Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 6, 2015

CLAIM NO. 201300660

MAITE AGUERO CARRERA PETITIONER

VS. **APPEAL FROM HON. R. SCOTT BORDERS, ADMINISTRATIVE LAW JUDGE**

HYATT REGENCY HOTEL
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Maite Aguero Carrera ("Carrera"), *pro se*, appeals from the April 11, 2014, Opinion and Order of Hon. R. Scott Borders, Administrative Law Judge ("ALJ"). In the April 11, 2014, Opinion and Order, the ALJ dismissed Carrera's claim against Hyatt Regency Hotel ("Hyatt Regency") for bilateral carpal tunnel syndrome and early complex regional pain syndrome to her upper extremities

caused by cumulative trauma manifesting on April 11, 2012. No petition for reconsideration was filed.

The Form 101 alleges Carrera sustained work-related cumulative trauma injuries to her hands, wrists, and upper extremities on April 11, 2012, in the following manner:

> Plaintiff suffered work-related cumulative trauma injury to her hands, wrists and upper extremities in the course of working as a housekeeper causing a harmful change evidenced by objective medical evidence resulting in permanent impairment by the 5th Edition AMA Guides.

The February 26, 2014, Benefit Review Conference ("BRC") order lists the following contested issues: work-relatedness/causation; average weekly wage; unpaid or contested medical expenses; injury as defined by the ACT; and TTD.

The October 3, 2013, Independent Medical Examination ("IME") report of Dr. Ronald Burgess was introduced by Hyatt Regency. Based on his examination of Carrera, Dr. Burgess set forth the following opinions:

> This patient is status post right carpal tunnel release. At the present time, she does have some limitation in finger flexion and a definite decreased temperature in the right hand as compared to the left. She also has a slightly mottled, pale appearance to

> the right palm, but does not have the other findings of complex regional pain syndrome, such as hair changes, edema, or sweat changes. I feel that she is currently not at maximum medical improvement and needs continuing physical therapy to maximum [sic] her recovery. Although she does have some of the changes of complex regional pain syndrome, she does not have sufficient changes to justify that diagnosis.
>
> The patient's diagnosis is right carpal tunnel syndrome. In review of the job analysis, it noted that it was light duty cleaning the rooms and that she did not have to take the bags off the cart, and the only lifting was pulling the mattress up for changing. It also states that there is a device called a Bed Made Easy that can be used, although the patient states today she has never heard of that device. Based on the job analysis, I feel this would qualify as light duty and is not felt to be a risk factor for the etiology of carpal tunnel syndrome. If Dr. Moreno has several articles that suggest that carpal tunnel is related to light duty activities, I am unaware of their existence. At the present time, the patient would not be able to return to her work activities secondary to the continued stiffness of the fingers.

The February 1, 2013, IME report of Dr. Thomas Gabriel was introduced by Hyatt Regency. After conducting a physical examination of Carrera, Dr. Gabriel opined as follows:

> As part of today's IME, I had the opportunity to review a Job Task Analysis dated 02/18/11. We have all

stayed in hotels before, and are well-aware of the housekeeping tasks/duties that are provided. The five-page job analysis form was reviewed, including the job task description, frequency, and physical parameters. The job is classified as a 'light to light-medium work requiring up to 25 pounds of lift [sic] with both hands, specifically while changing bed linens and lifting the mattress. Other activities such as dusting, cleaning, mopping, vacuuming, and emptying the trash are all daily components of Ms. Carrera's job requirements. These daily job requirements that involve large hand movements are protective rather than causative of carpal tunnel syndrome. There is no literature that supports these types of work activities as being the causative factor for the development of carpal tunnel syndrome. Lifting is generally not an activity that is felt to be the causation [sic] of carpal tunnel syndrome. In all job tasks, people use their hands and, as a housekeeper, a large variety of activities are performed throughout the day without the steady use of small hand-held tools, excessive vibratory equipment, or prolonged awkward wrist flexion position. Ms. Carrera moves from one job task to another throughout the day, and indeed uses her hands throughout the day, like everyone else in the workforce, for an eight to ten-hour period. Even Dr. Moreno stated he 'cannot completely say the causes of the nerve compression is only due to her work, as we (collective-we) seem to be able to use our hands for similar activities in our lives.' It is my contention that Ms. Carrera does not suffer from a work-related carpal tunnel syndrome, which at this time is only borderline or very mild, given

> today's normal electrodiagnostic studies.

In his July 16, 2013, IME addendum report, Dr. Gabriel opined as follows:

> Mr. Carrera is in the office today for an Independent Medical Evaluation. My opinions regarding the diagnosis of carpal tunnel syndrome on 02/01/13 have been submitted in an IME on that same date. I have also discussed my opinion regarding the work-relatedness of the carpal tunnel diagnosis. Again, I do not feel that Ms. Carrera suffers from a work-related injury. However, she did undergo a right carpal tunnel release. From the standpoint of the surgical decompression and the neurologic improvement with regard to numbness and tingling, Ms. Carrera does report some benefit, but unfortunately appears to have developed an early RSD. Her subjective improvement cannot be substantiated by today's electrodiagnostic studies, which show a mild median nerve compression, believed to be the result of recent surgery and residual nerve compression.
>
> Ms. Carrera has not reached maximum medical improvement. I do believe she needs greater attention towards the current diagnosis of reflex sympathetic dystrophy, and as such, should be referred to pain management for early stellate ganglion blocks. Therapy should be more than once a week, and geared toward stress-loading and other pain management modalities, including edema management, digital ROM and strengthening. The patient may benefit from a TENS unit and the continued use of Neurontin. Work restrictions remain light use of the right hand and a maximum 5 to 10 pounds lifting. I would

> be happy to reevaluate Ms. Carrera in two to three months if necessary for final MMI, as appropriate.

Dr. Gabriel's August 13, 2013, deposition was introduced during which he testified as follows:

> Q: And, Doctor, you also noted in that same section of your report that Ms. Carrera moves from one job task to another throughout the course of the day.
>
> Is that a significant finding as you evaluate causation, and if so, why is that significant?
>
> A: That type of activity is probably going to be more protective and preventative of carpal tunnel than actually causative because, again, it can be simple movements. In Ms. Carrera's case it's actually more significant changes.
>
> It's still called housekeeping, but if you're dusting and then moving to a vacuum and then you are actually picking up trash and then doing other things like that, your body positions, your wrist positions are moving constantly.
>
> Again, there is no argument that Ms. Carrera or for that matter you or I or anyone in this room don't use our hands quote/unquote repetitively on a day-to-day basis. But again, none of her job tasks are, you know, 12 hours of the same thing with the high repetition, high volume, him impact, high force - none of those things exists in her job description.

Regarding the work-relatedness of Carrera's symptoms of early Reflex Sympathetic Dystrophy ("RSD"), Dr. Gabriel testified as follows:

> Q: And, Doctor, then, based on your problems set forth in your February 1 report that the carpal tunnel and related symptoms and presentation were not work-related, is it, then, your same opinion as to your July 16 findings and the early RSD-type findings that those are also not work-related since they flow from the same sequels?
>
> A: Yes, correct.
>
> Q: And that opinion is rendered within the realm of reasonable medical probability?
>
> A: Yes.

In the April 11, 2014, Opinion and Order, the ALJ provided the following findings of fact and conclusions of law:

> By order of the undersigned Administrative Law Judge entered on February 26, 2014, this claim was bifurcated to address the issue of work relatedness/causation of the Plaintiff's bilateral carpal tunnel syndrome; the appropriate average weekly wage; entitlement to medical benefits; and entitlement to TTD benefits; with all other issues being preserved for further adjudication.
>
> The deposition of the Plaintiff was taken on July 11, 2013. Ms. Carrera is Cuban and testified through a Spanish interpreter. Ms. Carrera testified that

she resides in Louisville, Kentucky, is single, and has a 14-year-old daughter. She was not employed at time of her deposition and last worked on May 7, 2013. She had recently undergone surgery on May 7, 2013, performed by Dr. Moreno to her right wrist. She was working light duty in the laundry room with restrictions prior to her surgery. Ms. Carrera was working 40 hours a week and earning $9.33 per hour when she last worked.

Ms. Carrera began working for the Hyatt Regency on April 13, 2009. She had previously suffered an injury to her left hand and her back, was seen at OPS, received treatment, and the conditions resolved. She did not miss any time from work as a result of these accidents. She returned to work at Hyatt Regency when she was released by Dr. Moreno.

Ms. Carrera testified that the job at the Hyatt Regency was the first job she had after coming to the United States in December of 2008, as a political refugee. While in Cuba she worked at a clothing store, before that she was a stay-at-home mother.

Ms. Carrera testified that she was claiming an injury occurring on April 11, 2012. She picked that date because this is when Dr. Polo advised her that she had carpal tunnel syndrome that was related to her work.

She testified that her symptoms consisted of numbness in her hands that would travel up to her shoulders with the right worse than the left. She was not aware that it was due to her work until Dr. Polo advised her of such. She testified that she presented herself to Dr. Polo as soon as she began to have

pain and she admitted to seeing Dr. Polo in late 2010, early 2011 for left shoulder pain. She denied injuring her shoulder. She did see Dr. Polo in August of 2011, for pain and numbness in her fingers but was not advised it was due to her work at that time. She has not seen Dr. Polo since April 2012. After reporting her incident as work-related she was treated at OPS by Dr. Maya and was referred to Dr. Moreno and was first seen by him on June 20, 2012. She eventually underwent a right carpal tunnel release in May of 2013. Dr. Moreno has recommended surgery on the left hand that has not been scheduled yet. Ms. Carrera testified that she did not miss any work from April 11, 2012, until May 7, 2013, to undergo her right carpal tunnel release. At the time of her deposition she was still off work recuperating.

Ms. Carrera testified that the numbness is gone, her right hand and her fingers are still very rigid, and her shoulder continues to bother her. She denied any prior or subsequent injuries to either hand.

A Final Hearing was held on February 26, 2014. Ms. Carrera testified that she began working at the Hyatt Regency Hotel in Louisville, Kentucky, in 2009, as a housekeeper. She testified that her day typically began by preparing her cart by getting all the sheets, towels, crystal glasses, her vacuum, and the bags for trash.

When her cart was ready she would push it to the room. When they entered the room she would first remove the sheets and blankets, begin cleaning the windows, clean the bathroom, check the lamps, lights, clean the mirrors, toilet, the walls with a sponge, then

at the end she would remake the bed and vacuum the room. The heaviest item she would lift would be the corner of the mattress to make the bed. She did this all day long 40 hours per week.

Ms. Carrera first began to notice symptoms in her upper extremities in 2011. She had a lot of pain and [sic] her hands and they would go to sleep on her. Her hands hurt the most when she had to lift up the mattresses. She had never experienced any symptoms like this before. Her symptoms did improve a little after her treatment but not totally.

Ms. Carrera first learned that her condition was work-related in April 2012, when she was advised by her doctor and she immediately reported it to the Hyatt Regency. She thereafter was directed to OPS for medical treatment. At OPS she was put in braces and was referred to a specialist. She thereafter came under the care of Dr. Moreno, hand surgeon who performed a right carpal tunnel release on May 7, 2013. She has not been released to return to work at the time the Hearing. Dr. Moreno has recommended a left carpal tunnel release that has yet to be performed.

Ms. Carrera continues to have pain in her wrists and numbness and describes it as if they are asleep. The pain goes up her arm and her fingers hurt, she cannot flex them or grip. Her problems and pain are in both hands. At the time of her Hearing Ms. Carrera had relocated to Florida and was living with her family.

Ms. Carrera has difficulty in using her hands and she can't clean, vacuum, or

sweep. She has difficulty getting dressed and combing her hair.

The Plaintiff submitted the medical records of Dr. Juan Polo. The records consist of an EMG study with an impression of moderately severe right carpal tunnel syndrome and mild to moderate left carpal tunnel syndrome. The records also include an office note from April 11, 2012, when the Plaintiff complained of wrist pain and finger numbness she was prescribed medicines and splints to sleep. At that time they reviewed her NCL study and diagnosed her with bilateral carpal tunnel syndrome and referred her to a hand surgeon. The medical records do not contain an opinion in regards to causation.

The Plaintiff submitted the medical records from Occupational Physician Services of Louisville (OPS). These records indicate that the Plaintiff was seen at this facility on May 7, 2012, giving an injury date of May 4, 2012. In her mechanism of injury it has cleaning/lifting, both wrists. The diagnosis of bilateral carpal tunnel syndrome is made. She was released to return to work at restricted duty with no heavy grip/squeeze and to wear [sic] split. At that time she was referred to Dr. Moreno.

Both parties submitted medical records from Dr. Rodrigo Moreno, Hand Surgeon. Dr. Moreno initially saw Plaintiff on May 14, 2012, when she presented with complaints of tingling and numbness in all her fingers in both hands, right worse than left, for about a year. She noted a work history in housekeeping at The Hyatt Regency Hotel. The doctor performed a physical examination, reviewed EMG studies, and diagnosed

right carpal tunnel syndrome. The Plaintiff was seen again on June 11, 2012, and was diagnosed with right and left carpal tunnel syndrome. They attempted conservative treatment prior to proceeding with surgery. She was seen on July 9, 2012, and surgery was scheduled. The remainder of the records from Dr. Moreno consists of treatment notes and return to work with restrictions slips.

Of significance is the correspondence prepared by Dr. Moreno, dated August 28, 2012, and addressed to the insurance carrier for the Defendant/Employer. In this report Dr. Moreno states that the Plaintiff has a diagnosis of carpal tunnel syndrome in both hands with her right worse than left. Dr. Moreno opined that her job activities are contributing to her development of carpal tunnel syndrome. She works as a housekeeper where she has to use her hands for all her activities that are involved. Basically, it is manual labor work and she has to strip beds, clean bathrooms, and vacuum, etc. Dr. Moreno opined her symptoms are related to her work she is doing and there are several articles related to the development of carpal tunnel syndrome with repetitive manual activities such as those that the patient performs.

Dr. Moreno further stated that the Plaintiff does not have any pre-existing health conditions such as thyroid, diabetes, or metabolic changes. Dr. Moreno stated "we cannot completely say that the cause of her nerve compression is only due to her work as we seem to be able to use our hands for each activity in our lives; however, in this case the most repetitive manual activities this

patient does is at work. Although it may not be the sole cause of her symptoms, it is a major contributing factor of her symptoms at this time. Ms. Aguero-Carrera has a good chance of recovering and improving with surgical treatment."

The Plaintiff submitted medical records from Dr. Geevarghese, Pain Specialists. These records indicate that the Plaintiff was treated by this physician for chronic regional pain syndrome type I to her right upper extremity. Dr. Geevarghese treated the Plaintiff primarily with injections.

In a handwritten report dated November 5, 2013 Dr. Geevarghese was asked in his opinion the cause of the Plaintiff's current symptoms and diagnosis. His response is handwritten and very difficult to read but appears to say to [sic] CRP has stopped one or RSD is not uncommon in something following trauma. The doctor does not specifically say yes or no the Plaintiff's symptoms are caused by her work.

The Defendant/Employer had the Plaintiff evaluated by and submitted medical reports of Dr. Burgess, Hand Surgeon. Dr. Burgess saw the Plaintiff on October 3, 2013. He received a history of the Plaintiff being employed as a housekeeper for the Defendant/Employer since April 13, 2009, and that approximately 1 1/2 years later began to have difficulties with numbness and tingling in her hand, gradually increasing in severity.

The Plaintiff was initially seen by Dr. Polo, who diagnosed her as having bilateral carpal tunnel syndrome, as a result of the nerve conduction study

that indicated moderately severe right carpal tunnel syndrome and mild to moderate left carpal tunnel syndrome. She was referred to Dr. Moreno who opines that her condition was causally related to her work and who treated her conservatively with injections and medications. He notes the Plaintiff was seen twice by Dr. Gabriel who opined that her condition was not work-related.

Dr. Burgess performed a detailed physical examination, took and reviewed x-rays of both hands, and reviewed all medical records regarding her treatment to date. Based on the foregoing, Dr. Burgess diagnosed the Plaintiff as being status post right carpal tunnel release with present limitation in finger flexion and the definite decrease in temperature of the right hand as compared to the left. She has slightly mottled, pale appearance to the right palm but has no other findings of complex regional pain syndrome such as hair changes, edema, or sweat changes. He therefore did not believe she had a diagnosis of CRPS.

Dr. Burgess opined that he did not believe that her job, which he considered to be light duty work, is felt to be a risk factor for the etiology of carpal tunnel syndrome. Dr. Burgess was unaware of any articles that suggest carpal tunnel syndrome is related to light duty activities.

The Defendant/Employer had the Plaintiff evaluated by, submitted the medical reports of, and took the deposition of Dr. Thomas Gabriel, Hand Surgeon. Dr. Gabriel prepared a report regarding his first evaluation dated February 1, 2013, and a second report dated July 16, 2013.

Dr. Gabriel was given a history of the Plaintiff alleging the development of bilateral carpal tunnel syndrome as a result of her job duties as a housekeeper for the Defendant/Employer, the Hyatt Regency Hotel. He received a history of the medical treatment that she received as a result and reviewed all medical records and diagnostic studies regarding her treatment to date.

Dr. Gabriel diagnosed the Plaintiff as having bilateral carpal tunnel syndrome. Dr. Gabriel was of the opinion that Plaintiff's work as a housekeeper did not cause her bilateral carpal tunnel syndrome. He found no evidence to support a causative nexus or causative factor for the development of carpal tunnel syndrome and her work. He said particularly absent in this case was any steady repetitive use of any small hand-held tools, vibratory equipment, or prolonged, awkward wrist flexion. He also testified that her wrist positions would be moving while performing her job which would be beneficial in aborting the development of carpal tunnel syndrome.

Dr. Gabriel testified that there are studies that identify or suggest other causes of carpal tunnel syndrome that he stated certainly is metabolic, postmenopausal, due to diabetes, or thyroid problems. He said eight or nine out of ten carpal tunnel cases are probably women between the ages of 40 and 60.

Dr. Gabriel also felt that the Plaintiff is developing symptoms of RSD although it is not full-blown. He does not believe that this condition has any causative relationship to her work. While she does have some signs of it

she doesn't have all the signs. Dr. Gabriel did not believe the Plaintiff was at maximum medical improvement at the time of his evaluations.

The first issue for determination is whether or not Plaintiff's bilateral carpal tunnel syndrome is causally related to her work for the Defendant/Employer as a housekeeper.

KRS 342.0011 (1) defines injury as meaning "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings." The Plaintiff bears the burden of proof and risk of non persuasion in each and every element of her case. *Snawder vs. Stice*, 576 SW2d 276 (KY App. 1979), *Jones vs. Newberg*, 890 SW2d 284 (KY 1994).

The Plaintiff argues that as a result of performing her duties as a housekeeper for the Defendant/Employer, the Hyatt Regency Hotel, she developed bilateral carpal tunnel syndrome that is now becoming chronic regional pain syndrome in her right wrist. The Plaintiff testified that the specific activity of changing the sheets on the beds in the hotel cause her great discomfort and in her opinion led to her carpal tunnel syndrome.

The Plaintiff supports her position with testimony from Dr. Moreno a well-respected hand surgeon who opines that her work activities are contributing to her development of carpal tunnel syndrome. He felt the Plaintiff had no pre-existing health condition such as thyroid, diabetes, or metabolic changes

but admitted that he could not completely say that the cause of her nerve compression is only due to her work. However, in this case the most repetitive manual activities the Plaintiff does is at work. Although it may not be the sole cause of her symptoms, it is a major contributing factor of her symptoms at this time.

The Defendant/Employer argues that the Plaintiff has not met her burden of proving a causal connection between the development of carpal tunnel syndrome and her activities of working as a housekeeper for the Hyatt Regency Hotel. In support of their position the Defendant/Employer had the Plaintiff evaluated by Dr. Burgess and Dr. Gabriel, both of whom are well-respected hand surgeons also. Neither Dr. Burgess nor Dr. Gabriel could causally connect the Plaintiff's development of bilateral carpal tunnel syndrome, as well as the early stages of chronic regional pain syndrome in her right upper extremity, to her work activities at the hotel. Both Dr. Gabriel and Dr. Burgess were unaware of any literature connecting the type of work performed by the Plaintiff to the development of bilateral carpal tunnel syndrome. In fact, Dr. Gabriel felt that housekeeping would be considered a light occupation that is not sufficiently repetitive enough to lead to the development of carpal tunnel syndrome.

In this specific instance, after careful review of the lay and medical testimony, the Administrative Law Judge finds persuasive and relies upon the opinions of Dr. Burgess and Dr. Gabriel in finding that Plaintiff has not met her burden of proving that she suffers from bilateral carpal tunnel syndrome

> that was caused by her employment as a housekeeper for the Defendant/Employer. While the Plaintiff claims that specifically changing the sheets on the bed and lifting the mattress caused the development of her bilateral carpal tunnel condition, the Administrative Law Judge is simply not persuaded that this activity, in and of itself, is sufficiently repetitive to lead to the development of carpal tunnel syndrome as the Plaintiff claims. Therefore the Plaintiff's claim for Workers' Compensation benefits shall be dismissed as entirety.
>
> Due to the foregoing findings the remaining issues herein are deemed moot.

On appeal, Carrera asserts the ALJ should have relied upon the opinions of her treating physician, Dr. Moreno.

When the party with the burden of proof before the ALJ is unsuccessful, the sole issue on appeal is whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). There, the Court of Appeals stated:

> The claimant bears the burden of proof and risk of persuasion before the board. If he succeeds in his burden and an adverse party appeals to the circuit court, the question before the court is whether the decision of the board is supported by substantial evidence. On the other hand, if the claimant is unsuccessful before the board, and he himself appeals to the circuit court,

> the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor.

Id. at 735.

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). As long as any evidence of substance supports the ALJ's opinion, it cannot be said the evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). For an unsuccessful claimant, this is a great hurdle to overcome. As pointed out in Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986):

> If the fact-finder finds against the person with the burden of proof, his burden on appeal is infinitely greater. It is of no avail in such a case to show that there was some evidence of substance which would have justified a finding in his favor. He must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled "clearly erroneous" if it reasonably could have been made. Thus, we have simply defined the term "clearly erroneous" in cases where the finding is against the person with the burden of proof. We hold that a finding which can reasonably be made is, perforce, not clearly erroneous. A finding which is unreasonable under the evidence

> presented is "clearly erroneous" and, perforce, would "compel" a different finding.

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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). 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, supra.

The ALJ is given the discretion to choose the medical opinions in the record upon which he will rely. 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). Here, the ALJ relied upon the medical opinions of Drs. Gabriel and Burgess instead of Dr. Moreno's. The opinions of Drs. Gabriel and Burgess comprise substantial evidence in support of the determination Carrera's conditions are not work-related and the dismissal of her claim for income and medical benefits. Therefore, the ALJ's decision based upon these opinions cannot and will not be disturbed.

Significantly, Carrera failed to file a petition for reconsideration. Pursuant to KRS 342.285, in the absence of a petition for reconsideration, the ALJ's order "shall be conclusive and binding as to all questions of fact," as long as substantial evidence in the record supports the ALJ's conclusion. Here, substantial evidence supports the ALJ's decision. Because the ALJ's decision is

supported by substantial evidence, we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

Accordingly, the April 11, 2014, Opinion and Order is **AFFIRMED**.

ALL CONCUR.

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