. Thus, we affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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