Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 23, 2014

CLAIM NO. 201285725

AMANDA YOUNG PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

FAYETTE COUNTY BOARD OF EDUCATION
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

STIVERS, Member. Amanda Young ("Young"), *pro se*, appeals from the December 17, 2013, opinion and order of Hon. William J. Rudloff, Administrative Law Judge ("ALJ") in which the ALJ awarded temporary total disability ("TTD") benefits and medical benefits. The ALJ also ruled the Fayette County Board of Education ("Board of Education") was entitled to credit for workers' compensation benefits

paid and an offset for unemployment benefits paid during the period TTD benefits were paid. No petition for reconsideration was filed.

On appeal, Young asserts the ALJ's order is erroneous on the basis of material evidence in the record. Additionally, Young asserts the ALJ did not provide a "reasonable explanation" for the acceptance of one independent medical examination report over another.

The Form 101 alleges on March 13, 2012, Young injured her back in the following manner: "carrying a large 40 plus pound box upstairs and attempting to open a heavy door."

The November 6, 2013, Benefit Review Conference ("BRC") order lists the following contested issues: benefits KRS 342.730, injury as defined by the Act, medical benefits, and credit for unemployment benefits. Significantly, under "stipulations," is the following: "Plaintiff sustained a work-related injury or injuries on 3-13-12." Additionally, the Board of Education's Statement of Proposed Stipulations and Notice of Contested Issues, filed November 14, 2013, indicates a marked "yes" by the statement, "Plaintiff sustained work-related injury(ies) on:"

In the December 17, 2013, opinion and order, the ALJ determined as follows:

> A. "Injury" as defined by the Act.
>
> KRS 342.0011(1) defines "injury" to mean any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings. KRS 342.0011(33) defines "objective medical findings" to mean information gained through direct observation and testing of the patient applying objective or standardized methods.
>
> I saw and heard the plaintiff testify at the hearing. Based on her testimony and the medical evidence from Dr. Schwank, her treating neurosurgeon, which I found persuasive and compelling, I make the factual determination that the plaintiff did sustain work-related injuries while employed by the defendant on March 13, 2012, as documented in Dr. Schwank's medical records and reports.
>
> B. Benefits per KRS 342.730.
>
> KRS 342.0011(11)(a) defines "temporary total disability" to mean the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment.
>
> Based on the plaintiff's sworn testimony and the persuasive and compelling medical evidence from Dr. Schwank, her treating neurosurgeon, I

> make the determination that the plaintiff was temporarily totally disabled from March 19, 2012 to July 24, 2012 and is entitled to recover temporary total disability benefits in the amount of $512.85 per week for that period. As noted above, the defendant's workers' compensation insurer did make the appropriate payments, which total $9,377.83.
>
> As indicated above, I found the medical evidence from Dr. Schwank, the plaintiff's treating neurosurgeon, to be persuasive and compelling. Dr. Schwank's evidence is covered in detail above. His final diagnosis was that the plaintiff had sustained a lumbar strain, reached maximum medical improvement on July 24, 2012, will not sustain any permanent partial impairment and can resume full duty work on July 25, 2012. Based upon Dr. Schwank's evidence, I make the determination that the plaintiff is not entitled to recover permanent partial disability benefits under KRS 342.730.

Under the Kentucky's Workers' Compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as the fact-finder. As fact-finder, the ALJ reviews the evidence submitted by the parties and decides which testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as judge, then applies the law to the facts. As a matter of law, the facts as decided by the ALJ cannot be disturbed on appeal by this Board so long as

there is substantial evidence of record to support the ALJ's decision. *See* KRS 342.285(1); *See also* Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Furthermore, in the absence of a petition for reconsideration, concerning questions of fact, inadequate, incomplete, and even inaccurate fact-finding on the part of an ALJ is not grounds for reversal or remand if there is identifiable substantial evidence in the record that supports the ultimate conclusion. *See* Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); *See also* Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

As the claimant in a workers' compensation case, Young bore the burden of proving each of the essential elements of her cause of action before the ALJ, including proof of a permanent injury. *See* Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). As Young was unsuccessful in her burden, and since she failed to file a petition for reconsideration, the only question on appeal is whether evidence of substance supports the ALJ's determination that Young is not entitled to permanent partial disability ("PPD") benefits.

The December 17, 2013, opinion and order clearly states the ALJ relied upon the medical opinions of Dr. William Schwank in determining Young did not sustain a

permanent injury and is not entitled to permanent partial disability (“PPD”) benefits.

Dr. Schwank’s July 24, 2012, medical report indicates Young sustained a "lumbar strain resolved mild." He expressed the opinion Young had reached maximum medical improvement ("MMI"), has a 0% impairment rating, and has no permanent restrictions.

This report by Dr. Schwank is substantial evidence supporting the ALJ's determination to award TTD benefits and medical benefits but not PPD benefits. For this reason, the ALJ's determination cannot be disturbed.

Young also argues the ALJ did not provide a "reasonable explanation" for his acceptance of Dr. Schwank's report instead of Dr. Anthony J. McEldowney's. This alleged failure of the ALJ should have been addressed in a petition for reconsideration. Since Young failed to file a petition for reconsideration requesting additional findings and an explanation, the Board cannot address the issue on appeal.

While authority generally establishes an ALJ must effectively set forth adequate findings of fact based on the evidence in order to advise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed

explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Cmty. Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

Stated another way, the ALJ is not required to put forth a side-by-side comparison of the two competing doctors' reports and explain, in detail, why he chose one report over the other. Since the ALJ has provided a sufficient explanation for his reliance upon Dr. Schwank's report and Dr. Schwank's report constitutes substantial evidence supporting the ALJ's decision we are without authority to disturb his decision. Clearly, the record does not compel a contrary result.

Accordingly, the December 17, 2013, opinion and order is **AFFIRMED**.

ALL CONCUR.

PETITIONER/PRO SE:

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