

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 2, 2020

CLAIM NO. 201894353

GENERAL MOTORS CORPORATION

PETITIONER

VS.

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

MECA DUNN and
HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. General Motors Corporation (“GM”) appeals from the December 22, 2019 Opinion, Order and Award rendered by Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). The ALJ determined Meca Dunn (“Dunn”) suffered a work-related left wrist injury and awarded permanent partial disability (“PPD”) benefits enhanced by the 3 multiplier pursuant to KRS 342.730, and finding she does not retain the physical capacity to return to work. The ALJ also awarded

medical benefits for her left wrist injury. GM also appeals from the January 4, 2020 Order denying its petition for reconsideration.

On appeal, GM argues the ALJ erred in finding Dunn was entitled to application of the three multiplier was not supported by substantial evidence. GM argues Dunn admitted she feels capable of performing her original job with her right hand, while working on the opposite side of the car from the side requiring use of her injured left hand. GM argues the ALJ misinterpreted the medical evidence as Dr. James Farrage and Dr. Keith Morrison did not restrict Dunn from her original job, if it were performed on the driver's side of the car. However, the ALJ determined Dunn returned to light duty work for GM, but it was short-term because it had nothing more permanent to accommodate her restrictions. We affirm the decision of the ALJ.

Dunn testified by deposition of September 17, 2019, and at the Final Hearing held October 23, 2019. Dunn was 32 years old and at the time of her deposition, she was employed at LIDS as a store manager, earning less wages. She previously worked for GM at the Corvette plant installing carpet on the trim line. Her job was on the passenger side of the car and required her to use a torque wrench with her left hand to secure the carpet to the car. Dunn has not been asked to return to work on a permanent basis by GM and was out on "no work available".

Dunn suffered an injury to her left wrist on January 18, 2018 while operating a torque gun with her left hand which jerked her left hand injuring her wrist. Dunn came under the care of Dr. Morrison who performed surgery on the wrist. As a result of the injury and subsequent surgery, Dunn can barely use her left

hand to even brush her hair and has been advised by Dr. Morrison her condition is “as good as it is going to get”. However, Dunn is willing to attempt to return to work using her right hand to operate the torque gun, but has not been allowed to do so by GM. Dr. Morrison restricted Dunn from using a torque gun with the left hand. She has returned to work for GM on a few occasions.

The ALJ considered GM’s medical records. Dunn was seen at this facility for her left wrist injury where she was treated with cold compresses, bracing, wearing padded gloves, and placed on restricted duty.

Dr. Morrison’s medical records were considered by the ALJ. The records reflect Dunn treated with Dr. Morrison from April 2018 through April 1, 2019. Dunn was diagnosed with a left wrist scapholunate ligament injury. On July 11, 2018, she underwent a left wrist arthroscopy, left wrist thermal shrinkage, and open left wrist scapholunate ligament repair. On September 19, 2018, Dunn underwent surgery to remove the deep implant retained hardware in her left wrist. Dr. Morrison thereafter assessed Dunn with permanent work restrictions of no lifting over fifty pounds with both hands, and no torque or air gun use with the left hand.

Dr. Thomas Gabriel’s November 7, 2018 medical report was considered by the ALJ. Dr. Gabriel saw Dunn at GM’s request. He received a history of Dunn’s work-related left wrist injury of January 18, 2018 and her medical treatment to date. He reviewed all medical records and diagnostic studies performed, and conducted a detailed physical examination. Dr. Gabriel diagnosed Dunn as having a work-related scapholunate injury strain status and partial tear, status post arthroscopic/open scapholunate interosseous repair and pinning, July 11, 2018 and

pin removal, September 19, 2018. Dr. Gabriel saw Dunn again on October 9, 2019, and assessed a 5% whole person impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, (“AMA Guides”) for the left wrist, and agreed with permanent restrictions of thirty pound maximum lifting, and no use of torque guns or drills.

The ALJ considered Dr. Farrage’s March 25, 2019 report. Dr. Farrage saw Dunn at her request. He received a history of Dunn’s January 18, 2018 work-related left wrist injury and her medical treatment. He reviewed all medical records, including diagnostic testing, and performed a detailed physical examination. Dr. Farrage diagnosed Dunn as being status post left wrist partial scapholunate ligament tear repair with continued issues of pain, restricted ROM, decreased strength, and impaired functional capacity. He assessed a 5% whole person impairment pursuant to the AMA Guides, and permanently restricted her to light to medium activity with weight limit for lifting of no more than thirty pounds occasionally and up to fifteen pounds on a frequent basis. She can push/pull up to fifty pounds occasionally. She should avoid forced extension or flexion of the wrist, and no use of pneumatic power tools with the left upper extremity. Dr. Farrage opined Dunn does not retain the physical capacity to return to her prior job at GM.

In an Opinion, Order and Award rendered on December 22, 2019, the ALJ determined Dunn retained a 5% impairment rating due to her work-related left wrist injury. Additionally, the ALJ determined Dunn does not retain the physical capacity to return to the type of work performed at the time of her accident and enhanced her benefits by the three multiplier.

The ALJ specifically found as follows regarding Dunn's capacity to return to work:

Benefits Per KRS 342.730 The only real issue remaining for determination is the amount of benefits to which plaintiff is entitled for her left wrist injury. In fact, the parties even agree plaintiff's injury warrants a 5% impairment rating. Indeed, the only point of contention is whether plaintiff retains the physical ability to return to the job she held at the time of her injury, entitling her to application of the 3x multiplier in KRS 342.730(1)(c)(1). On this point, the Administrative Law Judge is persuaded by the fact that Dr. Morrison, Dr. Farrage and Dr. Gabriel all concluded plaintiff should be restricted from using the kind of torque gun she was using at the time of her injury due to her left wrist. The defendant argues plaintiff is not restricted from using the torque gun with her right hand and that plaintiff testified she could operate the torque gun with her left hand. However, plaintiff also testified the carpet install position she held at the time of her injury was on the passenger side of the vehicles, and this could only be performed with the torque gun in the left hand. Based on plaintiff's credible and unrefuted testimony on this point, and the unanimous restriction against the use of a torque gun, the Administrative Law Judge is persuaded plaintiff does not retain the physical capacity to return to the job she held at the time of her injury, thereby entitling her to application of the 3x multiplier.

GM filed a petition for reconsideration requesting the ALJ make additional findings of fact regarding the assessment of the three multiplier. The petition was overruled by the ALJ.

On appeal, GM argues the ALJ's decision is not supported by substantial evidence. GM argues the ALJ erred by finding Dunn's job could only be performed on the passenger side of the car using the torque wrench with the left hand. GM argues she can use the torque wrench with the right hand and simply

perform her job on the other side of the car. However, for unknown reasons, GM has never allowed this to occur.

As the claimant in a workers' compensation proceeding, Dunn 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 she was successful in that burden, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). 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). 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). Rather, it must be shown there was no evidence of substantial probative value to support the 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 weight and credibility or by

noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). If the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal.

The ALJ properly reviewed all the evidence in this case and determined Dunn did not retain the physical capacity to return to her former job at GM. The evidence from all the medical experts, Dr. Morrison, Dr. Farrage and Dr. Gabriel unanimously demonstrate Dunn cannot use a torque wrench with her left hand as required by GM. For GM to argue that Dunn can perform the job on the other side of the car, using her right hand to operate the torque wrench, never making such a job position available to her, but arguing the job could be performed by her, is quite disingenuous and borders on the incredible. The record is devoid of any proof substantiating this argument.

Accordingly, the December 22, 2019 Opinion, Order and Award, and the January 4, 2020 Order on petition for reconsideration rendered by Hon. Grant S. Roark, are hereby **AFFIRMED**.

ALL CONCUR.

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