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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2019-CA-001842-WC

ARYONE LYMON — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-17-54578

GEORGIA PACIFIC; HONORABLE MONICA RICE-SMITH, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: DIXON, GOODWINE, AND TAYLOR, JUDGES.

DIXON, JUDGE: Aryone Lymon petitions for review of the Workers' Compensation Board (Board) opinion entered November 22, 2019, affirming the

opinion and order entered on August 2, 2019,[1] by the administrative law judge (ALJ). Following review of the record, briefs, and law, we affirm.

BACKGROUND FACTS AND PROCEDURE

On December 1, 2017, Lymon worked a normal 12-hour shift (7 p.m. to 7 a.m.) at Georgia Pacific's factory as a Dixie Cup Machine (DCM) Operator. She experienced no acute injury or pain during her shift. Thereafter, Lymon went home the morning of December 2, 2017, showered, ate, and went to bed. When she awoke that afternoon, she immediately noticed a sharp pain in her right foot. While driving herself to work that evening, experiencing pain as though her foot was asleep, she decided to drive herself to the emergency room instead. Lymon was diagnosed with a "pinched nerve." Soon after, she began experiencing urinary incontinence and increasing low back pain. She followed up at the emergency room on December 5, 2017. An MRI documented a herniated disc at L4/L5, ruptured with a sequestered fragment, which compressed a nerve root and caused *Cauda Equina* Syndrome (CES), as well as right foot drop. Lymon underwent emergency back surgery on December 6, 2017, to remove the sequestered fragment. This resolved her urinary incontinence and improved her low back pain;

[1] Lymon petitioned the ALJ to reconsider her order, but her petition was denied by an order entered August 30, 2019.

however, she still experienced problems with her right foot. Lymon never returned to work for Georgia Pacific after her shift ended on December 2, 2017.

On January 17, 2018, Lymon filed her Form 101, Application for Resolution of a Claim-Injury, claiming she was injured within the scope and course of her employment with Georgia Pacific on December 2, 2017, in her "SPINAL CORD - TRUNK" by "STRAIN OR INJURY BY LIFTING." Lymon was deposed on March 1, 2018. At that time, she was thirty years old. Lymon acknowledged she had been in a motor vehicle collision (MVC) on June 13, 2015, after which she was diagnosed with a low back injury, but claimed she fully recuperated from that injury. She denied any broken bones, bumps, or other significant injuries. Lymon testified that during her work for Georgia Pacific, she oversaw several[2] DCMs, and one of her duties was to change out rolls of paper on the bottom of the machines. The DCMs would use two to two-and-a-half rolls of bottom paper per shift. Lymon testified the rolls weighed between 20 and 30 pounds. She had to roll the paper from its rack to the machine and use a crank to lift the paper into position on the machine. Lymon testified the cranks were often broken, necessitating that she lift the roll with her right foot and hands a few inches to its position on the machine. She further stated that the rolls did not usually fit

[2] Lymon's brief states there were 16 machines in her group, but only approximately 12 were working on any given day.

on the first attempt; she would have to try two or three different rolls to find one that fit properly. Lymon said she worked her last shift as normal and awoke with pain that afternoon. She claimed she reported her injury to her supervisor through her family member, and her supervisor directed her to contact Chris Brown, the safety advisor. Lymon testified she informed Brown of her injury, as directed.

Sharon Markle, Lymon's supervisor, was deposed on May 25, 2018. At that time, Markle had served as a plant supervisor for over 11 years. Although Markle supervised 13 employees, she testified she interacted with Lymon about once an hour. Markle testified the bottom roll of paper weighed 60 pounds. While she had been trained on how to operate the DCMs, Markle testified that she did not train Lymon. She described the method of lifting rolls using a foot and hands as a dangerous and unauthorized shortcut. She testified workers had been injured using this method in the past, and it was against company policy. Markle further testified she was unaware of any broken cranks on the DCMs and stated it had not happened—to her knowledge—since she had worked there. Markle also testified the problem with rolls of bottom paper not fitting properly on the DCMs did not begin until after Lymon was no longer working for Georgia Pacific. Markle stated it was not Lymon's job to lift the bottom rolls of paper, and if they needed to be lifted, Lymon was to have another employee do so. Markle further testified no heavy lifting was required of Lymon at her job with Georgia Pacific. Markle

stated Lymon reported a prior injury in which she smashed her fingers in the DCM but did not report that her foot and/or back injury was sustained either at work or because of work.

Lymon sent Dr. Harry Lockstadt, her surgeon and treating physician, a letter with a series of "yes" or "no" questions concerning the causation of her injuries, to which Dr. Lockstadt replied on February 1, 2018. The first question asked if CES can be caused by heavy lifting over a period of months. Dr. Lockstadt marked "yes," but also wrote "possible but unlikely." He also indicated it is *possible* Lymon sustained an injury that caused her CES due to an extruded herniated disc brought on by heavy lifting. Lymon also sent Dr. Lockstadt a "medical questionnaire." Dr. Lockstadt responded on March 8, 2018, indicating Lymon had not yet reached Maximum Medical Improvement (MMI). He assigned Lymon a current impairment rating, pursuant to the AMA *Guides*,[3] of "13% but if foot drop continues to recover, this can decrease down to 10%."

Lymon also sent Dr. Brandon Cook a letter with a series of mainly "yes" or "no" questions concerning the causation of her injuries. Dr. Cook responded on November 15, 2018. He indicated he believed, within a reasonable degree of medical probability, that it was "highly likely" the CES was caused as a

[3] LINDA COCCHIARELLA & GUNNAR B.J. ANDERSSON, GUIDES TO THE EVALUATION OF PERMANENT IMPAIRMENT, AMERICAN MEDICAL ASSOCIATION (5th ed. 2000).

direct and proximate cause of Lymon's "work activities *lifting heavy* rolls of paper onto a paper press." (Emphasis added.) Dr. Cook further wrote, Lymon "without a doubt had [CES] which was secondary to a large herniated disc which *in her case was sudden which is usually correlated with heavy lifting*." (Emphasis added.)

Lymon requested Dr. Joseph Zehner review her medical records. Dr. Zehner's report, dated October 23, 2018, opined Lymon "probably had annular tears at the 4-5 and L5-S1 levels that were *pre-existing* conditions brought into a disabling reality" and the "L4-5 tear allowed a free fragment to escape into the spinal canal *during sleep*." (Emphasis added.) Dr. Zehner further opined the cause of Lymon's injuries "was *repetitive forward-bending-lifting while balancing on one foot during work*" and "[d]ue to her age, it is surprising that she got hurt." (Emphasis added.) Dr. Zehner opined Lymon would not improve further and assigned a whole person impairment rating, pursuant to the AMA *Guides*, of 21%, based on 13% lumbar spine impairment and 9% urinary system neurological impairment.

Lymon underwent an Independent Medical Evaluation (IME) on April 4, 2018, with Dr. Timothy Kriss. Dr. Kriss's IME report opined Lymon's injuries were *natural* and *spontaneously* occurring due to the *natural aging process* and Lymon's *degenerative disc disease*. Dr. Kriss further reported there was "no evidence whatsoever to indicate any work-related causation for this right L4/L5

disc herniation." Dr. Kriss noted Lymon "did not have any onset of symptoms at work associated with a physical event or physical activity." Dr. Kriss also noted Lymon "did not have any aggravation of symptoms at work associated with any physical event or physical activity." Dr. Kriss supplemented his report on April 11, 2018, after reviewing additional treatment records of Lymon, stating those records did not change his original opinion. Dr. Kriss supplemented his report again on May 12, 2018, after reviewing Lymon's objection to his report, explaining his understanding and reliance upon medical literature. Lymon underwent a second IME, on December 12, 2018, with Dr. Kriss. He opined Lymon reached MMI on December 6, 2018, and assessed an impairment rating, pursuant to the AMA *Guides*, of 12%. However, Dr. Kriss stressed that Lymon's impairment was not work-related. Dr. Kriss's deposition testimony on February 13, 2019, was consistent with his reports.

A benefit review conference was held on April 12, 2019, and a final formal hearing on June 3, 2019. Lymon testified consistently with her deposition testimony. On August 2, 2019, the ALJ entered her opinion and order finding that Lymon failed to satisfy her burden of proving she sustained any work-related injury, as alleged, on December 1, 2017. Consequently, Lymon's claims were dismissed. Lymon petitioned the ALJ for reconsideration, but her petition was

denied. She then appealed the ALJ's orders to the Board, and the Board affirmed the ALJ. This appeal followed.

STANDARD OF REVIEW

The appropriate standard of review for workers' compensation claims was summarized in *Bowerman v. Black Equipment Company*, 297 S.W.3d 858, 866-67 (Ky. App. 2009).

> Appellate review of any workers' compensation decision is limited to correction of the ALJ when the ALJ 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 Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). Our standard of review differs in regard to appeals of an ALJ's decision concerning a question of law or a mixed question of law and fact *vis-à-vis* an ALJ's decision regarding a question of fact.
>
> The first instance concerns questions of law or mixed questions of law and fact. As a reviewing court, we are bound neither by an ALJ's decisions on questions of law or an ALJ's interpretation and application of the law to the facts. In either case, our standard of review is *de novo*. *Carroll v. Meredith*, 59 S.W.3d 484, 489 (Ky. App. 2001); *Cinelli v. Ward*, 997 S.W.2d 474, 476 (Ky. App. 1998). *De novo* review allows appellate courts greater latitude in reviewing an ALJ's decision. *Purchase Transportation Services v. Estate of Wilson*, 39 S.W.3d 816, 817-18 (Ky. 2001); *Uninsured Employers' Fund v. Garland*, 805 S.W.2d 116, 117 (Ky. 1991).
>
> The second instance concerns questions of fact. [Kentucky Revised Statutes (KRS)] 342.285 designates the ALJ as finder of fact, and has been construed to mean that the factfinder has the sole discretion to determine the

quality, character, weight, credibility, and substance of the evidence, and to draw reasonable inferences from the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985); *McCloud v. Beth-Elkhorn Corporation*, 514 S.W.2d 46, 47 (Ky. 1974). Moreover, an ALJ has sole discretion to decide whom and what to believe, 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 adversary party's total proof. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15, 16 (Ky. 1977).

KRS 342.285 also establishes a "clearly erroneous" standard of review for appeals concerning factual findings rendered by an ALJ, and is determined based on reasonableness. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). Although an ALJ must recite sufficient facts to permit meaningful appellate review, KRS 342.285 provides that an ALJ's decision is "conclusive and binding as to all questions of fact," and that the Board "shall not substitute its judgment for that of the [ALJ] as to the weight of evidence on questions of fact[.]" *Shields v. Pittsburgh & Midway Coal Mining Co.*, 634 S.W.2d 440, 441 (Ky. App. 1982). In short, appellate courts may not second-guess or disturb discretionary decisions of an ALJ unless those decisions amount to an abuse of discretion. *Medley v. Board of Education, Shelby County*, 168 S.W.3d 398, 406 (Ky. App. 2004). Discretion is abused only when an ALJ's decision is arbitrary, unreasonable, unfair, or unsupported by sound legal principles. *Downing v. Downing*, 45 S.W.3d 449, 454 (Ky. App. 2001).

. . . .

Generally, "arbitrariness" arises when an ALJ renders a decision on less than substantial evidence, fails to afford procedural due process to an affected party, or exceeds her statutory authority. *K & P Grocery, Inc. v.*

Commonwealth, Cabinet for Health Services, 103 S.W.3d 701, 703 (Ky. App. 2002).

Substantial evidence is "that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." *Bowling v. Natural Resources and Envtl. Protection Cabinet*, 891 S.W.2d 406, 409 (Ky. App. 1994). Our standard of review requires us to show considerable deference to the ALJ and the Board.

COMPELLING EVIDENCE

Lymon contends the evidence presented compels a different result. If the employee is unsuccessful before the Board, "the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor." *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984). For evidence to be compelling, the evidence produced in favor of the employee "must be so overwhelming that no reasonable person could reach the conclusion of the Board." *REO Mechanical v. Barnes*, 691 S.W.2d 224, 226 (Ky. App. 1985), *superseded by statute as stated in Haddock v. Hopkinsville Coating Corp*., 62 S.W.3d 387 (Ky. 2001).

Here, the ALJ found Dr. Kriss's opinions the most persuasive. Dr. Kriss's examination of Lymon and review of her medical records revealed no evidence of any work-related causation for the L4/5 herniation and CES. He opined Lymon's injuries were not work-related but occurred spontaneously and

naturally as part of the natural aging process, coupled with her degenerative disc disease. The ALJ also found Markle's testimony more persuasive than Lymon's concerning Lymon's work activities. The ALJ did not believe Lymon engaged in the heavy lifting she described. Consequently, the ALJ rejected medical opinions based on history provided by Lymon which the ALJ concluded was false. The ALJ further concluded that even if Lymon did perform the activities she described, they did not cause her low back condition. Dr. Kriss's opinions and Markle's testimony constitute substantial evidence; therefore, we will not disturb the ALJ's findings. Conversely, the evidence presented by Lymon—including her testimony and medical records, as well as the opinions of Drs. Lockstadt, Cook, and Zehner—is not so overwhelming as to compel a contrary result.

Nonetheless, Lymon compares her case to *Haycraft v. Corhart Refractories Co*., 544 S.W.2d 222 (Ky. 1976). However, this case differs factually. Haycraft engaged in hard physical labor at work, such as using a sledgehammer and lifting and shifting heavy objects and materials. Haycraft experienced no back pain until he had a sudden severe onset of pain while swinging a sledgehammer. Following that injury, Haycraft never fully recovered and suffered "flare-ups" two or three times per year. He had back pain while he worked and had another incident of severe pain at work, but eventually resumed his customary duties involving hard manual labor. Then, on his day off, he

experienced another incident of severe pain. A myelogram disclosed a disc-type defect at L5 and L4. Haycraft had back surgery and was eventually released for work with restrictions. Herein, Lymon was in a car accident injuring her back a few years before she started working for Georgia Pacific. There is no indication of any back pain or injury after Lymon began working for Georgia Pacific until December 2, 2017. Moreover, the type of work detailed in Lymon's job description, and described by Markle, did not involve heavy lifting or hard physical labor.

The *Haycraft* Court held:

> We agree that not all degenerative diseases or conditions are compensable. We agree also that it is difficult to assess the degree of relationship between this claimant's work and his disability. But difficult or not, that such a relationship does exist can hardly be avoided. Not only is it beyond question that the nature of the work was such that it probably aggravated and accelerated the degenerative disc condition, but also there have been two incidents of actual injury to the man's back arising out of and in the course of his employment.
>
> To the extent that the claimant was actively disabled prior to April 11, 1974, under KRS 342.120 he cannot be compensated. For the remainder of his disability attributable to the present condition of his back he is entitled to compensation to be divided between the employer and the Special Fund, the employer's portion to be assigned not on the basis of how much of it would have occurred in the absence of the degenerative disc condition, but *on the basis of how much the work has contributed to it*.

Id. at 228 (emphasis added) (footnote omitted). Lymon had the burden of proof and risk of nonpersuasion before the ALJ with regard to every element of her claim. She failed to prove her work at Georgia Pacific contributed to her injury.

DR. KRISS

Lymon also attacks the ALJ's reliance upon Dr. Kriss's opinions. Lymon argues Dr. Kriss "invades the province of the ALJ by basing his opinions on causation on the fact that Aryone Lymon did not self diagnose [sic] her condition as being work related." However, a question of causation involving a medical relationship not apparent to a layperson is *only* properly within the province of medical experts, *not* the ALJ. "Where the question at issue is one which properly falls within the province of medical experts, the fact-finder may not disregard the uncontradicted conclusion of a medical expert and reach a different conclusion." *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000) (citing *Mengel v. Hawaiian-Tropic Northwest & Cent. Distribs., Inc*., 618 S.W.2d 184 (Ky. 1981)). It is clear the ALJ did not impermissibly disregard an uncontradicted conclusion of a medical expert. Instead, she specifically stated in her order, "[t]he ALJ finds Dr. Kriss' opinion most persuasive in this case." Dr. Kriss specifically found Lymon experienced a naturally occurring, spontaneous disc herniation without any associated or triggering trauma. The causation determined by Dr. Kriss was based on his examination of Lymon and review of her medical records.

Dr. Kriss's medical report referenced at least 34 of Lymon's medical records to support his opinion, observations, and medical findings. Contrary to Lymon's assertions, Dr. Kriss did not require her to self-diagnose. Instead, Dr. Kriss simply found it significant that Lymon was asymptomatic at work, did not experience any specific traumatic injury at work, or any onset or aggravation of symptoms at work. Dr. Kriss opined the majority (approximately 80%) of these types of injuries, including Lymon's, are naturally occurring without a traumatic triggering event.

Lymon also contends Dr. Kriss was not fully aware of all the relevant facts before he made his report, that he misconstrued Lymon's medical history, and that he used the wrong standard of causation. However, these contentions are not borne out by the record. Lymon argues when a physician's opinion is based on a history that is substantially inaccurate or largely incomplete, the opinion cannot constitute substantial evidence. In support of her argument, Lymon cites to *Cepero v. Fabricated Metals Corporation*, 132 S.W.3d 839 (Ky. 2004), which held:

> [I]n cases such as this, where it is irrefutable that a physician's history regarding work-related causation is corrupt due to it being substantially inaccurate or largely incomplete, any opinion generated by that physician on the issue of causation cannot constitute substantial evidence. Medical opinion predicated upon such erroneous or deficient information that is completely unsupported by any other credible evidence can never, in our view, be reasonably probable. Furthermore, to permit a ruling of law to stand based upon such evidence

> that is not reliable, probative and material would be fundamentally unjust.

Id. at 842 (quoting *Cepero v. Fabricated Metals Corp*., No. 01-00361, slip op. at 18-19 (Ky. Workers' Comp. Bd. Mar. 6, 2002)). Herein, however, the additional pieces of information Lymon presented to Dr. Kriss at his deposition did not alter his opinions so as to render Lymon's medical history either substantially inaccurate or largely incomplete. Concerning Lymon's medical history, although Dr. Kriss referenced bone spurs in his first report, he corrected and clarified that reference in a subsequent report.[4] Concerning causation, KRS 342.0011(1) defines "injury" as

> any work-related traumatic event or series of traumatic events, including cumulative trauma, 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*. "Injury" *does not include the effects of the natural aging process . . . .*

[4] Dr. Kriss's response stated:

> I acknowledge that the Lancet study also includes an analysis of osteoarthritic bone spurs in the lumbar spine . . . I made an error in describing Ms. Lymon's degenerative changes as osteoarthritic ("bone spurs"[)], but this simply represents a variable – osteoarthritis – analyzed and covered in the Lancet study, which Ms. Lymon does not have. This does not mean that the Lancet data pertaining to lumbar disc degeneration and repetitive bending, twisting and lifting does not apply to Ms. Lymon. All of that data applies to Ms. Lymon perfectly. The fact that the study is more inclusive of the types of degenerative changes tracked than the patient demonstrates does not automatically invalidate the degenerative disc data, much less exclude the patient from the study entirely. I made an error in my description of the type of degenerative changes in Ms. Lymon [sic] spine, but in pointing out this error, and then trying to inappropriately exclude Ms. Lymon from comparisons with the highly specific Lancet study data, [Lymon's counsel] makes a far greater error.

(Emphasis added.) Dr. Kriss's report opines, "[i]n this situation, an unsubstantiated opinion of work-related causation without ANY objective, medical, scientific evidence is, by medical definition, **SPECULATION**." (Emphasis in original.) He merely noted the lack of objective medical findings to support an injury as defined by the Act.[5] Dr. Kriss did not use the wrong standard of causation or impose a higher burden than required of Lymon.

The ALJ's ultimate finding—lumbar degenerative disc disease was the cause of the onset of Lymon's symptoms—mirrored Dr. Kriss's opinion. In adopting Dr. Kriss's medical findings and opinions, the ALJ noted, "[a]lthough the undersigned believes heavy repetitive lifting can cause disc herniation, I am not convinced Lymon performed those activities or that such caused her low back condition." The lack of documented complaints linking Lymon's symptoms to work-related injury or trauma led Dr. Kriss—and ultimately, the ALJ—to conclude the symptoms were not caused by Lymon's work. Based on the foregoing, it is clear the ALJ's factual findings regarding Lymon's medical conditions were supported by substantial medical evidence. Consequently, the Board was correct to affirm the ALJ.

[5] KRS Chapter 342, known as the Workers' Compensation Act (Act).

SUFFICIENCY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

Lymon further maintains the ALJ provided insufficient findings of fact and conclusions of law to allow for meaningful appellate review. This argument is merely an attempt to reargue the merits of Lymon's claim, however. KRS 342.275(2) requires nothing more than an award, findings of fact, and rulings of law. ("The award, order, or decision, together with a statement of the findings of fact, rulings of law, and any other matters pertinent to the question at issue shall be filed with the record of proceedings[.]") An ALJ is not required to engage in detailed discussion of the facts or set forth minute details of his reasoning in reaching a result, so long as the ALJ lays out the basic facts from the evidence upon which the conclusions are drawn so the parties are reasonably apprised of the basis of the decision. *Big Sandy Community Action Program v. Chaffins*, 502 S.W.2d 526, 531 (Ky. 1973); *Shields*, 634 S.W.2d at 444. The ALJ made detailed findings of fact and conclusions of law, which were articulated sufficiently to allow for meaningful review. We agree with the Board that the ALJ adequately informed the parties of the basis of her reliance upon Dr. Kriss and her rejection of the opinions of Drs. Lockstadt, Cook, and Zehner.

CONCLUSION

For the foregoing reasons, the opinion of the Workers' Compensation Board is AFFIRMED.

ALL CONCUR.

BRIEF FOR APPELLANT:

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