

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000205-WC

HAZARD ARH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-13-00339

CHARLENE SPENCER;
HON. WILLIAM RUDLOFF,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND DIXON, JUDGES.

DIXON, JUDGE: Hazard ARH seeks review of a Workers' Compensation Board decision affirming an Administrative Law Judge's award of permanent total disability benefits for a knee injury sustained by Hazard's former employee, Charlene Spencer. We affirm.

Spencer was born August 6, 1958. She has an Associate's Degree in nursing, and she worked as a registered nurse at Hazard for several years. At the time of the injury, Spencer was a nursing supervisor in Hazard's oncology center. On May 12, 2011, she slipped and fell in a hallway at the hospital, injuring her left knee. Spencer sought treatment at the emergency room, where she was diagnosed with a significant sprain and contusion of the knee with marked swelling. Spencer continued working after the injury for approximately six months. In November 2011, Spencer resigned due to ongoing knee pain and because she wanted to be at home with her granddaughter.

Spencer sought workers' compensation benefits for her left knee injury, and a final hearing was held in August 2013. Spencer testified at the hearing and introduced the medical report of Dr. James Owen. Dr. Owen diagnosed marked degeneration of the medial compartment of her left knee, which he attributed to the direct trauma of her slip/fall at work. Dr. Owen assessed Spencer's impairment at 8% and concluded she was unable to perform her prior work that required lifting, standing, and walking.

Hazard contested a number of issues, including work-relatedness/causation and existence of a permanent disability. Hazard submitted the medical report of Dr. Gary Bray, the deposition of Sheila Cornett (Hazard's human resources manager), as well as medical records from Quantum Health Care, Bluegrass Bariatric Associates, and Dr. Donnie Spencer. In Dr. Bray's opinion, Spencer sprained her knee when she fell, but the condition resolved as of July 1,

2011, without any permanent impairment. Dr. Bray attributed Spencer's complaints to osteoarthritis unrelated to the work injury, and he opined that she could return to her position as a nursing supervisor.

After considering all the evidence, the ALJ concluded that Spencer suffered a work-related knee injury and was permanently and totally disabled. In his opinion and award, the ALJ carefully summarized the lay and medical testimony. The ALJ relied on Spencer's testimony and Dr. Owen's report to conclude Spencer suffered a permanent injury to her left knee as a result of falling at work. As to total disability, the ALJ relied on Spencer's testimony and Dr. Owen's report and considered the factors established by the Kentucky Supreme Court in *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48, 51 (Ky. 2000).

Hazard's petition for reconsideration was denied, and it appealed to the Board. In its opinion affirming, the Board concluded substantial evidence supported the ALJ's finding that Spencer suffered a work-related injury that resulted in permanent total disability. This petition for review followed.

The findings of an ALJ in favor of an injured worker will not be disturbed on appeal where the decision is supported by substantial evidence. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). "The [ALJ], as the finder of fact, and not the reviewing court, has the authority to determine the quality, character and substance of the evidence presented" *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). Furthermore, the ALJ 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). When this Court reviews a workers’ compensation decision, our function is to correct the Board only where we believe “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).

As it did before the Board, Hazard challenges the sufficiency of the evidence supporting the ALJ’s decision regarding causation and total disability. Hazard points out pieces of evidence it believes the ALJ failed to consider: 1) Cornett, the human resources manager, testified that Spencer resigned so she could care for her granddaughter; 2) Dr. Owen failed to document Spencer’s prior complaints of bilateral knee pain; and 3) Spencer did not seek additional treatment for her knee pain until August 2012.

KRS 342.0011(1) defines a compensable injury as being “any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.”

The medical evidence and Spencer’s testimony established that she had no difficulty performing her job prior to the fall at work. Spencer testified that her left knee pain had been continuous since she fell and that her knee would

occasionally buckle as she tried to walk. Dr. Owen's report acknowledged that Spencer had occasional bilateral knee pain before the injury; however, his x-ray of Spencer's left knee showed diminished space in the medial compartment with severe degeneration. Dr. Owen concluded that the trauma to the knee when Spencer fell was the cause of her ongoing pain.

Although Hazard is dissatisfied with the ALJ's assessment of the evidence, we reiterate that the ALJ had "the authority to determine the quality, character and substance of the evidence[.]" *Burkhardt*, 695 S.W.2d at 419, and he was free "to believe part of the evidence and disbelieve other parts of the evidence . . . [.]" *Caudill*, 560 S.W.2d at 16. Despite Hazard's argument to the contrary, the ALJ did not fail to consider all of the evidence; rather, the ALJ weighed the conflicting evidence and found Dr. Owen's medical opinion and Spencer's lay testimony to be the most credible.

Hazard next challenges the evidence supporting the ALJ's finding of permanent total disability, asserting that Spencer was well-educated and suffered a "non-surgical" injury.

KRS 342.0011(11)(c) defines "permanent total disability" as "the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury[.]" The Kentucky Supreme Court, in *Hamilton, supra*, noted several factors relevant to an ALJ's determination of whether a claimant is partially or totally disabled. Those factors include:

the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities. The definition of 'work' clearly contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled.

Hamilton, 34 S.W.3d at 51.

In the case at bar, the ALJ concluded:

In the present case, I considered the severity of the plaintiff's work injury to her left knee, her age, her work history, her educational background, the credible and convincing testimony of the plaintiff and Dr. Owen's specific opinions regarding her physical limitations and occupational disability. I note that Mrs. Spencer testified that her former job with the defendant required a lot of walking and some lifting. She testified that her left knee is now painful, that she limps, that she takes pain medication for her left knee and that due to her physical limitations she cannot return to work at her former job. I also found Dr. Owen's evidence that the plaintiff does not retain the physical capacity to return to the type of work which she performed at the time of her work injuries and that she cannot stand or walk for more than 15 minutes and should avoid activity which requires lifting and carrying greater than approximately 10 pounds. Based upon the above legal authorities and the credible and convincing testimony from the plaintiff and Dr. Owen, I make the factual determination that Mrs. Spencer is permanently and totally disabled and cannot find work consistently under regular work circumstances and work dependably.

After careful review, we conclude the ALJ sufficiently articulated his reasoning and the evidence supporting his finding of total disability. Although Hazard cites “evidence which would have supported a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal.” *Id.* at 52. Further, it is well settled that “[a] worker's testimony is competent evidence of h[er] physical condition and of h[er] ability to perform various activities both before and after being injured.” *McNutt Construction/First General Services v. Scott*, 40 S.W.3d 854, 860 (Ky. 2001). Given the ALJ’s broad discretion in weighing the evidence, we are not persuaded the ALJ erred by relying on Dr. Owen’s medical opinion and Spencer’s credible lay testimony to make a finding of total disability. We conclude the Board did not err in affirming the ALJ’s award.

For the reasons stated herein, the decision of the Workers’ Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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