

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 19, 2014

CLAIM NO. 201386254

DREMA SCHELM

PETITIONER

VS.

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

NESCO, INC.
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. Drema Schelm ("Schelm") appeals from the June 23, 2014 Opinion, Award and Order and the July 25, 2014 Order Denying Petition for Reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"). On appeal, Schelm argues the ALJ's opinion is not based on

substantial evidence. For the reasons set forth herein, we affirm.

The parties stipulated Schelm suffered a work-related injury on April 22, 2013. Nesco, a temporary staffing agency, placed her at Highland Diversified where she worked on the paint line. April 22, 2013 was her first day at Highland. Her task was to pick up the satellite dishes from a large tote on the floor, and place them on a hook attached to a moving line. Schelm performed this job for about two hours then took a scheduled break. During the break, she felt a tingling sensation in her left arm into her fingers. Highland's human resource manager sent her back to Nesco, and she never returned to Highland.

Nesco referred Schelm to Dr. William Lester, who prescribed muscle relaxers and ordered an MRI of the cervical spine. The May 13, 2013 MRI report revealed mild multilevel degenerative changes and straightening of the normal cervical lordotic curve, possibly indicating muscle spasm. Schelm continued to treat with Dr. Lester until July, 2013. He diagnosed myofascial pain syndrome and noted she enjoyed full range of motion in the left upper extremity as early as April 26, 2013. He released her to full duty work and placed her at maximum medical improvement ("MMI")

as of July 8, 2013. In a letter dated August 8, 2013, Dr. Lester opined Schelm had no permanent impairment.

On May 1, 2013, Schelm went to the emergency room at Saint Joseph Hospital with complaints of sharp pain from the left elbow to the left shoulder. A CT scan of the cervical spine was performed. The records indicate a clinical impression of cervical radiculopathy.

Dr. Joseph Zerga performed an independent medical evaluation ("IME") on June 26, 2013. He concluded the medical records are suggestive of brachial plexus stretch injury, but found no strong support of any precise diagnosis. He recommended she continue on light duty work for another month. In a supplemental letter dated September 10, 2013, Dr. Zerga opined Schelm had no permanent impairment as a result of the work incident.

Dr. Arthur Hughes conducted an IME on July 24, 2013. He diagnosed left shoulder and arm pain, and paresthesias. He opined these symptoms are related to the April 22, 2013 work incident. Referencing the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. Hughes assigned a whole person impairment of 12%. He placed Schelm at MMI on July 24, 2014 if she received no further treatment.

At a deposition conducted on December 20, 2013, Dr. Hughes explained he tested Schelm's grip strength and range of motion. He performed these tests once, three months after her injury. However, he acknowledged the AMA Guides recommend that strength can only be applied as a measure of impairment at least one year following the injury and when it is assessed multiple times.

At the final hearing on April 22, 2014, Schelm testified she continues to experience a burning sensation in her arm and fingers. The pain is constant and impedes her ability to perform some household duties. She feels her symptoms have worsened since the incident at Highlands.

Schelm continues to treat with her family physician, Dr. David Hays. He ordered an MRI of her left shoulder, which was performed on April 4, 2014. The MRI revealed a partial tear of the supraspinatus and mild degenerative changes in the acromioclavicular joint. Documents submitted after the final hearing indicate Schelm was thereafter referred to Dr. J.W. Pullekines and prescribed physical therapy for four weeks.

Relying on the opinions of Dr. Lester and Dr. Zerga, the ALJ concluded Schelm had suffered an injury at work which resulted in no permanent impairment. He found she reached MMI on July 26, 2013 and awarded temporary total

disability ("TTD") benefits from April 22, 2013 through July 26, 2013. The ALJ also awarded medical benefits.

In her petition for reconsideration, Schelm requested the ALJ to consider the April 4, 2014 MRI report. According to Schelm, once she was treated by her own family physician, her left shoulder pain was finally investigated. She asserted the MRI revealed a tear in her left shoulder that had been causing her complaints since the work injury, but had gone unaddressed by Dr. Zerga. She requested treatment for the shoulder tear, and an award of TTD benefits until such time as she reaches MMI.

The ALJ denied the petition, acknowledging the findings of the April 4, 2014 MRI. However, the ALJ also emphasized that no evidence of work-relatedness of the shoulder tear had been submitted. Further, the ALJ pointed out that Schelm should have made a motion prior to the hearing if she believed she was not at MMI for the work-related injury at that time. Schelm now appeals.

Schelm challenges the sufficiency of the evidence supporting the ALJ's decision. She asserts that evidence compels a finding the shoulder tear was caused by the work incident. Again, Schelm emphasizes that she complained of neck and upper extremity pain since the day of the work injury, but no MRI of her shoulder was performed. Once this

complaint was investigated, the MRI revealed a tear in her shoulder.

As the claimant in a workers' compensation proceeding, Schelm had 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 unable to convince the ALJ she has a permanent impairment, 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).

The essence of Schlem's argument on appeal is that the April 4, 2014 MRI is proof of a permanent injury resulting from the work incident. However, as the ALJ noted, Schelm made no motion to bifurcate or continue prior to the final hearing, despite the MRI being conducted eighteen (18) days prior. Though the April 4, 2014 MRI

report was submitted to the ALJ, no medical opinion as to work-relatedness was presented. As such, the April 4, 2014 MRI falls far short of compelling a finding of permanent impairment. The ALJ's opinion was based on the reports of Drs. Zerga and Lester, which constitute the requisite substantial evidence to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Accordingly, the June 23, 2014 Opinion, Award and Order and the July 25, 2014 Order Denying Petition for Reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

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