Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 19, 2014

CLAIM NO. 201380907

TAMMY FRANCIS PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE**

KELLY SERVICES
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Tammy Francis ("Francis") appeals from the March 28, 2014 Opinion and Order and the April 17, 2014 Order denying her petition for reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"). The ALJ determined Francis sustained only a temporary injury and dismissed her claim for permanent income and medical

benefits. Francis argues the ALJ erred in failing to find a permanent injury and in failing to award future medical benefits. We disagree and affirm.

Francis testified by deposition on October 16, 2013 and at the hearing held January 28, 2014. Francis was employed by Kelly Services and assigned to work as a laborer at the Zappos warehouse, where she was responsible for returns. She would take the product off a cart, scan it and place it on shelving. On December 1, 2012, she was working in a confined space. She turned while holding a return at chest level and struck her elbow on a shelf bracket or pole holding the shelves. Her elbow became bruised and swollen.

Later that night, she went to the Jewish Medical Center emergency room, was treated and released. X-rays of the elbow were negative. She was diagnosed with an elbow contusion and treated conservatively.

Subsequently, Francis underwent physical therapy which alleviated stiffness in her elbow but not the extreme pain. She was referred to Dr. Ty Richardson, who diagnosed left lateral epicondylitis and contusion on December 28, 2010. He administered a cortisone injection, which completely resolved her symptoms, and restricted her to clerical work for four weeks. On January 28, 2013, Dr.

Richardson noted Francis was feeling much better and was "basically symptom free" at that time. She had full extension and flexion with no crepitation or pain. He released her to return to work without restrictions and indicated she could return for treatment on an as needed basis.

In a June 6, 2013 letter to Francis' counsel, Dr. Richardson indicated his diagnosis was contusion of the elbow. He stated he did not anticipate the condition would require any further treatment or affect her activities of daily living or ability to work.

Francis performed light duty work in the fulfillment center office following the injury until February, 2013. She then secured employment in May, 2013 at ProLogistix performing warehouse labor. Her work was not as intense as it was at Zappos, but she began to have increasing elbow pain. Francis testified she continues to experience pain and swelling in her left elbow.

Dr. Warren Bilkey performed an independent medical evaluation on August 5, 2013. Francis complained of severe elbow pain radiating into her hand and neck. Dr. Bilkey's impression was:

> 12/1/12 work injury contusion injury to the left elbow, traumatic lateral epicondylitis (tennis elbow). Question

> is raised about injury to the extensor tendon mechanism. This has not been diagnosed or ruled out. There is myofascial pain affecting the left upper extremity involving the forearm and scapular musculature. On clinical grounds there is cubital tunnel syndrome.

Dr. Bilkey indicated Francis was not at maximum medical improvement, and recommended further diagnostic testing. However, based upon his examination, he stated a 10% impairment rating could be assessed for loss of range of motion of the elbow, cubital tunnel syndrome and chronic pain.

Dr. Richard DuBou evaluated Francis on November 5, 2013. He diagnosed subjective complaints of pain with no objective verification of lack of use of the extremity or of lateral or medial epicondylitis. He stated Francis' complaints were not consistent with objective medical findings, and suspected symptom magnification. Dr. DuBou opined Francis sustained a temporary contusion and slight abrasion that would have resolved within two or three weeks of the work incident without treatment. He assigned no restrictions and recommended no further treatment.

The ALJ, based upon the opinion of Dr. DuBou, found Francis sustained no permanent injury. Rather, he concluded she suffered only a temporary contusion injury

that had long since healed, required no additional treatment, and produced no residual impairment. The ALJ observed Dr. Richardson, a treating physician, also diagnosed an elbow contusion and released Francis from his care indicating she would not have any restrictions or require further treatment. Accordingly, the ALJ dismissed the claim for permanent income and medical benefits.

Francis filed a petition for reconsideration requesting additional findings that the elbow injury was a traumatic injury resulting in a harmful change. She also requested additional findings explaining why the ALJ did not rely on Dr. Bilkey's opinions. Finally, she argued she is entitled to future medical benefits.

In his April 17, 2014 Order on Petition for Reconsideration, the ALJ clarified that, based upon Dr. DuBou's opinions, it was determined Francis did not have objective findings of a permanent harmful change to the human organism. The ALJ found Francis' temporary elbow contusion was caused by a traumatic incident, but the contusion did not cause a permanent injury and she does not require additional treatment.

Francis argues the ALJ erred in failing to find a permanent injury. She asserts the ALJ arbitrarily concluded a contusion is a temporary condition and failed

to apply the statutory definition of injury. She notes the physicians agree she sustained a contusion and two of the three physicians who evaluated her diagnosed lateral epicondylitis. Thus, she believes she has shown a harmful change evidenced by objective findings. Based upon her argument that the contusion qualifies as a harmful change and satisfies the definition of injury, Francis also argues the ALJ erred by not awarding future medical benefits.

This Board must reject Francis' contention the ALJ erred in finding the work accident caused no permanent injury and erred in failing to award future medical benefits for her physical injuries. In Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), the Kentucky Supreme Court held a claimant may submit evidence of a temporary injury for which temporary income and medical benefits may be awarded, yet fail to prove a permanent harmful change to the human organism for which permanent benefits are appropriate. The claimant, in Robertson, failed to prove more than a temporary harmful change as a result of the work injury. Thus, the Court ruled the claimant was not entitled to income benefits or future medical expenses, but was limited to compensation for only those medical expenses incurred in treating the temporary symptoms resulting from the work-related incident.

The opinions of Drs. DuBou and Richardson constitute substantial evidence upon which the ALJ was free to rely. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Dr. DuBou determined Francis sustained only a transient elbow contusion as a result of the work injury which generated no permanent impairment. He specifically found there was no permanent injury, and Francis had recovered from the contusion injury. He further found no evidence verifying epicondylitis. Dr. Richardson, a treating physician, in his June 6, 2013 letter only indicated a diagnosis of a contusion of the elbow and indicated he did not anticipate the condition would require any further treatment or affect her ability to work. As explained in Robertson, the ALJ could reasonably conclude from this evidence the injury of December 1, 2012, produced only temporary harmful changes that had fully resolved.

Francis' arguments on appeal are essentially an attempt to have the Board re-weigh the evidence and substitute its opinion for that of the ALJ. We may not do so. On appeal, Francis argues the evidence compels a different result. While she has identified evidence supporting her position that a permanent impairment resulted from her injury, the totality of the evidence does

not compel such a result. Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The ALJ properly considered all evidence of record, weighed the evidence, and reached a decision supported by substantial evidence and in conformity with the law. Thus, we are without authority to direct a different result.

Accordingly, the March 28, 2014 Opinion, and Order and the April 17, 2014 Order denying Francis' petition for reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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