Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 1, 2014

CLAIM NO. 201300796

PIKE COUNTY BOARD OF EDUCATION PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

LINDA GRIFFEY
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Pike County Board of Education ("Pike") appeals from the February 10, 2014 Opinion and Award and the March 28, 2014 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") finding Linda Griffey ("Griffey") permanently totally disabled. On appeal, Pike argues Griffey did not sustain an injury as

defined by the Act, can return to her custodian position, is not permanently totally disabled and is not entitled to any future medical treatment. Because the ALJ's decision is supported by substantial evidence, we affirm.

Griffey testified she began working for Pike in 1989 as a custodian and this has been her only employment. Her work involved cleaning, mopping, sweeping, cleaning windows and bleachers, cleaning the gym, waxing and polishing floors, moving tables, moving desks, cleaning bathrooms and stair rails, scrubbing walls, and collecting garbage, which was the heaviest task. These tasks involve frequent stooping, twisting, lifting, and bending.

Griffey indicated she began treating with Dr. Stephen Harrison in 2004 for back pain. She sought treatment because she had been having trouble performing job duties including lifting, tugging and mopping stairs. Eventually, she received several injections from Dr. Sujati Gutti to relieve her back pain. In addition, Griffey treated with Dr. Mark Reed for anxiety and depression, who referred her to Mountain Comprehensive Care.

Griffey testified she experiences back pain radiating down her right leg and numbness in the leg and foot. While working for Pike, she had to sit and elevate her leg, which put her behind in her work. As an

accommodation, she would skip breaks, causing additional stress.

She completed a form for an initial absence on August 16, 2012, citing stress, nerves, and sickness. The following day, she visited Dr. Gutti and her subsequent forms listed nerves, depression, stress, and back and leg pain as the reasons she was off work. She remained off work until April 2013, when her sick leave was exhausted. Griffey did not believe she could return to work as a custodian.

Nancy Grubb, Director of Finance & Treasurer for Pike, confirmed Griffey last worked on August 9, 2012, began using sick days during the August 6 through 17, 2012 pay period, and exhausted her sick leave in April 2013. When asked whether the custodian position involved heavy manual labor, Grubb replied "Yes. It's definitely a manual job." A written job description submitted by Pike for Griffey's position indicates a custodian must have the ability to perform heavy physical labor and be able to walk, bend, lift, push and stand for extended periods of time.

Dr. David E. Muffly performed an independent medical evaluation ("IME") on March 14, 2013. Griffey complained of constant low back pain radiating through her

hip and down her right leg. Dr. Muffly diagnosed progressive lumbar degenerative disc disease, lumbar spinal stenosis and radicular pain. He opined the progressive degenerative changes were associated with her occupation as a custodian which required frequent bending, twisting and lifting. Dr. Muffly assigned an 8% impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). He noted "[t]his 8% impairment is related to cumulative trauma associated with her 24 years of custodial work" for Pike. He further indicated Griffey did not have an active impairment prior to her injury. Dr. Muffly permanently restricted her from lifting over fifteen pounds, and to avoid bending and stooping. He also stated Griffey should have the opportunity to change from a seated position every twenty minutes and to avoid sitting more than two hours per eight hour day. Additionally, he limited Griffey to standing and walking a total of four hours per day and indicated she must be able to lie down and elevate her leg for relief of her symptoms. Dr. Muffly indicated Griffey should only occasionally climb stairs and ramps, balance, stoop, kneel, crouch or crawl.

Griffey introduced Dr. Gutti's medical records, including a May 4, 2007 lumbar MRI report which revealed

degenerative changes at L4-5 with mild associated spinal stenosis and no herniated disc. An October 29, 2008 MRI revealed stable degenerative disc disease at L4-5 and L5-S1 with mild central bilateral recess stenosis. On June 24, 2009, nerve conduction studies revealed chronic right S1 radiculopathy. Griffey received trigger point injections on May 1, 2012 with good results for three to four weeks. In the final note on December 6, 2012, Dr. Gutti recorded diagnoses of lumbar degenerative disc disease with mechanical symptoms of facet dysfunction and SI dysfunction, right leg radicular symptom in the L5-S1 distribution and carpal tunnel syndrome.

Dr. Russell L. Travis performed an IME on September 16, 2013. Griffey complained of pain in her back and right lower extremity, and indicated she had “nerve problems” as well. Dr. Travis diagnosed complaints of low back and right lower extremity pain.

In his IME report, Dr. Travis emphatically challenged the notion Griffey suffers from any condition other than normal degenerative changes. He found no objective findings on detailed neurological evaluation, and believed Griffey exhibited some mild symptom magnification. Dr. Travis reviewed MRI scans from 2007, 2008 and 2010 revealing progressive facet arthropathy “which hasn’t

changed a great deal" with perhaps some enlargement of the facets from arthropathy consistent with the aging process. There was no evidence of acute traumatic changes or evidence of a soft herniated disc. Dr. Travis noted Griffey also has suffered from significant non-work-related anxiety and depression for years, which is a major component preventing her from working.

Dr. Travis' report also challenges the general concept of cumulative trauma. He stated there are no specific studies revealing a higher incident rate for spinal problems in individuals engaged in custodial work. He indicated numerous studies have shown facet arthropathy is an age-related problem, unrelated to cumulative trauma. Dr. Travis opined Griffey does not have a work-related condition, but does have a 5% impairment rating pursuant to the AMA Guides attributable to the natural aging process. She could be restricted as a result of her age and development of facet arthropathy to no lifting greater than fifty pounds. However, he noted that, with work hardening, the restriction could be lifted in four to six weeks. Based upon her job description, Dr. Travis stated the age-related degenerative changes likely will affect her capacity to continue to work as a custodian.

Relying on the opinion of Dr. Muffly, the ALJ found Griffey sustained an injury as defined by the Act resulting in an 8% functional impairment. He found no pre-existing active condition. The ALJ concluded Griffey does not retain the physical capacity to return to the type of work performed at the time of her injury. After noting the definitions of "permanent total disability" and "work", and identifying the considerations required by Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), the ALJ determined Griffey is permanently totally disabled as a result of the work-related injury. While acknowledging Griffey's relatively modest impairment rating, the ALJ also considered the significant physical restrictions imposed on her. These restrictions, combined with her advanced age and work history limited to custodial activity from which she is now prohibited, convinced the ALJ it is highly unlikely Griffey will be able to provide services to another in return for remuneration on a regular and sustained basis in a competitive economy.

Pike filed a petition for reconsideration arguing the ALJ erred in finding Griffey permanently totally disabled. By order dated March 28, 2014 the ALJ overruled the petition.

On appeal, Pike raises four arguments. It first asserts the ALJ erred in finding Griffey has suffered a work-related cumulative trauma injury. Next, it challenges the conclusion Griffey is unable to return to her custodial position. Thirdly, it claims there is no evidence to support a finding Griffey is permanently totally disabled due to the alleged work injury. Finally, Pike claims the ALJ erred in awarding future medical benefits.

Pike's arguments on appeal are essentially an attempt to have the Board reweigh the evidence and substitute its opinion for that of the ALJ. We may not do so. As to Pike's first claim of error, the ALJ was faced with conflicting evidence on the issue of whether Griffey sustained an injury as defined by the Act. He weighed the evidence and, as was his prerogative, found the opinion of Dr. Muffly more persuasive. Dr. Muffly found Griffey sustained a work-related cumulative trauma resulting in a permanent impairment rating. His report, therefore, constitutes the requisite substantial evidence to support the award. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

In claiming Griffey did not sustain a work-related injury, the thrust of Pike's argument is that Dr. Travis' report is more thorough, detailed, and credible

than Dr. Muffly's opinion. However, the duty of this Board is not to determine what evidence is most persuasive; that task lies within the exclusive discretion of the ALJ. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Having concluded Dr. Muffly's opinion constitutes substantial evidence supporting the ALJ's finding, we may not reverse the finding of a work-related injury.

Pike next challenges the conclusion Griffey cannot return to her custodian position. Again, to support this argument, Pike points to Dr. Travis' opinion that Griffey's physical restrictions could likely be lifted if she underwent a work hardening program. Notwithstanding, the ALJ was entitled to rely upon the restrictions assessed by Dr. Muffly, which would clearly preclude Griffey from performing custodial tasks. Moreover, the testimony of Ms. Grubb, as well as the job description submitted by Pike, indicated Griffey's position required heavy physical labor. This evidence is substantial proof to support the conclusion Griffey is incapable of performing her prior work duties.

Pike's third argument is that Griffey is not permanently totally disabled. Pike states the impetus for Griffey's cessation of work was not related to her low back, but rather her non-work-related psychological issues.

Indeed, a non-work-related impairment may not be considered in determining whether an employee is totally disabled. Furthermore, Pike emphasizes none of the physicians specifically stated Griffey was permanently disabled due to physical problems. Additionally, Pike contends there is no evidence Griffey's work as a custodian was heavy manual labor, nor was a vocational evaluation submitted regarding her education, work history, skill, and restrictions compared to available work.

The ALJ understood the definitions of permanent total disability and work and applied the holding of Ira A. Watson Department Store v. Hamilton, id. Griffey is an older worker whose only employment has been as a custodian engaged in physical labor for Pike. The job description filed by Pike indicates the position requires the ability to perform heavy physical labor and the ability to walk, bend, lift, push and stand for extended periods of time. The ALJ accepted the restrictions assessed by Dr. Muffly which clearly preclude Griffey from performing the work as stated in the job description. Although Dr. Travis did not believe Griffey had a work-related condition, he conceded the degenerative condition of her spine would affect her capacity to continue in the custodial position. The ALJ could reasonably conclude Dr. Muffly's positional

restrictions (needing to change from a seated position every twenty minutes and sitting only a total of two hours per eight hour day), would preclude performing even sedentary employment on a regular and sustained basis in a competitive economy. Additionally, Griffey, whom the ALJ found credible, testified she needed to lie down and elevate her leg which would significantly impact her ability to secure and maintain regular employment.

An ALJ has wide discretion in granting or denying an award of permanent total disability. Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006). While Pike has identified proof supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within his discretion to determine which evidence to rely upon, and it cannot be said the ALJ's conclusions are so unreasonable as to compel a different result. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

Finally, Pike argues Griffey is not entitled to future medical treatment because the probative and persuasive medical evidence establishes she does not have any physical condition which is work-related. Again, Pike contends any physical condition is degenerative in nature and the result of the natural aging process.

A worker who has established a work-related permanent impairment rating has also established a disability for purposes of KRS 342.020 and is entitled to future medical benefits. FEI Installation, Inc,. v. Williams, 214 S.W.3d 313 (Ky. 2007). Because the ALJ adopted Dr. Muffly's impairment rating, as a matter of law, Griffey is entitled to an award of future medical benefits. There was no error.

Accordingly, the February 10, 2014 Opinion and Award and the March 28, 2014 Order rendered by Hon. Jonathan R. Weatherby are hereby **AFFIRMED**.

ALL CONCUR.

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