

Commonwealth of Kentucky
Court of Appeals

NO. 2011-CA-002270-WC

AGC AUTOMOTIVE AMERICAS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-10-01388

RUTH WOLFE; HON. JOSEPH W.
JUSTICE, ADMINISTRATIVE LAW
JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: ACREE, CHIEF JUDGE; CLAYTON AND DIXON, JUDGES.

ACREE, CHIEF JUDGE: An Administrative Law Judge dismissed Ruth Wolfe's
Workers' Compensation claims based on an alleged injury to her left wrist, but the
Workers' Compensation Board partially vacated the ALJ's order and remanded for

additional findings. AGC Automotive Americas, Wolfe's employer, has appealed, asserting that the bases upon which the Board reversed were not properly preserved and that the ALJ's findings were supported by the evidence. We disagree and affirm.

I. Facts and procedure

Over her Thanksgiving vacation in 2009, Wolfe went to the emergency room seeking treatment for tingling and numbness in her left hand and mild chest pain. She reported the numbness in her hand had been ongoing for some time and became worse at night. It was eventually determined Wolfe suffered from carpal tunnel syndrome, and she underwent surgery to alleviate her symptoms. This injury eventually formed the basis of Wolfe's Workers' Compensation claim which is now at issue.¹

Two of the issues disputed before the ALJ were whether Wolfe had provided her employer timely notice of her injury and whether her injury had a work-related origin or was attributable to some other cause.² Wolfe claimed she had alerted her supervisor of her emergency room visit and wrist injury upon returning to work from the Thanksgiving holiday, but the employer's witnesses disputed that account. Also, while Wolfe claimed her treating physicians had diagnosed her carpal tunnel syndrome as work-related, AGC claimed no medical records supported that claim. The employer further noted that its independent medical

¹ In the same adjudication, the ALJ resolved a dispute concerning an injury to Wolfe's right shoulder, but that injury is not the subject of this appeal.

² The ALJ also resolved a number of other issues which have not been raised on appeal.

examiner concluded Wolfe's injury was caused by her hypothyroidism, and not by repetitive use of her wrist at work.

The ALJ denied Wolfe's claim for benefits for her wrist injury on a number of bases, two of which have been raised on appeal: (1) that Wolfe failed to provide adequate and timely notice to her employer; and (2) that Wolfe failed to persuasively demonstrate that her injury was work-related.

Wolfe appealed. With respect to the issue of notice, the Board ruled the ALJ's analysis was deficient because the wrong legal standard was applied; the Board recited the correct rule and remanded for findings under that standard. The Board also found the ALJ's findings on the causation issue were insufficient because they did not reflect what medical evidence, if any, they relied upon. Consequently, the Board concluded, the ALJ's order did not comply with the rule requiring "that basic facts be clearly set out to support the ultimate conclusions." *Shields v. Pittsburgh and Midway Coal Min. Co.*, 634 S.W.2d 440, 444 (Ky. App. 1982).

Now, AGC contends the issues addressed by the Board and which formed the basis of its order was not preserved and, even if they were, it was erroneous to disturb the ALJ's ruling because the evidence supported it.

II. Standards of review

Despite the employer's argument that the evidence was sufficient to support the ALJ's order, there is no finding of fact at issue here. The Board remanded because it found the ALJ's rulings legally deficient. Likewise, our analysis will

turn purely upon questions of law, and our review is *de novo*. *White v. Great Clips*, 259 S.W.3d 501, 503 (Ky.App. 2008).

III. Discussion

A. Preservation of issues before the Board and the scope of the Board's authority

AGC's first argument is that the Board was not permitted to address the issues of notice or causation because Wolfe failed to advance those matters as the bases of her motion for the ALJ to reconsider his opinion. Rather, the employer maintains, the Board was permitted to disturb the ALJ's order only on those grounds Wolfe raised in her motion to reconsider. This is incorrect.

Although the Board is prohibited from "substitut[ing] its judgment for that of the [ALJ] as to the weight of the evidence," reversal is proper when "[t]he order ... is not in conformity to the provisions of [KRS Chapter 342.]" KRS 342.285(2). To that end, the Board may reverse *sua sponte* those portions of an ALJ's order which are legally erroneous in that they do not comply with KRS Chapter 342. *George Humfleet Mobile Homes v. Christman*, 125 S.W.3d 288, 294 (Ky. 2004). As for preservation, the Board may disturb an ALJ's order which does not comport with KRS Chapter 342 "regardless of whether the particular error ... was contested by a party and regardless of whether the initial award was appealed on a different ground." *Whittaker v. Reeder*, 30 S.W.3d 138, 144 (Ky. 2000). AGC's challenge to the Board's authority fails.³

³ AGC has not asserted that the Board's conclusions were legally incorrect, so we will not review them for legal accuracy.

B. Sufficiency of the ALJ's opinion

We struggle in understanding AGC's next argument. It appears the employer contends that even if the Board properly addressed the matters of notice and causation, it was erroneous to disturb the ALJ's opinion because the evidence in support of that opinion was "sufficient." As we noted previously, the Board did not vacate the ALJ's order because it found the evidence compelled a different result; the ALJ's findings of fact were not reversed, *per se*. Instead, the Board found the wrong legal standard had been applied to the issue of notice and the findings of fact regarding causation of Wolfe's injury were legally insufficient to apprise the parties of the basis of the ALJ's conclusion.

In its essence, AGC asks us to uphold the ALJ's order because there is nothing clearly erroneous about the ALJ's findings of fact. However, there are no findings of fact to which to apply the clearly erroneous standard. The Board's order vacated all the findings pertaining to the issue of notice and concluded that, in effect, the ALJ had entered no findings of fact pertaining to the causation issue. Because AGC has not persuaded us that it was erroneous for the Board to do so, the status of this case remains as the Board left it: until the ALJ enters findings of fact on these two issues, no appellate body – neither the Board nor this Court – can determine whether the evidence supports the ALJ's dismissal of Wolfe's claim. Expounding upon the weight and significance of the evidence is solely the province of the ALJ, and we will not usurp his role. KRS 342.275; *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993).

IV. Conclusion

AGC has raised no ground which would permit this Court to reverse the order of the Workers' Compensation Board. We, therefore, affirm.

ALL CONCUR.

BRIEF FOR APPELLANT:

Michael P. Neal
Louisville, Kentucky

BRIEF FOR RUTH WOLFE,
APPELLEE:

Stephanie L. Kinney
Louisville, Kentucky