

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 26, 2021

CLAIM NO. 201901367

BRENDA WATTS

PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE**

KENTUCKY DEPARTMENT OF TRANSPORTATION and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Brenda Watts (“Watts”) appeals from the August 25, 2020 Opinion and Order and the September 10, 2020 Order overruling her Petition for Reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ dismissed Watts’ claim for injuries to her low back, feet, and left hip allegedly caused by cumulative trauma.

On appeal, Watts argues the ALJ erred in dismissing her claim based upon the evidence of record as a whole. Watts alleges the ALJ erroneously discredited Dr. Anbu Nadar's opinion by incorrectly stating he did not review any diagnostic studies in formulating his opinion regarding causation. Because substantial evidence supports the ALJ's determination, and a contrary result is not compelled, we affirm.

Watts filed a Form 101 on November 5, 2019. She alleged injuries to her low back and left leg, feet, and left hip due to repetitive standing, walking, climbing, crouching, and lifting while employed as an inspector by the Kentucky Department of Transportation ("KDT"). Watts listed July 31, 2016 as the injury date, which is also the date she retired from KDT. The Form 104 indicates Watts worked as a permit inspector for KDT from April 1986 to July 31, 2016.

A Benefit Review Conference was held on March 10, 2020. The parties identified the following contested issues: manifestation date, work-related injury/causation, notice, benefits per KRS 342.730, ability to return to work, exclusion for pre-existing impairment, unpaid/contested medical treatment, proper use of AMA Guides, and injury as defined by the Act.

Watts testified by deposition on December 19, 2019 and at the final hearing held June 26, 2020. Watts was born in September 1958 and resides in Pikeville, Kentucky. Watts graduated from high school and has no specialized or vocational training. She worked in the KDT maintenance department from 1986 to 1987. She was then assigned to the construction department from 1987 to 2001. In both the maintenance and construction departments, Watts primarily worked in the

office doing paperwork and performing telephone tasks. Watts occasionally operated an end loader while in the maintenance department. While in the construction department, Watts occasionally assisted on concrete pours, and loading and carrying concrete cylinders weighing ten to fifteen pounds. She also occasionally assisted in surveying, running transits, and setting blacktop.

Watts began working in the permit division in 2001, and was assigned to several Kentucky counties. Watts provided the following testimony regarding her job duties:

I was in the permit division. I would go out with contractors when they done anything on state right-of-way. I had to do field reports to make sure that everything was put in to our - - the Department's specifics. If it was a pipe, you know, the depth had to be correct. If it was an overhead line, the height had to be correct. Drain tile, if it was private, a private drive had to be put in correct. I done all of that. I had three counties that was primary (sic) my counties that I had to work. At times, I would have to work other counties. If someone was off and needed covered, I would drive those counties. If I didn't have a contractor working at the time. I would drive those counties to make sure that no one was doing anything illegal on state right-of-way.

Watts' job required her to walk three to four miles on a daily basis. She started her workday in the office, then drove a state vehicle to various job locations to ensure contractors were meeting specifications. She walked into ditches, typically using a ramp, to measure the pipe depth with a measuring tape. She used a pole to measure the utility line height. Watts testified her job required extended driving, standing, walking, bending, crouching, and kneeling. She worked at least fifty hours per week. Watts retired from KDT on July 31, 2016 because she could no

longer properly perform her job duties due to her pain, symptoms, and limitations. She has not returned to any work since her retirement.

Watts alleged injuries to her low back, feet, and left hip due to her repetitive work activities with KDT. Watts experienced gradually worsening low back pain radiating into her left leg for approximately ten years. She takes Ibuprofen 800, Flexeril, and Neurontin prescribed by her family physician. She also uses a heating pad throughout the day. Watts underwent a lumbar MRI two or three years ago, but has not had physical therapy or injections. Watts treated with Dr. Norman Meyer on one occasion in 2016. He did not recommend surgical intervention.

Watts treated with Dr. Kevin Pugh, who administered injections. Watts testified she began experiencing progressively worsening pain in both feet approximately eight years ago for which she treated with Dr. Bradwell Chaney. Dr. Chaney has administered injections to both feet. Watts testified her prescriptions of Ibuprofen 800, Flexeril, and Neurontin are also for her left hip and feet conditions.

Watts attributes her low back, feet, and left hip conditions to her repetitive job duties with KDT, particularly to extensive walking, standing, and driving. Watts typically missed five days of work per month in the last five or six years of her employment with KDT due to her alleged work injuries. Watts acknowledged she worked without restrictions for KDT, and never received reprimands regarding her job performance. Watts testified Dr. Nadar was the first to inform her that her low back, left hip, and feet symptoms were caused by her work activities with KDT.

KDT filed several diagnostic studies from Pikeville Medical Center. A November 3, 2010 lumbar MRI demonstrated degenerative disc disease without evidence of herniation or stenosis. An April 8, 2016 lumbar X-ray demonstrated degenerative changes most notable at L4-5 with endplate degenerative change and facet arthrosis. An October 25, 2016 lumbar X-ray demonstrated degenerative changes of the lumbar spine, not significantly changed since April 8, 2016.

Watts filed a January 16, 2017 lumbar MRI report indicating she has a broad based disc protrusion at L4-5 resulting in mild canal stenosis with mild to moderate bilateral neural foraminal stenosis. Watts filed a June 5, 2018 lumbar MRI report indicating she has degenerative changes at L4-5 without significant spinal canal stenosis and mild narrowing of the L4-5 neuroforamen.

Watts filed the handwritten and largely illegible medical records of Dr. Mark Reed from 2018 and 2019. Dr. Reed diagnosed “back pain” on several occasions. He prescribed Neurontin and Flexeril. He noted a 2018 MRI showed degenerative changes without significant stenosis.

Watts filed Dr. Pugh’s 2017 left hip treatment records. On March 7, 2017, Watts reported gradually worsening hip and groin pain radiating into her lower leg and foot without any acute injury. Dr. Pugh performed an examination and ordered an X-ray of left hip, which revealed mild arthritis. Dr. Pugh diagnosed Watts with left hip pain and bursitis, and he recommended conservative treatment. Dr. Pugh administered a left hip bursa injection and ordered an MRI, which was interpreted as normal. Dr. Pugh administered additional left hip injections on April 10, 2017 and May 5, 2017. Dr. Pugh referred Watts to Dr. Stephen Duncan, whom

she saw on August 15, 2017. Dr. Duncan ordered a left hip X-ray, which demonstrated no acute findings. He assessed left hip pain and recommended injections and physical therapy. Watts returned to Dr. Pugh on June 8, 2018 complaining of continued left hip pain. Dr. Pugh diagnosed Watts with left hip bursitis, and recommended conservative treatment. He administered a left hip bursa injection.

Watts filed Dr. Chaney's records from the Pikeville Foot Care Center. On February 2, 2018, Watts complained of persistent pain, a burning sensation, and swelling in her right foot for approximately five days. He diagnosed neuralgia, early degenerative joint disease, and pain. He also ordered inserts for her shoes. Watts returned on February 5, 2018 complaining of foot pain. Dr. Chaney ordered X-rays of the feet which demonstrated osteopenia and osteoarthritis. He diagnosed lesions of the plantar nerve in the right and left lower limb, and pain in the feet. Dr. Chaney prescribed Medrol and Neurontin. He also provided Watts with a removable metatarsal pad for her feet. Dr. Chaney administered an injection into the left 3rd and right 3rd interspaces on February 19, 2018.

Watts filed the October 24, 2019 Form 107 by Dr. Nadar, who examined her on October 1, 2019. Dr. Nadar provided a summary of Watts' job activities with KDT and the treatment rendered by Drs. Reed, Meyer, Pugh, and Chaney. He reviewed the February 5, 2018 X-ray report, the January 16, 2017 MRI report, and the June 5, 2018 MRI report. Dr. Nadar performed an examination and diagnosed a lumbosacral strain with radiculopathy, left hip bursitis, and plantar fasciitis with metatarsalgia of both feet. He opined Watts' work activities caused her

impairment. Based upon the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”), Dr. Nadar assessed an 8% impairment rating for the lumbar condition. Dr. Nadar opined Watts does not retain the physical capacity to return to her former work. He advised Watts to avoid prolonged standing, walking, lifting, climbing, pushing, pulling, and walking on uneven terrain.

Dr. Nadar also prepared an October 21, 2019 letter. He opined Watts’ current symptoms are due to “repetitive injuries which she had suffered over the years and her current symptoms are the result of repetitive injuries which she had suffered over the years and her current symptoms are the result of the cumulative effects of these injuries. But for her job, she would not be having the symptoms.” Dr. Nadar recommended additional treatment for her ongoing symptoms. He noted the AMA Guides does not provide an impairment rating for hip bursitis and plantar fasciitis.

KDT filed Dr. Christopher Stephens’ February 11, 2020 report. He only addressed Watts’ alleged lumbar condition. Dr. Stephens summarized her job with KDT and the treatment rendered for her lumbar condition. Dr. Stephens reviewed the medical records, ordered X-rays, and performed an examination. He noted the 2016 and 2018 lumbar MRIs demonstrated degenerative disc disease. He further concluded the X-rays taken at his office demonstrated mild degenerative changes including findings of lumbar spondylosis, facet arthritis, and degenerative disc disease. He opined, “There is no evidence on these studies of an acceleration of the normal spinal degenerative process, due to aging. On the contrary, it is my

opinion that her X-rays demonstrate less degenerative change than would be expected for females in this age group.”

Dr. Stephens diagnosed chronic back pain secondary to mild degenerative disc disease and lumbar spondylosis. Dr. Stephens opined the medical evidence does not support Watts’ claim of a lumbar injury due to cumulative trauma. He found no evidence on the radiographs of advanced or accelerated degenerative changes. He further noted Watts’ occupation placed her at a very low risk for development of an injury caused by cumulative trauma. Dr. Stephens did not assess an impairment rating or assign restrictions due to Watt’s alleged injuries.

Dr. Stephens disagreed with the opinions of Dr. Nadar expressed in his Form 107 report regarding causation and assessment of impairment. He emphasized there is no objective evidence of susceptibility to cumulative micro traumas in her relatively low demand occupation as an inspector for the KDT. He further noted, “Dr. Nadar has arrived at his opinions without review of diagnostic studies. In my opinion, an evaluator is not equipped to opine with regards to cumulative traumatic injury without review of appropriate diagnostic studies, which are essential for the establishment of this diagnosis.”

Dr. Stephens prepared a March 10, 2020 supplemental report after reviewing the June 5, 2018 lumbar MRI. He opined the mild level of degeneration noted on the MRI is less than would be expected in the average sixty-one year old female. Dr. Stephens opined the MRI did not evidence advanced or accelerated degenerative changes. Dr. Stephens reiterated his opinion that Watts did not sustain

a lumbar injury resulting from cumulative trauma due to her thirty-year employment history with KDT.

KDT also filed Dr. Gregory Snider's March 2, 2020 report. He reviewed the reports of Drs. Nadar and Stephens. He summarized Watts' work history with KDT and her complaints of low back, left hip, and feet pain. He opined as follows:

I have not seen any of Ms. Watts' actual treatment records or the evaluations of the specialists who sought to treat her. I have not seen the imaging studies firsthand. Secondhand MRI reports suggest modest degenerative changes consistent with her age and habitus. Ms. Watts is significantly overweight and of sufficient age for degenerative changes, and symptoms from these changes, to have developed regardless of her occupation. I tend to agree more with Dr. Stephens' assessment than Dr. Nadar's given the information available.

In summary, I do not see convincing information that suggests Ms. Watts has cumulative trauma changes to her low back, hips, or feet in excess of what one would expect based on her age and habitus, and independent of her occupation.

The ALJ rendered an Opinion and Order on August 25, 2020 dismissing Watts' claim for benefits due to cumulative trauma. The ALJ found, in relevant part, as follows, *verbatim*:

16. Dr. Stephens credibly determined that the diagnostic studies revealed no evidence of advanced or accelerated degenerative change in excess of what would otherwise be expected and asserted that advanced or accelerated degenerative confirmed by diagnostic studies is a pre-requisite for a finding of cumulative trauma.

17. Similarly, Dr. Snider credibly observed that the Plaintiff's MRI reports revealed modest degenerative changes consistent with her age. He also credibly found

that she was of sufficient age for degenerative changes and symptoms to have developed regardless of her occupation.

18. The ALJ finds that opinions of Drs. Stephens and Snider are credible and convincing. The ALJ is also persuaded by the criticism leveled at Dr. Nadar by Dr. Stephens. Dr. Stephens opined that without reviewing any diagnostic studies, an evaluator is not equipped to opine about cumulative trauma.

19. The ALJ finds that this reasoning is sound and that the opinion of Dr. Stephens is credible. The ALJ therefore finds in accordance with these credible opinions that the Plaintiff has not sustained cumulative trauma injuries to her low back, hips, and feet based upon the credible evidence in the record.

20. The ALJ therefore finds based upon the opinion of Dr. Stephens that the Plaintiff did not satisfy her burden to establish the occurrence of a harmful change to the human organism based upon the objective medical evidence available. The Plaintiff's claim for benefits due to an alleged work-related cumulative trauma injury must therefore be **DISMISSED**.

21. All other contested issues have been rendered **MOOT** by the foregoing.

Watts filed a Petition for Reconsideration arguing Dr. Nadar's opinion is the most credible evidence in the record. Watts pointed out that Dr. Nadar reviewed diagnostic studies, which he identified on page 2 of the Form 107. Watts asserted the ALJ did not address her credibility or any other evidence of record. Watts asserted she is entitled to an award of permanent total disability benefits and future medical expenses due to her work injury. Watts did not request additional findings of fact, but requested the ALJ reconsider his decision. The ALJ summarily overruled Watts' petition in an Order dated September 10, 2020.

On appeal, Watts argues she sustained a compensable injury during her employment with KDT. Watts asserts the record as a whole clearly establishes her “timeline for treatment which corroborates not only the Petitioner’s testimony but gives weight to Dr. Nadar’s Opinion that her complaints got worse during the course of her employment with the Respondent. The ALJ simply ignored every other piece of evidence in the record.”

Watts also argues the ALJ improperly weighed Dr. Nadar’s opinion. Watts asserts the ALJ’s finding Dr. Nadar did not review any diagnostic studies is erroneous since he specifically identified the diagnostic studies he reviewed on page 2 of the Form 107. Watts argues the ALJ erroneously discounted Dr. Nadar’s opinion when he clearly reviewed X-ray and MRI reports.

As the claimant in a workers’ compensation proceeding, Watts had the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Watts was unsuccessful in proving she sustained injuries her low back, left hip and feet due to cumulative trauma, 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). The function of the Board in reviewing the ALJ’s decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, *supra*.

As 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 sole authority to judge 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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, supra. As 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, supra.

Substantial evidence supports the ALJ's determination Watts did not sustain injuries to her low back, left hip, or feet caused by cumulative trauma, and a contrary result is not compelled. The ALJ was confronted with the opinions of Drs. Nadar, Stephens, and Snider, and ultimately found the latter two most persuasive.

As previously noted, Dr. Stephens diagnosed chronic back pain secondary to mild degenerative disc disease and lumbar spondylosis, and opined the medical evidence did not support Watts' claim of a lumbar injury caused by cumulative trauma. He found no evidence on the radiographs or MRIs of advanced or accelerated degenerative changes. He further noted Watts' occupation with KDT placed her at a very low risk for development of a cumulative trauma injury. Dr. Stephens noted the X-rays taken in his office demonstrated less degenerative change than would be expected for females in this age group. Dr. Stephens reiterated his opinion that Watts did not sustain a cumulative trauma lumbar injury due to her thirty-year employment history with KDT in the March 10, 2020 supplemental report.

In his March 2, 2020 report, Dr. Snider stated he did not see convincing information suggesting Watts sustained cumulative trauma changes to her low back, hips, or feet in excess of what one would expect based on her age and habitus, and independent of her occupation after reviewing the reports of Drs. Nadar and Stephens. The opinions of Drs. Stephens and Snider constitute substantial evidence supporting the ALJ's determination, and a contrary result is not compelled.

Watts essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ, which we cannot do. Whittaker v. Rowland, supra. It was the ALJ's prerogative to rely upon the opinions expressed by Drs. Stephens and Snider, and the record supports his determination. Therefore, we affirm.

We find no merit in Watts' argument the ALJ improperly weighed Dr. Nadar's opinion based on an incorrect statement he did not review any diagnostic studies. Watts argues the ALJ erroneously found Dr. Stephens' criticism of Dr. Nadar's opinion persuasive. In the Form 107, Dr. Nadar indicated he reviewed the 2017 and 2018 lumbar MRI reports, but did not personally review the films. He indicated he personally reviewed the 2018 X-rays of the feet. It is reasonable to infer Dr. Stephens' criticism addresses the fact Dr. Nadar did not personally review the MRIs. Further, Dr. Stephens' critique of Dr. Nadar's opinion goes to the weight of the evidence and does not compel a contrary result.

Accordingly, the August 25, 2020 Opinion and Order and the September 10, 2020 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON STEPHANIE L COLEMAN
PO BOX 1076
PIKEVILLE, KY 41502

COUNSEL FOR RESPONDENT:

LMS

HON LEE JONES
PO BOX 1139
PIKEVILLE, KY 41502

ADMINISTRATIVE LAW JUDGE:

LMS

HON JONATHAN R WEATHERBY
MAYO-UNDERWOOD BLDG
500 MERO STREET, 3rd FLOOR
FRANKFORT, KY 40601