

**Commonwealth of Kentucky**  
**Court of Appeals**

NO. 2018-CA-000873-WC

JENNIFER CREAGER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-16-00561

FORD MOTOR COMPANY;  
HON. TANYA PULLIN,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: DIXON, KRAMER, AND LAMBERT, JUDGES.

DIXON, JUDGE: Jennifer Creager seeks review of a Workers' Compensation Board opinion affirming an administrative law judge's order dismissing Creager's claim for benefits. After careful review, we affirm.

Creager began working in the paint repair department at the Ford Motor Company assembly plant in 1992. In 2004, Creager underwent an L5-S1

discectomy to treat low back pain. Approximately five years later, her low back symptoms returned, and she began regularly treating with a pain management physician, Dr. Berg, for ongoing complaints of back pain. Creager's pain management treatment included epidural steroid injections, trigger point injections, and up to three Percocet per day. In the fall of 2014, while still receiving treatment for her low back symptoms, Creager advised Dr. Berg that she was also experiencing neck pain radiating into her right arm. In December 2014, a cervical MRI revealed disc protrusions at C5-6 and C6-7 with moderate to severe right foraminal narrowing.

On February 23, 2015, Creager felt a sharp pain in the back of her head, neck, and upper back when she raised a heat lamp on the assembly line. She received treatment at Ford Medical and followed up with Dr. Berg. On September 15, 2015, while lowering a lift gate, Creager experienced neck pain radiating through her upper back and right arm; thereafter, her low back symptoms increased. Creager reported the incident and sought treatment with Dr. Becherer, a neurosurgeon, and Dr. Berg. In March 2016, Dr. Becherer performed a lumbar laminectomy-discectomy, and approximately nine months later, he performed a multi-level cervical fusion. After her surgeries, Creager returned to work at Ford in a new position as a job security representative.

Creager ultimately filed a claim for workers' compensation benefits alleging work-related injuries to her neck and low back on February 23, 2015, and September 15, 2015. In addition to asserting affirmative defenses, Ford denied the claims due to lack of work-relatedness/causation. At the final hearing, Creager testified and acknowledged that she had regularly treated with Dr. Berg for pain management prior to the initial work incident in February 2015.

Both parties submitted the medical records of Dr. Berg and the IME report of Dr. Banerjee. Ford introduced a peer review report of Dr. Acosta, also a neurosurgeon, and the IME report of Dr. Grossfeld. Creager submitted medical records from Dr. Becherer and the IME report of Dr. Bilkey.

Dr. Berg's treatment records documented Creager's visits approximately every other month since 2010 for chronic low back pain due to multi-level degenerative disc disease, facet arthropathy, disc herniation at L5-S1, and multi-level spinal and foraminal narrowing. In November 2014, Creager complained of gradually worsening cervical pain that began spontaneously three months earlier. Three days prior to the first work incident in February 2015, Dr. Berg noted that Creager continued to have increasing cervical, shoulder, and right arm pain despite conservative treatment. He recommended epidural injections and physical therapy. In a February 2016 letter, Dr. Berg stated that Creager's

worsening spinal conditions were caused by work-related repetitive lifting and bending.

In his IME report, Dr. Banerjee diagnosed a right shoulder strain attributable to Creager's work. He also noted imaging studies confirmed pre-existing cervical spondylosis unrelated to her work. The peer review report of Dr. Acosta indicated a diagnosis of cervical sprain/strain due to the September work incident. He opined that the majority of Creager's complaints were due to multi-level degenerative disc disease and C7 radiculopathy unrelated to her work. Dr. Grossfeld performed an IME and records review, noting that radiology records showed pre-existing active cervical and lumbar conditions. Dr. Grossfeld diagnosed pre-existing degenerative disease of the cervical and lumbar spine with prior lumbar disc herniation and cervical disc protrusion. She opined that Creager's conditions were not caused by her work but were attributable to the natural progression of the pre-existing active conditions of the cervical and lumbar spine.

Dr. Becherer diagnosed cervical spondylosis, lumbar disc herniation, and lumbar stenosis. He opined that Creager's conditions were degenerative in nature and aggravated by the work injury in September 2015. Dr. Bilkey performed an IME and concluded that the work incidents caused cervical strain and aggravated Creager's cervical and lumbar disc disease. He assessed 22%

lumbar impairment with 11% pre-existing active and 28% cervical impairment with 9% pre-existing active.

The ALJ rendered an opinion and order dismissing Creager's claim. The ALJ relied upon the records of Dr. Berg to conclude that Creager failed to establish that she sustained an injury causally related to her work at Ford. The ALJ also concluded that the medical evidence established that Creager had pre-existing, actively symptomatic conditions of her lumbar and cervical spine prior to the alleged work incidents. In an order on reconsideration, the ALJ made additional findings of fact indicating that she found the IME report of Dr. Grossfeld persuasive and consistent with Dr. Berg's treatment records. As to pre-existing conditions, the ALJ asserted that *Finley v. DBM Technologies*, 217 S.W.3d 261, 265 (Ky. App. 2007) required an active pre-existing condition to be both symptomatic and impairment ratable. The ALJ found that the evidence of Creager's disc protrusions and surgeries rendered her cervical and lumbar conditions "impairment ratable" prior to the alleged work incidents pursuant to *Finley*. Creager appealed to the Board, arguing that the ALJ rendered insufficient factual findings and that her determination as to causation was not supported by substantial evidence. Creager also asserted that the ALJ overlooked evidence that supported her claim and erred in analyzing pre-existing active impairment pursuant to *Finley*. In its opinion affirming, the Board concluded that the ALJ's

determination as to work-relatedness/causation was supported by substantial evidence, which rendered Creager's remaining arguments moot. This petition for review followed.

Creager raises the same arguments here as she did before the Board. She contends that the ALJ overlooked evidence favorable to her position and erroneously applied the analysis of *Finley* relating to pre-existing conditions.

“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). 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).

KRS 342.0011(1) defines injury as “any work-related traumatic event or series of traumatic events . . . 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.”

We have thoroughly reviewed the administrative record, and Creager’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 she 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). Further, “an ALJ is vested with broad authority to decide questions involving causation.” *Miller v. Go Hire Employment Development, Inc.*, 473 S.W.3d 621, 629 (Ky. App. 2015).

In the case at bar, we agree with the Board’s well-reasoned opinion, which stated, in relevant part:

After careful review, we find the ALJ accurately summarized the evidence and had a complete understanding of the issues before her. In the opinion, the ALJ relied upon the treatment records of Dr. Berg, both pre-dating and following the work injury, in finding Creager had not sustained her burden of proof regarding the causal relationship between the February 23, 2015 and September 23, 2015 work incidents, and her cervical or lumbar spine conditions. ALJ Pullin also relied upon Dr. Berg’s treatment records, as well as the opinions of Dr. Grossfeld, in overruling Creager’s petition for reconsideration. Dr. Grossfeld’s opinion, in conjunction

with Dr. Berg's treatment records, constitute substantial evidence supporting the determination Creager failed to prove her cervical and lumbar conditions are related to the February 23, 2015 and September 15, 2015 work injuries. We find the ALJ acted within the scope of the deference afforded to her, and a contrary result is not compelled.

We acknowledge Creager is able to point to conflicting evidence supporting her position on appeal. However, the ALJ as fact-finder determines the credibility of the evidence. The ALJ may also choose whom and what to believe when faced with conflicting evidence. It was the ALJ's prerogative to rely on Dr. Berg's treatment records and Dr. Grossfeld's opinions in making her determination. Therefore, her decision will not be disturbed.

We disagree with Creager's argument the ALJ failed to make sufficient findings of fact. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for her decision, she is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of her reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). The ALJ's analysis of the evidence, in addition to the further analysis made by ALJ Pullin in the Order on reconsideration, was more than sufficient to support her determination.

Although Creager contends the ALJ overlooked evidence favorable to her position, it was within the province of the ALJ to pick and choose what to believe. Creager has simply not shown that there was evidence in her favor as to



work-relatedness/causation that was “so overwhelming that no reasonable person would fail to be persuaded by it.” *Magic Coal Co.*, 19 S.W.3d at 96.

Creager next contends that the ALJ erroneously applied *Finley* by determining her pre-existing conditions were “impairment ratable.” Creager asserts that *Finley* requires an actual numerical impairment rating to establish a pre-existing active condition. We disagree.

*Finley* plainly states: “To be characterized as active, an underlying pre-existing condition must be symptomatic and impairment ratable pursuant to the AMA *Guidelines* immediately prior to the occurrence of the work-related injury.” *Finley*, 217 S.W.3d at 265 (emphasis added). More importantly, Creager’s argument wholly overlooks the fact the ALJ determined she did not sustain a work-related “injury” within the meaning of KRS 342.0011(1). An analysis under *Finley* is premised upon an initial finding of a work-related injury followed by a determination of whether impairment should be apportioned between the work injury and a pre-existing condition. *Id.* at 265-66. Here, the ALJ’s threshold determination that Creager failed to prove work-relatedness/causation was dispositive; accordingly, it was unnecessary for the ALJ to engage in any discussion of pre-existing conditions. Having concluded that the ALJ’s determination that Creager failed to prove she sustained a work-related injury was supported by substantial evidence, we need not further address the *Finley* analysis.

After careful review, we find no error in the ALJ's dismissal of Creager's claim for benefits.

For the reasons stated herein, the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Wayne C. Daub  
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BRIEF FOR APPELLEE:

George T.T. Kitchen, III  
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