Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 19, 2015

CLAIM NO. 201270034

CATHY PRESTON PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

NORTHPOINT TRAINING CENTER
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Cathy Preston ("Preston") appeals from the October 22, 2014 Opinion and Order and the November 25, 2014 Order on Petition for Reconsideration of Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"). The ALJ dismissed Preston's claim, concluding she had not suffered an injury as defined by KRS 342.0011(1). Preston now appeals, arguing

the ALJ erred in his assessment of the evidence. For the reasons set forth herein, we affirm.

Preston was originally hired at Northpoint Training Center ("Northpoint") as an Office Support Assistant. On March 1, 2012, she was promoted to an accounting position, which increased her monthly salary by approximately $200. However, she was demoted from this position, back to the assistant position, on May 14, 2012.

Preston filed a Form 101 on August 24, 2013 alleging she injured her forehead, chin, hands, elbows, right knee, hip and back on January 24, 2012. She alleged the injuries occurred when she slipped and fell on uneven pavement. Preston testified she scraped her hands, and immediately felt burning in her elbow, knee and hip. She visited the on-site medical center, but declined to seek further treatment that day.

Preston testified she did not seek further treatment until April, 2012, when she visited her family physician, Dr. John Horn, because her right knee was swelling and her left hip and leg had numbness and tingling. She testified she was evaluated by the physician's assistant and was given home exercises to perform, but returned about six weeks later with no improvement. She was referred to Dr. Ragjan Sachdev.

Dr. Horn's records indicate Preston has been treating with him since 2008. The records disclose no complaints or treatment for low back pain, piriformis or sacroiliac dysfunction until after the fall at work in January 2012. The records further indicate Preston visited Dr. Horn twice between February 6, 2012 and May 17, 2012. On neither visit did Preston report any trauma or pain in her low back, knee or hip. On May 17, 2012, she presented with acute right knee pain. Dr. Horn noted mild jointline tenderness, but no laxity in her collateral or cruciate ligaments. She received the referral to Dr. Sachdev at this May 17, 2012 office visit.

Preston visited Dr. Sachdev on May 18, 2012 and May 24, 2012. Dr. Sachdev's notes indicate Preston reported her pain started gradually without injury. Upon review on an x-ray of her right knee, Dr. Sachdev determined Preston's problems originated in her low back. He referred her to Dr. Robert Knetsche.

Dr. Knetsche treated Preston from May 29, 2012 to August 7, 2012. She reported her pain began six weeks earlier, but denied any precipitating event. An MRI and EMG study were ordered. The MRI revealed L4-L5 and L5-S1 facet arthropathy with no significant stenosis. Dr. Knetsche diagnosed lumbar spondylosis, radiculitis, low back pain and

deep vein thrombosis. Her treatment consisted of physical therapy and prescription pain medication.

Preston was examined by Dr. William H. Brooks on September 4, 2012 for right sacroiliac joint pain radiating into her right leg. Preston reported a prior fall occurring in 2005, but did not report the 2012 accident. Dr. Brooks diagnosed sacroiliac joint dysfunction and piriformis syndrome. He opined her symptoms are “probably simply an exacerbation of her original problem from years ago.” He recommended chiropractic treatment and physical therapy.

Dr. Russell Travis performed an independent medical examination on December 23, 2013. He conducted a physical examination and reviewed medical records and imaging studies. Due to the fact Preston had no complaints for some period of time after her fall, Dr. Travis concluded her current symptoms and diagnosis are not a result of the January, 2012 incident. He assigned a 0% impairment rating and concluded she could return to her former position.

Dr. James Owen performed an independent medical examination on January 29, 2014. He conducted a physical examination and reviewed medical records and imaging studies. Dr. Owen acknowledged the timing of Preston’s symptoms is questionable, but could find no other appropriate explanation for the remarkable exacerbation of

her back pain. He concluded her ongoing low back pain was caused by the January, 2012 fall. He assigned an 8% whole person impairment pursuant to DRE Category II of the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition.

It was Preston's theory of the claim that Northpoint committed a safety violation in failing to maintain its sidewalk in a safe manner. To this end, she presented lay testimony concerning the condition of the sidewalk. She also presented lay testimony from co-workers in an effort to demonstrate her condition gradually worsened after her fall until April, 2012, when she was prompted to seek medical attention. Northpoint, on the other hand, presented lay testimony from Preston's supervisors in an attempt to establish she was disgruntled by her demotion, and filed her claim in retaliation. This lay testimony is not particularly pertinent to the issues on appeal, and will not be discussed further.

The ALJ ultimately concluded Preston's current symptoms were not causally related to her January, 2012 fall at work. He stated his belief Preston suffered a fall on January 24, 2012 while at work, but was unable to conclude her current condition was caused by the fall. He particularly considered that Preston refused treatment at

the time of the fall, and did not experience symptoms for several months after the fall. Additionally, the ALJ stated his reliance on the opinions of Drs. Brooks, Fadel and Travis. He cited Dr. Travis' medical opinion extensively before concluding Preston did not suffer a work-related injury as defined by Chapter 342.

Preston petitioned for reconsideration, arguing Dr. Owen's opinion was wrongly disqualified and that the ALJ failed to consider all the evidence. The ALJ denied the petition as a re-argument of the merits of the case. Preston now appeals.

She claims the ALJ erred in his assessment of the evidence. Specifically, Preston points to the ALJ's statement that she had been treated for a fall on June 18, 2010. The ALJ's opinion states:

> Dr. Owen is the only physician who assigns [Preston] a permanent whole person impairment rating according to the [AMA Guides]. Dr. Owen found with regard to the question of whether there was any pre-existing active, that, "By medical record and her own account, she has no pre-existing active, her injury in 2005 having been completely resolved in the distant past." He based his rating in part on this finding. In fact, that is not true. Dr. Moran, as cited in the history prepared by Dr. Travis, noted on 6/18/2010 that Ms. Preston had contacted his office that morning complaining of a fall she had that morning. She described symptoms of

> aching pain down her right thigh, in response to which Dr. Moran ordered multiple x-rays which showed normal. This was only 18 months prior to the alleged injury of 1/24/2012.

Preston claims it was error for the ALJ to reject Dr. Owen's opinion on this basis. She emphasizes she received no ongoing treatment for the 2010 fall, and it completely resolved.

Preston also indicates the ALJ overlooked a June 13, 2012 medical record from the Spine Center of Central Kentucky, which was not summarized in the Opinion and Order. She visited the Spine Center for an electromyographic evaluation upon referral from Dr. Knetsche. At this office visit, she gave a history of a work fall in January, 2012. This record was also not included in Dr. Travis' review and summary of Preston's medical records.

As the claimant in a workers' compensation proceeding, Preston bore the burden of proving her fall at work caused a harmful change in the human organism. KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that 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). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

We do not believe the ALJ erroneously rejected Dr. Owen's opinion based on a misunderstanding of Preston's 2010 fall. Though the ALJ discredited Dr. Owen partially because he did not cite the 2010 fall, he noted the x-rays ordered by Dr. Moran were normal. Therefore, it does not appear the ALJ erroneously concluded Preston suffered a pre-existing condition. Moreover, given his extensive citation to Dr. Travis' report, it is clear the ALJ was simply more persuaded by that medical opinion.

Furthermore, we do not believe the ALJ erred in failing to specifically cite the Spine Center of Central Kentucky records. These records were contained in Dr. Knetche's medical records, and the ALJ summarized the findings of an electromyographic evaluation. Thus, it is evident the ALJ read the report of the Spine Center of Central Kentucky, even if he did not specifically recite the history she provided prior to the evaluation.

At any rate, Preston's arguments on appeal go to the weight to afford the evidence, a function which lies exclusively within the province of the ALJ. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). The question on appeal is not whether the ALJ properly rejected Dr. Owen's opinion, but whether substantial evidence supports his conclusions. The opinions of Drs. Travis, Brooks and Fadel constitute the requisite substantial evidence to support the conclusion Preston's current complaints were not caused by her fall at work. Given the conflicting nature of the lay and medical evidence, we cannot say the ALJ abused his discretion in choosing to rely upon these physicians' opinions.

As such, the October 22, 2014 Opinion and Order and the November 25, 2014 Order on Petition for Reconsideration of Hon. Steven G. Bolton, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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