

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-002100-WC

AISIN AUTOMOTIVE CASTING, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-10-01328

BEVERLY DISNEY;
HON. LAWRENCE SMITH,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: LAMBERT, THOMPSON AND VANMETER, JUDGES.

THOMPSON, JUDGE: Aisin Automotive Casting, Inc. appeals an opinion of the
Workers' Compensation Board (Board) entered August 17, 2007, affirming a

decision of the Administrative Law Judge (ALJ) awarding workers' compensation benefits to Beverly Disney. For the reasons stated herein, we affirm.

In September 1998, Disney began working for Aisin. For several years, she worked at quality control where she inspected parts. Disney's work responsibilities required her to inspect at least 400 parts every eight-hour shift with the parts weighing between ten to fifteen pounds. Based on Disney's testimony, she sought treatment from Dr. Hays, her primary care physician, for numbness in her hands in January 2008. After a series of referrals, Disney had an operation on her right wrist to eliminate the numbness in her hand.-

The administrative record contains medical evidence from Dr. Brooks who performed the right carpal tunnel release on Disney's wrist. In a note from March 4, 2010, Dr. Brooks wrote that Disney complained of numbness, tingling, and pain in her right hand which caused her to experience difficulties at work. Dr. Brooks diagnosed Disney with carpal tunnel syndrome, which was worse on her right wrist and hand than her left. Dr. Brooks further opined that Disney's condition was work-related due to repetitive nature of her work responsibilities.

The administrative record further contains medical evidence from Dr. Twyman. Dr. Twyman noted that Disney had received treatment from a doctor for neck pain and paresthesia in her hand in 2002. Dr. Twyman stated that Disney was diagnosed with carpal tunnel syndrome in 2002, which apparently was not told to Disney according to Dr. Hays. When Disney complained of moderate arm, bilateral neck, and hand pain, Dr. Twyman opined that Disney's work aggravated

her carpal tunnel syndrome. Dr. Twyman further opined that Disney's condition was caused by her employment.

Additionally, Dr. Jackson's medical records and deposition testimony were entered into the record. Dr. Jackson testified that Disney suffered from chronic right upper extremity pain and numbness, bilateral carpal tunnel syndrome, cervical disc disease, and a history of carpal tunnel release. Dr. Jackson assessed an eighteen percent impairment rating, pursuant to the American Medical Association Guides, as a result of her work-related condition. Although admitting that he did not initially have access to all of Disney's relevant medical records, Dr. Jackson stated that a subsequent review of Disney's older records did not alter his prior opinion. Specifically, he disagreed with Dr. Zerga's opinion that fifty percent of Disney's condition resulted from her work and the other half was not work-related.

Dr. Hays, Disney's primary care physician, testified that Disney complained of hand and wrist problems before 2002, but he stated that he did not inform Disney that she might be suffering from carpal tunnel syndrome. Dr. Hays opined that Disney's diabetes was not a factor in her hand and wrist problems. He further opined that Disney's carpal tunnel syndrome was a work-related condition.

Dr. Zerga, a neurologist, evaluated Disney on January 31, 2011. He diagnosed Disney with cervical spondylosis with a history of back pain aggravated by two motor vehicle accidents, osteoarthritis, and carpal tunnel syndrome. Dr. Zerga noted that Disney obtained a good result from the carpal tunnel release

surgery, but that her prognosis was not good. He opined that she had a six percent impairment, which entailed a three percent impairment to each wrist. Dr. Zerga opined that fifty percent of Disney's impairment was caused by diabetes and her two car accidents and fifty percent was work-related.

At the conclusion of the hearing, the ALJ wrote, in pertinent part, the following:

Although I note that Dr. Zerga concluded that the plaintiff had an active preexisting condition, I am more persuaded by the opinion of Drs. Twyman, Brooks and Jackson who all agree that the repetitive activities she performed at her job caused the plaintiff's condition. Accordingly, I find that the plaintiff's bilateral carpal tunnel was caused by her work activities and therefore constitutes an injury as defined by the Act.

On appeal, the Board affirmed the decision of the ALJ. This appeal follows.

Aisin contends that the ALJ's assessment of an eighteen percent impairment rating was not supported by substantial evidence. It argues that the ALJ's reliance on Dr. Jackson's eighteen percent impairment rating was erroneous, because Dr. Jackson repudiated his rating opinion by admitting that he used inadequate records. It further cites Dr. Jackson's testimony that a portion of Disney's carpal tunnel syndrome pre-existed her carpal tunnel syndrome diagnosed in 2010 due to the detection of the syndrome on a nerve conduction study years before 2010. Therefore, Aisin argues that Disney's impairment must be caused in part by pre-existing conditions and factors unrelated to her employment. We disagree.

The function of appellate review is to correct the Board only where 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 ALJ, as the finder of fact, has the authority to decide the quality, character, and substance of the evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993). When “the ALJ finds in favor of the party with the burden of proof, the standard for review of the finding is whether it is supported in the record by any evidence of substance and, therefore, is reasonable.” *Staples, Inc. v. Konvelski*, 56 S.W.3d 412, 416 (Ky. 2001); *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986).

While Dr. Jackson testified that an older medical record indicated that Disney suffered carpal tunnel possibly from a non-work related source, he further testified that it would not have likely been caused by diabetes and car accidents. This testimony refutes the testimony of Dr. Zerga that fifty percent of Disney’s impairment was caused by diabetes and car accidents. Additionally, Drs. Twyman’s and Hays’s opinions were that Disney’s carpal tunnel syndrome was caused by her work which required repetitive hand movement.

Based on the evidence in the record, the ALJ’s finding that Disney’s carpal tunnel syndrome was work-related was supported by substantial evidence. Although Aisin focuses on Dr. Zerga’s testimony and a highly selective statement from Dr. Jackson, there was considerable evidence supporting the finding that Disney’s impairment was caused by her work, not diabetes and car accidents.

Because an ALJ may reject any testimony and believe or disbelieve various parts of the evidence even from the same witness, the ALJ's finding of facts was not erroneous. *Abel Verdon Const. v. Rivera*, 348 S.W.3d 749, 753-54 (Ky. 2011).

Aisin argues that the ALJ erred by ruling that Disney gave Aisin notice of her injury within the two-year statute of limitations in KRS 342.185(1). It contends that Disney knew or should have known of her work-related carpal tunnel syndrome as early as January 15, 2008, and, consequently, her claim expired on January 15, 2010. Noting that Disney filed her claim on October 29, 2010, Aisin argues that the ALJ's ruling that Disney's claim was timely filed was incorrect.

Under KRS 342.185(1), a workers' compensation claim generally must be filed within two years of an accident or injury to be compensable. *Butler's Fleet Service v. Martin*, 173 S.W.3d 628, 633 (Ky.App. 2005). When an employee has a gradual injury that is not immediately discovered, the workers' compensation statute of limitations starts to run at the time that the employee becomes aware of the existence of a disabling condition and the fact that it was caused by work. *Special Fund v. Clark*, 998 S.W.2d 487, 489-90 (Ky. 1999).

Despite Aisin's contention that Disney knew or should have known of her work-related impairment, the ALJ was presented with substantial evidence that Disney was not aware that she suffered from work-related carpal tunnel syndrome until she received Dr. Twyman's letter dated August 27, 2010. While Disney was aware of pain in her wrists and hands before January 15, 2008, no physician

informed her that she suffered from carpal tunnel syndrome due to her employment until 2010. When there is no indication that a claimant was ever informed by a physician of a work-related gradual injury, a claimant cannot be deemed aware of her injury. *Hill v. Sextet Min. Corp.*, 65 S.W.3d 503, 507 (Ky. 2001). Under the circumstances of this case, “we are not persuaded that the claimant was required to self-diagnose...” her wrist and hand condition and the cause of the condition. *Id.*

Accordingly, Disney became aware of her work-related injury on or about August 27, 2010, and filed her claim on October 29, 2010, well within the applicable two-year statute of limitations period in KRS 342.185(1). Therefore, the ALJ did not error when it ruled that Disney’s claim was timely filed.

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

ALL CONCUR.

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