

OPINION ENTERED: SEPTEMBER 18, 2012

CLAIM NO. 201091790

BEJDA HAMZABEGOVIC

PETITIONER

VS.

APPEAL FROM HON. JOSEPH W. JUSTICE,  
ADMINISTRATIVE LAW JUDGE

PARADISE TOMATO KITCHEN  
and HON. JOSEPH W. JUSTICE,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION AFFIRMING

\* \* \* \* \*

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

**SMITH, Member.** Bejda Hamzabegovic ("Hamzabegovic"), *pro se*,<sup>1</sup> appeals from the February 21, 2012 Corrected Opinion and Order rendered by Hon. Joseph W. Justice, Administrative Law Judge ("ALJ"), dismissing her claim upon finding she failed to prove she has work-related carpal tunnel syndrome or other impairment as a result of an alleged March 26, 2010 injury.

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<sup>1</sup> Hamzabegovic was represented by counsel before the ALJ.

Hamzabegovic filed her Form 101, Application for Resolution of Injury Claim, on November 29, 2010, alleging she injured her right wrist, right arm and neck on March 26, 2010 when her right arm was "yanked" while working on the packaging line at Paradise Tomato Kitchen ("Paradise").

Hamzabegovic testified through a translator by deposition on January 26, 2011 and at the hearing held December 15, 2011. She was born on November 13, 1966 in Bosnia and moved to the United States in November 2000. She is a high school graduate with no specialized or vocational training. She was hired by Paradise on August 4, 2008.

Hamzabegovic testified she was working on a packaging line on March 26, 2010 when she was injured.

Hamzabegovic stated she could not immediately find her supervisor and had to stay on the line for five to ten more minutes. She stated she had a sharp pain in her shoulder and swelling in her right hand. She was able to locate her supervisor at 7:00 a.m. and he called a meeting and made a report. She was off work from the date of the injury until July 19, 2010. She stated she continues to have the same pain in the same location.

At the hearing, Hamzabegovic described the incident as follows:

That day I was on the third spot on the packaging line packing product for pizza, especially Pizza Hut. A punch bag came to my spot on my line, and my responsibility is, pack my bag and send two orders separated back to another to work it there. I tried to pull bag to my side, and coworker came to my spot and grabbed like that so hard on that bag and pulled on her side. At that time I was shocked. My -- I feel hard pain in my arm that is like strong knife beat me in my wrist.

Hamzabegovic treated at Occupational Physician Services that morning and was placed on light duty work. She received injections and used a splint. She testified she tried to work with her left hand while using her right hand for support. She stated when she was not able to do that, she used personal leave and vacation time. She worked approximately 3 weeks upon her return before using leave time. See testified she is still unable to use her arm which cannot be raised or moved backwards. Her hand is always "puffy" with pain and swelling. She testified her pain occasionally decreases but is always present. She indicated she has pain in her arm up to her neck and every movement of her arm bothers her.

Since the ALJ's analysis set forth below contains ample reference to the pertinent medical evidence, a summary of that evidence is unnecessary. In his February

21, 2012 Corrected Opinion and Order, the ALJ provided the following analysis, findings of fact and conclusions of law:

This matter was bifurcated on work-relatedness/injury. The ALJ has read all the evidence contained in the record, including the medical evidence. The ALJ will discuss the critical and pertinent medical evidence hereinafter. The parties have gone to great lengths to establish whether Plaintiff sustained any injury at work on March 26, 2010. The ALJ is convinced that there was an incident of Ms. Thompson jerking a bag of product which she and Plaintiff took hold of simultaneously while it was on the conveyor line. There was a note made by someone that had reviewed the video to that effect. The troublesome part of the matter is how much force was later applied to Plaintiff's body in this exchange. This is something that the ALJ has quantified by subsequent events and testimony. It is apparent to this ALJ that Plaintiff and some of the other employees did not have a good working relationship prior to the incident on the line. It is obvious that Plaintiff was under stress from interpersonal relationships with her coworkers. See employee records beginning in February 2009, and June 4, 2009.

Plaintiff present[ed] to OPS on March 26, 2010. A Dr. Podill diagnosed a right wrist and shoulder strain. She was released to work on a modified basis. Plaintiff had a return visit scheduled and returned on April 20, and [was] seen by Dr. Thomas. Plaintiff's work status and restrictions remained. Dr. Thomas prescribed ibuprofen and

referred her to Dr. Kilambi for an April 21, 2010 appointment.

Dr. Kilambi began treating Plaintiff on April 21, 2010. He said Plaintiff had a normal shoulder examination. On May 12, 2010, he came up with some possible assessments, which included wrist sprain with a possible triangular fibrocartilage complex.

He continued to treat her and on June 7, 2010, he said it was difficult to ascertain what the irritation was. He thought she had carpal tunnel, but it did not "make a lot of sense to have dorsal numbness all around the hand in both posterior and anterior and then radiating up all the way to her neck.["] He said he did not have a solution, and he would send her for referral to one of the hand specialists "who have more patience with this type of symptoms,["] and possibly send her to neurosurgery if it was felt the issues were coming from her neck.

Plaintiff then came under the care of Dr. Thirkannad at Kleinert and Kutz, with complaints of numbness and tingling in the right upper extremity, which were constant and pain at 10/10, which was also constant. He found her "clinical examination is extremely confusing." He said he was confused and could not explain the finding on the two-point discrimination test. His clinical impression was carpal tunnel with symptom magnification. His reports were full of the "abnormality and their impossibility." In September, Plaintiff was complaining of neck pain for which he recommended a cervical spine specialist. He placed her on light duty based entirely on her subjective complaints.

Plaintiff was referred to Dr. Gabriel, who saw Plaintiff on September 15, 2010. He reviewed the medical accumulated to that time. He commented on the report of Dr. Kilambi that Plaintiff's shoulder examination was essentially near normal. He commented on the report of electrodiagnostic studies which were done by Dr. Tillett on 6/30/10, which were remarkable for "right median sensorimotor latencies moderately prolonged at the wrist." EMG study was completely unremarkable. He then reviewed Dr. Thirkannad's evaluations. He noted Plaintiff's two previous carpal tunnel cortisone injections without benefit. On examination, he made similar statements as the previous physicians. His assessment was possible carpal tunnel syndrome. He concluded by saying, "[n]either the patient's electrodiagnostic studies of a moderate carpal tunnel syndrome nor the mechanism of injury is consistent with the patient's reported subjective complaints and alleged disability.

Plaintiff came under the care of Dr. Rouben, who initially examined her on December 9, 2010. The ALJ has not found Dr. Rouben's reports persuasive. The initial evaluation report was prepared by a Timothy Fitch, PAC, and signed off by Dr. Rouben. In describing the findings of the CT scan from St. Mary's/Elizabeth Hospital of November 16, 2010, the following interpretation appears as though it is from the radiology report, but is actually not in the report: [t]here appears to be a moderate broad-base discal bulge at the base of the cord, posterior centrally displacing the cord in fact without [m]uch clarity, otherwise because there is no contrast and otherwise why she cannot be determined from this study.["]

He does not separate his interpretation from that of the radiologist.

He said the patient on exam has marked limitation of [r]ight shoulder abduction. She was unable to perform in a functional degree of internal rotation. Under the exam section of his report on page 3, he goes on to list a number of things in which Plaintiff has shown abnormalities. These findings are mostly diametrically opposed to the findings of her treating and evaluating physicians for treatment. The ALJ does not find any of these examination findings credible in view of the Plaintiff's history of exaggeration in examination with other physicians. The ALJ does not find the "impressions" of the report credible. The impression of: 1. "[o]n the job injury causing forceful unexpected abduction and extension of right upper extremity with clinical subacromial syndrome" is based on examination findings that were not found by the other confounded physicians, and apparently were made in reliance on and unreliable examinee; 2. Right carpal tunnel syndrome-moderate to severe responsive to conservative measures inclusive of injections through Kutz and Kleinert. He had no basis to diagnose carpal tunnel other than [sic] an EMG finding that was substantiated by clinical objective medical findings. The medical records did not support that Plaintiff was responsive to the treatment, including the injections. The injections did not improve Plaintiff's condition. Plaintiff did change her complaint somewhat when the discrepancies in the examination were brought to Plaintiff and her daughter's attention. 3. Right C7 radiculopathy, likely secondary to neuroforaminal stenosis at C6-7. There are no objective medical findings in the record

to support this diagnosis. In fact the posterior subacromial injection tried by Dr. Rouben did not improve Plaintiff symptoms. Neither did the "right C7 selective nerve root block.[" In the December 22, 2010, report he said the cervical MRI findings were not impressive on a neural perspective. MRI of the shoulder did not reveal anything significant. He was still talking about "marked impingement maneuvers," without ever mentioning other physicians had examined Plaintiff and did not find any of the findings listed. At no time did he question Plaintiff's veracity of complaints in the examinations. He considered referring her back to Dr. Thirkannad, "who at the time she was being evaluated, apparently may [sic] surgical comment that she needed to have carpal tunnel release surgery performed, but they felt that her neck needed to be addressed first." He completely misconstrued Dr. Thirkannad['s] report. The ALJ could not find where Dr. Thirkannad made a recommendation for carpal tunnel release. He said there was evidence to "suggest" carpal tunnel "but other than that all other symptoms were consistent and are exactly the same when I saw her last week." He was frustrated and wanted to get a second opinion and that was from Dr. Gabriel.

It seems incredible that on March 20, 10, 2011, he recommended fusion of C4-5, C6-7, [sic] and C6-7. He recommended this on the sole basis of "symptomatic neuro-compression of C4-5, C5-6, C6-7. He would not assign an impairment rating because he said she had not reached MMI.

The ALJ was particularly persuaded by the criticism of Dr. Rouben's reports by Dr. Kriss. The ALJ was persuaded by the reports of Dr. Kriss that he was not

convinced that Plaintiff had carpal tunnel, but assuming that she had some degree of carpal tunnel, it was not as a consequence of the March 26, 2010 incident. He then describes the biomechanical movement in causing carpal tunnel. Although Dr. Thirkannad said that the EMG "suggested" carpal tunnel, he never definitively diagnosed carpal tunnel. No other condition was definitively diagnosed to account for Plaintiff's complaints. Dr. Kriss concludes Plaintiff's complaints were of a psychosomatic symptomatology nature.

The ALJ finds that Plaintiff has not proven that she has a work-related carpal tunnel syndrome or other impairment as a result of the March 26, 2010 work.

On appeal, Hamzabegovic notes she completed an assessment and evaluation prior to being hired and passed every physical and fitness requirement without an impediment. She notes she was able to perform her strenuous job without dysfunction or complaints prior to the work injury. Hamzabegovic notes she had no prior injuries. Hamzabegovic then argues as follows:

After this injury I am in constant pain, and I am unable to work. I was placed on a restriction and light duty work by the doctor; however the employer did not have light duty work, and terminated me. Because of the termination I lost all the benefits including personal health insurance. Because I did not have health insurance, I was unable to continue the treatment with Dr. Rouben. All that I

was left with is pain and suffering as a result of this injury.

In this appeal, I am asking the Administrative Law Judge to reconsider this claim in line with the medical evidence, focusing especially on the treating doctors. I have also done an FCE at BaptistWorx (3303 Fern Valley Rd, Louisville, Ky 40212) on 12-10-10, please refer to medical records from 12-10-10 which include my limitations and restrictions, and Dr. Thirkannad agrees with these FCE restrictions. I am asking for medical treatment for the work-related injury that occurred on March 26, 2010. I am also asking the Administrative Law Judge to take into consideration that there was a videotape of the incident that shows that my injury did occur at work and how it happened. The video-tape is a very important piece of evidence in this investigation because it shows the truth and supports everything that I have said, and that has happened. The employer has challenged this case by denying that my injury happened at work, and that is the reason that they have hidden the videotape of this incident.

In conclusion, I am asking the Administrative Law Judge to allow treatment for this work-related injury. I am also asking the judge to take into consideration that due to this work-related injury, I lost my job and all the benefits, including health insurance. In addition to the pain and suffering that I have to handle every day, it is hard to find another job due to the restrictions and limitations that the doctor placed on me.

It is obvious from Hamzabegovic's *pro se* brief she feels she has been dealt with unfairly. Even so, as a matter of law, the decision in this case must be affirmed. Because Hamzabegovic is representing herself, we shall attempt to explain the fundamental legal principles controlling how this Board must decide her appeal.

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

Although we understand Hamzabegovic is frustrated at the outcome of her workers' compensation claim, we also recognize the ALJ's job as fact-finder is a difficult responsibility. As a rule, in every claim, both sides contend they have presented evidence of "the truth"

concerning the matters at issue. It is for this very reason that, in cases where the evidence is conflicting, the facts concerning the issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

Hamzabegovic, as the claimant in a workers' compensation case, had the burden of proving each of the essential elements of her cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Among those elements were work-related causation and the extent and duration of any disability generated by the work injuries alleged. Burton v. Foster Wheeler Corp., 72 S.W.3d 925, 928 (Ky. 2002); Stovall v. Collett, 671 S.W.2d 256 (Ky. App. 1984). Since Hamzabegovic was unsuccessful in her burden, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence which is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the

evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, supra.

In this case, there is substantial evidence supporting the ALJ's finding Hamzabegovic's carpal tunnel and any other condition were not the result of the work incident. In reaching his decision, the ALJ found more credible the report of Dr. Kriss. That is his prerogative. Although Hamzabegovic identifies evidence that could have supported a finding in her favor, the record contains conflicting medical evidence. The ALJ considered all of the evidence,

weighed that evidence and, unfortunately for Hamzabegovic, found the evidence submitted by Paradise more persuasive. An appeal to the Board is not a vehicle for re-argument of the merits of the claim.

We believe the report of Dr. Kriss constitutes substantial evidence supporting the ALJ's decision that the incident on March 26, 2010 did not result in an injury. Dr. Kriss was not convinced Hamzabegovic's carpal tunnel, if it existed, was caused by the March 26, 2010 incident. Instead, he concluded Hamzabegovic's complaints were psychosomatic symptomatology and noted massive symptom magnification. He stated she sustained only a temporary musculoskeletal strain of the wrist, forearm, arm and shoulder and reached maximum medical improvement on May 26, 2010.<sup>2</sup> He stated she had 0% impairment pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition. His opinion constitutes substantial evidence upon which the ALJ could rely in dismissing Hamzabegovic's claim for permanent income and medical benefits.

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<sup>2</sup> The parties stipulated Paradise paid temporary total disability benefits from March 27, 2010 to November 13, 2010, six months beyond the date Dr. Kriss opined Hamzabegovic had reached maximum medical improvement. Thus, even if one assumed she sustained a temporary injury for which TTD benefits were payable, the record would not compel a finding of any greater period of temporary disability.

Under these circumstances, we believe Hamzabegovic has fallen far short of the requirement to demonstrate the findings of the ALJ are so unreasonable under the evidence they must be disregarded as a matter of law. Ira Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Hamzabegovic, in her brief, requested oral argument before this Board. We have reviewed the record and arguments on appeal and find no novel or complicated issues. Therefore, no oral argument is necessary and her request is **DENIED**.

Accordingly, because the evidence does not compel the result Hamzabegovic now seeks, and there is substantial evidence of probative value to support the ALJ's decision, we may not disturb that ruling on appeal. Special Fund v. Francis, supra. The decision of the ALJ is **AFFIRMED**.

ALL CONCUR.

**PETITIONER:**

BEJDA HAMZABEGOVIC  
7313 RIDAN WAY  
LOUISVILLE, KY 40214

**COUNSEL FOR RESPONDENT:**

HON JOSHUA W DAVIS  
455 S FOURTH AVE STE 1500  
LOUISVILLE, KY 40202

**ADMINISTRATIVE LAW JUDGE:**

HON. STEVEN G. BOLTON  
ADMINISTRATIVE LAW JUDGE  
657 CHAMBERLIN AVENUE  
PREVENTION PARK  
FRANKFORT, KY 40601