Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 13, 2014

CLAIM NO. 201380339

LISA SHELDON PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

KONSEI USA, INC.
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Lisa Sheldon ("Sheldon") seeks review of the Opinion and Order rendered January 31, 2014, by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"), dismissing her claim against Konsei USA ("Konsei") after finding she failed to establish work-relatedness/causation. On appeal, Sheldon argues the ALJ misunderstood the

testimony regarding the physical demands of her position as a machine operator. She also argues the medical evidence of record compels a finding of causation in her favor. Sheldon also seeks review of the March 10, 2014 order denying her petition for reconsideration. Because substantial evidence exists in the record supporting the ALJ's determination and no contrary result is compelled, we affirm.

Sheldon filed a Form 101 alleging she injured her neck on March 22, 2013 due to "repetitive lifting and power washing" while employed as a machine operator with Konsei. Thereafter, the ALJ sustained Sheldon's "Motion to Add Additional Injury" seeking to amend the Form 101 to allege an additional injury date of March 1, 2013.

Sheldon testified by deposition on September 9, 2013 and at the hearing held December 18, 2013. She began working for Konsei in September 2007 through a temporary employment agency, and was later hired as a full-time employee on December 12, 2007. She initially worked as a visual inspector, but was then moved to machine operator. She operated a washer for approximately a year and a half and then was moved to a press machine for approximately a year.

On March 22, 2013 Sheldon was instructed on how to clean plastic boxes with a pressure washer. On the same

day, her hands began to feel numb and by the following morning she could hardly walk. On March 25, 2013, Sheldon reported her injury to Debra Sheldon ("Debra"), her supervisor who is also her sister-in-law. She also saw Ms. Melanie Mooney, ARNP. Following testing, Ms. Mooney referred her to Dr. John Cole who recommended surgery. Sheldon stated she returned to regular duty on March 28, 2013 and continued to work until she quit on April 17, 2013 due to her disabling symptoms.

Sheldon currently experiences numbness throughout her entire right leg, arm, and neck. She also uses a walker. Sheldon denied completing or assisting in the preparation of an accident report. Sheldon also denied experiencing symptoms in her neck, right arm or leg prior to March 23, 2013. She additionally denied stumbling or falling off her porch in March 2013. Sheldon also denied she reported to Debra on March 5, 2013 she injured her neck and shoulder on March 1, 2013 while operating a washer.

At her deposition, Sheldon testified she began working at Konsei inspecting parts brought to her on trays. Each tray held either forty-two or sixty parts and "they weighed about 30 pounds or so a tray." She then placed the parts in boxes, each weighing approximately fifty pounds, and lifted them onto a pallet. Operating a machine washer

required her to lift trays containing either forty-two or sixty parts and stack them into the washer five trays high. She also unloaded the trays and stacked them on a cart. Sheldon operated six washers at a time. Sheldon testified a sixty piece tray "ranged from about 15 pounds to 50 pounds." As a press operator, Sheldon testified she operated approximately seventeen presses at a time. Sheldon stated she lifted the same trays. She loaded and unloaded two trays at a time in a press. Once the trays were unloaded, Sheldon placed them into boxes and lifted them onto a cart. Each full box weighed "anywhere from 50 to 75 pounds." At the hearing, Sheldon stated each box held four to six trays and weighed thirty to fifty pounds.

Bathea Piggee ("Piggee") testified by deposition on October 14, 2013. Piggee is Sheldon's neighbor, and also worked with her at Konsei. Piggee testified she observed Sheldon stumble on her back porch sometime during the first half of 2013 but could not identify the specific month.

Malinda Logsdon ("Logsdon"), a Konsei employee who worked with Sheldon during all relevant times, testified by deposition on November 25, 2013. Logsdon testified she has worked for Konsei since October 2012 as a "tray person, washer person." Logsdon's position required her to load and unload trays of parts. Logsdon indicated the trays varied

in weight, but she estimated the heaviest weighed no more than five pounds.

Logsdon testified she has also operated a press machine, which required the loading or unloading of two trays, which usually contained sixty parts each. She stated the heaviest item she lifted "would probably be the 100s and 119s" which she estimated weighed approximately five pounds. Logsdon testified as follows regarding Sheldon's lifting requirements:

> Q: [Sheldon] talked about the trays, which I still can't picture, but she said something about there were 60 items per tray.
>
> A: Yes, sir.
>
> Q: Does that sound right?
>
> A: Yes, sir. They're small parts, they're not very big, except for the 119s and 100s, and they're just a little bit heavier.
>
> Q: How much - - how much does a 119 or a 100 weigh. Are you talking about a pound or 2 or . . .
>
> A: Oh, not - - not each part, no sir. The tray itself probably weighs between 5, 6 pounds, something like that.
>
> . . . .
>
> Q: And if you're picking up two trays at a time, they would weigh what?
>
> A: Be probably – probably 10, 12 pounds . . . if you pick up two trays.

Logsdon also recalled Sheldon stating she had fallen off her porch on March 1, 2013.

Debra, a subleader at Konsei, testified by deposition on November 25, 2013. Debra was Sheldon's immediate supervisor at all relevant times. Debra confirmed Sheldon was a press operator, but also operated the washers. As a press operator, Sheldon was required to load and unload trays of parts and put them in boxes. Debra testified two trays weighed approximately ten pounds, which would have been the heaviest thing Sheldon was required to lift. On cross-examination, Debra stated as follows:

> Q: Okay. And I think [Sheldon] testified she thought the trays would weigh as little as 25. Maybe as much as 50 pounds; does that sound in the ballpark?
>
> A: One tray?
>
> Q: Yeah, it looks like - - I - - it might be one or two trays. What's one tray weigh?
>
> A: One tray - - it depends on what part it is. Defusers, they maybe weigh maybe 5 pounds, 6 pounds for a tray.
>
> Q: For a tray; okay.
>
> A: If you go to 119s, two trays may weigh 20 pounds.
>
> Q: Okay. And a 119, is it - - is it a bigger defuser?

A: Bigger, yes.

Q: All right.

A: It’s a bigger part.

Q: One tray would weigh 20 pounds?

A: Two trays.

Q: Two trays.

A: So 10 pounds a tray.

Debra testified Sheldon reported on March 5, 2013 she sustained a work-related neck and shoulder injury while cleaning out a washer on March 1, 2013. Debra completed an accident report concerning the March 1, 2013 incident. Thereafter, Sheldon reported no additional work injuries. Debra also alleged Sheldon told several Konsei employees she had fallen on or off her back porch some time after March 5, 2013.

In support of her claim, Sheldon filed the records of Ms. Mooney, ARNP, and Dr. Cole. Although mostly illegible, the records appear to reflect Ms. Mooney treated Sheldon on March 25, 2013; April 1, 2013; April 25, 2013; and May 6, 2013 for complaints of neck and right shoulder pain, as well as numbness and tingling throughout her right side. After undergoing testing, Ms. Mooney referred Sheldon to Dr. Cole for a neurosurgical evaluation. Dr. Cole

diagnosed cervical spondylosis with myelopathy and recommended a two level fusion.

Sheldon also filed the September 23, 2013 report of Dr. Mark Barrett. In his report, Dr. Barrett noted Sheldon reported she felt a sudden onset of neck pain radiating into upper extremity on March 22, 2013 while using a pressure washer to clean out boxes. The report also noted, "[t]he patient has a history of doing very heavy and intense factory work that was primarily working as a press operator and would routinely lift things that would weigh from 50-75 lbs without difficulty." Dr. Barrett diagnosed progressive cervical stenosis and stated as follows regarding causation:

> It is very obvious that her cervical stenosis and degenerative changes in her neck were not caused by work. On the other hand, this woman had absolutely no symptoms prior to this event and was able to do extremely heavy physical work without any sort of pain or pre-event symptoms. It is my medical opinion that she had a pre-existing but dormant medical condition which, because of the very intense work that she performed, was suddenly pushed into disabling reality. The work that she did, in all likelihood, caused her to have the onset of some sort of inflammatory reaction which then caused the cascade of events to the very progressive and severe problem that she has now.

Konsei filed the October 8, 2013 report of Dr. Dan Spengler who also noted Sheldon began experiencing symptoms on March 22, 2013 while working with a pressure washer. Dr. Spengler diagnosed cervical myelopathy secondary to cervical stenosis at C4-5 and C5-6 and recommended a two level anterior cervical discectomy and fusion. With regard to causation, Dr. Spengler stated "Certainly, the longstanding cervical stenosis was not caused by her work. Nevertheless, her work brought her symptoms into fruition, so I would classify this as an aggravation of a preexisting condition . . ."

The ALJ dismissed Sheldon's claim finding she did not sustain her burden of proof regarding work-relatedness/ causation, stating as follows:

> The main problem for Plaintiff is the many discrepancies in the evidence. The sad part of this claim is it appears Plaintiff does, in fact, need surgery. However, that is not reason enough to require Defendant Employer to pay the claim if Plaintiff has failed to meet her burden of proving the injury is work related. It is also clear the medical opinions discuss her strenuous work activities as potentially causative factors. These opinions come after Plaintiff's claim she lifted 30 lbs. to 50 lbs. all the time while working and daily lifted 75 lbs., lifting weights not confirmed by her co-workers. In fact, the testimony of the co-workers is consistent among the three who testified and not in a

> way appearing as contrived or practiced. According to their testimony, regular lifting would be closer to 5 lbs. and up to 10 pounds with occasional lifting up to 20 lbs. Dr. Barrett found the reason for surgery **not** caused by work but, based on **her** testimony she regularly lifted 50 lbs. to 75 lbs., he found the work brought her condition in to disabling reality. In forming his opinion, he relied upon statements found herein to be inaccuracies.
>
> The other problem is Plaintiff's failure to confirm anything at all about the March 1, 2013 event although she does claim one of her dates of injury as March 1, 2013. It is her testimony she was completely pain free until the morning of March 23[sic], 2013 but her claim is for cumulative trauma and injures prior to that time.
>
> The evidence is simply too confusing and contradictory to make a finding in favor of Sheldon. She has not met her burden of proof. She has filed for Social Security Disability, and while the opinion of a workers' compensation ALJ makes no difference to the Social Security Administration, it appears she should easily qualify for such benefits.

Sheldon filed a petition for reconsideration requesting the ALJ find she was injured on March 22, 2013 and no injury occurred on March 1, 2013 based upon the evidence submitted. Sheldon also requested additional findings of fact regarding causation in light of the fact every physician found she had sustained a work-related

injury. Sheldon requested the ALJ make a finding regarding whether she fell at home and further findings of fact concerning the range of weights she was required to lift. Finally, Sheldon requested the ALJ find the first report of injury was not prepared contemporaneously with the injury. In the March 10, 2014 order denying Sheldon's petition, the ALJ addressed each allegation, stating as follows:

> 1. **The ALJ erred by considering the March 1, 2013 injury an additional injury rather than amending the injury date from March 22, 2013 to March 1, 2013.**
>
> On December 2, 2013, Plaintiff filed MOTION TO ADD ADDITIONAL INJURY. He[sic] did not ask for the injury date to be substituted but to be added which is what occurred by Order dated September 18, 2013, during a telephonic status conference. There was never a request to substitute to[sic] injury date. Even so, as there was a finding of no injury on either date, the injury dated[sic] is not a factor which would change the outcome of the final decision. . . .
>
> 2. **The ALJ erred by failing to make findings of fact that an injury occurred on March 22, 2013.**
>
> As stated in the Opinion, Plaintiff failed to meet her burden of proving a work-related harmful change in a human organism on March 22, 2013. Whether or not there was an event at all, Plaintiff has not met her burden of proving a work-related injury, either temporary or permanent.

3. **The ALJ failed to take into consideration that all doctors in evidence found a work component to the injury.**

   The Opinion specifically addresses this issue as it was noted the findings of the doctors were based on the history of lifting at work provided by Plaintiff, a history found in the Opinion to be unsubstantiated.

4. **The ALJ failed to make a finding regarding whether or not Plaintiff fell at her home.**

   The issue of a fall at home is wrought with facts as murky as the majority of the issues in this claim. Since the ALJ did not find a fall at home to be the cause of Plaintiff's complaints, there is nothing that would require a decision on this particular issue. If a decision is required, the finding would be, the evidence failed to establish a fall at home.

5. **The ALJ failed to make sufficient findings concerning ranges of weight Plaintiff was required to lift at work.**

   The statements made by Plaintiff regarding lifting amounts, as stated in the Opinion, were factors found troubling and led, in part, to the finding Plaintiff failed to meet her burden of proof.

6. **The ALJ failed to make a finding concerning whether the first report of injury was properly and timely prepared.**

   The testimony concerning the first report of injury was also murky at best. As this issue had no bearing either way on the final Opinion, the

> issue was not decided, nor was this listed or preserved as a contested issue.
>
> After thorough review of Plaintiff's Petition, the Response of Defendant Employer and the Opinion and Order Dismissing, the issues raised by Plaintiff were all carefully considered prior to the decision. Plaintiff's claim was dismissed because she did not sustain her burden of proving work-relatedness/causation. As explained on pages 10 – 11 . . . .

The ALJ then quoted the language found on pages 10-11 in the January 31, 2014 Opinion and Order regarding the discrepancies in the evidence regarding Sheldon's lifting requirements and her failure to confirm anything at all about the March 1, 2013 injury.

On appeal, Sheldon argues the ALJ misunderstood the testimony regarding the weight of the trays she repetitively lifted in the course of her employment. She argues this mistake led the ALJ to erroneously conclude the opinion of Dr. Barrett was based upon an inaccurate history provided by Sheldon. Sheldon also argues the ALJ failed to understand she never alleged a March 1, 2013 injury. Sheldon argues the evidence compels a finding she injured her neck caused by performing repetitive heavy lifting which she first became aware of on March 22, 2013. She argues the evidence compels a finding of work-relatedness/

causation since all physicians opined her condition is work-related, including Dr. Spengler.

As the claimant in a workers' compensation proceeding, Sheldon had the burden of proving each of the essential elements of her cause of action, including causation/work-relatedness. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Sheldon 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 under the evidence that 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 discretion to determine 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). Although a party may note evidence supporting a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). 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 that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). 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, 708 S.W.2d 641, 643 (Ky. 1986).

In this instance, the evidence does not compel a finding in Sheldon's favor regarding the issue of work-relatedness/causation. In her opinion and order on reconsideration, the ALJ clearly outlines the discrepancies and inconsistencies in the evidence precluding a finding

Sheldon met her burden in establishing her injury is work-related. As noted above, several witnesses testified regarding Sheldon's lifting requirements. Sheldon testified she lifted trays weighing approximately thirty pounds and boxes fifty pounds while working as a visual inspector. She also stated she lifted trays weighing anywhere from fifteen to fifty pounds while operating a machine washer. Sheldon stated as press operator she lifted the same trays of parts, placed them into boxes, and moved the boxes onto carts. At her deposition, Sheldon stated each of the boxes weighed approximately fifty to seventy-five pounds. At the hearing, Sheldon stated each box weighed thirty to fifty pounds.

In contrast, Logsdon stated the trays she was required to lift weighed no more than five pounds each. As a press operator, Logsdon stated the heaviest thing lifted "would probably be the 100s and 119s" and estimated they weighed "about 5 pounds." She later stated the trays of 100s or 119s weighed five or six pounds. Logsdon provided no testimony regarding the lifting or weight of boxes. Likewise, Debra testified two trays weighed approximately ten to twenty pounds. She also stated the trays would have been the heaviest item Sheldon had to lift as a press operator. She estimated one tray of defusers may weigh five

to six pounds and "If you go to 119s, two trays may weigh 20 pounds . . . [s]o 10 pounds a tray." Debra did not testify regarding the lifting or weight of boxes.

Based upon the above, we find no error in the ALJ's determination the evidence was inconsistent regarding Sheldon's actual lifting requirements during her employment with Konsei. The ALJ possesses the authority to determine the weight, credibility and substance of the evidence and the Board may not usurp the ALJ's role by superimposing its own appraisals as to the weight and credibility to be afforded the evidence. Square D Co. v. Tipton, supra; Whittaker v. Rowland, supra.

Further, the ALJ did not err in finding the medical opinions unpersuasive regarding causation in light of the impeached history Sheldon provided. Dr. Barrett noted Sheldon reported she had a history "of doing very heavy and intense factory work that was primarily working as a press operator and would routinely lift things that would weigh from 50-75 lbs without difficulty." He later provided a causal basis for Sheldon's condition based upon this history by finding she had a pre-existing, dormant medical condition which, "because of the very intense work that she performed, was suddenly pushed into disabling reality. . . ." Similarly, Dr. Spengler opined the "longstanding

cervical stenosis was not caused by her work. Nevertheless, her work brought her symptoms into fruition, so I would classify this as an aggravation of a preexisting condition. . . .”

It appears both physicians relied on Sheldon’s account of the physical demands of her work in forming their opinions on causation. However, the ALJ determined Sheldon’s account of the physical demands was contradicted by other evidence in the record, a finding we will not disturb. Physicians’ opinions do not compel a finding of a work-related injury where their conclusions are based upon a history, elicited by a claimant, sufficiently impeached by other testimony bearing on its accuracy. *See* Osborne v. Pepsi-Cola, 816 S.W.2d 643, 646-647 (Ky. 1991)(overruled in part on other grounds) and Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004).

Because the ALJ’s determination regarding causation will not be disturbed, it is unnecessary to address Sheldon’s remaining arguments.

Accordingly, the January 31, 2014 Opinion and Order by Hon. Jane Rice Williams, Administrative Law Judge, and the March 10, 2014 order denying Sheldon’s petition for reconsideration are hereby **AFFIRMED**.

ALL CONCUR.

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