Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 1, 2016

CLAIM NO. 201500018

HEATHER TRIPLETT PETITIONER

VS. **APPEAL FROM HON. CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE**

HOSPICE OF THE BLUEGRASS
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

RECHTER, Member. Heather Triplett ("Triplett") appeals from the February 19, 2016 Opinion and Order rendered by Hon. Chris Davis, Administrative Law Judge ("ALJ") dismissing her claim against Hospice of the Bluegrass ("Hospice") in its entirety. On appeal, Triplett argues the evidence establishes she had a worsening of her condition and an increase in her impairment rating as a

result of an acute work injury entitling her to an award. Because the ALJ's determination is supported by substantial evidence, we affirm.

Triplett testified by deposition on May 19, 2015, and at the hearing held January 19, 2016. She was hired as a nurse by Hospice in August 2014 to provide in-home medical care including taking vital signs, dispensing medication and moving patients. Triplett testified she and three others were moving a patient from a bed to a stretcher on August 28, 2014. She had "no signs and symptoms at all" that day. However, she woke in excruciating low back pain the next day and had difficulty walking.

Triplett reported to work and gave notice of her injury, then sought treatment at Quantum Healthcare. She followed up with Dr. Scott Akers, who administered a steroid injection. She was then referred to Dr. Leon Briggs, a neurosurgeon, for a consultation. Triplett was off work from Hospice for six or seven weeks, and was then terminated because of her restrictions.

Triplett acknowledged she had previously injured her back in a non-work-related slip and fall in a department store in 2012. She settled a claim for

$72,500.00 in connection with that accident. She testified her pain related to that injury had “subsided tremendously” prior to the injury at Hospice. Though she experienced pain prior to the work injury, her symptoms had decreased three to four months prior to the work injury.

Dr. Briggs’ records indicate, on August 23, 2012, Triplett complained of lower back pain, right greater than left, radiating down her right leg to the knee. She attributed her complaints to the slip and fall accident. He diagnosed sacroiliitis and administered a series of sacroiliac joint injections.

Triplett returned on October 13, 2014, reporting a history of an acute episode of low back pain in September 2014 while moving a patient. Dr. Briggs noted Triplett improved following the injections in 2012, and was able to work and function normally. On examination, Triplett had decreased joint mobility with pain at L4-5, L5-S1, and bilateral sacroiliac joints. Dr. Briggs diagnosed sacroiliitis and lumbar radicular pain, and ordered an MRI.

Triplett filed the report of Dr. Bruce R. Guberman who performed an independent medical evaluation (“IME”) on October 20, 2014. He diagnosed chronic post-traumatic strain of the lumbar spine. He assigned an 8%

impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). He attributed 5% of the impairment rating to the prior slip and fall injury, and 3% impairment rating to the work injury.

Hospice filed medical records of Physical Therapy Services documenting treatment on eighteen occasions between October 12, 2012 and December 5, 2013. At her last visit, Triplett reported overall improvement with regard to pain and soreness, but she continued to have episodes of increased pain at the low back and hip with no specific acts or motions. She also continued to note a numb/tingling feeling at the buttocks with various movements. Triplett was noted to be at maximum medical improvement with pain and decreased strength limiting her functional activities and decreased range of motion preventing full functional activity. She was discharged with a home exercise program.

Hospice also submitted the report of Dr. John Vaughan who performed an IME on June 17, 2014. On physical examination, Triplett had full range of motion and negative straight leg raising tests. Dr. Vaughan diagnosed lumbar strain and lumbar spondylosis. Noting the degenerative

changes were present on MRI in 2012, he concluded the work injury did not cause her current complaints. He further cited the fact her chronic back pain that was active and in need of treatment prior to the work injury. Any pain, need for treatment, impairment rating, or need for restrictions pre-existed the work injury. Dr. Vaughan stated there was no objective evidence the 2014 injury resulted in a harmful change to the human organism.

After noting evidence from Dr. Guberman could support an award, the ALJ made the following findings:

> The symptoms experienced by the Plaintiff post-date of injury are nearly identical with those experienced pre-date of injury. Only a slightly vague allegation of a worsening of those symptoms is made.
>
> It is even clear, based on the 5% pre-date of injury and the total 8% post-date of injury, that Dr. Guberman is saying that it is essentially the same condition, but only that the symptoms worsened. This is true because both pre- and post-date of injury the Plaintiff, according to Dr. Guberman, was in DRE Category II.
>
> Notes from Dr. Briggs in October, 2014 do refer to the then current reason for the office visit as low back pain from moving a patient on a stretcher. However I am unable to discern how any exam finding for the Plaintiff differed from her pre-date of injury findings. It also appears as if the pre-date of injury medical

> treatment by Dr. Briggs was actually more consistent and in-depth than the post-date of injury treatment.
>
> Conversely Dr. Vaughan has noted that the Plaintiff's underlying condition, which he does not dispute exists, is not work-related. He states her pre- and post-date of injury conditions are unchanged.
>
> In reliance on Dr. Vaughan and the foregoing analysis the Plaintiff's claim is dismissed, in its entirety, for failure to prove any work-related injury or condition sufficient to make an award of any medical or income benefits, whether temporary to [sic] permanent.

Triplett did not file a petition for reconsideration. On appeal, she argues the evidence establishes she had an acute injury and a worsening of her condition as a result of the lifting incident with Hospice. She further contends the ALJ failed to take into account her testimony and Dr. Briggs' records, which indicate her condition following the 2012 injury had greatly improved prior to the injury at Hospice.

Triplett 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 so overwhelming that 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).

The record contains substantial evidence supporting the ALJ's dismissal of the claim. Dr. Vaughan opined the underlying condition was not work-related and her condition was unchanged following the alleged work incident. He stated her prior back condition was active and any pain, need for treatment, impairment rating, or need for restrictions pre-existed the work injury. Further, he stated there is no objective evidence her work produced a harmful change to the human organism because the degenerative changes in her spine were present in the 2012 MRI.

Triplett's arguments are essentially an attempt to have this Board re-weigh the evidence and substitute our opinion for that of the ALJ. We are without authority to do so. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). It was the ALJ's prerogative to rely upon Dr. Vaughan's

opinion. Triplett merely identifies conflicting evidence supporting a different outcome, which is not an adequate basis to reverse on appeal. 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 February 19, 2016 Opinion and Order rendered by Hon. Chris Davis, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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