Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 27, 2014

CLAIM NO. 201297620

SAMANTHA J. BLOODWORTH PETITIONER

VS. **APPEAL FROM HON. EDWARD D. HAYS, ADMINISTRATIVE LAW JUDGE**

COLLECTIVE EFFORT INVESTMENTS
D/B/A LITTLE CAESARS PIZZA
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Samantha J. Bloodworth ("Bloodworth") appeals from a September 9, 2013 Opinion and Order and an October 25, 2013 Order on Petition for Reconsideration rendered by Hon. Edward D. Hays, Administrative Law Judge ("ALJ"). In the Opinion and Order, the ALJ determined

Bloodworth had not suffered an injury as defined by the Workers' Compensation Act. Her subsequent petition for reconsideration was denied, and she now appeals, arguing the evidence compels a finding of permanent injury. We affirm.

Bloodworth is a 25 year old woman. She was employed as a shift manager at Little Caesar's Pizza on January 17, 2011 when she left the store to make a bank deposit. It is uncontested this errand was work-related. As she was sitting in her car preparing to leave the parking lot, a truck backed into the front passenger corner of Bloodworth's vehicle. She filed a traffic collision report, in which the responding officer described the accident as "minor", and she informed her manager of the incident. She experienced no symptoms initially, but after a few hours she developed stiffness and pain. She visited Methodist Hospital Emergency Room later that afternoon. The hospital's evaluation form reports normal findings except for a "tender" lumbar spine, and a radiological report is "normal". She was prescribed pain medication and a muscle relaxant.

Bloodworth testified she continued to experience back pain that eventually progressed into her right hip, so she visited her primary care physician, Dr. Jerald

Rightmyer. According to Bloodworth, he prescribed light duty, though no medical records which document this prescription were submitted.

On February 23, 2011, Bloodworth was in the basement of the Little Caesar's when she slipped on water. A fellow employee caught her before she fell to the floor. Bloodworth testified this incident "jerked" her lower back, which was still causing pain due to the prior motor vehicle collision. She did not visit the emergency room, but returned to Dr. Rightmyer. She continued on light duty for two more days until she was fired for unrelated reasons on February 25, 2011. She found work in July, 2011 as a portrait photographer at Olan Mills Studios.

Meanwhile, Dr. Rightmyer ordered four months of physical therapy. On March 12, 2011, he also ordered an MRI of the lumbar spine which revealed mild disc bulges with "no evidence of acute trauma." Bloodworth also introduced a letter from Dr. Rightmyer dated March 15, 2011 diagnosing a thoracic and lumbar strain. Though Bloodworth had already been terminated from Little Caesar's, his letter states she "has been unable to work due to her injuries and [is] still under treatment." In the letter, Dr. Rightmyer cautions Bloodworth to avoid repetitive bending or lifting.

Bloodworth visited Dr. Judith Canlas on November 3, 2011, and complained of increased pain in her right lower extremity with numbness. Dr. Canlas' records indicate an MRI was performed in November, 2011 which was normal. Her impression was sacroilliitis, with increased right lower extremity pain and paresthesia resulting in intermittent sciatica. She doubted Bloodworth suffered from radiculopathy. Dr. Canlas recommended physical therapy and took Bloodworth off work from November 10, 2011 to November 21, 2011. Bloodworth testified the extensive physical therapy provided no relief.

Dr. J. Criss Yelton evaluated Bloodworth on April 30, 2012, and reviewed the November, 2011 MRI report which he also concluded was normal. He believed her complaints were muscular in nature, and concluded the history of Bloodworth's trauma was inconsistent with any joint injury. This conclusion was based partly on Bloodworth's "normal gait" and "smooth and painless" hip motion. He recommended a home-based rehabilitation program and released Bloodworth to full-duty work as of the date of the examination. He also gave her a trial injection in the right sacroiliac joint, which provided no relief according to Bloodworth.

Dr. Jerry Morris, a family practitioner, first evaluated Bloodworth on April 3, 2013. He diagnosed a

persistent, intractable right sacroiliitis and posterior superior iliac spine enthesitis, with altered gait due to chronic low back pain. Referencing the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. Morris assessed an 18% whole person impairment. He also recommended Bloodworth use a cane or crutch when walking more than ten to fifteen yards. In an addendum dated June 12, 2013, Dr. Morris stated: "[S]hould the gait derangement be adjudicated as excessively representing Plaintiff's true impairment and future risk" then her impairment rating would be 11%.

Dr. Morris' addendum was entered in response to an independent medical evaluation performed by Dr. Thomas O'Brien on June 3, 2013. Dr. O'Brien opined Bloodworth sustained "at most" a minor lumbar paraspinous muscle strain due to the two work-related incidents. He did not believe she sustained any permanent injury, and concluded her complaints of pain were out-of-proportion to his physical examination. He particularly noted her symptoms have persisted over two and half years after the incident, despite normal MRI and radiological findings and extensive physical therapy. Dr. O'Brien agreed with Dr. Yelton that Bloodworth had sustained no sacroiliac joint injury.

Further, he found no injury to her right lower extremity. He assessed a 0% permanent impairment based on the AMA Guides. He strongly recommended she discontinue use of the cane, which he characterized as “absurdly contraindicated”, and cease use of Norco, a prescription pain medication which produces the deleterious side effect of chronic pain complaints.

The ALJ ultimately concluded Bloodworth had not suffered an injury as defined by the Act. He based this conclusion primarily on Dr. O’Brien’s report, also noting the normal MRI and radiological reports. Additionally, he considered Dr. Yelton’s opinion, who found no joint injury, and questioned Bloodworth’s credibility. In a subsequent order denying Bloodworth’s petition for reconsideration, the ALJ acknowledged there is no dispute as to what occurred on January 17 and February 23, 2011. Nonetheless, he reaffirmed his conclusion neither occurrence resulted in a harmful change to the human organism.

On appeal, Bloodworth raises two related arguments challenging the ALJ’s determination no injury occurred. She first argues the ALJ erred by failing to determine if her injury was temporary or permanent. According to Bloodworth, the evidence is uncontroverted she suffered at least the temporary injury of a lumbar strain

or sprain. However, in her second argument, Bloodworth asserts the evidence compels a finding she suffered a permanent injury.

As to whether Bloodworth suffered a permanent injury, the ALJ acted well within his discretion in rejecting this claim. To prevail on appeal, Bloodworth must establish the evidence compelled a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Dr. Morris is the only physician who opined Bloodworth had suffered a permanent injury. Particularly in light of the significant evidence indicating otherwise, we do not agree Dr. Morris' report, alone, constitutes 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).

The question of whether Bloodworth suffered at least a temporary injury is a closer question; however, we believe the ALJ's determination she suffered no injury at all is based on substantial evidence. As thoroughly articulated by the ALJ, there are virtually no objective findings of injury. The emergency room diagnosis of lumbar strain was based on Bloodworth's subjective complaints of pain. The emergency room radiological report was unremarkable, as were two subsequent MRIs. Dr. Yelton

found no joint injury. Dr. O'Brien agreed she suffered no joint injury, and suffered "at most" a lumbar strain which would heal itself within five to ten days.

The ALJ considered this medical evidence in conjunction with Bloodworth's testimony, which he found less than credible. He concluded she had "grossly exaggerated" both the motor vehicle accident and her symptoms. He likewise noted Bloodworth missed no work following either occurrence, and initially reported no injury until several hours after the motor vehicle accident.

As the 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 discretion to determine 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).

The crux of Bloodworth's argument on appeal seems to be that Dr. O'Brien did not expressly state she suffered no injury. Instead, he made the equivocal statement she suffered "at most" a lumbar strain. We conclude the ALJ acted within his broad discretion in interpreting this report to mean she possibly suffered no injury at all. In this case, we are particularly mindful of the ALJ's opportunity to personally assess the claimant's credibility. Considering the totality of the evidence, both lay and medical, we do not believe the evidence compels a finding Bloodworth suffered a temporary injury.

For the reasons set forth herein, the September 9, 2013 Opinion and Order and the October 25, 2013 Order on Petition for Reconsideration rendered by Hon. Edward D. Hays are hereby **AFFIRMED**.

ALL CONCUR.

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