

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 15, 2016

CLAIM NO. 201489436

ELAINE COLLETT

PETITIONER

VS.

APPEAL FROM HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE

LESLIE COUNTY ATTORNEY/CHILD SUPPORT DIVISION
HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
* * * * *

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

RECHTER, Member. Elaine Collett ("Collett") appeals from the December 21, 2015 Opinion and Order and the February 24, 2016 Order rendered by Hon. Jonathan Weatherby, Administrative Law Judge ("ALJ") dismissing her claim against the Leslie County Attorney Child Support Division ("Leslie County"). On appeal, Collett argues the ALJ erred in finding her psychological impairment was not work-

related, and in determining she did not suffer a permanent impairment as a result of her injury. For the reasons set forth herein, we affirm.

Collett testified by deposition on August 6, 2015 and at the hearing held October 22, 2015. Her work for Leslie County primarily involved opening and reviewing child support cases, interviewing clients, and working on the computer. On January 22, 2014, her husband drove her to work due to icy road conditions. As she was getting out of her husband's vehicle, Collett slipped on the ice in Leslie County's parking lot. She was able to hold on to the seat and door to avoid falling to the ground, but jerked and twisted her neck and back. She experienced neck pain radiating down her arm into her fingers, and back pain radiating to her hips, legs and feet.

Collett sought treatment at the Primary Care Clinic and was off work for four days. She returned to work on restrictions and continued to work until March 11, 2014. However, she missed days during that period due to pain and medical appointments.

Collett indicated she has constant pain in her cervical area radiating to her arms and hands, with numbness and tingling as a result of the injury. She has

muscle spasms in her neck and shoulders. She has constant pain in her low back, legs and feet with numbness and tingling. She also experiences memory problems, anxiety and depression.

Collett acknowledged a past shoulder injury in 2010 and prior treatment for low back pain 2011, but denied a specific back injury. She missed five to six weeks of work at that time. Collett denied any problems with fibromyalgia or migraine headaches prior to the work injury.

Collett submitted the report of Dr. Robert Hoskins who performed an independent medical evaluation ("IME") on August 12, 2015. Collett complained of neck pain and stiffness; intermittent pain and paresthesia about the upper extremities to the hands; low back pain, stiffness and weakness; intermittent pain and paresthesia about the lower extremities to the feet; and multiple intolerances and limitations with instrumental activities of daily living. Dr. Hoskins diagnosed cervical strain/sprain; cervical radiculitis; cervical degenerative disc disease/disc bulging; lumbosacral sprain/strain; lumbosacral radiculitis; lumbar degenerative disc disease; and fibromyalgia. Relative to the work injury, he assigned

a 6% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). He opined Collett has a 10% impairment rating for pre-existing cervical and lumbar conditions.

Collett submitted the report of Dr. P. D. Patel who performed an IME on September 4, 2015. Dr. Patel diagnosed neck pain, low back pain, fibromyalgia and depressive disorder. He assigned a 27% impairment rating pursuant to the AMA Guides due to the work injury.

Both parties introduced medical records from Primary Care Centers of Eastern Kentucky, where Collett was treated for complaints of migraines in 2009 and knee pain in 2010. Lumbar x-rays in October 2010 revealed mild lower lumbar facet joint osteoarthritis. Collett was seen for low back spasms of three week duration on June 14, 2011, and was diagnosed with low back and radicular pain. She was treated from January 22, 2014 through August 21, 2014 in connection with the work injury.

Leslie County submitted the report of Dr. Russell Travis who performed an IME on September 2, 2015. Dr. Travis noted Collett had a normal neurological examination, no objective findings on examination, and normal imaging

studies. He felt Collett suffered from severe somatization. Dr. Travis assigned a 0% impairment rating for the cervical and lumbar conditions pursuant to the AMA Guides.

Leslie County submitted the report of Dr. Douglas Ruth who performed an independent psychological evaluation on August 19, 2015. Dr. Ruth diagnosed major depressive disorder, single episode, and panic disorder, and assigned a 7% psychiatric impairment rating pursuant to the AMA Guides. In a September 16, 2015 supplemental report, Dr. Ruth opined as follows concerning the cause of Collett's psychological complaints:

I concluded that if it were determined that Mrs. Collett's pain were the result of a work injury, then her psychiatric complaints similarly would be considered caused by that work injury. On the other hand, if it were concluded that her complaints of pain were not related to the work injury, then her psychiatric complaints would not be caused by that work incident. Dr. Travis' findings provide evidence that her complaints were not caused by the work incident.

Leslie County submitted the report of Dr. Richard Sheridan who performed an IME on January 28, 2015. He diagnosed resolved acute cervical and lumbar strains referable to the January 22, 2014 incident. Dr. Sheridan

opined the incident did not result in a harmful change to the human organism as evidenced by objective medical findings. He assessed a 0% impairment rating for the cervical and lumbar conditions pursuant to the AMA Guides.

The ALJ dismissed Collett's claim in its entirety after finding as follows:

17. The ALJ is compelled to reference that the Plaintiff is a sympathetic figure who suffered a near fall for which she was prescribed Ibuprofen and 30 days of a mild muscle relaxer for muscle spasms.

18. The ALJ is persuaded by the credible objective medical evidence in this claim that indicates a significant history of prior similar complaints as well as the thorough report of Dr. Travis that concludes that she had a normal neurological examination resulting in a 0% impairment for the cervical and lumbar spine.

19. The ALJ finds that Dr. Travis was particularly convincing in that he had sympathy for the Plaintiff but was shocked that the MRI and X-ray results were normal and unremarkable despite her presentation as being incapacitated.

20. The ALJ also finds that despite the Plaintiff's implication that she was taking Cymbalta for depression, the records indicate that it was actually prescribed to her for fibromyalgia which is a condition whose symptoms appear to pre-date the work incident. The ALJ finds the Plaintiff's near fall resulted in 0%

whole person impairment as concluded by Dr. Travis and as such, any psychological impairment is not causally work related.

Collett filed a petition for reconsideration arguing the ALJ did not properly address the psychological injury. She noted the ALJ found her psychological condition was not compensable because the physical injury did not produce an impairment rating. She further noted Leslie County stipulated that she sustained the physical injury, so the ALJ was required to address whether psychological impairment was a direct result of the traumatic event. Collett also argued the ALJ erred in finding the work injury resulted in a 0% impairment rating as she continues to have debilitating pain and is limited in her activities.

On reconsideration, the ALJ found as follows:

This matter having come before the undersigned on plaintiff's Petition for Reconsideration of the Opinion and Order dated December 21, 2015; and the defendant employer having filed a response; and it appearing that the dismissal of the claim was based on evidence of record, including the opinion of Dr. Travis that the plaintiff has sustained no permanent impairment rating or injury from her work incident, and the opinion of Dr. Ruth that plaintiffs [sic] psychiatric complaints would only be related to the work incident if the underlying

complaints of pain were related to that incident; it is hereby ordered that the petition for reconsideration is overruled.

On appeal, Collett argues the ALJ erred as a matter of law in finding her psychological impairment was not work-related. Collett notes the ALJ in the Opinion and Order based the determination on a lack of an impairment rating related to a physical injury. However, KRS 342.0011(1) only requires that the mental harm directly result from a physically traumatic event. Collett notes it was stipulated she sustained a work injury on January 22, 2014 and asserts it is uncontradicted that she experienced a physically traumatic event. The opinions of Drs. Ruth and Patel establish she has an impairment rating for her psychiatric condition.

Collett further argues the ALJ erred in finding the work-related injury resulted in no impairment rating. She contends the evidence compels a finding she has an impairment rating for her cervical and low back condition, and that the injury caused depression and anxiety resulting in a psychological impairment rating.

As the claimant in a workers' compensation proceeding, Collett 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 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

KRS 342.0011(1) states an "[i]njury . . . shall not include a psychological, psychiatric, or stress-related change in the human organism unless it is a direct result of a physical injury." "[I]n instances where the harmful change is psychological, psychiatric, or stress-related, it must directly result from the physically traumatic event." Lexington-Fayette Urban County Government v. West, 52 S.W.3d 564 (Ky. 2001). Collett is correct in noting a psychological condition may be compensable even where the physical injury did not produce a permanent impairment rating. Thus, for Collett to prevail upon appeal, the evidence must compel a finding that there was a physical injury which directly caused her psychological condition.

Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

Upon review of the totality of the evidence, we cannot say the proof compels a finding in Collett's favor. Dr. Travis, whom the ALJ found to be persuasive, stated there were no objective findings on examination and her imaging studies were within normal limits. Dr. Ruth indicated the psychological condition could only be found to be related to the work injury if the work injury caused her pain. He noted Dr. Travis' report is evidence her complaints were not caused by the work incident.

The ALJ was not persuaded Collett's pain complaints were related to the January 2014 injury. Thus, based upon Dr. Ruth's opinion, he could reasonably conclude the psychological condition was not related to the physical trauma. The ALJ's factual findings are supported by the opinions of Drs. Travis and Ruth, which constitute substantial evidence. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). While Collett has identified evidence supporting a different conclusion, this fact is insufficient to prevail on appeal. As such, the ALJ acted within his discretion to determine which evidence to rely upon, and it cannot be said the ALJ's conclusions are so

unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the December 21, 2015 Opinion and Order and the February 24, 2016 Order rendered by Hon. Jonathan Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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