

Commonwealth of Kentucky

Court of Appeals

NO. 2015-CA-001194-WC

DOLLAR TREE STORES, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-12-95149

PATTI-ANN DAVIS; HONORABLE CHRIS
DAVIS, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: DIXON, MAZE, AND STUMBO, JUDGES.

DIXON, JUDGE: Dollar Tree Stores, Inc., seeks review of a decision of the Workers' Compensation Board that affirmed in part, reversed in part, and remanded an Administrative Law Judge's award of benefits to Patti-Ann Davis. Specifically, Dollar Tree contends the Board erred by affirming the ALJ's finding

of a 47% impairment rating for Davis's work-related injury. Finding no error, we affirm.

Davis injured her right hand and ring finger while working as a cashier at a Dollar Tree store. Davis ultimately had two surgical procedures on her finger to remove a mass from the tendon. Following the second procedure, Davis was unable to move her right ring finger. Dr. Rodrigo Moreno examined Davis and diagnosed complex regional pain syndrome (CRPS) of the right hand. Dr. Moreno referred Davis to Dr. David Ciochetty at Interventional Pain Specialists to address her complaints of radiating pain in her fingers. Dr. Ciochetty also diagnosed Davis with CRPS of the right hand, and he administered nerve block injections to help with Davis's pain management. Dr. Ciochetty referred Davis for an impairment evaluation by Nathan Johnson, DPT, and Steffan Stambaugh, OT/L. According to their report, Johnson and Stambaugh cited the *AMA Guides* in measuring the range of motion, sensory deficits, and strength in Davis's right hand. Dr. Ciochetty concurred with the therapists' measurements and signed the report, adopting their determination that Davis sustained a 47% whole person impairment.

Davis sought workers' compensation benefits for her injury. In addition to her medical records, Davis submitted Dr. Ciochetty's impairment evaluation report. Dollar Tree submitted the IME report of Dr. Richard DuBou. Dr. DuBou noted Davis was post-surgery on her right finger tendon with resulting ninety degree flexion contracture. Dr. DuBou found no evidence of CRPS, and he assigned a 5% impairment rating for her right hand injury.

The ALJ rendered an opinion and award in favor of Davis, concluding she suffered a work-related hand injury, which rendered her permanently and totally disabled. The ALJ relied on the opinions of Drs. Moreno and Ciochetty that Davis suffered from CRPS. The ALJ also accepted the 47% impairment rating assigned by Dr. Ciochetty.

Dollar Tree appealed the ALJ's decision to the Board. In its opinion, the Board affirmed the ALJ's findings regarding the diagnosis of CRPS and the 47% impairment rating. The Board concluded the ALJ failed to properly analyze the issue of permanent total disability; consequently the Board vacated the opinion as to that issue and remanded the case to the ALJ. 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).

Dollar Tree now contends the Board erred by affirming the ALJ's finding of a 47% impairment rating. Specifically, Dollar Tree asserts Dr.

Ciochetty's opinion was unreliable because he merely adopted the findings of the physical therapists, Johnson and Stambaugh.

In its opinion, the Board stated, in relevant part:

We reject Dollar Tree's objection to the 47% impairment rating based on the fact the impairment rating was assessed by physical therapists and not Dr. Ciochetty. It is clear from the September 24, 2014, report of Stambaugh and Johnson that the impairment rating was assessed pursuant to the AMA Guides. Further, it is clear from Dr. Ciochetty's deposition testimony . . . that Dr. Ciochetty reviewed the report of Stambaugh and Johnson, agreed with their measurements and calculations, and ultimately agreed with the 47% impairment rating adopting it as his own. The ALJ's reliance upon the impairment rating initially calculated by Stambaugh and Johnson and subsequently adopted by Dr. Ciochetty and his finding Davis has a 47% impairment rating will not be disturbed.

When this Court reviews a decision of the Board, our role is to correct the Board only if 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 Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). The record clearly indicates Dr. Ciochetty had been Davis's treating physician for two years at the time he referred her for the impairment evaluation. In his deposition, Dr. Ciochetty explained the diagnosis of CRPS, as well as some of the symptoms Davis exhibited, including decreased grip and increased sensitivity to stimuli. As to the impairment evaluation, Dr. Ciochetty testified that he believed the calculations and measurements were accurate and that he agreed with the 47% impairment rating. Although Dollar Tree points out evidence

supporting its position, we are mindful “that only an ALJ may judge the weight and credibility of conflicting evidence.” *George Humfleet Mobile Homes v. Christman*, 125 S.W.3d 288, 294 (Ky. 2004). After reviewing the record, we conclude the ALJ’s assessment of a 47% impairment rating was supported by substantial evidence; accordingly, the Board properly affirmed the ALJ's decision on the issue of Davis’s impairment rating.

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Thomas C. Donkin
Lexington, Kentucky

BRIEF FOR APPELLEE:

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