

RENDERED: APRIL 8, 2011; 10:00 A.M.  
NOT TO BE PUBLISHED

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2010-CA-000751-WC

EVA HALL.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-07-87637

CINTAS CORPORATION; HON. GRANT S.  
ROARK, ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION  
BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: NICKELL AND THOMPSON, JUDGES; SHAKE,<sup>1</sup> SENIOR JUDGE.

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<sup>1</sup> Senior Judge Ann O'Malley Shake sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

SHAKE, SENIOR JUDGE: Eva Hall appeals from the March 22, 2010, opinion of the Kentucky Workers' Compensation Board ("Board"). That order affirmed the October 9, 2009, opinion, order, and award of Administrative Law Judge ("ALJ") Grant S. Roark, which found that Hall's lumbar back injury was work related and granted her an award of temporary total disability and permanent partial disability. Hall's appeal pertains to injuries that were found to be not work related, as well as the percentage of functional impairment that was assigned to her lumbar back injury. Because we hold that the Board was correct in finding that the ALJ's decision was supported by substantial evidence, we affirm.

Hall was employed by Cintas Corporation when, on May 17, 2007, she suffered an injury while lifting a box. As a result of her injury, Hall sought workers' compensation benefits, claiming that she suffered a cervical back injury, a lumbar back injury, and psychological problems. The medical evidence presented to the ALJ included testimony and medical records from various sources, including Dr. Robert Lowe,<sup>2</sup> Dr. James C. Powell, Dr. Timothy S. Allen, Dr. James McGinnis, Dr. Martin Staker, Dr. Eugene DeGiorgio, Valley Health, and Dr. Eric Johnson. After reviewing the evidence, the ALJ concluded that Hall's psychological and cervical back conditions were not work related. The ALJ also concluded that Hall sustained a 3% lumbar back impairment due to the work

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<sup>2</sup> As part of his examination of Hall, Dr. Lowe reviewed medical records from Dr. Martin Staker, Dr. James S. Powell, Dr. Kimberly Martin, Dr. Gail Feinburg, Dr. Thomas Long, King's Daughters' Medical Center, and Dr. Eugene DeGiorgio.

injury, which was compensable. The ALJ then awarded Hall temporary total disability and permanent partial disability.

Hall subsequently appealed the ALJ's opinion, order, and award, and argued that the ALJ erred in finding her cervical injury and psychiatric impairment to not be work related. Hall also argued that the ALJ erred in calculating the percentage of functional impairment for her lumbar injury. The Board affirmed the judgment of the ALJ and this petition for review followed.

An ALJ's decision is "conclusive and binding as to all questions of fact" and the Board "shall not substitute its judgment for that of the [ALJ] as to the weight of evidence on questions of fact." Kentucky Revised Statutes (KRS) 342.285. The review by the Court of Appeals is limited to that of the Board and also to errors of law arising before the Board. *Whittaker v. Rowland*, 998 S.W.2d 479, 481 (Ky. 1999); KRS 342.290. Hence, our review "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).

On appeal to this Court, Hall argues that the Board committed the following three errors: affirming the ALJ's finding that the cervical back injury is not work related; affirming the ALJ's finding that the psychiatric impairment is not work related; and affirming the ALJ's finding of the percentage of functional impairment attributable to the lumbar back injury. In support of her arguments,

Hall maintains that the ALJ misinterpreted the testimonies of Drs. Powell and Lowe, that Dr. Allen's opinion should have been given less weight than Dr. Johnson's, and that the testimonies of Drs. Lowe and Powell indicate that Dr. Allen's opinion is incorrect. In essence, Hall is challenging the ALJ's interpretation of, and reliance on, certain evidence. Due to the nature of Hall's argument, we do not believe it is necessary to include a comprehensive rehash of the evidence presented to the ALJ.

As the fact-finder, the ALJ has the sole authority to determine the weight, credibility, substance and inferences to be drawn from the evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993); *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). The ALJ also has the sole authority to judge the weight to be afforded to the testimony of a particular witness. *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46, 47 (Ky. 1974). When conflicting evidence is presented, the ALJ may choose whom or what to believe. *Pruitt v. Bugg Bros.*, 547 S.W.2d 123, 125 (Ky. 1977). Furthermore, the ALJ may reject any testimony and 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, 96 (Ky. 2000).

In support of his decision, ALJ Roark's final judgment stated, in relevant part:

Having reviewed the evidence of record, the Administrative Law Judge is ultimately most persuaded by the opinions of Dr. Powell that plaintiff's cervical

condition is not work related. Similarly, Dr. Allen's opinion regarding her psychological claim is found most persuasive, given plaintiff's long history of significant prior psychological problems and treatment. Although plaintiff argues Dr. Allen erroneously concluded none of her current psychological condition is due to the effects of her lower back injury, the Administrative Law Judge is not so persuaded. Dr. Allen credibly opined that the neck condition was the more serious condition and is in keeping with plaintiff's reports to Dr. Powell that her low back condition had fairly resolved. For these reasons, it is determined that plaintiff's psychological and cervical conditions are not work related and must therefore be dismissed.

Hall essentially argues to this Court that certain testimonies should be accepted as more reliable and/or given more credibility than others. However, mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. *Whittaker*, 998 S.W.2d at 482. The function of both the Board and this Court in reviewing the ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. *Ira A. Watson Dep't Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000). We hold that they are not. The record reveals that Dr. Powell clearly indicated, through letters and his deposition, that Hall's cervical back injury was not work related. Further, based on various factors,<sup>3</sup> Dr. Allen indicated that he did not believe Hall's psychological issues to be work related. The record also indicates that Dr. Lowe assigned a 5% impairment rating to Hall and further opined that half of the impairment was attributable to an active preexisting

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<sup>3</sup> The reasoning behind Dr. Allen's inferences can be found in the record, the ALJ's judgment, and the order of the Board. We do not find it necessary to repeat them herein.

condition, thus assigning her a 2.5%, rounded up to 3%, impairment attributable to the work injury. This Court, as an appellate tribunal, may not assume the ALJ's role as fact-finder by applying its own assessments of weight and credibility, or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Although Hall may point to evidence which could support a different outcome, the record contains substantial evidence to support the judgment of the ALJ, and we are, thus, without authority to disturb his decision.

For the foregoing reasons, the March 22, 2010, order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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