

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 23, 2015

CLAIM NO. 201260384

MICHELLE KENNIE

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

WEST MAIN HVAC and
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Michelle Kennie ("Kennie") appeals from the Opinion, Award and Order rendered June 30, 2015 by Hon. Chris Davis, Administrative Law Judge ("ALJ"), dismissing her claim against West Main HVAC ("West Main"). Kennie also seeks review of the August 31, 2015 Order denying her petition for reconsideration.

On appeal, Kennie argues the ALJ failed to provide sufficient findings of fact to support his legal conclusions. Kennie additionally argues the ALJ's determination is not supported by substantial evidence of record. Kennie next argues the ALJ has drawn unreasonable inferences from the record, and failed to explain why he chose to rely upon Dr. Richard Dubou's opinions. Because substantial evidence supports the ALJ's determinations, and no contrary result is compelled, we affirm.

Kennie filed a Form 101 on June 20, 2014 alleging she developed a gradual onset of cumulative trauma injuries to her left and right wrists while working for West Main as its office manager. Although the Form 101 reflects December 28, 2012 as the date of injury, the evidence has established she last worked for West Main in November 2012. A more specific date is unavailable based upon the evidence. Kennie is a high school graduate, and has an Associate's Degree from Western Kentucky University. She worked as the office manager for West Main from 2003 to 2012. Prior to her employment with West Main, she worked for five years as a human resource assistant for another employer and for three years as a layaway manager at a discount department store.

Kennie testified by deposition on October 30, 2014, and at the hearing held May 6, 2015. She was born on May 15, 1974, and is a resident of Glasgow, Kentucky. Kennie is right hand dominant. In addition to the jobs listed above, Kennie worked at a couple of fast food restaurants while she was in high school.

Kennie's job as a layaway manager required entering invoices, placing labels on packages, bagging and boxing. Her job as a human resources assistant required her to perform data entry. Her job with West Main involved data entry, key boarding, entering invoices, preparing receipts, making bank deposits, preparing work orders, ordering supplies, and answering telephones. She has not worked since she left West Main in November 2012.

She stated her bilateral carpal tunnel syndrome developed gradually over a period of time. She first experienced symptoms in the fall of 2010. She later stated she first experienced problems in June 2010. She initially experienced tingling and numbness in both hands after she was required to input an extensive amount of data subsequent to a computer system crash. She treated with T. J. Samson Family Practice, and her symptoms resolved. She missed no work, and was not advised her condition was work-related.

Kennie's symptoms returned in February 2012, and did not improve after she stopped working in November 2012. She initially noted tingling in her fingertips. This developed into occasional numbness. She began sleeping with splints on her wrists. At some point, she experienced neck pain due to her sleep position, and she sought medical treatment. By November 2012, her pain became significant, and she reported this to Lanny Rippy ("Rippy"), West Main's owner. She stopped working after she reported her condition to Rippy. She stated no physician has ever taken her off work. She stopped working due to her pain and inability to do the job. She has had no income from any source since she last worked in November 2012.

She was first diagnosed with carpal tunnel syndrome by Dr. Narasimah Reddy. She saw Dr. Reddy on a few occasions, and he recommended surgery. She then began treating with Dr. John Jones, a chiropractor. Dr. Jones eventually referred her to Dr. Sunil Thirkannad, a hand surgeon, who performed surgery on her left wrist on June 4, 2014 at Jewish Hospital in Louisville. She stated the surgery improved her left wrist symptoms. She has not yet had surgery on the right wrist, although it has been recommended. She stated she has difficulty carrying items with the right hand.

Rippy testified by deposition on January 21, 2015. He is the owner of West Main. His business services, repairs and installs furnaces and air conditioners. He has owned the business for over thirteen years, and Kennie worked for him for over ten years. He stated Kennie did what was necessary for the office to function. Her duties included answering the telephone, bookkeeping, billing, typing, ordering supplies, preparing invoices, writing receipts, and preparing tickets to assign jobs to service technicians. In November 2012, she advised she was having problems with her hands. She told him she could no longer work due to the pain. She stopped working at that time. He stated she could return to work once she is healed.

In support of her claim, Kennie attached records from Dr. Reddy, and Kathleen Galloway, a physical therapist from the EMG testing service. Dr. Reddy first saw Kennie on December 28, 2012. He noted she is right hand dominant, and complained of pain in both wrists, worse on the right. He noted this condition had originally onset in June 2010 and had worsened. He diagnosed mild carpal tunnel syndrome. He also noted she has cervical degeneration. He administered an injection to the right hand. On January 11, 2013, he noted the injection had provided some relief.

He noted both the Tinel's and Phalen's tests were positive. On September 9, 2013, he stated the following regarding causation, "In terms of causation, I could not categorically state her work did it but we see these kind of problems more often in people who does [sic] extended period [sic] of time typing or working on a computer." He also stated repetitive motion could be one of the factors causing symptoms, but they could also be caused by diabetes mellitus and rheumatoid arthritis. He further indicated Kennie could return to work which does not require repetitive flexion or extension of the wrist. The EMG performed December 21, 2012 was interpreted as borderline for mild sensory nerve compromise at the wrists.

Dr. Jules Barefoot performed an evaluation at Kennie's request on June 10, 2014. He noted she had seen her primary care physician for tingling in her hands and neck pain in June 2010. She had physical therapy and her condition improved. Her symptoms returned, and were worse in 2012. He noted she had undergone left wrist surgery, but continued to have right hand pain. He diagnosed her as status post left carpal tunnel release, and having right median nerve sensory neuropathy. He stated her conditions were "more likely than not" caused by her work activities. He stated her treatment was reasonable and necessary. He

stated she may have had pre-existing dormant conditions which were aroused into disabling reality. Dr. Barefoot opined she had not reached maximum medical improvement ("MMI"), and would not do so until six to nine months after she has surgery on the right wrist. He assessed a 6% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") for the left wrist and hand.

In a supplemental report dated November 29, 2014, Dr. Barefoot opined any diagnosis of Reynaud's was not work-related, and if she has that condition it does not change his opinion regarding causation or restrictions. In another supplemental report dated February 15, 2015, Dr. Barefoot stated Kennie's symptoms manifested into disabling reality in June 2012, and in December 2012 she should have been placed on light duty. If no light duty was available, she should have been taken off work.

Treatment records from T.J. Samson Family Health, and T.J. Samson Rehabilitation for treatment from October 10, 2012 through December 3, 2012 were filed by Kennie. Dr. Corey Jaquez saw her on October 10, 2012 for hand numbness, and noted he had seen her for the same condition several months before. She again saw Dr. Jaquez on October

24, 2012 for complaints of bilateral hand and shoulder pain and numbness. Notes dated November 7, 2012 and December 5, 2012 indicate physical therapy helped, but her symptoms had returned. Dr. Ian Gilson saw Kennie on December 31, 2012. He considered sending her for a rheumatology consult, and increased the dosage of Gabapentin. He noted her pain does not radiate, and the location of the complaints varies.

Kennie treated with Dr. Jones sixty-five times between July 12, 2012 and May 13, 2014. His notes reflect he provided cervical, lumbar and extremity adjustments. He noted percussion therapy provided some relief. His notes reflect continued improvement. He opined she needed a carpal tunnel release. In addition to Dr. Jones' treatment records, he completed a somewhat illegible Form 107-I dated August 26, 2013. Dr. Jones diagnosed Kennie with a cervical disk disorder, and bilateral carpal tunnel syndrome. He opined the unsupported use of her hands caused her complaints. He assessed a 14% impairment rating pursuant to the AMA Guides, of which 7% was due to the cervical condition and 7% to the carpal tunnel syndrome. He stated she should avoid lifting greater than ten pounds, or typing.

Kennie saw Dr. Thirkannad, a hand surgeon, on May 20, 2014. The intake sheet for that appointment indicates

she had complaints of numbness in both of her hands, wrist and forearm pain, and tingling and numbness in the fingers. He noted she had smoked for twenty years. On June 4, 2014, he performed a left wrist decompression and injected the right wrist. In an office note dated June 26, 2014, Dr. Thirkannad diagnosed carpal tunnel syndrome, Raynaud's syndrome, lesion ulnar nerve/cubital tunnel syndrome/Guyon's canal, and embolism and thrombosis of arteries of the upper extremity.

Kennie also filed the August 15, 2014 note of Carla Hale, PA-C. She noted Kenzie had been a patient of the clinic for several years. She stated Kenzie suffers from severe bilateral pain in the upper extremities and had recently undergone surgery for the left wrist. She noted a similar surgery had been planned for the right wrist. She noted Kenzie had recently been diagnosed with leukocytosis and had undergone hematologic evaluation.

West Main filed the First Report of Injury dated December 6, 2012. This form was completed by Kenzie and signed by Rippey. This form indicates the date of injury was "6/2010". The form also indicates Rippey was first notified on "11/2012". The form also notes the cause of her complaints was "office work-typing".

West Main also filed the orthopedic peer review report of Dr. Peter Kirsch dated January 7, 2013. Dr. Kirsch stated Kennie had a history of intermittent hand pain and numbness for two years, and intermittent neck pain for four years. He opined her carpal tunnel syndrome was not related to Kennie's work, or work environment.

Dr. Dubou examined Kennie on September 30, 2014 at West Main's request. He reviewed records and performed an examination. He diagnosed Kennie with bilateral carpal tunnel syndrome unrelated to any particular work injury culminating on December 28, 2012 or any cumulative trauma type of injury of any type. He noted Kennie had a pre-existing bilateral carpal tunnel syndrome, but by her reported history this was not active until the spring or summer of 2012. He opined her work did not cause the cumulative trauma carpal tunnel pathology. He specifically noted her symptoms did not improve after she stopped working. He stated if these conditions were caused by her work, the symptoms would have improved after she was no longer performing her employment activities. He stated there is no objective basis for assessment of a functional impairment rating. He recommended she avoid repetitive gripping requiring flexion and extension of the wrist; no use of industrial power tools, impact hammers or air guns;

and no repetitive lifting of ten pounds, or intermittently fifteen pounds. He stated she is fully capable of returning to her pre-injury work. Dr. Dubou stated he disagreed with Dr. Barefoot regarding causation and impairment. Likewise, he disagreed with Dr. Jones. He stated she may require right wrist surgery if her problems continue.

In a supplemental report dated October 21, 2014, Dr. Dubou stated he had reviewed additional records from Dr. Thirkannad, and stated, "Certainly no part of the arterial lysis, Guyon canal decompression, or sympathectomy of the ulnar artery can be part of any workman's compensation case as there is nothing known that would cause it."

West Main also filed the June 20, 2010 note of Dr. Kathryn Rutland. This note reflects Kennie presented for treatment with complaints of neck pain which she had been having intermittently for two years.

A Benefit Review Conference was held on May 6, 2015. The issues preserved for determination included benefits per KRS 342.730, work-relatedness/causation, unpaid or contested medical expenses, pre-existing active and temporary total disability benefits.

In a decision rendered June 30, 2015, the ALJ dismissed Kennie's claim. He provided an extensive review of the evidence, and made the following findings:

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.

This claim, like many cumulative trauma claims, and through no fault of counsel for either party, is somewhat disjointed. To begin with the date of injury alleged on the Form 101, December 28, 2012, is inconsistent with the alleged date of injury on the First Report, June, 2010, after the date on which notice was provided, November, 2012, and after the Plaintiff's last date of work, November, 2012.

As such clearly her date of injury is not December 28, 2012. Notice is not contested so it is unnecessary to analyze what date she should have or did provide notice. Date of injury for any benefits must still be ascertained, if in fact the condition(s) are work-related.

Further, although Interlocutory Relief was not requested if I find the claim work-related it would be difficult, if not impossible, for me to make any permanency award at this time. Currently the Plaintiff has not even had her right wrist release and as of the various reports assigning an impairment rating for the left wrist none was done prior to her reaching MMI for that condition.

Complicating matters, from the Plaintiff's perspective, is that seven different medical professionals have given a diagnosis and/or provided a causation opinion but only two of them have stated the condition is work-related. Those are Dr. Johns, a chiropractic providing an opinion on wrists, and Dr. Barefoot, the Plaintiff's IME physician. Even Dr. Barefoot conceded that the Plaintiff has Raynaud's syndrome and that it is not work-related.

It is noted that Dr. Reddy did not offer an opinion which I believe meets the standard of "within reasonable medical probability." Brown-Forman Corp. v. Upchurch, 172 S.W.3d 615 (Ky. 2004) Even if legally probative I am not persuaded by his opinion that it is work-related. Like him I see work-related carpal tunnel syndrome in clerical workers and make awards accordingly. But each case is individualized and I am not persuaded herein.

She has, at times, been diagnosed with Raynaud's syndrome, mononeuritis, peripheral neuropathy, a cervical condition, and bilateral carpal tunnel syndrome. She has been verified through diagnostic testing to have had a blocked artery in her left wrist.

Ultimately, as Dr. DuBou states, carpal tunnel syndrome is [sic] condition with many contributing causes, including defects in the structure of the wrist, co-morbid diseases and metabolic conditions.

I can make no factual finding that the bilateral carpal tunnel condition is work-related. I like Ms. Kennie and believe that she is sincere and a good

worker. It appears she has benefited from the surgery done. Her employer, Mr. Rippy, thinks a lot of her. Nonetheless the evidence supporting her claim is less than convincing. The evidence that it is not work-related, when taken as a whole, is compelling.

In reliance on the foregoing and with specific reliance on the opinion of Dr. DuBou this claim is dismissed, in its entirety, as not work-related.

Kennie filed a petition for reconsideration on July 14, 2015, arguing, as she does on appeal, the ALJ erred in dismissing the claim. First, Kennie argued the ALJ should reconsider the evidence, and essentially reverse his dismissal of the claim. Kennie also requested the ALJ make specific findings regarding the weight afforded to Dr. Kirsch's opinions; why he deemed Dr. Dubou's opinions more credible than those of Drs. Barefoot and Jones; and the impact of the diagnosis of Raynaud's. In general, Kennie asked the ALJ to set aside his entire decision, find she sustained compensable work injuries, and to award benefits accordingly based upon the evidence she submitted. The ALJ denied the petition for reconsideration by order dated August 31, 2015.

On appeal Kennie acknowledges the evidence is conflicting. She argues the ALJ failed to submit sufficient findings of fact to support his legal

conclusions. She argues the ALJ apparently used a "score card" in dismissing her claim because he made a comment in the decision regarding the number of medical opinions supporting Kennie's position versus those opposed. She also argues Dr. Dubou's opinion is unreliable, untrustworthy, and insufficient to support the ALJ's decision. Kennie argues the evidence compels a contrary result.

As the claimant in a workers' compensation proceeding, Kennie 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 she 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 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 could otherwise 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.

On review, we find Kennie's appeal constitutes nothing more than a re-argument of the evidence before the ALJ. Kennie impermissibly requests this Board to engage in fact-finding and substitute its judgment as to the weight and credibility of the evidence for that of the ALJ. This is not the Board's function. See KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Contrary to Kennie's assertion, Dr. DuBou's opinions constitute substantial evidence upon which the ALJ could rely.

While Kennie requested additional findings by the ALJ, a review of his decision reveals his findings are minimally sufficient to support his determinations. 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.

The June 30, 2015 Opinion, Award and Order dismissing Kennie's claim, and the August 31, 2015 Order denying her petition for reconsideration rendered by Hon. Chris Davis, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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