

Commonwealth of Kentucky

Court of Appeals

NO. 2012-CA-001729-WC

LUBRIZOL ADVANCED MATERIALS, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-11-00482

DEBRA HENDRICKS; HONORABLE
CAROLINE PITT CLARK,
ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: MAZE, STUMBO, AND VANMETER, JUDGES.

VANMETER, JUDGE: Lubrizol Advanced Materials, Inc. ("Lubrizol") petitions for review of the opinion of the Workers' Compensation Board ("Board") which affirmed an Administrative Law Judge's ("ALJ") award to Debra Hendricks of temporary total disability ("TTD") benefits, permanent partial disability ("PPD")

benefits and medical expenses based upon a finding that Hendricks's hypersensitivity pneumonitis was caused by her exposure to antigens while working for Lubrizol. For the following reasons, we affirm.

On March 30, 2011, Hendricks filed a Form 102, Application for Resolution of Occupational Disease Claim, alleging she suffered from hypersensitivity pneumonitis as a result of her exposure to chemicals and noxious elements within the Lubrizol facility over the course of her employment. From 1987 to October 2008, Hendricks worked for Lubrizol, a company that manufactures chlorinated polyvinyl chloride resins and compounds in its facility located in Louisville.

Beginning on April 18, 2008, Dr. Christopher Howerton, a pulmonologist, began treating Hendricks for shortness of breath and dizziness she claimed to have experienced since January 2008. Dr. Howerton diagnosed Hendricks with bilateral pulmonary infiltrates and hypoxia. He recommended she not work and ordered additional diagnostic testing.

On a follow-up examination, Dr. Howerton diagnosed Hendricks with progressive pulmonary infiltrates, dyspnea and hypoxia. He noted that Hendricks's oxygen saturation levels had dropped from 90% to 88% since he last saw her, and arranged for oxygen treatment and a biopsy at the local hospital. He concluded that Hendricks suffered from hypersensitivity pneumonitis, but was unclear as to the cause. On an additional follow-up examination, Hendricks told Dr. Howerton she was feeling well, and he returned her to work without restrictions. His diagnosis remained unchanged but noted that the cause may be

attributed to Hendricks's exposure to natural antigens while working and hunting on her farm, and her exposure to furbearing animals.

On September 5, 2008, Hendricks reported to Dr. Howerton that upon returning to work she began to feel worse, had developed a cough and was wheezing while breathing. Testing revealed that her oxygen saturation levels had worsened. He diagnosed hypersensitivity pneumonitis with worsening since she was off her medication and had returned to work. Dr. Howerton noted that Hendricks had not been exposed to organic antigens during this time, and stated he was beginning to think her symptoms were connected to her work environment. He ordered her off work.

Hendricks presented to Dr. Howerton again on September 16, 2008 following nine days off work and medication. She reported no symptoms and claimed to feel well. Dr. Howerton took her off medication and kept her off work for two more weeks. On September 30, 2008, Hendricks indicated that she was feeling well, and Dr. Howerton permitted her to return to work.

Hendricks returned to see Dr. Howerton on October 27, 2008, reporting that she felt worse. Dr. Howerton diagnosed hypersensitivity pneumonitis with recurrent relapse upon returning to work. He noted that the evidence suggested she is being exposed to something in the workplace that causes her condition. He ordered indefinite medical leave from work and placed Hendricks back on medication.

A follow-up examination was conducted on November 25, 2008, during which Hendricks reported feeling great. She stated that she continued to hunt and field dress her game with no recurrence of symptoms. Dr. Howerton noted that her oxygen saturation levels had significantly improved. In December, Dr. Howerton allowed Hendricks to return to work on a limited basis to perform office work. At an examination in February 2009, Dr. Howerton noted a slight worsening of Hendricks's condition.

Dr. Howerton next saw Hendricks on September 3, 2010, the first examination in over 14 months. He noted that she had not returned to work, and had been off medication since February 2010. He concluded that her condition had resolved.

Dr. Rafael Perez, a pulmonologist, evaluated Hendricks on July 22, 2011, and found that she presented with a history of pulmonary symptoms. After reviewing Hendricks's medical records and conducting a physical examination, Dr. Perez diagnosed her with hypersensitivity pneumonitis with subacute presentation resolved with minimal residual lung impairment. He concluded that Hendricks's symptoms strongly correlated to her time at work, and determined within reasonable medical probability that Hendricks's condition was causally related to her work exposure to byproducts of PVC manufacturing, specifically one of the thermal decomposition products, phthalic anhydride. He stated that his opinion was supported by the negative results of serological hypersensitivity panels of common antigens known to cause hypersensitivity pneumonitis.

Lubrizol claimed that Hendricks's condition was caused by organic antigens, likely attributed to her exposure while working on her farm, interacting with her animals, and engaging in hunting activities. Lubrizol submitted the medical reports of Dr. Bruce Broudy, who evaluated Hendricks on July 1, 2011. Dr. Broudy diagnosed Hendricks with hypersensitivity pneumonitis, in remission. After reviewing her medical history, he concluded the trigger factor for the condition was unclear. He testified by deposition that known causes of hypersensitivity pneumonitis include exposure to hay, dust, and furbearing animals.

Alice Simpson, the environmental and human resources manager at Lubrizol, testified at the formal hearing before the ALJ. Simpson has a degree in chemistry and had worked at Lubrizol for 33 years at the time she testified. She testified that although Dr. Perez identified phythalic anhydride as a possible cause of Hendricks's condition, Lubrizol does not make, manufacture or use phythalic anhydride.

After reviewing the evidence, the ALJ found that Hendricks's hypersensitivity pneumonitis was causally related to her exposure to antigens while working for Lubrizol. The ALJ found compelling Drs. Howerton's and Perez's conclusions that the timing and proximity of Hendricks's symptoms strongly correlated to the workplace. In particular, the ALJ relied on Dr. Howerton's records which indicated that on two separate occasions, as Hendricks's symptoms cleared, when she returned to work the symptoms returned, as evidenced by her

subjective complaints and the oxygen saturation tests. The ALJ noted that Hendricks had not experienced a recurrence of symptoms since she stopped working, and additional testing revealed that common antigens she is exposed to on her farm were not the cause of the hypersensitivity pneumonitis.

The ALJ ordered that Hendricks was entitled to all reasonable and necessary medical expenses resulting of her pulmonary condition. The ALJ also ordered TTD benefits per week from April 18, 2008, through August 25, 2008; from September 5, 2008, through October 8, 2008; and from October 27, 2008, through May 12, 2009. PPD benefits were ordered to commence April 18, 2008, and continue for a period not to exceed 425 weeks. The ALJ specifically ordered that the PPD benefits shall be suspended during the intervening periods of TTD benefits awarded. Lubrizol filed a petition for reconsideration, which the ALJ denied.

Lubrizol appealed to the Board, arguing that the ALJ erred by relying upon the opinion of Dr. Perez, who the ALJ found had an inaccurate exposure history. Lubrizol further argued that Dr. Howerton's medical reports merely established a temporal relationship between Hendricks's work environment at Lubrizol and her symptoms of hypersensitivity pneumonitis, and thus were insufficient to establish causation for purposes of her workers' compensation claim. Lubrizol also argued the ALJ erred by commencing PPD benefits on April 18, 2008, rather than May 12, 2009, the date Hendricks reached maximum medical improvement, because one is not entitled to both PPD and TTD benefits at the same time.

The Board held that the ALJ's finding of a causal relationship between Hendricks's work environment and the pulmonary condition was supported by substantial evidence. The Board further held that the ALJ did not err by commencing PPD benefits on April 18, 2008, the date the ALJ determined Hendricks's impairment arose, and also determined that because the PPD benefits were suspended during payment of TTD benefits, the benefits were not awarded at the same time. Accordingly, the Board affirmed the opinion and award of the ALJ. This appeal followed.

The ALJ is the finder of fact and "has the sole authority to determine the quality, character, and substance of the evidence." *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993) (citation omitted). We review the ALJ's findings of fact under a clearly erroneous standard of review. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). The standard for reviewing a decision of the Board "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." *W. Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).

On appeal, Lubrizol raises the same issues it brought before the Board, and claims the Board erred by affirming the ALJ's award. Namely, Lubrizol claims: (1) the ALJ erred by relying upon a temporal relationship to establish causation between Hendricks's pulmonary condition and work environment; and (2) the ALJ

erred by commencing PPD benefits on April 18, 2008, because Hendricks was not entitled to receive PPD and TTD benefits at the same time. We disagree.

“Medical causation must be proved to a reasonable medical probability with expert medical testimony[.]” *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004) (citation omitted). We look to the quality and substance of a physician’s testimony to determine whether it establishes a reasonable medical probability. *Id.* (citation omitted).

Here, Drs. Howerton and Perez provided expert medical opinions that Hendricks’s hypersensitivity pneumonitis was causally related to her exposure to antigens while working for Lubrizol. The medical reports of Dr. Howerton indicate that Hendricks’s symptoms of hypersensitivity pneumonitis worsened on two occasions upon returning to work, and subsided when she was off work. Dr. Howerton’s opinion was supported by the oxygen saturation tests which showed that Hendricks’s oxygen saturation levels dropped in correlation to her returning to work.

Dr. Perez also found that “the timing and proximity of the symptoms associated with the workplace are strong,” and that he could conclude within reasonable medical probability that Hendricks’s condition was causally related to her work environment. These conclusions were supported by Hendricks’s testimony that her symptoms developed when she was at work, and had not returned since she stopped working for Lubrizol.

We do not find the conclusions reached by Drs. Howerton and Perez to amount to merely a temporal relationship between Hendricks's symptoms and her work environment. Certainly, both doctors were permitted to draw conclusions regarding the correlation between the aggravation of Hendricks's symptoms and her work schedule. Likewise, the ALJ was permitted to base her award on those conclusions.

Lubrizol places great emphasis on other possible sources of antigens which may have caused Hendricks's symptoms, particularly her exposure to natural antigens while working and hunting on her farm, and interaction with animals. However, Dr. Perez noted that tests to measure Hendricks's reaction to natural antigens known to cause hypersensitivity pneumonitis were negative. Furthermore, no conflicting objective medical evidence was submitted by Lubrizol to prove Hendricks's symptoms were caused by her exposure to other antigens. Lubrizol's expert, Dr. Broudy, opined that he could not ascertain the cause of Hendricks's condition. Thus, the evidence did not compel a result different from that which the ALJ reached. Accordingly, we do not find the Board's decision to affirm the ALJ's order and award was erroneous.

With respect to the ALJ's award of PPD benefits commencing on April 18, 2008, we find no error with the Board's affirmation of the award. PPD benefits begin on the date the impairment arises. *Sweasy v. Wal-Mart Stores, Inc.*, 295 S.W.3d 835, 839-40 (Ky. 2009). Here, the ALJ determined that the condition arose when Hendricks first sought treatment on April 18, 2008, from Dr. Howerton

and he diagnosed a pulmonary condition. Additionally, the ALJ suspended PPD benefits during the intervening periods when Hendricks would receive TTD benefits; thus, Hendricks is not receiving PPD benefits and TTD benefits at the same time. Accordingly, the Board did not err by affirming the ALJ on this matter.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Scott C. Wilhoit
Louisville, Kentucky

BRIEF FOR APPELLEE:

Walter Bedford Jr.
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