

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2018-CA-000843-WC

CTA ACOUSTICS, INC.

APPELLANT

v.

PETITION FOR REVIEW OF DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-16-069016

BARBARA MCDANIEL;  
HON. JONATHAN R. WEATHERBY,  
Administrative Law Judge;  
And KENTUCKY WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \*\* \* \*\*

BEFORE: JONES, MAZE, AND TAYLOR, JUDGES.

MAZE, JUDGE: CTA Acoustics, Inc. (CTA Acoustics) appeals a decision from the Workers' Compensation Board (the Board) affirming an award of benefits entered in favor of CTA Acoustics' former employee, Barbara McDaniel. CTA

Acoustics argues the Board should be reversed because the award of benefits depended on an opinion from Dr. Stephen Autry, which CTA Acoustics contends was “internally inconsistent and inadequately reasoned.” We disagree with CTA Acoustics’ characterization of Dr. Autry’s opinion and affirm.

McDaniel began working for CTA Acoustics in 1986. On September 6, 2016, she was struck by a crate while at work. McDaniel was then treated for pain in the neck, back, shoulders, and left leg; numbness in her right leg and toes; and tinnitus. Before the incident, McDaniel was working twelve-hour shifts. After the accident, she was unable to return to work and sought workers’ compensation benefits.

McDaniel was deposed and she testified she experienced two previous workplace accidents. In 2003, she suffered hearing loss following a workplace explosion, and in 2015 she was injured while exercising at work. McDaniel suffered back, hip, and leg pain following the 2015 injury but missed no time from work and continued her twelve-hour shifts. McDaniel admitted on cross-examination she suffered “constant” back pain from 2015 to 2016, for which she was prescribed medication. However, she alleged her pain significantly increased following the 2016 accident.

Dr. Henry Tutt examined McDaniel on CTA Acoustics’ behalf. Dr. Tutt took McDaniel’s prior history of back pain and reviewed her previous medical

records, including pre-injury and post-injury MRIs of McDaniel's back. Dr. Tutt assessed McDaniel as having a 5% pre-existing active impairment but no impairment from her 2016 injury.

Dr. Autry examined McDaniel at her request on May 24, 2017. Dr. Autry's report discussed McDaniel's 2016 accident and the symptoms she alleged she suffered afterwards, her history of back pain, her past medical treatment, and the results of his diagnostic testing on McDaniel. Dr. Autry diagnosed McDaniel as suffering from aggravation of cervical spondylosis, aggravation of lumbar spondylosis with radiculopathy, and a closed head injury with residual tinnitus. Dr. Autry opined that, within reasonable medical probability, McDaniel's ailments were caused by her 2016 injury. Unlike Dr. Tutt, Dr. Autry concluded McDaniel did not suffer active impairment prior to her 2016 workplace accident. Dr. Autry further opined that McDaniel had reached maximum medical improvement (MMI) by the date of his evaluation and gave her a 7% whole person impairment rating based on the American Medical Association Guides.

Dr. Autry's opinion stated that his diagnosis that the 2016 injury, not a pre-existing active impairment, was the cause of McDaniel's complaints was based on McDaniel's claims that the symptoms associated with her back problems doubled in severity following the 2016 accident. However, Dr. Autry stated in a section titled "causation" that "In the case of Ms. McDaniel, harmful change

occurred due to recurrent stress loading to the disc, ligament, and facet of anatomy sustained during the course of performing the activities required in the job description.” He did not reference the 2016 accident in this section of his report.

A benefit review conference was held in November of 2017. The ALJ entered a written opinion and award finding McDaniel was an “excellent” witness and her testimony was entitled to significant weight. The ALJ accepted Dr. Autry’s opinion that the 2016 accident caused McDaniel to suffer aggravation of dormant cervical spondylosis and lumbar spondylosis with radiculopathy, that McDaniel sustained 7% impairment as a result, and reached MMI on May 24, 2017. The ALJ did not apportion part of McDaniel’s impairment to a pre-existing active condition because he did not find Dr. Tutt’s opinion credible. The ALJ specifically noted that Dr. Tutt’s assessment of a 5% pre-existing active impairment was inconsistent with McDaniel’s testimony that she worked twelve-hour shifts prior to the 2016 injury but was unable to return to work thereafter. Based on these findings, the ALJ awarded McDaniel medical benefits, permanent partial disability benefits, and temporary total disability benefits for September 6, 2016, through May 24, 2017.

CTA Acoustics then petitioned the ALJ to reconsider. The ALJ denied the motion except as it pertained to an issue that is not pertinent to this appeal. CTA Acoustics appealed to the Board, arguing the ALJ erred by relying

on Dr. Autry's "flawed" opinion. It relied on the language in the causation section of Dr. Autry's opinion stating that McDaniel experienced harmful change due to "recurrent stress . . . sustained during the course of performing the activities required in the job description." Based on this language, CTA Acoustics alleged that Dr. Autry did not relate the cause of McDaniel's complaints to her 2016 injury, but to cumulative trauma. Because McDaniel alleged she deserved compensation for acute trauma, not cumulative trauma, CTA Acoustics reasoned that Dr. Autry's report was unreliable; therefore Dr. Autry's opinions could not provide substantial evidence for the ALJ's finding that the 2016 accident was the cause of McDaniel's complaints, that she did not suffer from a pre-existing active condition, and that she reached MMI on May 24, 2017.

The Board concluded the causation section of Dr. Autry's opinion was "confusing" because its failure to reference the September 6, 2016, accident suggested that McDaniel's ailments were caused only by reoccurring stress. However, it held that a review of his Dr. Autry's entire opinion made it clear he was fully aware of the 2016 accident and ultimately believed that it aggravated pre-existing dormant conditions in McDaniel's cervical and lumbar spine. It therefore found the ALJ's findings were supported by substantial evidence and affirmed. This appeal follows.

Appellate review of an opinion by the Board is limited to determining whether “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 Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992).” In doing so, we must be mindful that “[t]he ALJ has the sole discretion to determine the quality, character, and substance of the evidence and may reject any testimony and believe or disbelieve various parts of the evidence regardless of whether it comes from the same witness or the same party’s proof.” *GSI Commerce v. Thompson*, 409 S.W.3d 361, 364 (Ky. App. 2012). “If the party with the burden of proof is successful before the ALJ, the question on appeal is whether the ALJ’s opinion was supported by substantial evidence.” *Id.*

CTA Acoustics’ arguments on appeal depend entirely on its contention that Dr. Autry’s report was inconsistent and inadequately reasoned. After carefully reviewing the record, we do not necessarily agree with the Board’s opinion that the causation section of Dr. Autry’s report was confusing. It seems consistent with his opinion that the repetitive nature of McDaniel’s work led to dormant conditions in her back, which became active after the 2016 accident. Regardless, we agree with the Board’s opinion that a review of Dr. Autry’s whole report shows he was familiar with McDaniel’s 2016 injury and ultimately believed it aggravated pre-existing dormant conditions in her cervical and lumbar spine. “It

is well-established that the work-related arousal of a pre-existing dormant condition into disabling reality is compensable.” *Finley v. DBM Technologies*, 217 S.W.3d 261, 265 (Ky. App. 2007). Thus, we hold the ALJ’s findings were supported by substantial evidence and there are no grounds to disturb its opinion and award.

Accordingly, the opinion of the Workers’ Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Marcus Roland  
Lexington, Kentucky

BRIEF FOR APPELLEE:

McKinnley Morgan  
London, Kentucky