

RENDERED: OCTOBER 26, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-002155-WC

CENTRAL BAPTIST HOSPITAL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-09-79544

THERESA HAYES,
HON. CHRIS DAVIS, ADMINISTRATIVE
LAW JUDGE, and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: LAMBERT, THOMPSON, AND VANMETER, JUDGES.

LAMBERT, JUDGE: Appellant, Central Baptist Hospital, appeals from a decision of the Workers' Compensation Board affirming the award of permanent disability benefits to Appellee, Theresa Hayes. Central Baptist argues that: (1) the Board

erred by holding that application of certain provisions of the American Medical Association (AMA) *Guides to the Evaluation of Permanent Impairment* required medical expertise; and (2) the award of benefits was not based upon an impairment rating authorized by the *Guides*. We affirm.

Hayes is employed as a nurse's assistant in surgery at Central Baptist. Her duties included transporting patients to surgery, preparing the operating room for surgery, and stocking surgical supplies. On August 19, 2009, Hayes tripped over IV poles and fell injuring her left knee. She was initially treated at the emergency room at Central Baptist and then underwent physical therapy at Baptist Worx. Hayes was subsequently treated by Dr. Paul J. Nicholls, who performed arthroscopic surgery on her knee. Hayes continued to have some pain in her knee following the surgery and received intermittent injections to her knee, which provided some relief. Dr. Nicholls also prescribed a knee brace. Hayes returned to work at Central Baptist and continues to work at a higher wage than at the time of injury. Following the filing of the workers' compensation claim, Dr. Daniel Wolens performed a medical records review and Dr. Daniel D. Primm, Jr. performed an independent medical examination. The Administrative Law Judge (ALJ) awarded Hayes benefits based upon a 10% impairment rating in an order entered on July 1, 2011. The impairment rating was based upon Dr. Nicholls's assessment of a 7% impairment under Table 17-5 combined with a 3% impairment under Table 17-31 of the *Guides*. Central Baptist filed a petition for reconsideration arguing that the *Guides* expressly prohibited the combination of an

impairment rating under Table 17-5 with any other impairment rating. The ALJ denied the petition for reconsideration. Upon appeal, the Board affirmed the award. This appeal followed.

Central Baptist argues that the Board erred by holding that the issue of whether the combined impairment rating was appropriate was a medical question solely within the province of medical experts. This, Central Baptist contends, resulted in an impairment rating which was not authorized by the *Guides*.

When the claimant was successful before the ALJ, the question before the Board on appeal was whether substantial evidence supported the ALJ's decision. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky.App. 1984). When this Court reviews the Board's decision, our function is to correct the Board only where we believe it 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).

In order to determine permanent partial disability benefits, the ALJ must find a permanent impairment rating as calculated by the latest available edition of the *Guides*. KRS 342.0011(36) & (37); KRS 342.730(1)(b); *Knott County Nursing Home v. Wallen*, 74 S.W.3d 706, 710 (Ky. 2002). The proper interpretation of the *Guides* and any assessment of an impairment rating in accordance with the *Guides* are medical questions reserved only to medical witnesses. *Ky. River Enters., Inc. v. Elkins*, 107 S.W.3d 206, 210 (Ky. 2003).

There is no requirement that an ALJ must necessarily accept an assessed impairment rating as true. *Greene v. Paschall Truck Lines*, 239 S.W.3d 94, 109 (Ky.App. 2007). “An impairment rating is but one piece of the total evidence that the ALJ, as fact-finder, must evaluate for ‘quality, character, and substance’ and, in the exercise of his discretion, either accept or reject.” *Id.* When medical experts offer differing opinions on such issues as an injured worker's impairment rating and/or the proper application of the *Guides*, it is the ALJ's function to weigh the conflicting evidence and to decide which is more persuasive. See *Brown–Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004); *Greene*, 239 S.W.3d at 109. Ultimately, the ALJ retains broad discretion “to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party's total proof.” *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

Central Baptist cites *Caldwell Tanks v. Roark*, 104 S.W.3d 753 (Ky. 2003) in support of its proposition that no medical expertise was necessary to determine that the combined impairment rating was not authorized by the *Guides*. In *Caldwell Tanks*, however, the Supreme Court held that an ALJ is authorized to read the table that converts a binaural hearing impairment into an AMA whole-person impairment if a medical expert fails to do so. *Id.* at 757. The Court's rationale in that case was that a medical expert had already determined the hearing impairment, the evidence was unrefuted, and reading the table that converted it into an AMA impairment required no medical expertise. *Id.*

Under the authority cited above, we hold that the ALJ was permitted to accept the impairment rating in the case at bar, as assessed by Dr. Nicholls as a medical expert, and was not required to look behind the rating to independently assess the appropriateness of the rating under the *Guides*. The medical experts in the case presented conflicting evidence and the ALJ has the sole authority to determine the weight and credibility of the evidence. Further, we hold that the Board properly applied the controlling law and that there was no error in assessing the evidence so flagrant as to constitute gross injustice.

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

ALL CONCUR.

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