

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 21, 2016

CLAIM NO. 201486366

JAMIE WEIR

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

BAPTIST HEALTH MADISONVILLE and  
HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING  
& ORDER  
\* \* \* \* \*

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

**ALVEY, Chairman.** Jamie Weir ("Weir") seeks review of the Opinion and Order rendered June 29, 2015 by Hon. Chris Davis, Administrative Law Judge ("ALJ") dismissing her claim against Baptist Health Madisonville ("Baptist") for thoracic and lumbar injuries allegedly occurring on April

18, 2014. Weir also seeks review of the October 12, 2015 Order denying her petition for reconsideration.

On appeal, Weir argues the ALJ's conclusion she did not sustain either a temporary or permanent work-related injury is not supported by an adequate analysis. Weir also argues the ALJ's decision does not fairly and properly apprise the parties of the basis for his decision. Because the ALJ's decision is supported by substantial evidence, the basis of the decision was adequately explained, and a contrary result is not compelled, we affirm.

Weir filed a Form 101 on June 6, 2014 alleging she injured her thoracic and lumbar spine on April 18, 2014 while assisting a physical therapist in transferring a patient who began to fall. Weir alleged she caught the brunt of the patient's weight, and experienced immediate low back pain.

Weir testified by deposition on September 23, 2014, and at the hearing held May 6, 2015. She is a resident of Providence, Kentucky. She has a GED and completed two and a half semesters of college. Weir has a CNA certification. She worked for Baptist from 2011 to 2012. She returned to work there in late September 2013. Weir's employment history includes working as a CNA, office

manager for an automobile repair shop, and in "repossessions".

In 1995, Weir sustained a compression fracture to the L1 vertebra in a motor vehicle accident ("MVA"). She wore a back brace for several months afterward. She stated after the MVA her back pain was, "No, not more than just, you know, a pulled muscle or average, normal back pain." She stated her back pain never completely resolved, and sometimes was worse than others, but continued to worsen as she got older. She also had complaints of pain in the right hip and right knee.

Weir stated her feet and legs constantly went to sleep, and she experienced a needling sensation in her feet when she sought treatment in November 2013 with Dr. Abraham Galloway, a treating family physician who advised her she has osteoarthritis. Dr. Galloway began treating her for neuropathy in her hands and feet, and prescribed Neurontin. Weir admitted having chronic low back pain prior to April 18, 2014 for which Dr. Galloway also provided treatment. She stated she strained a back muscle on April 18, 2014 while transferring a patient, but this had resolved by the next morning. Despite the allegation of April 18, 2014 as the date of injury, she claimed the primary injury occurred on April 19, 2014 while assisting a physical therapist move

a patient to a chair. This was a task regularly undertaken during the course of her duties as a CNA. She stated she experienced immediate pain to the left of center of her low back, left hip and left leg when the patient began to fall toward her and she caught all of the weight. She completed the task of moving the patient, then reported the incident, and sought treatment in the emergency room at Baptist.

Weir received pain medication in the emergency room then went home. She saw a physician on Monday who prescribed Flexeril. She was also prescribed physical therapy which she stated worsened her condition. She saw Dr. Galloway who ordered an MRI, referred her to pain management, and eventually referred her to Dr. David Weaver. Dr. Weaver gave her a steroid injection, ordered a myelogram, and eventually performed surgery. Weir worked light duty from the time of the alleged incident until May 19, 2014. She was off work until January 2015 when Dr. Weaver placed her at maximum medical improvement. Since that time she has worked forty-eight hours per week as a caregiver for an elderly couple. She does not believe she can return to the job performed on the date of the injury. She stated she continues to experience left leg pain, but no tingling and numbness. She also has continued mild low back pain. She was terminated by Baptist in June 2014.

Weir filed into the record a short-term disability claim form dated May 20, 2014. She noted her workers' compensation claim was denied on May 14, 2014, and she first missed work on May 21, 2014.

Both parties filed records from Dr. Galloway who first saw Weir on November 21, 2013 for complaints of generalized arthritis and numbness in both the upper and lower extremities. He prescribed Celexa (for depression), Neurontin, Mobic, Depo-Medrol (for generalized osteoarthritis), and Desyrel (for insomnia). He also indicated she may need an MRI. On December 18, 2013, Weir complained of significant neck and low back pain, but stated Neurontin had helped the numbness. On December 24, 2013, Weir complained of low back, hip and knee pain. On January 10, 2014, Weir complained of low back pain. On January 20, 2014, in addition to the other medications, Dr. Galloway prescribed Norco or Hydrocodone for treatment of Weir's low back pain and generalized osteoarthritis. On February 20, 2014, Weir complained of chronic low back pain which she rated 7 or 8 out of 10. On March 20, 2014, Weir had continued complaints of low back pain and osteoarthritis for which her medication regimen was continued.

On April 21, 2014, Dr. Galloway diagnosed Weir with acute on chronic low back pain. He noted Weir had chronic low back pain, "however did have an acute injury that occurred at work and has worsened her symptoms." He stated this resulted in increased pain and the need for pain medications. He diagnosed generalized osteoarthritis and low back pain. He restricted Weir from lifting or pushing greater than ten pounds, with no repetitive bending or twisting, and no prolonged standing or walking. On April 28, 2014, he noted Weir's continued complaints. On May 5, 2014, he changed the restrictions to no lifting or pushing greater than five pounds, and listed some positional restrictions. On May 16, 2014, he stated Weir should be limited to working no more than forty hours per week. On June 4, 2014, an MRI was performed at Dr. Galloway's request which was read by the radiologist as showing a shallow left para median disc protrusion at L5-S1 with a possible mild compression of the nerve root.

Weir filed records from Dr. Weaver, and his responses to questions propounded by letters from her attorney. Dr. Weaver first saw Weir on July 7, 2014 for complaints of low back and left lower extremity pain. He noted complaints of radiculopathy which stopped at the left knee. He ordered a steroid injection and a CT-scan. The

CT-scan revealed mild disc protrusions at L4-L5 and L5-S1. He later ordered a myelogram which was read as showing mild disc protrusions with extradural defects at L4-L5 and L5-S1. Weir continued to complain of low back and left lower extremity pain at the office visit of August 25, 2014. Surgery was recommended. On September 16, 2014, Dr. Weaver noted Weir's complaints briefly improved with the injection and he recommended a left lumbar discectomy at L5-S1. This was done on September 17, 2014.

In somewhat illegible handwritten responses to questions from Weir's counsel in a letter dated September 24, 2014, and signed September 29, 2014, Dr. Weaver checked the yes line below the inquiry, "Is there a causal nexus with the lifting duties and acute work-related injury that Ms. Weir suffered on or about April 19, 2014?" Dr. Weaver also checked yes on the lines below the inquiries, "Has Ms. Weir been temporarily total disabled from May 19, 2014 till present as directed by Dr. Galloway and subsequent treatment?", and "Have the treating MRI discogram and the September 16,[sic] 2014 L5-SI surgery been reasonable and necessary medical treatment of the April 19, 2014 work-lifting accident?"

In a subsequent letter from Weir's counsel dated December 30, 2014, Dr. Weaver checked the yes lines under

the inquiries, "Has Ms. Weir reached maximum medical improvement?", and "Please provide an additional opinion within a reasonable degree of medical probability as to whether or not Ms. Weir retains the physical capacity to perform her old job as a CNA which consists of pushing, pulling, lifting, grown human beings weighing over 100 pounds." Dr. Weaver added pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment 5<sup>th</sup> Edition ("AMA Guides"), Weir has an 11% impairment rating.

Baptist filed the records review report of Dr. Shelly Freimark dated May 13, 2014. Dr. Freimark determined Weir suffered from active lumbar pain prior to the incident based upon her complaints and chronic treatment with narcotic pain medications. She stated, "It is my opinion any treatment for her continued complaints of back pain would be due to her pre-existing condition." Dr. Freimark stated Weir sustained no significant acute injury.

Baptist also filed the report of Dr. Jeana Lee who evaluated Weir at its request on September 30, 2014. Weir stated she sustained a work injury on April 18, 2014 as she was assisting a physical therapist transfer a patient weighing over two hundred pounds. Weir reported she had an immediate onset of low back, but not leg pain.

Weir also advised of the previous compression fracture from which she initially denied any ongoing problems, but subsequently admitted taking pain medication for low back pain on a chronic basis. Dr. Lee also noted Weir had undergone micro-lumbar surgery two weeks before the examination. Weir advised she was better except for mild surgical site soreness. Dr. Lee opined, "In essence, Ms. Weir's examination was benign and normal."

Dr. Lee diagnosed chronic low back pain and lower extremity pain. She opined Weir's condition is not causally related to the April 18, 2014 injury. She stated Weir was, "symptomatic from her active pre-existing lumbar condition for which she was undergoing treatment with injections, oral NSAIDS, Neurontin, and copious amounts and escalating doses of pain medication." Dr. Lee stated Weir would qualify for a 10% impairment rating pursuant to the AMA Guides; however, none of this is due to the April 18, 2014 injury. She stated Weir could return to unrestricted work and no restrictions were recommended. She additionally opined Weir retains the capacity to return to work as a CNA.

Dr. Lee stated, "0% of the impairment is causally related to the April 18, 2014 injury. Treatment for her chronic low back pain and left lower extremity pain was

wholly related to a chronic active pre-existing condition." Dr. Lee stated Weir was treating for the same condition both before and after the April 18, 2014 incident. She additionally stated Weir needs no additional medical treatment.

A benefit review conference ("BRC") was held May 6, 2015. At the BRC, the parties stipulated the contested issues included whether Weir retains the capacity to return to the type of work performed on the date of injury; benefits per KRS 342.730; work-relatedness/causation; correct calculation of the average weekly wage; unpaid or contested medical expenses; injury as defined by the Act; exclusion for prior active disability; and temporary total disability benefits.

The ALJ rendered a decision on June 29, 2015 dismissing Weir's claim. After summarizing the evidence, the ALJ stated as follows:

As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. *Square D Company v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky. App. 1995). In weighing the evidence the ALJ must consider the totality of the evidence. *Paramount Foods Inc., v. Burkhardt*, 695 S.W. 2d

418 (Ky., 1985).

In analyzing this claim the Administrative Law Judge has reviewed all of the evidence in this claim, as summarized above. The Administrative Law Judge has also reviewed the parties' briefs and arguments.

I have reviewed the records from Dr. Galloway and his opinion. I have reviewed the records and opinions from Dr. Weaver. I have certainly carefully considered the testimony of Ms. Weir.

Nonetheless I am not persuaded that the current condition is work-related. The mere fact that these two treating physicians have opined the condition is work-related is probative but not binding.

The Plaintiff's immediate past history of low back pain and treatment is more persuasive to me. For several months prior to the alleged date of injury herein she sought medical treatment with Dr. Galloway and routinely complained of severe low back pain. The pain was at least severe enough that Dr. Galloway prescribed her hydrocodone, Trazadone and Gabapentin and to send her to physical therapy.

It is logical and allowed to conclude, as does Dr. Lee and myself, that the pain felt on April 18, 2014 was no more than the natural progression of a pre-existing, active condition which was in no way caused, worsened or exacerbated by the alleged work incident.

In reliance on Dr. Lee and the foregoing analysis this claim is dismissed, in its entirety, because no work-related injury, temporary or permanent, has occurred.

Weir filed a petition for reconsideration on July 3, 2015. She did not request the ALJ make additional findings. She did, however, state the ALJ failed to articulate what objective medical evidence supports his conclusion of a pre-existing active disability, the condition at L5-S1 was a natural progression, and, "what medical evidence differentiates the presence and need for 'history of low back pain and treatment' between the 1995 L1 fracture due to an MVA and the distinct acute injury on April 18, 2014 with positive MRI results at L5-S1." Weir requested the ALJ reverse his decision regarding her claim, and find she sustained a compensable injury. The ALJ denied the petition for reconsideration as a re-argument of the case.

As the claimant in a workers' compensation proceeding, Weir 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 Weir was unsuccessful in her 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 the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable based on 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).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may 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. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative

value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Despite Weir's argument to the contrary, Dr. Lee's opinion constitutes substantial evidence supporting the ALJ's dismissal of the claim, and no contrary result is compelled. Differing medical opinions in the record address whether Weir sustained a work injury. However, if "the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006).

The ALJ found Dr. Lee's opinion most persuasive and her opinion constitutes substantial evidence supporting

the ALJ's determination. The ALJ provided a sufficient explanation for why he found Dr. Lee's opinion most credible. He specifically cited to Weir's ongoing complaints of significant low back pain for which she was actively treating prior to April 18, 2014. The ALJ's decision to rely on Dr. Lee's opinions falls squarely within the discretion afforded to him.

We acknowledge parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973); New Directions Housing Authority v. Walker, 149 S.W.3d 354 (Ky. 2004). In this instance, we determine the ALJ sufficiently provided the basis for his decision,

supported by the evidence, and a contrary result is not compelled. Therefore, we affirm.

Accordingly, the Opinion and Order rendered June 29, 2015 and the October 12, 2015 order on reconsideration by Hon. Chris Davis, Administrative Law Judge, are hereby **AFFIRMED**.

Finally, Weir requested oral argument. Having reviewed the record, we conclude oral argument is unnecessary. **IT IS HEREBY ORDERED AND ADJUDGED** the request for oral argument is **DENIED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN  
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