

RENDERED: AUGUST 2, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2013-CA-000154-WC

MELISSA CRUTCHER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-00195

NEW DIRECTION, CATHY MILLER;
UNINSURED EMPLOYERS' FUND;
HON. EDWARD D. HAYS, ADMINISTRATIVE
LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

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

DIXON, JUDGE: Melissa Crutcher petitions for review of a decision of the
Workers' Compensation Board affirming an ALJ's decision to dismiss Crutcher's
claim for benefits. The ALJ concluded Crutcher failed to meet her burden of

proving that injuries she suffered in an assault arose out of her employment as a waitress for New Direction Bar and Grill. Finding no error, we affirm.

Crutcher began working as a waitress and cook at New Direction in September 2011. Late in the evening on December 10, 2011, Crutcher was waiting on tables in the crowded bar. Crutcher claimed she was grabbed from behind and knocked to the ground by a customer, Alicia King. An off-duty Louisville police officer, Sean Pate, worked as a security guard for New Direction. Pate broke up the altercation and removed King from the bar. Crutcher finished her shift and sought medical treatment for her injuries. Crutcher left her employment at New Direction on January 31, 2012.

Crutcher filed a claim for workers' compensation benefits, alleging she suffered work-related injuries to her head, neck, hair, shoulders, arms, back and knees as a result of the assault. New Direction was uninsured, and the Uninsured Employers' Fund (UEF) was joined as a party. The UEF moved to bifurcate the claim to decide the issue of work-relatedness. The ALJ granted the motion and held a hearing to determine whether Crutcher was injured in the course and scope of her employment.

According to Crutcher, she was an innocent victim of an unprovoked attack. Crutcher testified at the hearing that she did not know King prior to the incident, nor did she know Stacey Hope, with whom King had been arguing throughout the evening. Crutcher asserted that King grabbed her from behind by the hair, threw her to the ground and punched her. Several other witnesses testified

by deposition, including Cathy Miller (the owner of New Direction), Officer Pate, Kevin Hedges (King's then-boyfriend and Hope's ex-boyfriend), Alicia King, Brittany Powell (the bartender) and Carlos Moore (the cook).

According to King's testimony, she was arguing with Hope when Crutcher intervened on Hope's behalf and called King a vulgar name. Hedges testified that King and Hope were arguing when Crutcher approached King. Hedges asserted that Crutcher grabbed King's arm, and then each woman grabbed the other's hair. Officer Pate testified that, when he intervened in the altercation, King was holding onto Crutcher's hair. Pate arrested King for assault based on Crutcher's statement that she had been attacked "out of the blue." Cathy Miller testified that she did not personally observe the King-Crutcher altercation. Miller asserted that Hedges was a regular customer of the bar. Miller also believed that Crutcher was acquainted with Stacey Hope and knew of Hope's prior involvement with Hedges. After considering the evidence, the ALJ rendered an opinion and order dismissing Crutcher's claim. The Board affirmed the dismissal, and this petition for review followed.

KRS 342.0011(1) defines an "injury," in relevant part, as "any work-related traumatic event . . . arising out of and in the course of employment" It is well settled that the Act does not provide coverage just because an injury occurs contemporaneous with the employment; rather, the Act requires "a direct causal connection between the employment and the injury." *January-Wood Co. v. Schumacher*, 22 S.W.2d 117, 120 (Ky. 1929).

This case involved disputed facts, as Crutcher’s version of events was inconsistent with the testimony of the other witnesses. The ALJ noted that Crutcher maintained that she did not know Stacey Hope before that night. The ALJ found Cathy Miller’s testimony to be more credible, as Miller testified that she had seen Crutcher associating with Hope on prior occasions, including hanging out at the bar on Crutcher’s day off. The ALJ also considered the discrepancies in the testimony regarding the origin of the altercation. According to Crutcher, she was an innocent victim who was grabbed by the hair and thrown to the ground without warning. However, Hedges testified that Crutcher grabbed King’s arm and hair-pulling ensued. Likewise, King testified that Crutcher intervened in the King-Hope argument and called King a vulgar name.

The ALJ weighed the testimony and concluded that Crutcher’s version of events was not the most credible; instead, the ALJ relied on the testimony of Miller, Hedges, and King to conclude that “Crutcher intervened or meddled in the argument between Stacey [Hope] and Ms. King.” The ALJ determined that Crutcher failed to establish the requisite direct causal connection between the employment and the injury.

“It has long been the rule that the claimant bears the burden of proof and the risk of nonpersuasion before the fact-finder with regard to every element of a workers' compensation claim.” *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). Although an injury may occur at the workplace, the claimant must establish that the injury “was connected to the individual's work in order for it to be

compensable.” *Williams v. White Castle Systems, Inc.*, 173 S.W.3d 231, 235 (Ky. 2005). Where, as here, the claimant is unsuccessful before the ALJ and appeals to the Board, the question is “whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in [the claimant’s] favor.” *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).

Crutcher contends the evidence compelled a finding that her injuries arose out of her employment. Crutcher points out that the ALJ failed to acknowledge that King and Hedges had been drinking at the time of the altercation and that Cathy Miller, as an uninsured employer, had a motive to lie about whether Crutcher was acquainted with Stacey Hope. Crutcher alternatively asserts she was entitled to benefits under the positional risk theory because her employment at a “dive bar” exposed her to the risk of being involved in a fight with an intoxicated patron. In Crutcher’s view, she was an innocent bystander, and it was her work assignment that put her in a dangerous position.

Crutcher’s arguments ignore the discretion vested in the ALJ to weigh the evidence and determine witness credibility. An ALJ “has the authority to determine the quality, character and substance of the evidence[,]” *Paramount*

Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985), and he is free “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). Here, the ALJ heard conflicting testimony about the events leading up to the altercation between King and Crutcher. The ALJ evaluated the evidence and concluded that Crutcher intervened in the King-Hope argument and that Crutcher’s employment did not expose her to an increased risk of danger. Rather than accept Crutcher’s version of events, the ALJ chose to rely on the testimony of Miller, King, and Hedges. Although Crutcher contends the ALJ overlooked evidence favorable to her position, it was within the province of the ALJ to pick and choose what to believe. Crutcher has not shown that the evidence in her favor was “so overwhelming that no reasonable person would fail to be persuaded by it.” *Magic Coal Co.*, 19 S.W.3d at 96.

In light of the conflicting testimony, it was reasonable for the ALJ to infer that Crutcher was acquainted with Stacey Hope and intervened in the dispute on Hope’s behalf. “Where an employee is assaulted and injury is inflicted upon him through personal animosity arising over some cause wholly disconnected with the employer’s business, no recovery can be had even though he is assaulted when in the discharge of his duties.” *Kentucky Fluorspar Co. v. Wolford*, 92 S.W.2d 753, 754 (Ky. 1936). Quite simply, the ALJ considered the evidence and was not persuaded that Crutcher’s injury was connected to her employment. Based upon

our review, we agree with the Board's conclusion that the evidence cited by Crutcher did not compel a finding in her favor.

For the reasons stated herein, we affirm the decision of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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