

Commonwealth of Kentucky

Court of Appeals

NO. 2014-CA-000548-WC

MARIE MCMANIS

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-10-79549

BAPTIST HOSPITAL NORTHEAST;
DR. SANJIV MEHTA; INJURED WORKERS'
PHARMACY; HON. GRANT S. ROARK,
Administrative Law Judge; and WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: CAPERTON, COMBS, AND VANMETER, JUDGES.

COMBS, JUDGE: Marie McManis petitions for review of an opinion of the
Workers' Compensation Board that affirmed the decision of the Administrative
Law Judge (ALJ). The ALJ awarded temporary, total disability benefits and

medical benefits for a temporary injury sustained while McManis was employed by Baptist Hospital Northeast. McManis contends that the Board erred by concluding: (1) that the ALJ was not compelled by the evidence to find that she had a permanent injury or to award her occupational disability benefits commensurate with that injury and (2) that the ALJ was not compelled by the evidence to make an award that included future medical benefits. After our review, we disagree with these contentions. Thus, we affirm.

McManis began work as a surgical technician for Baptist Hospital in February 2010. On August 20, 2010, McManis suffered a work-related injury as a result of lifting a pan of surgical instruments which she estimated to have weighed between fifty and seventy pounds. She reported experiencing a painful, shocking, burning sensation in her neck that radiated into her right shoulder, scapula, arm, and hand. McManis gave timely and proper notice of the injury to her employer. She was diagnosed with right shoulder strain and was permitted to return to work on August 23, 2010. She left her employment with Baptist Hospital in September 2010.

On November 15, 2010, McManis filed an Application for Resolution of Injury Claim. At that time, she indicated that her medical treatment consisted of X-rays and chiropractic visits. However, voluminous treatment and evaluation records from a number of medical providers and facilities were eventually filed by the parties. In addition, Baptist Hospital filed a surveillance video and records detailing its observations of McManis's activities on July 5, 14, and 15 of 2012.

After analyzing the evidence, the ALJ concluded that McManis had not suffered a permanent injury. He found that her activities on the surveillance video were inconsistent with her description of her condition as well as with the symptoms that she gave to her medical care providers and to independent medical examination physicians (prior to learning of the existence of the surveillance). Relying primarily on the testimony of Dr. Thomas Loeb, the ALJ found that after McManis learned of the existence of the video, she continued to misrepresent her treatment history in an attempt to justify her level of activity. In an order rendered on September 30, 2013, the ALJ awarded temporary total disability benefits and temporary medical benefits, but he dismissed McManis's claim for permanent benefits.

On October 14, 2013, McManis filed a petition for reconsideration. In an order rendered on November 5, 2013, the ALJ confirmed that McManis was entitled to the medical benefits and temporary, total disability benefits that had already been paid. However, the ALJ specifically rejected McManis's request for future medical expenses. On appeal, the Workers' Compensation Board affirmed with one member dissenting. The dissenting member concluded that the ALJ's findings with respect to McManis's entitlement to future medical benefits were insufficient as a matter of law.

As the claimant, McManis had the burden of proving each of the essential elements of her claim. If the party with the burden of proof and risk of persuasion is unsuccessful before the ALJ, the question on appeal becomes whether the

evidence compels a finding in her favor. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418 (Ky. 1985). In order to be compelling, evidence must be so overwhelming that no reasonable person could reach the same conclusion as did the ALJ. *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky. App. 1985).

The Board is charged with deciding whether the ALJ's finding "is so unreasonable under the evidence that it must be viewed as erroneous as a matter of law." KRS 342.285; *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000). When reviewing the Board's decision, we reverse *only where it has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence that it has caused gross injustice*. *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685 (Ky. 1992).

In this case, the Board carefully evaluated the evidence. It observed that the ALJ specifically and soundly rejected the contention that McManis had suffered a permanent injury and that the ALJ was not persuaded by the evidence that McManis was entitled to an award of future medical benefits. The Board concluded that the ALJ's decision was reasonable in light of the evidence and the applicable law and that it could not be reversed upon any basis.

In her petition for review, McManis contends that the Board erred by concluding that the evidence does not compel a finding that she is entitled to an award based upon her permanent impairment -- including an award of future medical benefits. We disagree.

While the ALJ could have relied upon testimony to find that McManis suffered a work-related injury that resulted in permanent disability, the evidence does not compel this result. As the finder-of-fact, he had the sole authority and prerogative to judge the weight, credibility, substance, and inferences to be drawn from the evidence. *Paramount Foods, Inc. v. Burkhardt, supra*. Evaluating her testimony at the hearing, the ALJ found that McManis was not credible. He determined that she had misrepresented her disability and medical treatment history to medical providers, to medical evaluators, and to the court. The ALJ inferred that McManis had made these misrepresentations because she did not have significant and lasting pain or limitations. The evidence does not compel contrary findings or inferences.

Additionally, we disagree with her contention that the ALJ was compelled to make an award that included future medical benefits. We also disagree that his findings of fact with respect to those benefits were insufficient. The ALJ found that the effects of McManis's work-related injury were neither permanent nor significant. From the evidence, he inferred that her injury and its effects were merely temporary. Because the ALJ found that the work-related injury did not result in any permanent disability and that the pain and limitations initially associated with the injury had since resolved, we are not persuaded that an award of future medical benefits was warranted -- much less compelled. Furthermore, we conclude that under the circumstances, the ALJ's findings of fact were legally sufficient.

The Board did not overlook or misconstrue controlling law; nor did it so flagrantly err in evaluating the evidence that it has caused gross injustice by affirming the decision of the ALJ.

Consequently, we affirm the opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE BAPTIST
HOSPITAL NORTHEAST:

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