

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 16, 2014

CLAIM NO. 201285818

MELINDA KEOWN

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

METHODIST HOSPITAL
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * *

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

STIVERS, Member. Melinda Keown ("Keown") appeals from the December 23, 2013, Opinion and Order and the January 29, 2014, order overruling Keown's petition for reconsideration of Hon. Chris Davis, Administrative Law Judge ("ALJ"). In the December 23, 2013, Opinion and Order, the ALJ dismissed Keown's claim in its entirety for failure to prove a work-related injury, temporary or permanent.

In her petition for reconsideration, Keown asserted the evidence supporting her claim compels a finding of a work-related injury and an award of benefits. Additionally, Keown requested specific findings identifying the evidence introduced by Methodist Hospital the ALJ relied upon in support of his decision.

By order dated January 29, 2014, the ALJ overruled Keown's petition for reconsideration.

On appeal, Keown asserts the ALJ erred by finding she did not sustain a work-related injury. Additionally, Keown asserts the ALJ's findings of fact fail to advise her of the basis for his decision.

The Form 101 alleges Keown was injured during the scope and course of her employment with Methodist Hospital on May 12, 2011. Under "describe how the injury occurred," the following is written:

I was helping transfer a morbidly obese patient from one bed to the other at a nursing home when during the transfer my partner shifted the bulk of the weight to me and the beds seperated [sic], causing me to fall to my knees and support the patient's weight to prevent patient from falling.

Above this is the following: "5/16/11- Sat down and chair rolled out from me, landing on my buttocks."

Under "body part injured," the Form 101 alleges as follows: "Upper back pain radiating into my right scapular area and neck. 5/16/11- thoracic strain & numbness and tingling in right arm, hand and fingers."

Under "notice," the Form 101 alleges as follows:

5/16/11- reported same day to employer
12/9/11- I completed an injury report
and reported to my supervisor upon his
return to work.

(emphasis added.)

Keown was working as a licensed paramedic at the time of her alleged injury.

The October 31, 2013, Benefit Review Conference ("BRC") Order and Memorandum lists the following contested issues: benefits per KRS 342.730, work-relatedness/causation, unpaid or contested medical expenses, injury as defined by the Act, exclusion for pre-existing disability/impairment, TTD, vocational rehabilitation, and statute of limitations. ***Importantly, under stipulations, the parties stipulated that Keown sustained a work-related injury on December 9, 2011, and that Methodist Hospital received due and timely notice of***

said injury.¹

During Keown's July 10, 2013, deposition, the following conversation took place on the record between Keown's counsel and Methodist Hospital's counsel:

Counsel for Methodist Hospital: Ms. Keown, before we get started, I've spoken with your attorney, and Dan and myself are going to stipulate that this claim deals with the right upper extremity, it does not involve a neck or low back injury.

Counsel for Methodist Hospital: Is that correct, Dan?

Counsel for Keown: That's what the evidence is suggesting, yes.

Keown then testified as follows:

Q: And, Ms. Keown, I will ask you, do you agree with what we stipulated to, that we're dealing with a right upper extremity claim?

A: Yes.

Q: Okay. No neck injury, no low back injury?

A: No low back injury.

Q: And no neck injury-

A: No.

Q: -correct?

¹ Methodist Hospital never sought to be relieved of this stipulation. However, under the heading of Contested Issues, work-relatedness/causation and injury as defined by the Act are listed as two of the issues.

A: No, no neck, no low back.

Filed in the record by Keown is the November 14, 2012, Independent Medical Examination report of Dr. Jules Barefoot. After examining Keown, pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") Dr. Barefoot assessed a 7% whole person impairment rating and apportioned all of this impairment rating to the work incidents.

Concerning whether Keown sustained a work-related injury, the ALJ determined as follows in the December 23, 2013, Opinion and Order:

The undersigned does not doubt, to a large degree, that the Plaintiff's complaints are legitimate. I also do not doubt the occurrence on December 9, 2011. However, it remains the Plaintiff's burden to demonstrate and prove that the December 9, 2011 incident caused a change in the human organism. To that end she has presented her testimony and the report of Dr. Barefoot, as well as an MRI taken twenty months after the date of the occurrence.

Against this the Defendant has filed no less than seven distinct sets of medical records or reports, including from Crittenden County Hospital, Stuart Lockwood D.D., Community Methodist Hospital, Criss Yelton M.D., Debra Wallace M.D., Randall Oliver M.D. and Reid Wilson, M.D., which either document a long standing history of

chronic conditions, predating December 9, 2011, to the complained of body parts or specifically refuting a work-related causation. In the case of Dr. Oliver he limits his opinion to an affirmative non-opinion. Further, they have filed the report of Dr. Robert Weiss, M.D. which merely states the Plaintiff has no permanent impairment rating, restrictions or need for medical treatment.

I choose to rely upon the weight of the evidence and specifically find that the Plaintiff's alleged conditions are not work-related. Accordingly the claim is dismissed, in its entirety.

In the January 29, 2014, order ruling on Keown's petition for reconsideration, after being asked to make specific findings identifying the evidence he relied upon that supports his decision, the ALJ merely stated as follows:

There certainly is ample evidence not only in the form of the retained experts but also in the medical records as a whole to determine that the Plaintiff's condition(s) are not work-related. The evidence I found most persuasive was that her claim should be dismissed.

While the ALJ is not required to set forth the minute details of his reasoning in reaching a particular result, he is required to adequately lay out the basic facts drawn from the evidence upon which his ultimate conclusions were based so that all parties are reasonably

apprised of the basis for the decision. Big Sandy Community Action Program vs. Chafins, 502 S.W.2d 526 (Ky. 1973); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). In the case *sub judice*, the ALJ has not adequately apprised the parties or this Board of the basis for his conclusion Keown's claim should be dismissed for failure to prove a work-related injury.

As an initial matter, we acknowledge the omission of a December 9, 2011, injury date in Keown's Form 101. However, the December 9, 2011, injury date was stipulated to at the October 31, 2013, BRC, and this was never raised as an issue during the proceedings.

In the December 23, 2013, Opinion and Order, the ALJ listed the various medical reports and records filed by Methodist Hospital and stated he is relying upon the "weight of the evidence" to determine that Keown's conditions are not work-related. In response to Keown's petition for reconsideration requesting specific findings providing the evidence he relied upon in determining Keown did not sustain a work injury and dismissing her claim, the ALJ stated: "The evidence I found most persuasive was that her claim should be dismissed."

The language in the ALJ's order ruling on the petition for reconsideration is vague to the point of

ignoring Keown's request, particularly in light of the fact that this Board cannot locate any medical evidence in the record which, as stated by the ALJ, directly refutes the occurrence of a work-related injury. The more significant medical evidence filed by Methodist Hospital are, in part, as follows:

(1) The September 30, 2013, report by Dr. Robert Weiss.

I would not anticipate any permanent impairment or need for permanent restrictions from a neurosurgical standpoint. I think she has reached maximum medical improvement from a neurosurgical standpoint.

The diagnosis would be cervicalgia, along with pain in the right shoulder.

It appears her treatment and evaluations were related to the work injury, but I would really have nothing further to recommend at this point.

(2) The July 26, 2013, report by Dr. Criss Yelton.

I would expect [sic] return to unrestricted activities with regard to the treatment for the right carpal tunnel syndrome. It appears that some impairment is appropriate with regard to her scapulothoracic symptoms. However, it is unclear how much of her impairment is a result of her work activities and how much is a result of chronic disease. Clearly her shoulder symptoms were present well before her work injury of December of 2011.

(3) The September 23, 2013, report of Dr. Reid Wilson.

After reviewing the medical records, it is my impression that the patient had chronic ongoing right shoulder pathology. The previous treatment of her shoulder is well documented. MRI findings are consistent with chronic and degenerative changes as expected with natural aging process. Even after her injury, the patient did not seek acute orthopedic care for her right shoulder. The patient was seen by Dr. Criss Yelton and was treated for right carpal tunnel symptoms. This is consistent with her chronic pathology and lack of new acute findings. An MRI was not obtained until 20 months after the reported injury. Based on the documentation presented, there is little to suggest the condition is not chronic pathology. Apportionment is difficult to assign with the delay in MRI. However, it is clear that the patient's shoulder pathology is not 100% related to [sic] described work injury as suggested in Dr. Barefoot's IME.

(4) The September 30, 2013, report of Dr. Wilson.

After reviewing the medical records, it is my impression that the patient had chronic ongoing right shoulder pathology. The previous treatment of her shoulder is well documented. MRI findings are consistent with chronic and degenerative changes as expected with [sic] natural aging process. Even after her injury, the patient did not seek acute orthopedic care for her right shoulder. The patient was seen by Dr. Criss Yelton and was treated for right carpal tunnel symptoms. This is consistent with her chronic pathology and lack of new acute findings. An MRI was not obtained until 20 months after the reported injury. Based on the documentation presented, there is

little to suggest the condition is not chronic pathology. Apportionment is difficult to assign with the delay in MRI. However, based on MRI findings, previous treatment, and medical history at least 50% of the underlying pathology is secondary to her chronic condition.

The Board is not a fact-finding tribunal; thus, it is not charged with discovering and providing the facts and the rationale behind an ALJ's decision when the ALJ fails to provide the rationale. That said, the above-cited evidence does not constitute substantial evidence in support of the ALJ's determination to dismiss Keown's claim for failure to prove a work-related injury. Indeed, the above-cited medical evidence filed by Methodist Hospital establishes Keown in fact sustained either a temporary or permanent injury.

Because the parties stipulated Keown sustained a work-related injury and the evidence introduced by Methodist Hospital establishes Keown sustained either a temporary or permanent injury, the decision of the ALJ finding Keown did not sustain a work-related injury and dismissing her claim must be vacated.

Accordingly, the December 23, 2013, Opinion and Order and the January 29, 2014, order overruling Keown's petition for reconsideration dismissing Keown's claim for

failure to prove a work-related injury are **VACATED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion, award, and order determining whether Keown sustained a permanent or temporary injury and her entitlement to medical benefits.

ALL CONCUR.

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