Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 8, 2014

CLAIM NO. 201300339

HAZARD ARH PETITIONER

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

CHARLENE SPENCER
and HON. WILLIAM RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. Hazard ARH seeks review of the opinion and order rendered August 30, 2013, by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ found Charlene Spencer ("Spencer") permanently totally disabled due to a left knee injury she sustained on May 12, 2011 when she fell at work. He awarded Spencer permanent total

disability ("PTD") benefits and medical benefits. Hazard ARH also appeals from the October 18, 2013 order denying its petition for reconsideration.

On appeal, Hazard ARH argues the ALJ erred in determining Spencer's left knee condition is proximately related to the work incident, and resulted in a permanent injury. Hazard ARH argues the opinions of Dr. James Owen cannot constitute substantial evidence because he failed to document her complaints of knee pain prior to the date of injury, and pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), should be disregarded. It also argues the ALJ failed to explain the relationship of knee pain reported on April 3, 2013 to the 2011 work injury. Finally it argues the ALJ erred in finding Spencer totally disabled. 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.

Spencer filed a Form 101 on February 11, 2013, stating she fell and injured her left knee on May 12, 2011 while working for Hazard ARH. At the time of the accident, she was a nursing supervisor. Her work history consists of working as a waitress, nurse (both R.N. and L.P.N.), postal clerk, concession worker, and kindergarten aide. She

supported her claim with the May 13, 2011 record from Hazard ARH indicating she had left knee pain which started the day before and progressively worsened. The records include a report of the CT-scan taken of the left knee on May 16, 2011.

Spencer testified by deposition on July 29, 2013, and at the final hearing held August 28, 2013. She was born on August 6, 1958 and resides in Bonnyman, Kentucky. She has a GED, an L.P.N. certification, and an Associate's Degree in nursing. She began working for Hazard ARH in 1993 as an L.P.N., and later as an R.N. As a nursing director, she completed paperwork, made rounds, and assisted other nurses as needed. She also worked in the Oncology Center.

At the time of the accident, she testified she was walking down a hallway when "she hit something" causing her to fall. She stated she believed a foreign substance was on the hallway floor, but she could not be sure. She continued working after her accident, but could not perform all of her job duties. She avoided lifting, and had a slight limp. After the accident she took over-the-counter pain medication until it failed to provide relief, and then sought treatment with Dr. Donnie Spencer. Spencer resigned from Hazard ARH on November 2, 2011 due to continued left knee pain, and because she wanted to be home with her granddaughter. She

does not believe she can perform her job as an R.N. She stated she has ongoing left knee pain and occasional right knee pain. She stated she can walk approximately one hundred to one hundred and fifty feet at a time, and can stand fifteen to twenty minutes at a time. She has fallen occasionally since the accident because her left knee gives way.

Sheila Laurine Cornett ("Cornett"), Human Resources Manager at Hazard ARH, testified by deposition on July 29, 2013. She stated Spencer was the head nurse manager at the time of the accident and assisted employees with lifting if needed. She did not dispute Spencer gave timely notice of the accident. She stated Spencer went to the emergency room on the date of the accident, completed her shift, and missed no work until November 2, 2011. Cornett was unaware of ongoing left knee problems and did not recall Spencer limping at work.

Spencer was examined by Dr. James Owen on April 3, 2013. He stated Spencer sustained a work-related injury to her left knee on May 2011 when she fell. He diagnosed degenerative joint disease, with marked degeneration of the medial compartment due to her work injury. He noted Spencer had experienced additional subsequent falls at home. He noted she had some periodic knee pain prior to the accident.

Dr. Owen opined her problem was due to a rapid torsion-torque injury of her left knee. He assessed an 8% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Owen opined she did not retain the capacity to perform the job performed on the day of injury.

Hazard ARH filed the March 24, 2009 record from Quantum Health Care Associates for evaluation for bariatric surgery. The record reflects a history of obesity and chronic knee pain.

Dr. Gary Bray evaluated Spencer at Hazard ARH's request on July 9, 2013. Dr. Bray noted Spencer slipped and fell in May 2011 injuring her left knee. He diagnosed a knee sprain due to the accident which produced no harmful change. Dr. Bray opined Spencer could return to work as a nursing manager, and retains the capacity to perform her previous work. He stated Spencer had reached maximum medical improvement, and assessed a 0% impairment rating.

The records of Dr. Donnie Spencer, Spencer's family physician, were filed by Hazard ARH for treatment dates between September 2011 and March 2013. The note from July 13, 2012 reflects bilateral knee osteoarthritis. The note from March 11, 2013 reflects left knee pain.

Hazard ARH also filed the first report of injury noting the date of accident was May 12, 2011. The report reflects her right hip gave out as she was walking down the hallway, and she fell onto her left knee and lower leg.

A Benefit Review Conference ("BRC") was held on August 13, 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; and whether Spencer is permanently totally disabled.

In his decision rendered August 30, 2013, the ALJ found Spencer permanently totally disabled after November 2, 2013, based upon the criteria set in Ira Watson Department Store v. Hamilton, supra. The ALJ also found Hazard ARH responsible for medical benefits pursuant to KRS 342.020.

Hazard ARH filed a petition for reconsideration on September 13, 2013, arguing the ALJ erred in relying upon Dr. Owen's opinions rather than those of Dr. Bray. It also argued the ALJ erred in awarding PTD benefits in this non-surgical claim. Finally, Hazard ARH argued Dr. Owen's opinion could not be relied upon pursuant to Cepero, supra. The petition for reconsideration was denied by order entered October 18, 2013.

Spencer, 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 her 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 Spencer's own testimony clearly establish she was able to perform her job prior to the date of the accident without difficulty. After the accident, her left knee condition worsened to the point she could no longer work. Hazard ARH filed no evidence demonstrating the occasional knee pain Spencer experienced prior to the accident in any way affected her ability to work.

Hazard ARH's 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 Dr. Owen was provided a history so inaccurate or incomplete as to render his opinion lacking in probative value. Although Dr. Owen stated he did not have a complete copy of Spencer's pre-injury medical records, he was cognizant of some previous complaints related to the left knee. The ALJ's determination Spencer 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 Spencer's age, education and past work experience, in conjunction with her post-injury physical status, along with Dr. Owen's opinion, the ALJ was persuaded due to the effects of the work-related injury, she is totally disabled. While Hazard ARH introduced evidence expressing 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 Spencer entitled to an award of PTD benefits is so unreasonable under the evidence the decision must be reversed.

We emphasize Spencer'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).

Here 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 Hazard ARH 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 August 20, 2013 by Hon. William J. Rudloff, Administrative Law Judge, and the October 18, 2013 order on reconsideration are hereby **AFFIRMED.**

ALL CONCUR.

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