Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 29, 2015

CLAIM NO. 201356604

VANESSA LANIGAN PETITIONER

VS. **APPEAL FROM HON. ROBERT L. SWISHER, ADMINISTRATIVE LAW JUDGE**

ARMSTRONG HARDWOOD FLOOR SERVICE
BLUEGRASS FAMILY HEALTH
HON. ROBERT L. SWISHER,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Vanessa Lanigan ("Lanigan") appeals from the January 21, 2015 Opinion and Order rendered by Hon. Robert L. Swisher, Administrative Law Judge ("ALJ") dismissing her claim. The ALJ determined Lanigan's bilateral carpal tunnel syndrome and bilateral elbow

condition are not work-related. Lanigan now appeals, arguing the ALJ abused his discretion in so finding. We affirm.

Lanigan began working for the Respondent, Armstrong Hardwood Floor Service ("Armstrong") in 2006 as an off-loader/sorter. She testified she began noticing problems with her wrists in March 2012. According to Lanigan, she reported her complaints to her supervisor and visited her family physician in March 2012. She was transferred to a box-making position, in violation of restrictions recommended by her physician, which worsened her condition. Lanigan claims she reported this to her supervisors. She was terminated from Armstrong in August 2013.

Marsha Robinson, Armstrong's human resources manager, testified and contested significant portions of Lanigan's testimony. Robinson denied Lanigan ever reported work-related physical injuries prior to her termination. In fact, Robinson stated Lanigan informed her that she had developed carpal tunnel syndrome while working for her prior employer. For this reason, Lanigan was moved to the box-maker position and reported to Robinson she could perform this position without discomfort.

Following visits to her family physician, Lanigan eventually came under the care of Dr. Margaret Napolitano, who performed a right carpal tunnel release surgery on October 25, 2013. She later underwent a left carpal tunnel release surgery in January 2014. Lanigan testified she had been experiencing bilateral elbow pain for some time prior to the carpal tunnel release surgeries, and expected the procedures to alleviate her elbow pain. However, her elbow pain continued and Dr. Napolitano referred Lanigan to Dr. Andrew Ryan, an orthopedic surgeon.

Dr. Ryan's records indicate Lanigan was seen on July 24, 2014 for bilateral elbow pain. Physical examination revealed normal strength and range of motion with no instability. A subsequent cervical spine MRI was normal. Dr. Ryan found no indication for surgical intervention and recommended a rheumatology evaluation.

Lanigan also visited Dr. Kaveh Sajadi for bilateral elbow pain on July 8, 2014. Dr. Sajadi diagnosed bilateral tennis elbow. He reviewed her MRI, which he found normal. However, he declined to recommend surgery or work restrictions "given the lack of identifiable pathology." Instead, he recommended she continue with physical therapy exercises.

Dr. Joseph Zerga performed an independent medical evaluation ("IME") on April 7, 2014. He performed a physical examination and reviewed Lanigan's medical records. Dr. Zerga indicated Lanigan's symptoms are atypical for carpal tunnel. He noted radial sensory and ulnar studies were normal. Dr. Zerga compared these tests results with those from 2011, noting Lanigan showed significant improvement on the right and the left continued to show normal results. Tests performed in 2013 bore similar results. Dr. Zerga interpreted the studies to indicate Lanigan never had any significant abnormality on the left side, and had improvement on the right side. He concluded her conditions are not work-related, but caused by untreated hypothryroidism.

Dr. James Owen performed an IME on March 12, 2014. Dr. Owen received a history of Lanigan's carpal tunnel syndrome and surgical history, and conducted a physical examination. He concluded Lanigan had not reached maximum medical improvement, and that her bilateral carpal tunnel syndrome is related to her work activities. He opined she does not retain the physical capacity to return to her position at Armstrong.

Dr. Rick Lyon conducted an IME on August 21, 2014. He received a history of Lanigan's bilateral carpal tunnel

syndrome and elbow pain. Dr. Lyon noted full range of motion and normal strength in both wrists, elbows and fingers. He diagnosed bilateral carpal tunnel syndrome, bilateral epicondylitis, possible radial nerve entrapment and hypothyroid. He opined Lanigan's elbow complaints are not related to her carpal tunnel syndrome and he found no objective evidence of a work-related injury to her elbows.

Armstrong also submitted records from Drs. Steven Demunbrun and Barry Dixon. Dr. Demunbrun saw Lanigan on April 14, 2011 for complaints of pain and weakness in both arms and hands. Dr. Dixon saw Lanigan on March 31, 2011 for complaints of pain in her hands, numbness and tingling which she reported began following a car accident nine years prior.

Lanigan filed a Form 101 alleging bilateral carpal tunnel syndrome caused by repetitive trauma. She later amended the claim to include an elbow injury. With respect to work-relatedness and causation of the carpal tunnel syndrome, the ALJ determined Lanigan had not suffered a work-related injury. He explained he was most persuaded by the opinions of Drs. Lyon and Zerga because they received the most comprehensive medical history. Dr. Owen, on the other hand, "had no such prior records and, in fact, received a history from [Lanigan] that prior to the onset of

her symptoms in the [March, 2012] time frame, she had no prior problems with her wrists." The ALJ noted this medical history was inaccurate based on Lanigan's complaints to Drs. Demunbrun and Dixon in 2011. Furthermore, the ALJ considered that Dr. Owen did not take into consideration Lanigan's hypothyroidism as a potential cause for her bilateral carpal tunnel symptoms. Specifically relating to Lanigan's claim of an elbow injury, the ALJ noted the lack of objective clinical findings to support an injury occurred to either elbow. Thus, the claim was dismissed. Lanigan did not file a petition for reconsideration.

On appeal, Lanigan argues the ALJ's decision is clearly erroneous. She emphasizes that her bilateral carpal tunnel syndrome was confirmed by nerve conduction studies and began during her employment at Armstrong. She likewise states her bilateral tennis elbow began during her employment with Armstrong.

The ALJ's opinion is not clearly erroneous because it is supported by substantial evidence. The opinions of Drs. Lyon and Zerga constitute the requisite substantial evidence upon which to base the opinion. Though both physicians confirmed the diagnosis of bilateral carpal tunnel syndrome, as Lanigan emphasizes, neither concluded the condition is related to her work activities.

Futhermore, Dr. Lyon found no objective evidence of a work-related elbow injury. The ALJ, as the finder of fact, enjoys the discretion to determine the quality and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Furthermore, because no petition for reconsideration was filed, the ALJ's findings of fact are conclusive and binding. KRS 342.285(1). Because Lanigan, as the claimant, failed in carrying the burden of proof, 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). Given the conflicting nature of the medical opinions as to the cause of Lanigan's complaints, we are unable to conclude the evidence compelled a particular result.

We will briefly address two other statements contained in Lanigan's brief to this Board. Contrary to Lanigan's claim, the parties did not stipulate a work-related injury occurred on March 8, 2012. It is abundantly clear from the wording of the benefit review conference order and the record that causation was a contested issue. Additionally, Lanigan references a tear in her shoulder at page three of her brief to this Board. Based on the record before this Board, it does not appear a shoulder injury was alleged nor addressed by the ALJ in his Opinion and Order.

Because no petition for reconsideration was filed on the issue of an alleged shoulder injury, we will not further address Lanigan's request for medical benefits.

For the reasons set forth herein, the January 21, 2015 Opinion and Order rendered by Hon. Robert L. Swisher, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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