

**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**NOT TO BE PUBLISHED OPINION**

**THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.**

RENDERED: APRIL 19, 2007  
NOT TO BE PUBLISHED

**Supreme Court of Kentucky**

**FINAL**

2006-SC-000631-WC

DATE 5-10-07 ELLAGRETT/PL

JACQUELINE BYRD

APPELLANT

V. APPEAL FROM COURT OF APPEALS  
2005-CA-002281-WC  
WORKERS' COMPENSATION NO. 03-02199

FORD MOTOR COMPANY,  
WORKERS' COMPENSATION BOARD,  
AND ADMINISTRATIVE LAW JUDGE,  
JOHN B. COLEMAN

APPELLEES

**MEMORANDUM OPINION OF THE COURT**

**AFFIRMING**

Having found that the claimant did not suffer from a "permanent work-related condition" due to a thumb injury or carpal tunnel syndrome and that a thoracic spine condition caused no work-related impairment, an Administrative Law Judge (ALJ) dismissed the claimant's application for income and future medical benefits. The Workers' Compensation Board (Board) and the Court of Appeals affirmed. We affirm because we are not convinced that the employer's stipulation to an unspecified injury on November 15, 2001, precluded it from arguing that the injury did not result in a disabling thoracic condition. Nor are we convinced that the evidence compelled an award of income or future medical benefits for the thoracic condition or carpal tunnel syndrome.

When submitted to the ALJ, this claim included allegations of back injuries on November 15, 2001, and December 10, 2003; a thumb injury and carpal tunnel syndrome on November 13, 2003; cumulative trauma hearing loss that became manifest on February 15, 2004; and depression. Only a thoracic spine condition and carpal tunnel syndrome are presently at issue.

The claimant began working on the defendant-employer's assembly line in 1995. Later that year, she experienced some numbness and tingling in her right hand. The employer moved her to work that did not require the use of air tools, and her symptoms resolved. Records from the employer's medical department indicated that on November 15, 2001, the claimant reported numbness in her right hip after using it to turn a broken turntable. According to the claimant, however, she caught her leg in a cord and fell to the ground while working. Several fans then fell from a table and struck her in the back, causing sharp pains in her lower and mid back, with shooting pain into her legs. She stated that she returned to her usual duties after a period of light duty but continued to have a great deal of pain.

The claimant testified that she moved to the coolant line in the summer of 2003, because lifting fans increased her back pain. The job required her to use a 25-pound air gun that was suspended from the ceiling, and her hand symptoms returned. The medical department then had her transferred to the heater hose line. In November, 2003, she smashed her thumb. At that time, she also experienced numbness and tingling in her hands and arms, was treated by Dr. Harter, and was transferred temporarily to the bumper department. While picking up stock on December 10, 2003, she experienced severe back pain that brought her to her knees. She reported it to the medical department and was assigned permanent restrictions and a light-duty position.

When the matter was heard, the claimant testified that she continued to experience excruciating back pain, numbness and tingling in her hands, and sharp, shooting pain in her upper extremities. She could lift no more than seven to eight pounds, took medication, and used a TENS unit and hand braces. She acknowledged, however, that she had missed no time from work for her injuries.

Records from the employer's medical department indicated that on November 15, 2001, the claimant reported pain and numbness in her right hip after using it for the past two weeks to turn a broken turntable. She was diagnosed with a hip contusion and a lumbar spine sprain/strain. Several days later, she reported that she had used both hips on the turntable. Although her right hip had been worse at the initial visit, both hips and her low back were now painful. In November, 2002, she complained that her hip and low back pain had worsened. Dr. Shea ordered an MRI, which revealed some protruding lumbar discs, arthritis, and various other abnormalities. A thoracic MRI performed on February 12, 2003, revealed large herniations at T3-4 and T7-8.

Dr. Guarnaschelli saw the claimant on March 17, 2003. She gave a history of the November, 2001, injury and complained of pain throughout her back, into her neck, and into her left leg. He recommended conservative treatment, including home exercises and epidural blocks. He noted that her symptoms had improved as of August, 2003, and he recommended that conservative measures be continued.

The claimant submitted a report from Dr. Changaris, who evaluated her on March 18, 2004, several months after the second back injury. He diagnosed chronic low back and cervical pain, shoulder pain, herniated discs at T3-4 and T7-8, bilateral carpal tunnel syndrome, and moderate depression. Noting that the claimant was treated for neck, shoulder, and lower back pain before November 15, 2001, Dr.

Changaris attributed those impairments to pre-existing conditions. He assigned a 27% combined permanent impairment rating to work-related injuries. Included were a 10% impairment for depression; an 18% grip strength impairment for carpal tunnel syndrome due to the November 3, 2003, incident; and an 8% impairment for herniated thoracic discs due to the November 15, 2001, injury. He restricted the claimant to light to sedentary work.

Medical records indicated that on November 3, 2003, the claimant reported that she had injured her right thumb and also that she had been dropping small objects and thought that her carpal tunnel syndrome was flaring up again. When Dr. Harter saw her on January 29, 2004, he observed no gross motor deficits but did observe a very positive Tinel's bilaterally. He diagnosed carpal tunnel syndrome and suggested that she wear splints at night. On March 23, 2004, he noted that her nerve conduction studies were normal and that her symptoms were improved after injections. He released her to regular-duty work without restrictions. A May 7, 2004, letter indicated that the claimant had no permanent impairment rating for the condition.

Dr. Jacob, an orthopedic surgeon, evaluated the claimant for the employer on June 10, 2004. He noted that she was first diagnosed with carpal tunnel syndrome in 1995 but that the condition had apparently responded well to treatment with no residual carpal tunnel findings. He noted that a loss of grip strength did not meet the criteria for impairment due to carpal tunnel syndrome and that the testing he conducted for grip strength impairment yielded invalid results. Dr. Jacob also noted that the areas of thoracic herniation revealed on MRI did not correlate with the clinical findings. In his opinion, the claimant's thoracic spine condition was an incidental, age-related problem and not due to a reported work-related injury.

As reflected in the benefit review conference memorandum, the parties agreed to the following stipulation: "Plaintiff sustained work-related injury(ies) on 11-15-01, . . . ." They also stipulated that the employer received timely notice of the injury and paid \$9,145.48 in medical expenses. The parties contested the extent and duration of disability. The claimant's brief to the ALJ argued, among other things, that the employer failed to contest causation; therefore, the stipulation to a November 15, 2001, injury precluded it from asserting that her thoracic impairment was not work-related.

After summarizing the claimant's argument, the ALJ noted that the "extent and duration of disability is, in fact, the extent and duration of disability caused by the work related injury." Relying on Dr. Harter's testimony that the claimant was normal neurologically and that she had no impairment or work restrictions from carpal tunnel syndrome or the thumb injury, the ALJ was not convinced that she suffered from "a permanent work-related condition" due to the alleged injuries. Therefore, she was not entitled to income or future medical benefits. Turning to the November 15, 2001, injury, the ALJ noted that the claimant's initial treatment was for a contused hip. Dr. Jacob stated that the thoracic herniations found in 2003 did not correlate with her complaints, and he thought that they were probably age-related. Dr. Changaris indicated that the lumbar, cervical, and shoulder complaints were pre-existing and not work-related, and Dr. Cooley indicated that there was no work-related psychiatric impairment. Convinced that the incident caused no permanent work-related impairment, the ALJ dismissed the claim for that injury.

The burden was on the claimant to prove every element of her claim. Because KRS 342.285 designates the ALJ as the finder of fact, an ALJ has the sole discretion to determine the quality, character, and substance of evidence. See Paramount Foods,

Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Faced with conflicting evidence, an ALJ may reject any testimony and choose whom and what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977). Testimony by an interested witness does not bind an ALJ even if it is uncontradicted. Grider Hill Dock, Inc. v. Sloan, 448 S.W.2d 373 (Ky. 1969); Bullock v. Gay, 177 S.W.2d 883 (Ky. 1944). When the party with the burden of proof fails to convince the ALJ, that party must show on appeal that the favorable evidence was so overwhelming that it compelled a favorable finding. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

The claimant argues that the employer's stipulation to the November 15, 2001, injury and failure to preserve causation as an issue precluded it from asserting that the thoracic condition was not work-related. On that basis, she asserts that the ALJ was required to award future medical benefits for the condition and to award income benefits based on the 8% permanent impairment rating that Dr. Changaris assigned. We disagree.

KRS 342.0011(1), KRS 342.730, and KRS 342.020(1) base the entitlement to income and future medical benefits on the presence of "disability" that results from a compensable injury. Under the 1996 Act, disability is based on the presence of impairment as determined under the AMA Guides to the Evaluation of Permanent Impairment (Guides). As defined on page 2 of the Fifth Edition of the Guides, impairment is "a loss, loss of use, or derangement of any body part, organ system, or organ function," in other words, a harmful change in the human organism. Under the Guides, impairment that is permanent may or may not rise to the threshold for a permanent impairment rating. In Robertson v. United Parcel Service, 64 S.W.3d 284

(Ky. 2001), the court determined that future medical benefits were unwarranted where a harmful change was only temporary and had resolved before the claim was decided.

KRS 342.0011(1) defines a compensable injury as being a work-related traumatic event that is the proximate cause producing a harmful change in the human organism. This is not a case in which the employer asserted that the November 15, 2001, incident caused no harmful change in the human organism. It paid \$9,145.48 in medical expenses voluntarily, and it stipulated that the claimant sustained a work-related injury on November 15, 2001, and that it received timely notice. However, the parties did not stipulate to any specific harmful change, and they contested the extent and duration of the disability that the injury caused. That left the employer free to argue that the claimant was treated for a hip contusion and a lumbar sprain/strain after the incident and that disability from a thoracic condition that was diagnosed more than a year later was not due to the injury. Because the ALJ chose to rely on Dr. Jacob rather than Dr. Changaris and because overwhelming evidence did not compel a finding in the claimant's favor, the decision to dismiss the claim may not be disturbed on appeal.

The claimant's other argument is that Robertson v. United Parcel Service, *supra*, is factually distinguishable and does not support the refusal to award future medical benefits for carpal tunnel syndrome. She asserts that both Dr. Harter and Dr. Changaris diagnosed the condition and that her employer's medical department prescribed wrist/hand braces to be worn while working. She states that she continues to wear braces at night and that she remains under permanent restrictions against the repetitive use of her hands or the use of vibratory tools. Relying on Cavin v. Lake Construction Co., 451 S.W.2d 159, 161-62 (Ky. 1970), she asserts that that she is entitled to future medical benefits. We disagree.



Although Dr. Changaris assigned an 18% permanent impairment rating for carpal tunnel syndrome based on a loss of grip strength, Dr. Jacob testified that it was inappropriate to do so. When Dr. Harter first saw the claimant on January 29, 2004, he suggested that she wear splints at night, but by March 23, 2004, he noted that she had clinically improved, was neurologically normal, and had no permanent impairment or work restrictions. In May, 2004, he released her to return to regular-duty work without restrictions. No medical evidence indicated that a physician advised the claimant to continue to wear braces in order to treat the effects of the November, 2003, injury.

Acknowledging that the claimant had been diagnosed with carpal tunnel syndrome, the ALJ noted that she was "not medically impaired by that diagnosis at the present time." Therefore, the ALJ was not convinced that she suffered "from a permanent work[-]related condition caused from the alleged injuries of November 3, 2003." Because the medical evidence indicated that the claimant's symptoms had resolved and did not compel a finding that the November 3, 2003, incident caused a permanent harmful change that would require medical treatment in the future, we find no error in the refusal to award future medical benefits.

The decision of the Court of Appeals is affirmed.

All concur.

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