

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 18, 2019

CLAIM NO. 201881301

BETTY WILLIAMSON

PETITIONER

VS. **APPEAL FROM HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE**

KELLOGG CO. AND
HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

RECHTER, Member. Betty Williamson appeals from the April 26, 2019 Opinion and Order and the May 28, 2019 Order rendered by Hon. Christina D. Hajjar, Administrative Law Judge (“ALJ”), dismissing her claim. On appeal, Williamson argues she met her burden of proving a compensable back injury, and the evidence compels an award in her favor. We affirm.

Williamson worked as a machine operator for Kellogg Co. running a machine that wrapped product. She was responsible for dismantling the machine, cleaning it, reassembling it, and filling the wrap. Williamson testified that, on a Thursday, she was lifting wrap to put it on a spindle when her back “caught”, causing immediate pain. She completed her shift and returned to work on Friday. On the following Monday, May 1, 2017, she lifted the wrap and her back popped again. She filled out an accident report.

According to Williamson, she sought treatment with Dr. Samuel King at Pikeville Medical Center approximately one week after the injury. However, no medical records were located to corroborate this recollection. When questioned about the lack of treatment records following the injury, Williamson stated she was not certain she saw Dr. King before September 2017, though her pain was gradually increasing. She testified her leg pain worsened to the point she could no longer walk on March 6, 2018. She denied having any back pain that prevented her from working prior to the work incident.

Records predating the alleged injury include notes from Dr. King, who saw Williamson for back pain on June 18, 2009 and diagnosed acute lumbar strain and spasm. Dr. King obtained an ultrasound on Williamson’s legs on October 5, 2016 in response to complaints of low back and leg pain.

Following the work incident, Williamson visited Pikeville Medical Center for a sore throat on September 21, 2017 but did not mention the work incident or low back pain. She returned on November 28, 2017 with complaints of right knee pain, and a burning and tingling sensation in her lateral leg. Lumbar

examination findings indicated a normal straight leg raise. An x-ray of her lumbar spine showed multilevel spina bifida occulta, as well as a mild spondylolisthesis of L5 on S1. On December 13, 2017, Williamson complained of low back pain with a gradual onset over the last one to two months. An MRI revealed Grade 1 anterolisthesis of L5 on S1, low-lying conus suspicious for tethered cord with suggestion of partial diastematomyelia; and incomplete fusion of the posterior elements of L3, L4 and L5, likely a congenital anomaly. Williamson reported low back and right leg pain on February 16, 2018, and stated the pain began in September 2017 without injury.

Dr. Nancy Clark completed the physician's portion of a short term disability application in March 2018. Dr. Clark diagnosed spina bifida occulta and leg pain. She noted prolonged standing, working on concrete floors, and an inability to wear padded shoes exacerbated Williamson's chronic back and leg pain. Dr. Clark noted the condition was not work-related.

Williamson treated at the Pikeville Neurology Clinic with Dr. Sujata Gutti on April 15, 2018. An EMG/NCV revealed chronic right S1 radiculopathy, and sensory motor type peripheral neuropathy. On May 3, 2018, Dr. Gutti diagnosed chronic low back pain with the L5-S1 pars defect and possible tethered cord syndrome, chronic SI radiculopathy, and peripheral neuropathy. Williamson then sought a surgical evaluation with Dr. Phillip Tibbs, who diagnosed L5-S1 spondylolisthesis. He performed a fusion surgery on May 23, 2018.

Dr. Anbu Nadar performed an independent medical evaluation ("IME") on September 13, 2018. Williamson provided a history of the work injury

on May 1, 2017 while lifting a 47-pound roll, and denied any prior work-related or non-work-related injuries. Dr. Nadar diagnosed lumbosacral strain with radiculopathy, grade I spondylolisthesis L5-S1, and status post L5-S1 interbody fusion. Dr. Nadar indicated the injury caused permanent physical change to soft tissues. He assigned a 20% impairment rating pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (“AMA Guides”). He stated Williamson did not have an active impairment prior to this injury.

Dr. John Vaughn conducted an IME on October 29, 2018. Williamson gave a history of injuring her back while bending and lifting wrap on May 1, 2017. Dr. Vaughn diagnosed spina bifida, low-lying spinal cord/tethered spinal cord, congenital L5-S1 spondylolisthesis, and status post L5-S1 fusion. Dr. Vaughn stated Williamson's complaints were caused primarily by her pre-existing congenital spina bifida and congenital L5-S1 spondylolisthesis. He noted spina bifida and congenital spondylolisthesis develop in utero and not as a result of trauma. He attributed his diagnoses and the need for surgery to pre-existing congenital conditions.

In a February 4, 2019 supplemental report, Dr. Vaughn provided further insight into his analysis of what caused Williamson's condition. He emphasized that she sought no treatment for pain from the May 2017 work incident until November, and did not report back pain until December. Even at that time, her treatment notes do not indicate she reported a work accident. Dr. Vaughn also noted spondylolisthesis and spina bifida are congenital conditions. For these reasons, he concluded her condition is not related

to the work incident. He assigned a 20% impairment rating pursuant to the AMA Guides based upon her lumbar surgery, but stated none of her impairment rating is related to the work incident. With respect to any pre-existing active condition, Dr. Vaughn noted Dr. King had written several off-work notes prior to the work incident, but the reasons for those notes are unknown. Therefore, Dr. Vaughn concluded he lacked sufficient evidence to provide an opinion on whether Williamson suffered a pre-existing active condition.

The ALJ found:

This ALJ has considered the evidence and is convinced by Dr. Vaughn that Williamson's current low back condition and need for surgery is not related to the accident occurring on May 1, 2017. This ALJ found Williamson's testimony convincing that she felt a "pull" or pain in her low back and heard a "pop" while performing her activities on or about May 1, 2017, and that she gave timely notice to her employer of the incident. However, the records do not support Williamson's argument that this work-related incident aroused her pre-existing and active condition. Her medical records are devoid of treatment following the incident, and none of her treatment records indicate a history of a work incident or an onset of pain in May 2017. When she sought treatment for a sore throat on September 21, 2017, she did not report back pain at the time, and her musculoskeletal system was negative for back pain. Her first treatment for any complaints of back pain was in November 2017. She specifically indicated that her pain began in September 2017 without injury. She did not check "accident at work," although she had the option to do so. She reported that her pain just began gradually on September 10, 2017. This ALJ finds Dr. Vaughn's criticism valid that the work incident did not cause any harmful change to the human organism. Dr. Vaughn noted that all of the objective findings on imaging studies and physical exams are congenital conditions, and he determined that there was no work-related onset of pain.

Dr. Nadar opined that Williamson's injury was the cause of her complaints, and that she suffered permanent physical change to her soft tissues as a result of the work injury. However, his opinion did not address the concerns raised by Dr. Vaughn – that the onset of her symptoms occurred in September 2017, months after her work event. This ALJ is not convinced that the work incident on May 1, 2017, caused Williamson's condition or need for surgery. Further, she sought no treatment, incurred no medical benefits, and lost no time at work as a result of the incident on May 1, 2017. Thus, her claim for income and medical benefits is dismissed.

Williamson filed a petition for reconsideration, arguing the evidence compels a finding the work injury brought a prior, dormant condition into a disabling reality. The ALJ overruled Williamson's petition for reconsideration as an impermissible re-argument of the merits of the claim. She provided the following rationale:

Although this ALJ found Williamson to be credible that she had some back pain following an event that occurred at work on or about May 1, 2017, there was no corroborating evidence that her pain continued or that the incident caused her onset of symptoms for which she sought treatment in November 2017. Her treatment records do not include mention of the work incident, and her pain was said to have started in September 2017, without injury. She continued to work with no restrictions, and she sought no treatment for six months after the injury. Thus, this ALJ found that the May 1, 2017 incident did not cause her current complaints or need for surgery.

On appeal, Williamson argues the evidence compels a finding she suffered a compensable injury. Williamson argues it is inconsistent for the ALJ to state she is a credible witness, yet conclude she suffered no work injury. Williamson emphasizes she had no back pain prior to the incident. She also argues the ALJ

erred in relying on the report of Dr. Vaughan because he assumed any time off from work prior to the incident was due to her back condition.

As the claimant in a workers' compensation proceeding, Williamson bore the burden of proving each of the essential elements of her cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because she was unsuccessful in that burden, 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). "Compelling evidence" is defined as evidence that is 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).

When the cause of a condition is not readily apparent to a lay person, medical testimony supporting causation is required. Mengel v. Hawaiian-Tropic Northwest & Central Distributors, Inc., 618 S.W.2d 184 (Ky. App. 1981). Medical causation must be proven by medical opinion within "reasonable medical probability." Lexington Cartage Co. v. Williams, 407 S.W.2d 396 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980).

The evidence falls far short of compelling a finding that the work incident caused Williamson's low back condition and subsequent surgery. Williamson predicates much of her argument upon her belief that, by finding her testimony credible in one respect, the ALJ must find her credible in all respects. However, the ALJ clearly did not make a blanket finding that Williamson is credible.

Rather, the ALJ made a limited finding that Williamson was credible insofar as she experienced some back pain when she felt a “pull” in her low back and a “pop” while performing activities on or about May 1, 2017. The ALJ made no finding regarding Williamson’s credibility as to ongoing complaints. Further, the ALJ’s reference to Williamson continuing to work in pain until she could no longer walk is contained in the summary of Williamson’s testimony. It was not a finding of fact. An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney’s Discount Stores, 560 S.W.2d 15 (Ky. 1977). The ALJ enjoys the authority to pick and choose which portions of the claimant’s testimony are credible. For this reason, she enjoys the discretion to find Williamson credible regarding the occurrence of an incident at work, while simultaneously relying more heavily on the medical experts to draw conclusions as to the lasting effect of that incident.

The ALJ was convinced the medical evidence did not support a conclusion that Williamson’s current low back condition and need for surgery is related to the work incident. The medical records provide ample support for the ALJ’s determination. No medical evidence documents treatment prior to September 2017, more than four months after the alleged incident. At that time, Dr. King saw Williamson for a cold and she made no complaint of back pain. The first post-incident treatment for the back was on November 28, 2017, and Williamson did not

report a work injury. Williamson's disability paperwork notes an onset of symptoms in February 2018 and indicates she did not have a work injury.

We find no error in the ALJ's reliance upon Dr. Vaughan's report. Dr. Vaughan relied on diagnostic studies and physical examination to conclude Williamson had congenital defects that led to her current condition. It is true that Dr. Vaughan noted Dr. King wrote off-work notes several times before the work incident of May 1, 2017. However, Dr. Vaughan stated he did not know if these were related to her back or other unrelated medical conditions, because other records from Dr. King were not available. He specifically declined to express an opinion as to whether Williamson had a pre-existing active condition. While Williamson argues that the ALJ improperly inferred there was a pre-existing active condition, we find no such finding. Moreover, the ALJ was not required to make a finding as to pre-existing conditions given the medical opinions upon which she ultimately relied. The ALJ based the dismissal upon Williamson's failure to prove causation of her current condition. The ALJ, as was her prerogative, found Dr. Vaughan's opinion the most credible regarding causation.

While Williamson has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within her 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. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the April 26, 2019 Opinion and Order and the May 28, 2019 Order rendered by Hon. Christina D. Hajjar, Administrative Law Judge, are hereby **AFFIRMED**.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

HON. STEPHANIE L. COLEMAN **LMS**
PO BOX 1076
PIKEVILLE, KY 41502

COUNSEL FOR RESPONDENT:

HON. MARK R. BUSH **LMS**
250 GRANDVIEW DR. SUITE 550
FT. MITCHELL, KY 41017

ADMINISTRATIVE LAW JUDGE:

HON. CHRISTINA D. HAJAR **LMS**
ADMINISTRATIVE LAW JUDGE
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601