

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: July 2, 2015

CLAIM NO. 201260714

DIANE JENNINGS

PETITIONER

VS.

APPEAL FROM HON. R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE

AFNI, INC.  
R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**RECHTER, Member.** Diane Jennings ("Jennings") appeals from the January 27, 2015 Opinion and Order of Hon. R. Scott Borders, Administrative Law Judge ("ALJ") dismissing her claim for alleged neck and low back injuries. The ALJ concluded Jennings failed to prove she sustained an injury as defined by the Workers' Compensation Act. On appeal,

Jennings argues the evidence compels a contrary result. For the reasons set forth herein, we affirm.

Jennings filed a Form 101 alleging she was injured during the course of her employment at AFNI, Inc. ("AFNI") when she fell from a broken desk chair on November 19, 2012. She was working as a customer service representative at a call center when this accident occurred. Jennings finished her shift but began to feel discomfort the following day. She returned to work on November 21, 2012 and reported the injury. She testified she felt pain in her neck on the left side, and in her low back.

On November 23, 2012, she visited Greenview Regional Hospital emergency room. She was diagnosed with a sprained neck and back, and prescribed pain medication and a muscle relaxer. An x-ray was taken of her cervical spine which revealed degenerative disc and hypertrophic change from C5 through C7.

About two weeks later, Jennings was treated at Corp Care. She provided a history of sitting in a broken chair. An x-ray of the lumbar spine was taken, which revealed lumbar disc disease and spondylosis with mild scoliosis. An x-ray of her left hip indicated osteoarthritis. Dr. Jane Gibson diagnosed discogenic neck pain, discogenic low back pain and left hip flexor strain.

She was released to return to work that day with some restrictions. She had a follow-up appointment on December 18, 2012 and informed the provider she was moving to Florida.

Thereafter, Jennings began treating with Dr. Leslie Bronson, a chiropractor. Dr. Bronson's January 10, 2013 records indicate Jennings complained of neck and low back pain with numbness in her left hand and headaches. There is no history of a work accident contained in Dr. Bronson's January 10, 2013 record, or at an April 8, 2013 follow-up appointment.

Jennings also began treating at Coastal Spine and Pain Center on March 25, 2014. She complained of neck and shoulder pain, mid and low back pain, and knee and hip pain. The records do not include a history of a work-related fall from a broken chair. Dr. Kenneth Powell diagnosed muscle spasm, low back pain, degenerative lumbar intervertebral disc, neck pain, lumbar spine spondyloarthritis and displacement of lumbar intervertebral disc. Jennings continued to treat at Coastal Spine and Pain Center through 2014, receiving prescription medications and injections. On September 3, 2014, she underwent a lumbar facet joint nerve block. The final record from Coastal Spine and Pain Center is from October 1, 2014, indicating Jennings underwent an

L3-S1 facet joint ablation. The records from Coastal Spine and Pain Center do not indicate or address whether Jennings's ongoing symptoms are causally related to her work-related accident.

Dr. Harold Norman conducted an independent medical evaluation on August 30, 2013. Dr. Norman conducted a medical records review and a physical examination. Jennings reported neck, left arm, left leg and low back pain which she attributed to a fall from a desk chair in November, 2012. Dr. Norman diagnosed a history of myofascial shoulder and cervical sprain, osteoarthritis of the cervical spine, the left hip, and the knees. He opined Jennings "has reached maximum medical improvement regarding the myofascial sprain that she may have sustained at the time of the fall on November 19, 2012." Dr. Norman concluded no further treatment is needed and assigned no permanent impairment related to the fall.

AFNI also deposed two of Jennings co-workers, McKinley Blair ("Blair") and Crystal Robinson Green ("Green"). Blair, AFNI's human resources generalist, testified Jennings was terminated on November 28, 2012 as a result of poor performance. He also indicated he was not aware of her accident until two weeks later when she asked to prepare an injury report.

Green was Jennings's supervisor at AFNI and confirmed she was terminated for poor performance. Green acknowledged there were several broken chairs at AFNI's facility but did not recall a specific work-related incident. Rather, she remembered Jennings's complaining generally that her chair was hurting her back. On November 26, 2012, Green filled out the reverse side of an Accident/Incident Report, which was introduced at her deposition. On the back side of the report, Green indicated "Diane stated 11/23/12 she is having back pains...the way she has to sit in the chairs hurts her back." Green then gave the form to Jennings to fill out the front side of the document. On the front, Jennings described the chair breaking under her on November 19, 2012. A final notation indicates "HR received this document after second request on 11/27/12 at EOB."

The ALJ ultimately determined Jennings failed to prove she suffered an injury as defined by the Workers' Compensation Act. He noted none of the medical proof submitted by Jennings indicated her symptoms and complaints are related to the alleged incident on November 19, 2012. Also, the ALJ was persuaded by Dr. Norman, who concluded Jennings "may" have suffered myofascial strains that has resolved. Finally, the ALJ noted Dr. Bronson's records do

not contain any history of the November 19, 2012 incident. Accordingly, the claim was dismissed. Jennings did not file a petition for reconsideration.

On appeal, Jennings argues the ALJ erred in dismissing her claim. She heavily emphasizes the medical treatment she received in November, 2012 and the fact she has continued to seek treatment for her neck and low back pain. She contends Dr. Norman, upon whom the ALJ relied, acknowledged at least a temporary injury.

As the claimant in a workers' compensation proceeding, Jennings bore the burden of proving each of the essential elements of her cause of action. 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 this Board in reviewing the ALJ's decision is limited to a determination of whether his findings 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).

An injury means "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 evidence by objective medical findings." KRS 342.0011(1). In determining Jennings failed to prove an injury, the ALJ noted none of Jennings' treating physicians or chiropractor attributed her symptoms to the alleged work injury. In summarizing AFNI's argument, the ALJ also stated Dr. Norman believed Jennings "suffered nothing more than a minor sprain that has long since resolved." Later in the opinion, the ALJ indicated he relied upon Dr. Norman "in finding that [Jennings] has failed to meet her burden of proving that she suffered a work-related injury to either her neck, shoulders, or low back, as alleged by her." He again emphasized "not one single physician ... has specifically stated that [Jennings'] problems were causally related to the effects of the November 19, 2012 accident."

Jennings seems to argue Dr. Norman acknowledged at least a temporary injury, and the ALJ's reliance on his opinion is tantamount to a finding of a temporary injury. If such were the case, she may be entitled to temporary

medical and/or income benefits. Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). However, we disagree with this reading of the ALJ's opinion.

It must be emphasized that Dr. Norman's report stated his belief Jennings had reached "maximum medical improvement regarding the myofascial sprain that she **may** have sustained at the time of the fall." (emphasis added). Clearly, Dr. Norman equivocates as to whether Jennings suffered any injury at all as a result of the work incident. The ALJ evidently agreed, and expressly concluded that "not one single" physician related Jennings' symptoms to her alleged work accident. As fact-finder, the ALJ is entitled to conclude Dr. Norman was unconvinced she suffered any injury as a result of the fall. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993) (recognizing the ALJ has the sole authority to determine the weight, credibility and substance of the evidence). If Jennings was unclear as to the ALJ's interpretation of Dr. Norman's report, it was incumbent upon her to request clarification via a petition for reconsideration.

The ALJ's assessment of the proof is reasonable, and there is no compelling evidence in the record which would direct a contrary result. The fact Jennings' ongoing treatment for neck and back pain is well-documented is

unavailing, as she failed in her burden of proving these symptoms are related to her work accident. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

Accordingly, the January 27, 2015 Opinion and Order of Hon. R. Scott Borders, Administrative Law Judge is hereby **AFFIRMED**.

ALL CONCUR.

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