

RENDERED: JULY 11, 2008; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-000120-WC

MEDICAL CENTER HOSPITAL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-03-69600

CHERYL KING; HON. LAWRENCE
F. SMITH, ADMINISTRATIVE LAW
JUDGE; AND THE WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * **

BEFORE: CLAYTON, NICKELL, AND TAYLOR, JUDGES.

TAYLOR, JUDGE: Medical Center Hospital (Hospital) petitions this Court to
review an opinion of the Workers' Compensation Board (Board) entered

December 18, 2007, affirming the Administrative Law Judge's (ALJ) decision that

Cheryl King suffered a 15% psychological impairment and 13% physical impairment as a result of a work-related injury. We affirm.

King was employed as a nurse for the Hospital. While attempting to give medication to an uncooperative patient, King sustained a back injury. Subsequently, King filed a claim for workers' compensation benefits. Therein, she claimed to have suffered a work-related back injury and a "psychological injury." Following a hearing, the ALJ awarded King permanent partial disability benefits based upon a 15% psychological impairment and a 13% physical impairment. The Hospital then sought review with the Board. The Hospital challenged the ALJ's assessment of a 15% psychological impairment rating. By opinion entered December 18, 2007, the Board affirmed the ALJ's award as to the psychological impairment rating. Our review follows.

The Hospital contends that the Board erred by affirming the ALJ's psychological impairment rating. In particular, the Hospital argues that the ALJ's psychological impairment rating of 15% was not supported by substantial evidence of a probative value. In determining the psychological impairment rating, the Hospital maintains that the ALJ erroneously relied upon King's medical expert, Dr. Brian Monsma, who was a clinical psychologist. Although Dr. Monsma assessed a 15% psychological impairment, the Hospital believes that his opinion is flawed because the doctor stated that he relied upon either the 14th or 15th edition of the American Medical Association (AMA) Guides in determining King's impairment. The Hospital points out that there is no 14th or 15th edition of the AMA Guides; the

latest edition of the AMA Guides was the 5th edition. Moreover, the Hospital maintains that Dr. Monsma's opinion is flawed because there is no testimony that he additionally utilized the 2nd edition of the AMA Guides which is also necessary to assess a psychological impairment.

It is well-established that the ALJ as fact-finder has sole authority to determine the weight, quality, and substance of evidence. *Carnes v. Parton Bros. Contracting, Inc.*, 171 S.W.3d 60 (Ky.App. 2005). As such, the ALJ may draw reasonable inferences from the evidence and may believe some evidence and disbelieve other evidence. *Id.* Moreover, it is the role of the ALJ to translate the medical and lay evidence into a finding of occupational disability. *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000).

In reaching the finding of 15% psychological impairment, the ALJ specifically found:

This Administrative Law Judge is impressed with the work history [King] presents. She has been able to overcome tremendous obstacles while working in several professions including underground coal mining and as a registered nurse. . . .

. . . .

[King] also argues a psychological overlay relying upon the conclusions of Dr. Monsma. He assesses a 15% psychological impairment. Dr. [David] Shraberg, on behalf of the [Hospital], assesses 0% impairment. I am more persuaded by the opinions of Dr. Monsma. Although he could not recite the correct version of the AMA Guides during his deposition testimony, I find his testimony more credible on the issue of whether he used the latest of the AMA Guides and arriving at his

impairment assessment. In addition, my observation of [King's] demeanor, candor and history is consistent with the opinions of Dr. Monsma. [King] has had a lifelong history of accomplishments far beyond the normal and are a direct result of an amazing work ethic. Because of that, I find convincing [King's] evidence relating to how this injury has affected her psychologically.

Accordingly, I find that [King] has a 15% psychological impairment, in addition, to her physical impairment. I also find from the evidence presented that [King's] impairment is a result of her work injury of October 13, 2003, and not CMT [Charcot Marie Tooth] condition for which she has also been diagnosed.

Upon the above findings of fact, it is clear that the ALJ found the medical opinion of Dr. Monsma persuasive and ruled accordingly. As to whether Dr. Monsma utilized the latest AMA Guides, the ALJ specifically found that Dr. Monsma's "testimony [was] more credible on the issue of whether he used the latest of the AMA Guides." Moreover, in the order denying the Hospital's petition for reconsideration, the ALJ, in particular, found:

When questioned as to what Edition was the latest edition [Dr. Monsma] gave an incorrect answer. In my opinion, order and award, I found that, although he could not recite the correct version of the AMA Guides during his deposition testimony, I was persuaded by his testimony that he did, in fact, use the latest version of the Guides. I have reviewed the evidence again and continue in that persuasion.

Once again, the ALJ plainly reiterated that he was "persuaded" that Dr. Monsma utilized the latest edition of the AMA Guides when assessing King's psychological impairment. Although Dr. Monsma incorrectly stated that he used the 14th or 15th version of the AMA Guides, he also specifically testified that he

used the latest edition of the AMA Guides. Given Dr. Monsma's specific testimony that he used the latest edition of the AMA Guides, we believe the ALJ's finding that Dr. Monsma utilized the latest version of the AMA Guides to be supported by substantial evidence of a probative value. Simply stated, the ALJ chose to believe part of Dr. Monsma's testimony and chose to disbelieve other parts of his testimony. Such discretion is clearly within the province of the ALJ as fact-finder. *See Hamilton*, 34 S.W.3d 48. And, upon review of the record as a whole, we are of the opinion that substantial evidence of a probative value supports the ALJ's finding that King suffered a 15% work-related psychological impairment. Accordingly, we conclude that the Board properly affirmed the ALJ's award.

For the foregoing reasons, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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