

**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**NOT TO BE PUBLISHED OPINION**

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED."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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE  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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,  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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED  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  
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ACTION.

# Supreme Court of Kentucky

2012-SC-000752-WC

CENTRAL BAPTIST HOSPITAL

APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS  
CASE NO. 2011-CA-002155-WC  
WORKERS' COMPENSATION NO. 09-79544

THERESA HAYES;  
HONORABLE CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

## MEMORANDUM OPINION OF THE COURT

### REVERSING AND REMANDING

Appellant, Central Baptist Hospital, appeals from a decision of the Court of Appeals which upheld the assignment of a 10% impairment rating to Appellee, Theresa Hayes. Central Baptist's sole argument is that the Court of Appeals erred in holding that the determination of whether an impairment rating for gait derangement could be combined with an impairment rating for arthritis was an issue solely for medical experts to determine. Central Baptist notes that combining an impairment rating for gait derangement with one for arthritis is prohibited by the *AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition* and that our Workers' Compensation Act requires that impairment ratings be assigned according to the *Guides*. See KRS

342.0011(35) (defining permanent impairment rating as the 'percentage of whole body impairment caused by the injury or occupational disease as determined by the 'Guides to the Evaluation of Permanent Impairment,' American Medical Associations, latest available edition. '); KRS 342.730(1)(b) (awards for permanent partial disability are to be based on a "permanent impairment rating caused by the injury or occupational disease as determined by the 'Guides to the Evaluation of Permanent Impairment,' American Medical Association, latest edition available.") For the reasons set forth below, we reverse the Court of Appeals and remand this matter to the Administrative Law Judge ("ALJ").

While working at Central Baptist, Hayes tripped and fell. As a result, she injured her left knee and filed for workers' compensation. After trying physical therapy to relieve her pain, Hayes underwent arthroscopic surgery performed by Dr. Paul Nicholls. The surgery did not completely alleviate her pain, and she continues to receive treatments on her left knee.

Dr. Nicholls reviewed Hayes's condition and assigned her an impairment rating of 7% for gait derangement pursuant to Table 17-5 of the *Guides* and an impairment rating of 3% for arthritis pursuant to Table 17-31 of the *Guides*. Nicholls then added the two impairment ratings and assigned Hayes a combined impairment rating of 10%. However, Table 17-2 of the *Guides*, which sets forth how to calculate lower extremity injury impairment ratings, states that an impairment rating for gait derangement may not be combined with an impairment rating for arthritis. Further, Section 17.2c specifically provides

that, “the lower limb impairment percents shown in Table 17-5 [gait impairment] stand alone and are not combined with any other impairment evaluation method.”

The ALJ found Dr. Nicholls’s findings to be the most credible out of all of the medical experts and granted Hayes permanent partial disability benefits, based on the 10% impairment rating. Central Baptist filed a petition for rehearing arguing that Dr. Nicholls misapplied the *Guides* by combining the two lower extremity impairment ratings. In denying Central Baptist’s petition, the ALJ stated that he was unaware of any requirement, in fact or law, that required him to review Dr. Nicholls’s use of the *Guides* and that the record supported his findings. He further stated that he “agrees with [Hayes] that correct or incorrect use of the AMA *Guides* can only be determined by a medical professional, although clearly erroneous use of the *Guides* can impact the credibility of an opinion.”

The Workers’ Compensation Board, citing to *Kentucky River Enterprises Inc. v. Elkins*, 107 S.W.3d 206 (Ky. 2003), affirmed the ALJ’s decision. *Elkins* held that the assessment of impairment for the purposes of arriving at a disability rating in a workers’ compensation claim is a medical question solely within the province of the medical experts. *Id.* at 210. Additionally, the Board stated that:

[e]xcept under compelling circumstances where it is obvious even to a lay person that a gross misapplication of the AMA *Guides* has occurred, the issue of which physician’s AMA rating is most credible is a matter of discretion for the ALJ. *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky. App. 1985). We are cognizant of the

fact the *Guides* provide the lower limb impairment percents shown in Table 17-5 stand alone and are not to be combined with any other impairment evaluation method. Notwithstanding this fact, the ALJ had the authority to choose the combined impairment rating assessed by Dr. Nicholls.

The Court of Appeals affirmed and this appeal followed.

**I. ALL PERMANENT PARTIAL DISABILITY IMPAIRMENT RATINGS MUST BE BASED ON THE AMA GUIDES**

Central Baptist's sole argument is that the Court of Appeals erred by affirming the ALJ's assignment of a 10% impairment rating to Hayes for her gait derangement and arthritis, despite the *Guides* stating that those two lower extremity impairment ratings should not be combined. Key to that court's holding was the conclusion that the proper interpretation of the *Guides* and assessment of an impairment rating in accordance with the *Guides* are reserved to medical witnesses. *Elkins*, 107 S.W.3d at 210. Usually an ALJ may not question a medical expert's interpretation of the *Guides*, but may only determine which expert's findings he finds to be most credible. *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004). But once an ALJ is presented with overwhelming evidence that the impairment rating calculated by the medical expert is in contravention of the *Guides*, he has the responsibility to assign a different rating.

As previously noted, any impairment rating assigned by an ALJ must be in compliance with the *Guides*. KRS 342.0011(35); KRS 342.730(1)(b). In this matter, Central Baptist provided sufficient evidence to show that the combined 10% impairment rating assigned to Hayes was erroneous and not in

compliance with the *Guides*. Table 17-2 and Section 17.2c of the *Guides*, state that an impairment rating for gait derangement may not be combined with an impairment rating for arthritis. No medical analysis or expertise is necessary to come to this conclusion. Thus, Dr. Nicholls should not have combined the two different impairment ratings, and Hayes cannot be assigned the combined 10% impairment rating.

### **CONCLUSION**

Thus, for the reasons set forth above, we reverse the decision of the Court of Appeals and remand this matter to the ALJ for the entry of a new award based on the *Guides*.

All sitting. All concur.

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