

Commonwealth of Kentucky
Court of Appeals

NO. 2008-CA-0067-WC

LAURA YOUNG

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-01-70406

MOUNTAIN WATER DISTRICT,
HON. JOHN W. THACKER, ADMINISTRATIVE
LAW JUDGE, AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: COMBS, CHIEF JUDGE; NICKELL, JUDGE; GRAVES,¹ SENIOR
JUDGE.

GRAVES, SENIOR JUDGE: Laura Young appeals from a decision of the
Workers' Compensation Board affirming an award of benefits for a fifteen-percent

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

permanent partial disability resulting from carpal tunnel syndrome and a resulting psychiatric ailment. We affirm.

Young worked for Mountain Water District for fifteen years. Her most recent position was that of a billing clerk supervisor. In August 2001, Young sustained an injury that included pain in her upper right extremity. She underwent several surgeries. Dr. Ronald Burgess performed a tenosynovectomy on March 23, 2002. Next, Dr. Falvetto performed surgery for right carpal tunnel syndrome on March 12, 2003. Dr. Erdogan Atasoy performed further wrist surgery and removed one of her ribs to relieve pressure on her thoracic nerve. Young also received treatment for anxiety and depression. Young testified that none of the treatments had improved her condition. From November 12, 2001, through July 12, 2005, Mountain Water District paid temporary disability benefits in the amount of \$71,166.64. Mountain Water District has also paid medical expenses on behalf of Young in the amount of \$44,053.05.

Young filed a claim against Mountain Water District on January 12, 2006. The administrative law judge (ALJ) held a hearing on January 25, 2007. The ALJ heard the testimony of Young and Dr. Atasoy. Several other physicians who performed independent evaluations of Young also testified. The ALJ made extensive findings and concluded that Young had a fifteen-percent permanent partial disability as a result of carpal tunnel syndrome in the right upper extremity and psychiatric condition. The ALJ also found that Young did not sustain any

injury to her left side from carpal tunnel syndrome nor did she sustain any work-related injuries to her right shoulder from thoracic outlet compression. Young was entitled to temporary total disability from October 7, 2001, through April 25, 2005. The Workers' Compensation Board affirmed the ALJ's findings in a twenty-nine page opinion. This appeal followed.

This Court is bound by a strict standard of review in workers' compensation cases. The ALJ, in his role as fact-finder, has the sole authority to determine the credibility of witnesses and the weight of the evidence. *Miller v. East Kentucky Beverage/PepsiCo, Inc.*, 951 S.W.2d 329 (Ky. 1997). The ALJ is entitled to believe or disbelieve various parts of the evidence regardless of whether it comes from the same witness or the same party's total proof. *Magic Coal v. Fox*, 19 S.W.3d 88 (Ky. 2000). The Board is prohibited from substituting its own judgment for the ALJ's as to the weight of the evidence and questions of fact. KRS 342.285(2). In order to reverse a determination of the Board that is unfavorable to the claimant, the claimant must demonstrate that the evidence compelled a finding in his favor. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986).

Young points to her own testimony and that of Dr. Atasoy to establish compelling evidence of injuries to her left upper extremities, left carpal tunnel syndrome, and right shoulder thoracic outlet compression syndrome. However, she ignores the conflicting testimony of Dr. Michael Moskal and Dr. Gregory

Smith, which the ALJ found to be the most credible. Young is essentially asking this Court to reweigh the evidence. This we cannot do.

Young also argues that Mountain should have borne the responsibility for the mismanagement of her medical treatment and unnecessary procedures. This argument was not presented to the ALJ or to the Board. It has been raised for the first time on appeal. Therefore, this Court cannot consider it.

Accordingly, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Earl Hunt
Stanville, Kentucky

BRIEF FOR APPELLEE:

Walter W. Turner
Lexington, Kentucky