

RENDERED: OCTOBER 18, 2019; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2018-CA-001651-WC

ROBERTA ROSE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-03-00607

AISIN AUTOMOTIVE CASTINGS;
HON. CHRIS DAVIS, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * **

BEFORE: TAYLOR, K. THOMPSON, AND L. THOMPSON, JUDGES.

TAYLOR, JUDGE: Roberta Rose petitions this Court to review an October 12, 2018, Opinion of the Workers' Compensation Board (Board) that affirmed the

Administrative Law Judge's (ALJ) determination that Rose's left shoulder condition was not work related. We affirm.

On July 18, 2001, Rose fell while working for Aisin Automotive Castings and sustained a work-related injury to her right shoulder. The claim was settled by agreement of the parties dated May 7, 2004. Rose's last day of employment was in 2003, and she has not worked since that date.

On April 23, 2017, Rose moved to reopen her claim. Rose asserted that she suffered a compensable left shoulder injury that was causally related to her work-related right shoulder injury. Due to her work-related injury to her right shoulder, Rose maintained that she overused her left arm and shoulder, thus causing her left shoulder injury.

By a May 30, 2018, Opinion and Order, the ALJ found:

I understand that [Rose] has had a long history of injuries and limitations stemming from her right shoulder condition. Through the years, her doctors state, she has had to overcompensate by using her left arm and therefore shoulder to a greater degree. They state this has caused the left shoulder rotator cuff tear. I am not persuaded. She has had at least four surgeries to the right shoulder.

Dr. [Rick] Lyon persuades me. Dr. Lyon, like all doctors of record, conducted a physical examination. He extensively reviewed medical records. More importantly, I am persuaded by the scientific theories and evidence that Dr. Lyon advanced, as other causes for the tear. These include, as applicable to [Rose], increased

age and weight. Some other factors maybe [sic] at play. However, overuse is unlikely to play a part.

In reliance on Dr. Lyon, the left shoulder condition is not work-related.

May 30, 2018, Opinion and Order at 5-6.

The ALJ viewed Dr. Lyon's opinion as persuasive that Rose's left shoulder condition was not caused by overuse or by any limitation to her right shoulder. Hence, the ALJ concluded that Rose's left shoulder condition was not work related. Rose then sought review with the Board. By Opinion entered October 12, 2018, the Board affirmed the ALJ's Opinion and Order. This review follows.

Our review of the Board's opinion is limited. We only reverse the Board's opinion when "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." *W. Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). In reviewing the Board's opinion, we necessarily look to the ALJ's opinion. Where the claimant is unsuccessful before the ALJ, the claimant must demonstrate that the evidence compels a finding in claimant's favor. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984).

Rose contends that the ALJ's findings were clearly erroneous and that the ALJ abused its discretion by determining that her left shoulder condition was

not work related. Rose asserts that the evidence was overwhelming that her left shoulder condition was caused by overuse due to her right shoulder's physical limitations. Rose points out that the ALJ ignored the opinion of Dr. Ryan Donegan, who opined that her left shoulder condition worsened due to her right shoulder debilitating state.

In rejecting Rose's allegation of error, the Board reasoned:

The ALJ's decision is supported by substantial evidence. Dr. Lyon conducted a physical examination and reviewed Rose's medical history since her original right shoulder injury. He thoroughly explained his rationale, and his medical opinion that her right shoulder limitations did not cause her left shoulder rotator cuff tear. As fact-finder, the ALJ is entitled to rely on his opinion to support the ultimate conclusion. The fact Dr. [David] Muffly opined otherwise is not a basis for this Board to reverse the ALJ's decision. *McCloud v. Beth-Elkhorn Corp.*, 514 S.W.2d 46 (Ky. 1974). When the ALJ's decision is supported by substantial evidence, such as Dr. Lyon's opinion, this Board is not at liberty to reweigh the proof and reach a different conclusion.

October 12, 2018, Opinion at 5-6.

We agree with the Board that the ALJ's findings were supported by substantial evidence and that the evidence does not compel contrary findings. The ALJ found Dr. Lyon's opinion persuasive that the left shoulder condition was not work related. The ALJ possesses the sole discretion to determine the weight of evidence and the credibility of witnesses' testimony. *Ford Motor Co. v. Jobe*, 544 S.W.3d 628, 631 (Ky. 2018). And, the Board may not reweigh the evidence and

substitute its judgment for that of the ALJ. Kentucky Revised Statutes 342.285(2). Likewise, as a court of review, we cannot reweigh the evidence or assess the credibility of expert testimony. Accordingly, we conclude that the Board properly affirmed the ALJ's Opinion and Order.

We view any other contentions of error as moot or without merit.

For the foregoing reasons, we affirm the Opinion of the Workers' Compensation Board.

ALL CONCUR.

BRIEF FOR APPELLANT:

Phyllis L. Robinson
Manchester, Kentucky

BRIEF FOR APPELLEE,
AISIN AUTO. CASTINGS:

Patrick J. Murphy, II
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