

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 13, 2013

CLAIM NO. 201300217

COBB-VANTRESS, INC.

PETITIONER

VS.

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

KATINA M. KIDD
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Cobb-Vantress, Inc. ("Cobb-Vantress") seeks review of the opinion and order rendered September 3, 2013, by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ found Katina Kidd ("Kidd") permanently totally disabled due to a work-related low back injury, and a psychological condition caused by repetitive bending at

work, which became manifest on March 14, 2011. He awarded Kidd temporary total disability ("TTD") benefits, permanent total disability ("PTD") benefits, and medical benefits. He also referred Kidd for a vocational rehabilitation evaluation. No petition for reconsideration was filed.

On appeal, Cobb-Vantress argues the award of PTD benefits should be reversed because the ALJ's decision was not based upon substantial evidence contained in the record. Cobb-Vantress argues in part, the ALJ erroneously relied upon medical opinions regarding causation which were based upon inaccurate facts or history, and pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), should be disregarded. Because the ALJ's determination is in accordance with Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), and is supported by substantial evidence, we affirm.

Kidd filed a Form 101 on February 11, 2013, stating she injured her low back and both legs resulting in depression and anxiety, due to cumulative trauma from repetitive lifting, bending and stooping which manifested on March 14, 2011. At the time of the accident, Kidd worked for Cobb-Vantress gathering eggs and preparing them for shipment.

Kidd testified by deposition on April 23, 2013, and at the final hearing held August 28, 2013. Kidd was born on April 17, 1973 and resides in Monticello, Kentucky. She has a GED, and completed an associate's degree in visual arts from Somerset Community College, where she earned 87 hours of course credit. She has no other specialized or vocational training. Kidd's work history consists of working as a cashier in a snack bar, as a sewing machine operator, as a general laborer for a campground.

Kidd began working for Cobb-Vantress on October 17, 2011, where she performed various jobs involved in gathering and shipping eggs, including feeding and caring for chickens. She stated her last job there prior to March 14, 2011 required repetitive bending twelve to fourteen hundred times per day. Kidd sought medical treatment two weeks after her pain began, and was informed her condition resulted from the repetitive activities at work. She had experienced previous bouts of back pain in 2000, 2004, 2006 and 2009, all of which resolved. She stated she also took anti-depressants, including Prozac, in the past for female health issues, but no longer needed to take such medication after a tubal ligation surgery was performed in 2009.

Kidd first sought treatment with Dr. Michael Cummings, her family physician, who advised her low back

pain resulted from the repetitive lifting at work. Dr. Cummings prepared a statement indicating Kidd could perform light duty, and outlined her restrictions. Kidd presented this statement to Cobb-Vantress, and she was placed in a light duty position where she continued to work until May 18, 2011. She has not worked since. She subsequently received TTD benefits for approximately five and a half months. Cobb-Vantress paid for her medical treatment until she was evaluated by Dr. Timothy Kriss on October 17, 2011. She has received no additional TTD benefits, nor have any of her medical bills been paid by or on behalf of Cobb-Vantress since that time.

Kidd has had ongoing medical treatment for her low back and legs since March 14, 2011. She stated her symptoms have continued to worsen despite being off work since May 18, 2011. She has had conservative treatment in the form of medications, epidural steroid injections, and physical therapy, but no surgery has been recommended. She stated her current complaints consist of constant pain in her back and legs, tingling and numbness in the lower extremities. She also complained of confusion, fatigue and an inability to sleep.

Cobb-Vantress introduced a surveillance report and copies of pages from Kidd's facebook account, along with

pages of a listing from Fine Art America, an art website. Kidd testified she was not the person identified in the surveillance report. She also testified she has sold no artwork or photographs through either of the internet sources identified by Cobb-Vantress.

Kidd supported her claim with a report of Dr. Warren Bilkey who evaluated her on November 13, 2012. Dr. Bilkey stated Kidd sustained work-related injuries in March 2011 which resulted from the repetitive activities of her work on a poultry farm. Dr. Bilkey diagnosed a lumbar strain and chronic back pain due to her work injury. He opined she had reached maximum medical improvement ("MMI"), and assessed a 7% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Bilkey recommended the use of analgesic medications and home exercise. He agreed with restrictions imposed by Dr. Amr El-Naggar.

Kidd filed records from Dr. El-Naggar for treatment from July 25, 2011 through January 26, 2012. Dr. El-Naggar treated Kidd for complaints of low back pain, disc herniation and bilateral leg pain. He diagnosed a lumbar sprain/strain, degenerative disk disease, spinal stenosis, and radiculopathy. He opined surgery was not her best

option, but noted she had exhausted all conservative measures. He stated she could not return to her previous work. Dr. El-Naggar recommended restrictions of no lifting, pushing or pulling greater than ten pounds; no repetitive bending or twisting of the back; and alternate standing, sitting or walking every half hour.

Dr. Robert Sprague, a psychiatrist, evaluated Kidd on March 12, 2013. He diagnosed Depressive Disorder NOS, Anxiety Disorder NOS, and pain disorder associated with a general medical condition. He assessed a 10% impairment rating pursuant to the AMA Guides, 2nd Edition, all of which he attributed to the work injury. Dr. Sprague noted previous bouts of low back pain, as well as other injuries and health conditions. He recommended mental health intervention or treatment. He stated her work-related mental condition would have a moderate impact on her daily activities.

Kidd filed treatment records of Dr. Richard Meyer for treatment received from March 21, 2011 through September 19, 2011. Those records reflect treatment for low back pain, including physical therapy, and a referral for a lumbar MRI. Dr. Meyer diagnosed disc dessication and herniation at L3-L4 and disc dessication at L4-L5 and L5-S1.

Kidd filed treatment records from Dr. David Webber for treatment from September 21, 2011 through October 13, 2011. He noted complaints of low back pain radiating to her feet and toes, with tingling and numbness. He administered epidural steroid injections which provided no relief.

Both Kidd and Cobb-Vantress filed treatment records of Dr. Cummings. Treatment records from 1990 through 2009 document periodic treatment for low back and neck pain, but do not reflect ongoing treatment for her low back prior to the alleged accident. Records from March 14, 2011 through August 12, 2012 reflect continuous complaints of low back pain and depression which he treated with medication.

Dr. Kriss evaluated Kidd on October 17, 2011 at Cobb-Vantress' request. Dr. Kriss stated Dr. El-Naggar had recommended surgery. Dr. Kriss diagnosed persistent musculoskeletal strain, and lower extremity complaints which he found non-anatomic. He stated she does have some legitimate back pain. He also noted she had some symptom magnification, although earlier in his report he indicated he detected none. He assessed a 5% impairment rating pursuant to the AMA Guides, which he found unrelated to the work injury. He stated any restrictions were attributable to the natural aging process rather than the work injury.

He also indicated she was actively treating for depression prior to the work injury.

Dr. Chris Stephens evaluated Kidd on June 19, 2013 at the request of Cobb-Vantress. Dr. Stephens noted Kidd's complaints of low back pain radiating into both legs. He diagnosed chronic low back pain secondary to degenerative disc disease. He assessed no impairment rating due to the work injury. He stated her condition had plateaued and she was stable. He stated she needed no treatment, and surgery was not indicated.

A Benefit Review Conference ("BRC") was held on July 19, 2013. The BRC order and memorandum reflects the contested issues were benefits per KRS 342.730; work-relatedness/causation; unpaid/contested medical expenses; injury as defined by the Act; TTD; and whether Kidd is permanently totally disabled.

In his decision rendered September 3, 2013, the ALJ found Kidd entitled to TTD benefits from May 19, 2011 to October 25, 2011. Thereafter, considering the criteria set forth in Ira Watson Department Store v. Hamilton, supra, the ALJ found Kidd permanently totally disabled. He also found Cobb-Vantress responsible for medical benefits pursuant to KRS 342.020. Finally, the ALJ referred Kidd for a

vocational evaluation in accordance with KRS 342.710. No petition for reconsideration was filed.

On appeal, Cobb-Vantress argues the ALJ's decision is not supported by substantial evidence. It argues the evidence relied upon by the ALJ was based upon an inaccurate history, and should be disregarded.

Kidd, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her cause of action, including the extent of his occupational disability. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since she was successful, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

The crux of this appeal concerns whether the ALJ's determination of PTD is supported by substantial evidence. Authority has long acknowledged in making a determination granting or denying an award of PTD benefits, an ALJ has wide ranging discretion. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976);

Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An ALJ may reject, 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). Although a party may note evidence supporting a different outcome than reached by an ALJ, such is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to determining whether the findings made are so unreasonable under the evidence they must be

reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, supra. The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

We find no merit to the argument the ALJ's decision is not supported by substantial evidence. The medical records and Kidd's own testimony clearly establish she had no ongoing issues with low back pain or depression prior to the date of the accident. She had experienced bouts of back pain due to specific episodes in the past, but these had all resolved. Likewise, she treated with anti-depressant medication in the past for issues unrelated to her back, but she was no longer required to take those after her 2009 surgery.

Cobb-Vantress' arguments do not reflect an accurate review of the facts relied upon by the ALJ in making his determination. After an examination of the record, we conclude Cepero, supra, is inapplicable. Cepero, supra, was an unusual case involving not only a complete failure to disclose, but affirmative efforts by the employee to cover up a significant injury to the left

knee only two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury left Cepero confined to a wheelchair for more than a month. The physician upon whom the ALJ relied was not informed of this prior history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero's left knee impairment was not work-related but, instead, was attributable to the non-work-related injury two and a half years previous.

After reviewing the evidence, and the ALJ's decision, we cannot conclude any of the physicians here were provided a history so inaccurate or incomplete as to render it lacking in probative value. The ALJ's determination Kidd is permanently totally disabled was in accordance with the Kentucky Supreme Court's holding in Ira A. Watson Department Store v. Hamilton, supra.

Taking into account Kidd's age, education and past work experience, in conjunction with her post-injury physical status, along with the opinions of Drs. Bilkey, El-Naggar and Sprague, the ALJ was persuaded due to the effects of the work-related injury, she is totally disabled. While Drs. Kriss and Stephens express a different point of view, the ALJ's determination is

sufficiently supported by the record. Because the outcome selected by the ALJ is supported by substantial evidence, we are without authority to disturb his decision on appeal. See KRS 342.285; Special Fund v. Francis, supra. For that reason, we cannot say the outcome arrived at by the ALJ finding Kidd entitled to an award of PTD benefits is so unreasonable under the evidence the decision must be reversed.

Additionally, no petition for reconsideration was filed. Therefore, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Stated differently, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record that supports the ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985).

We emphasize Kidd's testimony regarding her post-injury ability to work and her level of pain is substantial evidence, as an injured worker's credible testimony is probative of his ability to labor post-injury. See Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979); See also Carte v. Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000).

We believe the ALJ's findings are sufficient. An ALJ's decision must effectively set forth adequate findings of fact from the evidence upon which his or her ultimate conclusions are drawn so the parties are reasonably apprised of the basis of the decision. However, he or she is not required to engage in a detailed explanation of the minutia of his or her reasoning in reaching a particular result. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973); Shields v. Pittsburg and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). While Cobb-Vantress is able to identify evidence which could have supported a finding in its favor, such evidence is insufficient to require reversal on appeal.

Accordingly, the decision rendered September 3, 2013 by Hon. William J. Rudloff, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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