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**NOT TO BE PUBLISHED OPINION**

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THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE  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UNPUBLISHED KENTUCKY APPELLATE DECISIONS,  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BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED  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

2013-SC-000407-WC

PAULA ROOP

APPELLANT

V. ON APPEAL FROM COURT OF APPEALS  
CASE NO. 2012-CA-001433-WC  
WORKERS' COMPENSATION NO. 11-01315

A.K. STEEL CORPORATION;  
HONORABLE RICHARD M. JOINER,  
ADMINISTRATIVE LAW JUDGE; AND  
WORKERS' COMPENSATION BOARD

APPELLEES

## MEMORANDUM OPINION OF THE COURT

### AFFIRMING

Appellant, Paula Roop, appeals from a Court of Appeals decision which upheld a workers' compensation award in her favor based on a 5% impairment rating for work-related hearing loss. Roop argues that the Administrative Law Judge ("ALJ") erred by rejecting the opinion of a university evaluator who instead assigned her a 14% impairment rating. For the reasons set forth below, we affirm the Court of Appeals.

Roop worked for Appellee, AK Steel Corporation, for approximately twenty-three years. Her last date of employment was in October 2009. While at AK Steel, Roop worked numerous jobs all of which exposed her to industrial noise. She was not exposed to significant loud noises outside of her

employment. While Roop does not have a personal history of frequent ear infections, trauma, or surgery prior to her employment with AK Steel, her family did have a history of hearing loss. Her grandmother wore hearing aids, and her father has hearing loss but does not wear hearing aids.

In October 2011, Roop filed a Form 103 – Application for Resolution of Hearing Loss Claim. To support her claim, Roop filed a report from Dr. Robert Manning who found that she had a history of “a slowly progressive sensorineural deficit bilaterally,” and that testing revealed a “moderate nerve impairment hearing loss . . . bilaterally.” Dr. Manning attributed Roop’s hearing loss to loud noise exposure and assigned her a 16% impairment rating.

Pursuant to KRS 342.315 and 803 KAR 25:010 §11, Dr. Raleigh O. Jones of the University of Kentucky was appointed as university evaluator. He stated in his evaluation that Roop had been exposed to loud noise frequently but not regularly while employed with AK Steel. Dr. Jones also noted that Roop’s grandmother suffered from significant hearing loss, but he was unaware of her father’s hearing difficulties. Dr. Jones’s testing revealed that Roop had both high and low frequency hearing loss and assigned her a 14% impairment rating. But, he noted that Roop’s test results did not fit the normal pattern for noise-induced hearing loss. Further, he stated that Roop was younger than most individuals who develop a sensorineural hearing loss from noise exposure. Since Roop’s case was not typical, Dr. Jones considered non-occupational causes for her hearing loss but could not find any. Therefore, he concluded that Roop “did most likely have noise-induced hearing loss.”

In rebuttal, AK Steel filed a report by Dr. Joseph B. Touma. Dr. Touma diagnosed Roop with “moderate mixed deafness sensorineural hearing loss in both ears.” However, he found that Roop’s hearing loss was not compatible with hearing loss caused by hazardous noise exposure, and stated that her low frequency hearing loss was not work-related. Dr. Touma assigned Roop a 5% impairment rating for work-related high frequency hearing loss.

The ALJ reviewed the evidence and applicable law, and made the following findings:

In this case, I reject the opinion of the university evaluator and instead find that the report of Dr. Touma is a more accurate assessment of the impairment that is attributable to noise exposure in the workplace. I do so for several reasons. First, Dr. Jones did not have a full family history from the plaintiff. Second, the shape of the curve produced by the audiogram is one that is not generally consistent with noise induced hearing loss. Dr. Jones acknowledged that those two things were important in assessing the cause of a hearing loss. In the absence of another explanation, Dr. Jones opted to attribute the hearing loss to the employment. He appeared to do so reluctantly by being unable to identify other causes. In his deposition Dr. Jones expressed concern about attributing the hearing loss to noise. The pattern of hearing loss was not typical for noise induced hearing loss. Also, Ms. Roop is younger than most to develop a sensorineural hearing loss from noise exposure. On the other hand Dr. Touma stated quite clearly that the low frequency hearing loss has nothing to do with noise exposure. This warrants adjusting the results of the test which reduces the impairment. I accept the opinion of Dr. Touma and I find that the work-related portion of Ms. Roop’s hearing loss is 5%.

Roop filed a petition for reconsideration which was denied by the ALJ. The Workers’ Compensation Board and Court of Appeals affirmed. This appeal followed.

**THE ALJ'S REJECTION OF THE UNIVERSITY EVALUATOR'S OPINION IS SUPPORTED BY THE RECORD**

Roop argues that the ALJ erred by rejecting the opinion of Dr. Jones, a university evaluator, and assigning her an impairment rating based on Dr. Touma's findings. She contends that the ALJ did not give Dr. Jones's opinion presumptive weight as required by KRS 342.315(2) and that adequate reasons for the rejection were not given. Roop also argues that the rebuttable presumption provided by KRS 342.7305(4) should have applied. That statute provides that an employee's hearing loss is presumed to be covered by workers' compensation when audiograms and other testing reveal a pattern of hearing loss compatible with that caused by hazardous noise exposure, and the employee was exposed to repetitive hazardous noise in the work place.

The ALJ, as fact finder, has the sole authority to judge the weight, credibility, substance, and inferences to be drawn from the evidence. *Paramount Foods, Inc. v. Burkhardt*, 695 S.W.2d 418, 419 (Ky. 1985). An ALJ's findings will only be reversed if they are so unreasonable as to be erroneous as a matter of law. KRS 342.285; *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48, 52 (Ky. 2000). Since Roop had the burden of proof, and was unsuccessful before the ALJ, she must show that the evidence was so overwhelming as to compel a finding in her favor. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). KRS 342.315(2) states that an ALJ must give a university evaluator's opinion presumptive weight and that the burden to overcome the evaluator's findings is on the opponent of that evidence. Further, if an ALJ rejects a university evaluator's opinion, he must

specifically state in the order the reasons for rejecting that evidence. *Id.*; *Magic Coal v. Fox*, 19 S.W.3d 88 (Ky. 2000).

A review of the record supports the ALJ's decision. The ALJ provided the following reasons for why he chose to reject Dr. Jones's opinion: 1) Dr. Jones did not have Roop's complete family history; 2) Roop's pattern of hearing loss and audiogram findings were not consistent with noise-induced hearing loss; 3) Dr. Jones attributed Roop's hearing loss to noise exposure because he could not find any other explanation; and 4) Roop is younger than most individuals who have developed noise-induced hearing loss. These reasons are sufficient grounds for the ALJ to reject the university evaluator's opinion.

Roop's argument that she was entitled to the presumption provided in KRS 342.7305(4) also fails. For the presumption to apply, Roop had to show that her hearing loss test results were "compatible with that caused by hazardous noise exposure." Roop supports her argument by citing to Dr. Jones's report where he states that her hearing loss could be caused by noise exposure. But, the hearing test results from Dr. Jones only indicated that her hearing loss *may* be the result of hazardous noise exposure. Dr. Jones admitted that Roop's test results were not typical and did not fit the "classic pattern of noise exposure hearing loss." Additionally, Dr. Touma specifically found that Roop's hearing loss pattern was not compatible with hearing impairment caused by hazardous noise exposure. There is no conclusive evidence in the record that Roop's hearing loss was compatible with that

caused by hazardous noise exposure, and therefore Roop was not entitled to the presumption that her hearing loss was work-related.

For the reasons set forth above, we affirm the decision of the Court of Appeals.

All sitting. All concur.

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