Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 21, 2016

CLAIM NO. 201499743

CHARLETTA RICHARDSON PETITIONER

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

ADP, INC.
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Charletta Richardson ("Richardson") appeals from the August 6, 2015 Opinion, Order and Award and the September 8, 2015 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ dismissed Richardson's claim after determining she did not sustain a work-related injury. Richardson argues the ALJ erred in

failing to find a work-related injury, and in relying on the opinion of Dr. John Guarnaschelli regarding causation. We affirm.

Richardson filed her claim on October 31, 2014, alleging she sustained injuries to her neck, low back, thoracic spine and upper extremities on November 6, 2012 when she tripped on steps and caught herself on the side rail.

Richardson testified by deposition on January 23, 2015 and at the hearing held July 28, 2015. She was employed by ADP, Inc. as a claims processor. She testified she was injured on November 6, 2012 when she slipped climbing stairs. She grabbed the handrail and her body jerked forward and back. She heard a pop and experienced immediate back, neck and left arm pain. Richardson was taken by ambulance to Baptist East Hospital. She could not recall if she told anyone at the emergency room that she had a work injury. Emergency room personnel told her they would “put it down as workers’ comp” because she was brought from work in an ambulance.

Richardson was off work for six months and received short term disability benefits during that time. She applied for long term disability benefits but her application was denied. Richardson returned to work in

April 2013, working four hours per day. She eventually returned to work full time performing her regular job duties. Her medical expenses were paid through her health insurance. A year after the incident, human resources contacted her and told her to report a work injury.

Richardson acknowledged a prior non-work-related low back injury as a result of a slip and fall on ice while she was getting into her car on February 12, 2010. Her low back pain completely resolved after physical therapy and home exercises. She denied experiencing neck pain as a result of that fall. Richardson could not recall giving any health care provider a history of cervical or thoracic complaints, nor could she recall having x-rays or a cervical MRI. She could not recall that physical therapy and her treatment with Dr. Henderson was for cervical and thoracic complaints, indicating she only remembered the treatment was for her low back. Richardson stated she was not taking medications, nor was she missing work because of neck pain, prior to the November 6, 2012 incident.

Danielle Higdon, ADP's Director of Government Services, testified by deposition on January 30, 2015. She supervises a number of managers, including Richardson's manager. On November 6, 2012, a team member informed her Richardson "was stuck in the stairwell" and that her back

injury had flared up. Higdon went to the stairs and briefly spoke to Richardson. Richardson never reported a work injury to Higdon. Higdon was aware that Richardson sustained a back injury in a fall on ice. Higdon believed Richardson's back pain in 2012 was related to her prior injury.

Patti Jo Carrico, manager of operations for ADP, testified by deposition on January 30, 2015. She was Richardson's manager at the time of the 2012 incident. The incident occurred before she arrived at work. Carrico was aware of Richardson's prior injury from the fall on ice. Richardson took medicine for her back prior to the 2012 incident. Carrico confirmed that Richardson returned to work with accommodations in April 2013. Carrico was questioned regarding her knowledge of the work-relatedness of Richardson's condition as follows:

> Q. Okay. After Ms. Richardson returned to work in April of 2013, did you have any conversations with her regarding the November 6, 2012 incident?
>
> A. Yes.
>
> Q. What was the context of that conversation?
>
> A. She came back to my desk, and she said she was getting information from the hospital that her claim – she had claimed that it was a workers' comp

> injury, and she said she never told them in the emergency room when she was there that it was workman's comp related. She didn't know why they kept saying it was workman's comp because it wasn't.
>
> Q. And what did you tell her?
>
> A. I just – I don't remember what I told her. I mean, that's what she told me. Later, we had a conversation and she said it was workers' comp, and I said, "You told me that it wasn't workers' comp," and she said, "I never said that."

Carrico was aware that Richardson's condition was symptomatic prior to the alleged work injury because Richardson would discuss her back pain and kept medication on her desk.

The November 6, 2012 records from Baptist East Hospital indicate Richardson was seen for complaints of mid and low thoracic pain with radiation to the low back. Notations in the record state: "Patient notes an injury. Mechanism of injury – she fell while walking. Occurred at work. Patient denies injury to head or chest. Thoracic and lumbosacral x-rays were negative." Richardson was diagnosed with acute back pain; thoracic strain.

Dr. R. Kirk Owens, II, treated Richardson on December 4, 2013. He noted the reason for the visit as back pain "upper back X's 4 years after fall in 2009, worse

since November 2012, left arm pain and numbness and tingling of the left arm and pinky." Dr. Owens recorded a history of upper thoracic back pain and radiation into the left arm and small finger, which started after a slip and fall on ice in 2009. Dr. Owens' impression was cervical radiculopathy.

Dr. Nanine Henderson treated Richardson from September 25, 2009 through October 3, 2012. On January 4, 2011, Richardson was seen for follow-up after a December 31, 2010 emergency room visit for radiating mid-back pain. She was diagnosed with a cervical spine sprain/strain, and received regular treatment for cervical and thoracic complaints throughout 2011.

Dr. Guarnaschelli, a neurosurgeon, evaluated Richardson on October 9, 2013 at Dr. Henderson's request. He noted a history of back pain for three years, left arm pain, and numbness and tingling in the left pinky finger. According to Dr. Guarnaschelli's notes, Richardson had considered breast reduction surgery, and had undergone physical therapy and pain management. Dr. Guarnaschelli diagnosed degenerative disc disease and opined Richardson has a chronic pain syndrome with mid axial pain mid-back primarily, and low back and upper neck and shoulder pain following a slip and fall on ice over three years prior.

The neurological exam failed to reveal any signs suggesting a true radiculopathy or myelopathy.

Richardson filed the December 2, 2014 report of Dr. Jules Barefoot who performed an independent medical examination ("IME"). Dr. Barefoot reviewed extensive medical records for treatment received after the 2012 injury. He diagnosed cervical radiculitis with non-verifiable radicular complaints. He placed Richardson in DRE cervical category II and assigned an 8% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), which he attributed solely to the November 6, 2012 work incident.

ADP filed the report of Dr. Ellen Ballard who conducted an IME on February 19, 2015. Dr. Ballard's impression was a history of reported neck, left arm, and upper back pain complaints. Dr. Ballard felt Richardson possibly had a mild strain as an initial injury, and opined Richardson's current complaints cannot be related to the alleged work event on November 6, 2012. There were no objective medical findings to support an impairment rating attributable to the alleged work event on November 6, 2012. In Dr. Ballard's opinion, Richardson would have reached maximum medical improvement within three months of her

reported problem and retains the physical capacity to return to the work she performed at the time of the work incident.

Dr. Ballard further stated Richardson had a pre-existing condition that "is somewhat described by Dr. Guarnaschelli" with a history of a slip and fall three years before and a fall on ice in 2010. Dr. Ballard noted Richardson previously sought approval for breast reduction surgery, which is considered medically appropriate for individuals whose large breasts cause neck, shoulder, and back pain. Dr. Ballard felt it would be difficult to assign an impairment rating related to the 2012 incident unless there was absolutely no evidence she ever had any cervical spine complaints before the incident. At most, Richardson could qualify for a 5% impairment rating pursuant to the AMA Guides. Dr. Ballard opined Dr. Barefoot's recommendations and conclusions would not be considered valid because he did not have a full history of Richardson's prior medical issues.

After noting the definitions of injury in KRS 342.0011(1) and objective medical findings in KRS 342.0011(33), and noting Richardson bore the burden of proof on every element of the claim, the ALJ found as follows:

> I make the determination that the medical records of Dr. John Guarnaschelli, a renowned neurosurgeon, as covered above, are very persuasive, compelling and reliable. I also make the determination that the comprehensive medical report from Dr. Ellen Ballard, the examining physician, is very persuasive, compelling and reliable. The medical evidence from Dr. Ballard is covered in detail above.
>
> Based upon the sworn testimony of the plaintiff Ms. Richardson, as covered above, and the persuasive, compelling and reliable medical evidence from Dr. Guarnaschelli, as covered above, as well as the persuasive, compelling and reliable medical evidence from Dr. Ballard, as covered above, I make the determination that the plaintiff Ms. Richardson did not sustain work-related injuries to her neck, low back, thoracic spine and upper extremities as a result of her alleged work event on November 6, 2012.
>
> For all of the above reasons, the credible and convincing weight of the evidence in this case is against the plaintiff Ms. Richardson on the threshold issues of injury as defined by the Act and work-relatedness/causation, which compels a dismissal of her claim for the injuries alleged in her Form 101. The plaintiff is, therefore, not entitled to recover workers' compensation benefits for either medical benefits or income benefits.

Richardson filed a petition for reconsideration requesting additional findings regarding the reports of Drs. Ballard and Guarnaschelli, temporary total disability,

permanent partial disability and other issues. Richardson argued she sustained an unexplained workplace fall and is entitled to a presumption of work-relatedness.

The ALJ issued his Opinion and Order on Reconsideration on September 8, 2015, denying Richardson's petition for reconsideration. He again stressed Richardson's history of back pain, and his reliance on the opinions of Drs. Guarnaschelli and Ballard. The ALJ also makes a specific determination that Richardson did not fall in the stairwell, but rather "slipped and grabbed a rail". He again found the alleged work accident did not cause work-related injuries to her neck, low back, thoracic spine and/or upper extremities.

On appeal, Richardson argues the ALJ erred in failing to find she sustained an injury as defined by the Act. She contends the overwhelming evidence shows a work-related accident occurred and she sustained an injury, noting the fact an ambulance was called and the treatment at Baptist East Hospital. Richardson contends Ms. Higdon's testimony corroborates her version of events. She also asserts she is entitled to a rebuttable presumption of a work-related injury, as the incident occurred on work premises and was otherwise not explained.

As the claimant in a workers' compensation case, Richardson bore the burden of proving each of the essential elements of her cause of action, including work-relatedness/causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she 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 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Where the evidence is conflicting, the ALJ, as fact-finder, has the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560

S.W.2d 15 (Ky. 1977). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

The mere fact Richardson experienced symptoms at work does not mean that her symptoms were caused by the work, nor does it compel a finding that she sustained a work-related injury. In this instance, there were differing medical opinions in the record addressing the cause of Richardson's conditions. Dr. Ballard's opinions constitute substantial evidence supporting the ALJ's determination Richardson's conditions are not casually related to her work activities at ADP, and no contrary result is compelled. Dr. Ballard reviewed all pertinent medical records, and disagreed with Dr. Barefoot's opinion. She felt Richardson had pain from a pre-existing non-work-related injury. She also opined Richardson's work event with ADP "was not such that there is any testing that could

indicate that her tests show anything new." Her opinion is substantial evidence to support a conclusion the event did not produce a harmful change.

Although Dr. Barefoot opined the work incident produced an injury, he apparently reviewed only medical evidence for treatment following the alleged work injury. Dr. Ballard indicated his opinion was not valid due to an incomplete medical history. Richardson provided Dr. Barefoot a history of treatment for her low back after the fall on ice with resolution of her problems related to that incident. The incomplete history and Dr. Ballard's critique are sufficient bases for the ALJ to reject Dr. Barefoot's opinion regarding causation.

Richardson also argues the ALJ erred in relying on Dr. Guarnaschelli's records. Richardson contends the note from the office visit was not an expert medical opinion directed specifically to this claim. She further asserts Dr. Guarnaschelli did not have a correct medical history and did not have an opportunity to review all of the medical records in the claim.

Richardson's argument on appeal regarding Dr. Guarnaschelli's note is essentially an attempt to have the Board revisit the ALJ's assessment of the appropriate weight to be given that evidence. We may not do so. The

ALJ was well within his authority in finding Dr. Guarnaschelli's note persuasive. Dr. Guarnaschelli reviewed prior and current MRI scans, and received a history of the slip and fall on ice. He noted "She denies other trauma injuries." He attributed her complaints to chronic pain syndrome following a slip and fall three years earlier.

The evidence falls far short of compelling a finding Richardson's conditions are causally related to her employment with ADP. Because Richardson failed to meet her burden of proof on this threshold issue, the ALJ properly dismissed the claim.

Accordingly, the August 6, 2015 Opinion and Order and the September 8, 2015 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge are hereby **AFFIRMED.**

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON JOHN SPIES
420 W LIBERTY STREET
SUITE 260
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT:

HON AIDA BABAHMETOVIC
333 GUTHRIE GREEN #203
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

HON WILLIAM J. RUDLOFF
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601