

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 10, 2014

CLAIM NO. 201187494

KOSAR HOLLAND

PETITIONER

VS.

APPEAL FROM HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE

NOVO NORDISK, INC.,
DR. JOHN KELLY;
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. Kosar Holland ("Holland") appeals from the October 3, 2013 Opinion and Order rendered by Hon. Edward D. Hays, Administrative Law Judge ("ALJ"), and from the ALJ's November 4, 2013 Order on Petition for Reconsideration. The ALJ dismissed Holland's claim,

concluding she failed to prove a permanent injury. On appeal, Holland argues the overwhelming weight of the evidence compels a finding of at least a temporary injury. Finding the ALJ's decision is supported by substantial evidence, we affirm.

Holland filed her claim on November 18, 2011, alleging work-related injuries to her head, neck, back, shoulders, pelvis, tailbone, right and left knee, and left wrist on May 2, 2011, while employed by Novo Nordisk, Inc. ("Novo"). She later amended her claim to include claims of psychiatric impairment and brain injury.

Holland testified by deposition on February 7, 2012, and at the hearing on August 1, 2013. Her job as a pharmaceutical salesperson with Novo required lifting heavy coolers filled with sample medications. She denied any previous work injuries or traumatic events, though she acknowledged some prior low back pain due to the driving required by her position. She likewise denied any psychological problems prior to the work incident, although she admitted taking Xanax for anxiety while her husband was deployed in Iraq.

Holland was injured on May 2, 2011 when the wheels on the cooler she was pulling locked up causing her to fall onto the concrete. Holland believes she was

knocked unconscious for a short time. She was taken to the emergency room at Floyd Memorial Hospital, which records indicate she was discharged with a prescription for Ibuprofen 800 mg. She was able to drive herself home.

The medical evidence in this case painted two starkly different pictures of Holland's present condition. We summarize the proof most relevant to the issue on appeal. Dr. Warren Bilkey performed an independent medical evaluation ("IME") on February 13, 2012. Dr. Bilkey examined Holland and reviewed prior treatment records from St. Elizabeth Hospital for chronic low back pain and anxiety from September, 2004 through October, 2009. Treatment included Darvocet for pain control, Tizanidine as a muscle relaxant, and Xanax for anxiety.

Dr. Bilkey opined Holland suffered a head injury and subsequent post-concussion headache, cervical strain, and lumbar strain with aggravation of pre-existing chronic low back pain as a result of the fall on May 2, 2011. He recommended a course of physical therapy. Dr. Bilkey assessed a 16% whole person impairment under the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), consisting of 5% for the cervical strain, 8% for the lumbar condition, and 3% for pain. He determined Holland had a 5% pre-existing

active lumbar impairment, leaving an 11% impairment attributable to the May 2, 2011, injury.

Dr. Peter J. Ganshirt, a licensed psychologist, began treating Holland on May 11, 2012. In an October 8, 2012 report, he found Holland to be "brain damaged" with post-concussive injuries, depression, and fibromyalgia exacerbating her pain management and mobility, and poor management of pain. He further stated she had severe sleep disturbances producing chronic fatigue.

Several months after her treatment with Dr. Ganshirt began, Dr. Joseph Zerga evaluated Holland on November 15, 2012. Dr. Zerga took a thorough history and reviewed pertinent medical records and reports. He also performed nerve conduction studies, which were normal, and concluded Holland had no radiculopathy in the cervical or lumbar region. Dr. Zerga opined it is possible Holland suffered a sprain to her cervical and lumbosacral spine.

Regarding the alleged brain injury, Dr. Zerga opined Holland possibly suffered a mild concussion, but even that is not well documented. Due to her lack of amnesia and based on Floyd Memorial Hospital's treatment records, Dr. Zerga ruled out a significant concussion. In reaching this conclusion, he also noted the lack of documentation of a concussion sufficient to cause memory

loss, prolonged headaches, or other cognitive dysfunction. Similarly, there is no documentation Holland suffered a traumatic brain injury on May 2, 2011. At most, her suffered a Class I Concussion, which would not cause sustained neurological *sequelae*.

Neurologically, Dr. Zerga opined Holland is at maximum medical improvement, and needs no neurological treatment or permanent restrictions for a neurological injury. Instead, he found evidence of a generalized anxiety disorder and depression with multiple somatic complaints. Dr. Zerga noted these are not definite neurological conditions, and they were present and active at the time of the event. Based on these circumstances, he opined Holland did not suffer neurological impairment as a result of the May 2, 2011 injury.

At a deposition on December 17, 2012, Dr. Ganshirt explained his diagnoses and responded to Dr. Zerga's report. Dr. Ganshirt noted diagnoses of major depression, somatization disorder, and cognitive disorder NOS. He also diagnosed post-concussive headaches, high blood pressure, ruptured cervical and lumbar discs, chronic low back pain, radiculopathy, coccyx pain, fibromyalgia, rheumatism, malaise and fatigue, and cranial sacral fissures. Dr. Ganshirt opined Holland has a traumatic

brain injury as a result of the fall at work. He noted Holland consistently complained of persistent headaches and short-term memory problems, is very fatigued, and demonstrated mental dullness in his office. She has attention and concentration problems, an unsteady gait, and she is in danger of falling.

Dr. Ganshirt disagreed with Dr. Zerga's conclusion the lack of amnesia regarding the events of her fall is proof there was not a significant concussion. Rather, he stated one would typically find an inconsistent recollection of events when assessing brain damaged patients or those with memory problems. He further opined Holland would need ongoing treatment for her cognitive and emotional conditions, and needs antidepressant medications and probably a positron emission tomography scan of the brain.

In a February 5, 2013 supplemental report, Dr. Zerga reviewed a more recent cervical MRI report and records from a spine specialist who had treated Holland. Although the cervical MRI noted a central disc herniation at C5-C6, Dr. Zerga indicated it was "minimal" and there was no evidence on the MRI report of any significant pathology.

Furthermore, Dr. Zerga disagreed with Dr. Ganshirt's opinion Holland sustained a brain injury, stating her history and records from Floyd Memorial Hospital on the day of the injury are not consistent with someone who has a brain injury because her memory of the event is too good. He again noted the lack of documentation of alteration of consciousness or problems with communication in the emergency room. As to Dr. Ganshirt's diagnosis of cranial sacral fissures, Dr. Zerga stated, "I have no idea what he is talking about." He further explained the diagnoses given by Dr. Ganshirt are symptomatic, not anatomical, and therefore inconsistent with any harmful change. Dr. Zerga found Holland very verbal, articulate, and of higher than average intelligence. She had no difficulty recalling her relevant medical history and responding to questions due to memory loss.

Dr. David Shraberg evaluated Holland on May 21, 2012, completed a May 31, 2012 medical report, and gave a deposition on November 13, 2012. Like Dr. Zerga, he noted Holland's memory was excellent, both before and after the accident, militating against any significant amnesia. Dr. Shraberg found Holland's symptoms diffuse and non-physiological. He noted she described her condition in

dramatic terms, and found her extraordinarily somatically preoccupied.

On neurological examination, Dr. Shraberg found no evidence of radiculopathy, neuropathy, or any condition of a traumatic origin. He found she had a "cervical lumbar sprain." She has had chronic back pain in the past and has been highly anxious since moving to America. Dr. Shraberg stated there was no neurological basis for Holland's present complaints, nor is there evidence to suggest she is post-concussive. Dr. Shraberg stated in his report:

Differential diagnoses would be that of a conversion disorder (not consistent), a factitious disorder, or an atypical somatoform disorder, possibly that of essentially hypochondriasis.

The elements of a factitious disorder with secondary gain being that of isolation and loneliness assuming the position of invalidism so as to be taken care of (possibly returning to the more familiar environment of England with her sons and family) cannot be overlooked. What this examiner can say is that, in my professional opinion, there is absolutely no evidence that her symptoms are of a traumatic origin. In addition, I would strongly disagree with Dr. Bilkey in that over-treatment and over-medicalization would merely reinforce a disorder that has no traumatic basis and physiological origin.

Dr. Shraberg found 0% permanent psychiatric impairment.

Ultimately, the ALJ dismissed the claim, concluding she suffered no significant injury. In reaching this conclusion, the ALJ noted Holland's prior treatment for chronic low back and neck pain, anxiety, depression and insomnia since 2004. The ALJ also took into account the circumstances surrounding the injury, and the fact Holland could accurately recall the pertinent events and was able to drive herself home from the emergency room. Additionally, the ALJ emphasized the myriad physical complaints voiced by Holland during her testimony, including high blood pressure, teeth grinding, teeth falling out, brain fog, debilitating headaches, leg cramps, radiculopathy, knee pain, the development of a "claw" deformity in her fingers and toes, insomnia, cognitive impairment, fibromyalgia, grogginess, bad coordination, memory issues, vision disturbances, hypertension, rashes, upset stomach, extreme coldness, nausea, fatigue, anxiety, weight loss, numbness, and paralysis and tingling in her shoulders and arms. The ALJ found the medical opinions of Drs. Zerga and Shraberg most persuasive. Analyzing the totality of the evidence, the ALJ concluded:

After a thorough review of this entire record, the ALJ is simply not convinced that the Plaintiff sustained any significant injury or impairment to her body. The ALJ finds nothing more than

minor strain or very minor concussion. There was no external evidence from the trauma noted in the emergency records. The history provided is almost entirely the subjective history given by Ms. Holland herself. The array of complaints made by the Plaintiff have no physiological basis in fact and cannot be attributed to the events that occurred on May 2, 2011.

To the extent that Plaintiff sustained a minor temporary injury, she has received more than adequate medical treatment, for which she has been compensated. Likewise, the Plaintiff has sustained no permanent impairment to the body as a whole. Based on the AMA Guides, 5th Edition, she is entitled to no indemnity benefits as the result of an accident. Plaintiff's claim should be **dismissed**.

Holland filed a petition for reconsideration arguing the ALJ misinterpreted the evidence concerning the occurrence of an injury and erred in failing to award indemnity and medical benefits for the neck and back injuries. In his November 4, 2013 order on reconsideration, the ALJ reiterated Holland failed to sustain her burden of proof, and noted any injury she sustained was minor and temporary for which she received more than adequate medical treatment. He stated she sustained no permanent injury as a result of the work incident. Finally, the ALJ again noted he was not

convinced Holland sustained anything greater than a minor concussion, from which she recovered almost immediately.

On appeal, Holland identifies evidence supporting the occurrence of various injuries. She asserts she suffered an injury which required medical treatment and notes Novo paid medical expenses and temporary total disability ("TTD") related to the lumbar strain. She further notes MRIs confirmed a cervical disc herniation and patellofemoral chondromalacia in the knee. Holland argues that even if she has no permanent impairment rating, she is entitled to analysis and findings regarding future medical treatment.

As the claimant in a workers' compensation proceeding, Holland 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 Holland 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). The function of the Board in reviewing the ALJ's decision is limited to a determination

of whether the ALJ's findings are so unreasonable they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Substantial evidence supports the ALJ's finding Holland was not entitled to permanent income and medical benefits. Dr. Shraberg found no evidence of radiculopathy, neuropathy or any condition of traumatic origin. He stated there was no neurological basis for Holland's present complaints, and her symptoms were non-physiological. Further, Dr. Shraberg found no psychological injury and no psychiatric impairment rating. Dr. Zerga concluded Holland's psychological conditions were present and active at the time of the incident. The ALJ's thorough opinion evinces a comprehensive understanding of the conflicting evidence. He weighed the proof, and reached a conclusion supported by substantial evidence. Clearly, the record does not compel a different result. Therefore, the decision of the ALJ dismissing Holland's claim for permanent income and medical benefits must be affirmed.

As to Holland's assertion on appeal of a temporary injury, the ALJ found Holland sustained, at most, a temporary injury for which she had been adequately compensated. In FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the Supreme Court instructed that

KRS 342.020(1) does not require proof of an impairment rating to obtain future medical benefits, and the absence of a functional impairment rating does not necessarily preclude such an award. Since the rendition of Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001); this Board has consistently held it is possible for an injured worker to establish a temporary injury for which temporary benefits may be paid, but fail in his burden of proving a permanent harmful change to the human organism for which permanent benefits are authorized.

Here, the ALJ correctly followed the standards set for the in FEI Installation and Robertson. Dr. Zerga stated Holland needed no neurological treatment. Again, we note Dr. Shraberg found Holland's complaints were non-physiological. The evidence does not compel a finding of entitlement to any additional TTD benefits or medical benefits beyond that which Holland has received.

Accordingly, the October 3, 2013 Opinion and Order rendered by Hon. Edward D. Hays, Administrative Law Judge and the November 4, 2013 Order on Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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