

IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28 (4) (c), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS AUTHORITY IN ANY OTHER CASE IN ANY COURT OF THIS STATE.

Supreme Court of Kentucky **FINAL**

2003-SC-0049-WC

DATE 1-8-04 ELLA C-row, H, D.C.

HAZARD ARH

APPELLANT

APPEAL FROM COURT OF APPEALS

2002-CA-1061-WC

V.

WORKERS' COMPENSATION BOARD NO. 1997-WC-02667

BRENDA STIDHAM; WORKERS'
COMPENSATION FUND, SUCCESSOR
TO SPECIAL FUND; HON. RONALD W.
MAY, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION
BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal is from a decision of the Court of Appeals affirming an opinion of the Workers' Compensation Board which affirmed an opinion and award of the Administrative Law Judge. Originally, the ALJ entered a decision dismissing the claim in 1999 based solely on the question of notice. That decision was ultimately reversed by this Court and remanded to the ALJ for a decision on all issues. On remand, the ALJ rendered his opinion and award which found Stidham to be permanently and totally occupationally disabled as a result of the work-related heart attack.

Hazard ARH presents three issues on appeal. First, it charges reversible error to the ALJ for not making a specific finding as to whether the "garbage lifting" events truly

occurred. Second, Hazard ARH believes it was incorrect for the ALJ to rely on medical evidence contradicting the University Evaluator's opinion regarding causation of the second operation and total disability. Third, they contest that the error of the ALJ to rely on evidence contradicting the University Evaluator's opinion on total disability demands a reversal of the award of total temporary disability.

Counsel for Stidham frames the issue as to whether the award by the ALJ is supported by substantial evidence, and thus not reversible.

Stidham testified that on May 6, 1996, while she was emptying heavy garbage, she began to experience chest and arm pains and began sweating. Her coworkers took her to the emergency room where she was initially diagnosed as having muscle spasms and sent home with a prescription for pain medication. Upon leaving the hospital, she again experienced pain in her arm and her sister took her to see Dr. George Chaney, who admitted her to the hospital where she was diagnosed as having a myocardial infarction. She eventually underwent cardiac cauterization and angioplasty and returned to work in the fall of 1996. Thereafter, she continued to experience additional pains in the chest and arm and eventually repeated the cardiac cauterization and underwent coronary bypass surgery in April of 1997. She did not return to work.

Stidham admitted in her testimony that she had previously experienced arm pains while at home putting away some soup cans but that the pain was not as severe as that she experienced on May 6, 1996. She filed her claim against Hazard ARH for workers' compensation benefits in December of 1997, alleging that her disability was a result of the work-related injury sustained on May 6, 1996. Initially, the ALJ dismissed the claim on the basis that she failed to give her employer due and timely notice of the

work-related injury. The Board reversed the decision of the ALJ as to failure to give notice and the Court of Appeals and Supreme Court affirmed the Board and remanded the case to the ALJ. On remand, the ALJ essentially adopted the findings of his earlier decision with the exception of the findings about notice. On the issue of work-related injury, he relied on the opinion of Dr. Stephen Wagner, the university evaluator, in finding that the heart attack was caused by the work she was performing for her employer on May 6, 1996, which aroused a preexisting condition into a disabling reality. The ALJ disregarded the opinion of the evaluator as to the work related nature of the claimant's ongoing medical problems and the extent and duration of her disability. The ALJ did rely on the claimant's treating physician as to these matters, and found Stidham totally and permanently disabled. On appeal, the Board and the Court of Appeals affirmed the ALJ. This appeal followed.

I. Work-related Lifting

Hazard ARH argues that the ALJ made a finding of causation without first finding that the alleged work-related incident occurred. The employer maintains that the incident in question did not occur and that it was actually the lifting of groceries at home which precipitated the heart attack. In support of their argument, Hazard ARH contends that medical records from May 6, 7 and 10, 1996 do not show any "garbage lifting" incident, and where it is noted that Stidham had a two-day history of chest pains which began when she was carrying groceries.

However, we agree with the Court of Appeals that the opinion of the ALJ of November 28, 2001 found that the garbage-lifting incident did occur. "The ALJ is further persuaded by the view of the university evaluator that the acute myocardial infarction plaintiff suffered on May 6, 1996, was precipitated by the physical efforts she

was performing in her job related duties.” The phrase “job-related duties” was a sufficient reference to the garbage lifting incident because that was the only evidence of work-related duties that Stidham had performed on that day prior to being taken to the hospital.

It is the responsibility of the ALJ to determine the quality, character and substance of the evidence presented. Paramount Foods, Inc. v. Burkhardt, Ky., 695 S.W.2d 418 (1985). When the ALJ rules in favor of a claimant, so long as the findings are supported by substantial evidence, a reviewing court will not disturb its ruling. Smyzer v. B.F. Goodrich Chemical Co., Ky., 474 S.W.2d 367 (1971). The same opinion defines substantial evidence as being evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable men. Smyzer, supra, at 369.

In this case, the ALJ recognized the conflicting evidence on the question of whether the work-related incident caused the heart attack. He acknowledged that the hospital records from the admission of Stidham and the follow up by Dr. Chaney did not mention any work injury or that her symptoms started at work. The ALJ also considered the testimony of the claimant that, although she had experienced some arm pain in the past, she began to sweat and have severe pains in her chest and arm which caused her to call for help when she was emptying the garbage cans. There was also testimony from the claimant's work supervisor that she called him at home to tell him about the chest pains. The supervisor testified that the job sometimes required fairly heavy lifting. The ALJ determined that the report of the university evaluator was most persuasive. He rendered an opinion that the heart attack was caused by her performance of work-related duties. It is well settled that the ALJ has the right to

believe part of the evidence and disbelieve other parts. See Caudill v. Maloney's Discount Stores, Ky., 560 S.W.2d 15 (1977).

Here, the testimony of the claimant and her supervisor, as well as the report of the university evaluator was substantial evidence to support the findings of the ALJ that the heart attack was work related.

II. Subsequent Medical Problems

Hazard ARH contends that the ALJ failed to accord presumptive weight to the opinion of the university evaluator regarding the cause of Stidham's medical problems subsequent to the heart attack. It was the evaluator's opinion that although the initial heart attack was caused by work-related activities, the subsequent progression of her coronary problems were related to her underlying risk factors such as cigarette smoking and diabetes and not her work-related activities. Hazard ARH asserts that the ALJ was in error when he disagreed with these findings of the evaluator.

KRS 342.315 provides for the appointment of a university evaluator to assess workers who have sustained occupational injuries or diseases. The statute has been interpreted so as to permit the ALJ to disregard the opinion of the evaluator when evidence is introduced in rebuttal. Magic Coal Co. v. Fox, Ky., 19 S.W.3d 88 (2000). In choosing to disregard part of the opinion of the evaluator, the ALJ stated in part:

As respects the other findings of the university evaluator the ALJ is persuaded that such other findings have been appropriately rebutted by those physicians who saw and treated plaintiff on more than one occasion. Accordingly, the ALJ is persuaded that the plaintiff's bypass surgery and subsequent development of neuropathic pain with RSD are incidences that flowed naturally and as incident of the initial work injury.

Dr. Robert Hoskins, who examined Stidham in 1998 was of the opinion that her continuing heart problems were the result of the rupture of the atherosclerotic plaque

during the 1996 heart attack which was caused by work-related activity. Accordingly, there was competent medical evidence which rebutted the opinion of the university evaluator.

III. Extent and Duration of the Injury

Finally, Hazard ARH maintains it was error for the ALJ to disagree with the university evaluator as to the extent and duration of the injury. The evaluator agreed with Dr. Chaney that the 1996 heart attack did not result in permanent damage, however, the evaluator believed that restrictions should be placed on the claimant's activity and that she did not have the physical capacity to continue working at Hazard ARH. Dr. Hoskins disagreed with the conclusion of the evaluator that the claimant suffered a small amount of myocardial damage. In addition, Dr. Hoskins stated that Stidham could not return to her job at the hospital, or any job that required strenuous work, especially heavy lifting.

Dr. Agtarap, who examined Stidham in 1997, believed that her heart problems at that time were severe enough to produce restrictions. He stated that she could not return to work at the hospital. Essentially, he concluded that she was unemployable for any type of sustained work activities.

Thus there was sufficient evidence to rebut the opinion of the university evaluator that the 1996 heart attack did not cause permanent damage. It is the duty of the ALJ to determine the degree of functional disability when there is conflicting medical evidence and to translate functional impairment into occupational disability. With regard to the duration and extent of the injury, the opinions of Drs. Hoskins and Agtarap were substantial evidence of probative value which support the findings by the ALJ that

Stidham was permanently and totally disabled. KRS 342.730(1)(a) and KRS 342.740(1). Cf. Magic Coal Co., supra, at 96.

The opinion of the Court of Appeals and the Workers' Compensation Board is affirmed.

All concur.

COUNSEL FOR APPELLANT:

H. Brett Stonecipher
Ferreri & Fogle
300 East Main Street, Suite 500
Lexington, KY 40507

COUNSEL FOR APPELLEES:

Monica J. Rice-Smith
Edmond Collett
John Hunt Morgan
P.O. Box 1810
Hyden, KY 41749

David W. Barr
Workers' Compensation Funds
1047 US Hwy 127 S Ste 4
Frankfort, KY 40601