Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 13, 2015

CLAIM NO. 201301127

REGINA TENO PETITIONER

VS. **APPEAL FROM HON. JEANIE OWEN MILLER**
ADMINISTRATIVE LAW JUDGE

FORD MOTOR COMPANY;
DR. YORELL MANON-MATOS;
DR. KIMLESH DAVE;
DR. GHIAS ARAR;
FIRST STOP URGENT CARE;
HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

RECHTER, Member. Regina Teno ("Teno") appeals from the June 11, 2015 Opinion and Order dismissing her claim against Ford Motor Company ("Ford") and the July 27, 2015 Order overruling her petition for reconsideration rendered by Hon.

Jeanie Owen Miller, Administrative Law Judge ("ALJ"). Teno argues the ALJ erred in dismissing the claim after concluding her alleged cumulative trauma injury is not work-related. We affirm.

Teno filed her application on July 29, 2013, alleging right arm, right wrist, neck and left wrist injuries on February 8, 2013, as a result of repetitive job duties. She later amended her claim to include an allegation she developed thoracic outlet compression syndrome as a result of her employment.

Teno was hired by Ford in 1993. At the time of the alleged injuries, she worked in the paint department of the truck plant. She testified her job was strenuous and repetitious, and involved frequent bending and reaching. She had to frequently manipulate chains that weighed up to ten pounds.

The parties submitted voluminous medical proof documenting Teno's lengthy treatment for her various symptoms, only some of which are relevant to the issue of causation. Teno testified she first began to experience symptoms in her arms in November, 2012. By February 8, 2013, the symptoms were constant and painful. She first treated with Dr. Kamlesh Dave at First Stop Urgent Care Center, who diagnosed wrist pain, severe carpal tunnel,

severe bilateral tendonitis, weakness and neck pain. A cervical MRI was normal, though an EMG indicated moderate to severe carpal tunnel syndrome. Teno was referred to Dr. Yorell Manon-Mantos of Kleinert and Kutz, and was treated with injections.

Teno then followed a course of physical therapy and was referred to Dr. Amit Gupta, who performed a carpal and cubital tunnel release surgery. She was then referred to the Cleveland Clinic, and thoracic outlet release surgery was recommended. However, Teno ultimately declined the recommended surgery upon the recommendation of Dr. Gupta.

Independent medical evaluations ("IME") were conducted by Dr. Valerie Waters, Dr. Warren Bilkey and Dr. Thomas Loeb. Dr. Waters diagnosed thoracic outlet syndrome and status-post right carpal/cubital tunnel release. However, she provided no opinion as to the causation of these conditions.

Dr. Bilkey provided similar diagnosis as Dr. Waters, but determined the conditions are work-related. Dr. Loeb, however, disagreed with the diagnosis of thoracic outlet syndrome and suspected brachial or cervical plexitis. He further opined Teno's current conditions are not related to her work activities.

Ford also presented medical records pre-dating Teno's alleged injuries. Records from Paige Primary Care Center document treatment in 2004 for neck pain which radiates into the extremities. Records from Dr. Damon Gatewood indicate Teno was treated for headaches, neck pain, and hand pain in 2011 and 2012.

The ALJ more thoroughly discussed the medical evidence in her Opinion and Order:

> The initial question is whether the plaintiff has proven the alleged conditions are causally related to her work. It is apparent Plaintiff has been actively treated for neck and upper extremity pain as early as 2004. Initially, she did not report her right upper extremity pain as a work related condition. She testified that was because she didn't want to be switched from her job and cause other workers to lose their jobs. She also testified that she did not like the way Ford Medical treated people. After being seen and treated at First Stop Urgent Care she reported it as a work injury, with an injury date of February 8, 2013. It is unclear when a physician told Plaintiff her condition was work-related. The record indicates that initially she reported these conditions as "private insurance" matters. The initial neurologist, who performed the first diagnostic test, opined she suffered carpal tunnel syndrome and cervical radicular pain. However, there is no causation opinion or statement in Dr. Arar's records. The Plaintiff filed her claim in July 2013 without a medical report indicating the causal relationship between a work injury (or

activity) and her condition. To the contrary, there is a report statement (March 4, 2013) by Dr. Yorell Manon-Mantos in the Kleinert and Kurtz [sic] chart that her condition was not related to her occupation. There is a report completed for Unicare by Dr. Dave dated June 16, 2013 that her disability is due to current occupation, he states that there was no "injury" but relates the disability to "repetitive movements". On July 7, 2014 Dr. Bilkey, the Plaintiff's IME physician, opines the Plaintiff's condition is work-related and describes the activity she was engaged in at work simultaneous to her onset of right upper extremity pain. However, Dr. Bilkey does not explain how or why the work activity caused the pain.

The evidence of causation in a cumulative trauma case must come from a medical witness. The Plaintiff's testimony is not sufficient to prove cumulative trauma. (See an unpublished Kentucky Supreme Court case for guidance – Pediatric Dentistry vs. Roy, No. 2008-SC-000198-WC March 19, 2009). Here, the causal relationship testimony comes from only one medical witness, Dr. Bilkey. While Dr. Bilkey is a skilled and well-respected physician, it is not clear to the undersigned that he understood the Plaintiff's specific physical activities at her job nor the fact that she had been actively treated for these conditions in the past – with an MRI in 2011 for neck pain. It is apparent that Dr. Bilkey was not informed of Plaintiff's previous treatment for neck pain and right upper extremity pain. Dr. Bilkey states: "It does not appear that Ms. Teno has an active impairment affecting the neck or right upper limb prior to 2/8/2013." Without the history of previous similar symptoms and [] any

connection of those symptoms to work activities, Dr. Bilkey's opinion becomes less than persuasive. It is essential that each impairment be temporally related to the specific trauma (cumulative or otherwise) to that a [sic] body part.

Of additional significance is the ongoing and concurrent medical treatment the Plaintiff was receiving for other orthopedic and neurological conditions which were apparently not connected to her work. Importantly, in April of 2013 (after she had reported the upper extremity as a work injury) she was seen by Dr. Chase for an initial evaluation for diffuse widespread joint pain. Dr. Chase does not address the causation of Plaintiff's symptoms but among the various pains reported to Dr. Chase, the Plaintiff includes her bicep pain, her right arm and wrist pain (and it is noted she is seeing orthopedists for these conditions). It is noted that Plaintiff was taking tramadol, a narcotic pain medicine, for other conditions of an orthopedic nature before this medicine was prescribed for the neck and right upper extremity pain.

After reviewing the volumes of medical records in this case, the undersigned is satisfied that Plaintiff does not have the capacity to work at Ford --- however, the undersigned finds the medical evidence is not persuasive that her claimed conditions are a result of her work activities.

Simply put, the Plaintiff's evidence is not sufficient to carry her burden of proof as it relates to work related/causation of her cumulative trauma.

> In deciding the threshold issue of causation and work-relatedness, the remainder of the contested issues shall not be addressed.

Teno filed a petition for reconsideration, arguing the ALJ misinterpreted the medical evidence in holding there was no work-related injury. She also alleges the ALJ failed to make a specific finding as to whether the evidence supported a finding the claimant suffered from thoracic outlet syndrome.

In her July 27, 2015 Order on petition for reconsideration, the ALJ noted the issue of causation is a medical question. The ALJ stated she thoroughly reviewed the medical evidence and found the causal connection lacking. The ALJ then set forth her findings from the original decision, as set forth above, and denied the petition for reconsideration.

On appeal, Teno argues that, against the overwhelming weight of the evidence presented, the ALJ erred in dismissing the claim. She again contends the ALJ misinterpreted the medical and lay evidence. Teno argues the ALJ erroneously determined Dr. Bilkey is the only medical witness to relate Teno's disability to her work activities. Teno notes Dr. Dave, her treating physician, clearly indicated her disability is due to her current

occupation. Additionally, Teno contends the ALJ disregarded the diagnosis of thoracic outlet syndrome, a condition known to be caused by highly strenuous and repetitive work and athletic activities. Teno contends the ALJ inappropriately weighed the opinions of Drs. Bilkey and Dave, and the diagnosis of thoracic outlet syndrome by the Cleveland Clinic and Dr. Waters.

As the claimant in a workers' compensation case, Teno bore the burden of proving each of the essential elements of her cause of action, including work-relatedness. 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 is so overwhelming, upon consideration of the record as a whole, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence 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) *superseded by statute on other grounds as stated in* Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001).

Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995);

Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Where the evidence is conflicting, the ALJ, as fact-finder, has the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). 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 which 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, there were differing medical opinions in the record addressing the cause of Teno's conditions. Although Teno contends Dr. Dave's opinion, as the treating physician, is persuasive, nothing in Chapter 342 mandates greater weight be given to a treating physician's testimony. Wells v. Morris, 698 S.W.2d 321 (Ky. App. 1985); Sweeney v. King's Daughters Medical Center, 260 S.W.3d 829 (Ky. 2008).

Dr. Loeb's opinions constitute substantial evidence supporting the ALJ's determination Teno's conditions are not casually related to her work activities at Ford, and no contrary result is compelled. Dr. Loeb reviewed all pertinent medical records, and disagreed with the diagnosis of thoracic outlet syndrome. Rather, he suspected she had chronic pain from a pre-existing non-work-related brachial plexitis. He also opined her activities with Ford were not consistent with carpal tunnel syndrome or cubital tunnel syndrome. According to Dr. Loeb, any alleged cervical strain or carpal tunnel syndrome is not related to her work.

The ALJ accurately summarized Dr. Dave's June 16, 2013 report. The report provides no explanation of any connection between the work and the various conditions he diagnosed. We conclude the ALJ correctly understood the evidence before her regarding causation, weighed that evidence, and, as was her prerogative, determined Teno's evidence was not persuasive. The ALJ cited Dr. Bilkey's apparent lack of knowledge of Teno's past medical treatment and her work activities in concluding his opinion was not persuasive. While Dr. Waters diagnosed thoracic outlet syndrome, Dr. Loeb stated Teno did not have that condition. Dr. Waters' opinion is merely conflicting evidence. The

evidence falls far short of compelling a finding Teno's conditions are causally related to her employment with Ford. Because Teno failed to meet her burden of proof on this threshold issue, the ALJ properly dismissed the claim.

Accordingly, the June 11, 2015 Opinion and Order and the July 27, 2015 Order overruling the petition for reconsideration rendered by Hon. Jeanie Owen Miller, Administrative Law Judge are hereby **AFFIRMED.**

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON. NICHOLAS MURPHY
455 S FOURTH ST STE 1450
LOUISVILLE, KY 40202

COUNSEL FOR RESPONDENT:

HON. GEORGE T T KITCHEN III
600 E MAIN ST STE 100
LOUISVILLE, KY 40202

ADMINISTRATIVE LAW JUDGE:

HON. JEANIE OWEN MILLER
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601