

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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

Supreme Court of Kentucky

FINAL

2006-SC-000945-WC

DATE 12-13-07 EIA Grovitt, D.C.

SARAH ROARK

APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
2006-CA-001427-WC
WORKERS' COMPENSATION BOARD NO. 03-97212

UNITED PARCEL SERVICE,
HON. MARCEL SMITH,
ADMINISTRATIVE LAW JUDGE,
AND WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

An Administrative Law Judge (ALJ) found that three work-related incidents caused only temporary strains, that they had completely resolved with no permanent impairment rating, that the claimant did not miss sufficient consecutive days of work to entitle her to temporary total disability (TTD) benefits, and that the employer had paid all medical benefits to which she was entitled. The Workers' Compensation Board affirmed the ALJ, and the Court of Appeals affirmed the Board. We affirm because the evidence did not compel a TTD award or an award of future medical treatment.

The claimant was born in 1983, completed high school, and was enrolled in college. During the academic year, she worked as an administrative assistant at the University of Louisville. She had a concurrent job with United Parcel Service (UPS) as

a package handler, which required her to unload tractor trailers and to lift as much as 70 pounds.

The claimant sustained three work-related injuries while working for UPS, reported each to her supervisor, and was treated for each at Baptist Worx. On January 21, 2003, she experienced back pain while placing a large box on a conveyor. She returned to light-duty work the next day and was released to full duty on February 5, 2003. On September 23, 2003, she experienced low back and shoulder pain while tugging on a package. She was restricted to light duty but lost no time from work. She remained on light duty when, on October 8, 2003, she experienced pain in her knee while squatting down to pick up an orange peel from the floor. She received more restrictions after the knee injury but was not taken off work. She testified that she had learned subsequently that the knee pain was attributable to her hip.

The claimant testified that Dr. Becker at Family Health Care took her off work completely on October 13, 2003, due to her knee and back injuries. Although she underwent a course of physical therapy and although Dr. Becker released her to return to light duty several times, she was unable to continue at UPS after November 2003. She testified subsequently that she could perform office work but could not return to her job at UPS due to pain in her right shoulder and occasional pain in her hip.

Records from Baptist Worx indicated that the claimant remained on light duty, under a 10-pound lifting restriction, and under a 20-pound pushing/pulling restriction when the third injury occurred on October 8, 2003. The records note a full active range of motion and no abnormalities after the third injury. The claimant was permitted to kneel, squat, and climb "as tolerated" and to return to work without restrictions on

October 13, 2003. She returned to Baptist Worx on October 10, 2003, complaining of thoracic and lumbar pain and of tingling in the right lower extremity. But the symptoms were noted to be out of proportion to the physical findings, which were normal.

Dr. Ballard performed an independent examination on November 6, 2003. Her impression was a history of upper and lower back pain and right knee complaints with no objective findings. In her opinion, the claimant had no permanent impairment rating, required no further treatment, and could return to work without restrictions. Dr. Becker reviewed the report and agreed that the claimant could return to full duty.

The claimant began a course of treatment with Dr. Murphy, a chiropractor, on November 15, 2003. He noted on July 1, 2004, that she had been totally incapacitated since he first saw her and that she would continue to be for the indefinite future. On July 21, 2004, he sought approval of an MRI of the shoulder girdle and right scapula.

The ALJ ordered a university evaluation, which Dr. Garman performed on November 12, 2004. Although he thought that the claimant was sincere in her belief that the injuries caused her present complaints, he found nothing to indicate that there was a residual thoracic or lumbar defect. In his opinion, the injuries were the cause of her complaints, but she had reached maximum medical improvement with no permanent impairment rating. He would limit lifting to 25 pounds and impose unspecified restrictions on bending, walking, standing, sitting, climbing, reaching, grasping, and operating machinery. He stated that she did not retain the physical capacity to return to work as a package handler. Noting that she had relatively low muscularity but performed fairly heavy work, he recommended reconditioning and work hardening. He thought that an MRI was unnecessary.

The claimant argues that the ALJ erred by failing to award TTD benefits and future medical benefits. She reasons that Dr. Murphy found her to be totally incapacitated from November 15, 2003, through July 1, 2004, and for the indefinite future thereafter. Moreover, although Dr. Garman found her to be at MMI as of November 12, 2004, he imposed restrictions and thought that she could not return to work as a package handler. He also recommended ongoing treatment in the form of reconditioning and work hardening.

KRS 342.315(2) requires an ALJ to give a university evaluator's clinical findings and opinions presumptive weight or state specific reasons for rejecting them. It does not deprive an ALJ of the authority to draw reasonable inferences from the evaluator's clinical findings and opinions in light of the other medical testimony. Chapter 342 does not afford a treating physician's testimony any particular weight.

Dr. Garman noted that the claimant's strength measurements seemed to reflect her "small stature and muscularity" and some deconditioning. He described her subsequently as a "young lady of relatively low muscularity [who] was endeavoring to do fairly heavy work" and noted that she "had multiple strains while doing it." Moreover, he assigned a 25-pound lifting limit "in light of her recurrent symptoms and her habitus." The ALJ relied on Dr. Garman and stated specifically that Dr. Ballard's findings corroborated Dr. Garman's. Dr. Ballard noted the absence of any objective findings of an injury on November 6, 2003. She assigned a 0% permanent impairment rating and thought that the claimant could return to full duty.

KRS 342.040(1) requires a worker to miss more than seven consecutive days of work due to an injury in order to become entitled to receive income benefits. The ALJ

appears to have inferred reasonably from Dr. Garman's report that he thought the claimant's size and low muscularity were the reasons that she lacked the physical capacity to perform the work for UPS, should not lift more than 25 pounds, and required work conditioning. Dr. Murphy's testimony did not compel a finding that the claimant's inability to work after November 15, 2003, resulted from her injuries.

KRS 342.020(1) entitles a worker to medical treatment for the effects of a work-related injury. Medical evidence supported the findings that the claimant's injuries caused strains, that they had resolved, and that they required no further medical treatment. It also permitted a reasonable inference that she lacked the physical capacity to work as a package handler due to her small size and low muscularity, conditions that did not result from her injuries. Because no overwhelming evidence indicated that the work-related injuries required further medical treatment, the ALJ did not err in failing to award it.

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

COUNSEL FOR APPELLANT,
SARAH ROARK:

WAYNE C. DAUB
600 WEST MAIN STREET
SUITE 300
LOUISVILLE, KY 40202

COUNSEL FOR APPELLEE,
UNITED PARCEL SERVICE:

KENNETH DIETZ
LANCE O. YEAGER
JONES, DIETZ & SCHRAND PLLC
P.O. BOX 0095
FLORENCE, KY 41022-0095