

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 2, 2018

CLAIM NO. 201598452

KATHY CHESNUT

PETITIONER

VS. **APPEAL FROM HON. RICHARD E. NEAL,
ADMINISTRATIVE LAW JUDGE**

CATHOLIC HEALTH INITIATIVES and
HON. RICHARD E. NEAL,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Kathy Chesnut (“Chesnut”) appeals from the Opinion and Order rendered June 21, 2018 by Hon. Richard E. Neal, Administrative Law Judge (“ALJ”). The ALJ found the injuries Chesnut allegedly sustained on January 12, 2015 while working for Catholic Health Initiatives (“Catholic Health”) to her left knee, right ankle/foot, and right wrist were not work-related, and the alleged injuries to her neck, low back and shoulders have resolved. In dismissing her claim, the ALJ

determined Chesnut is not entitled to any additional temporary total disability (“TTD”) benefits, permanent partial disability benefits, or additional medical benefits. Chesnut also appeals from the July 27, 2018 order denying her petition for reconsideration.

On appeal, Chesnut argues the ALJ erred in dismissing her claim, and a contrary result is compelled regarding the compensability of her left knee condition. She argues the ALJ’s decision is “not in conformity with the Act, that his decision is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion”. Because we determine the ALJ’s decision is supported by substantial evidence, and a contrary result is not compelled, we affirm.

Chesnut filed a Form 101 on November 30, 2016, alleging she fell down stairs while working on January 12, 2015, and sustained injuries to multiple body parts. In the Form 104 filed in support of the claim, Chesnut indicated she had worked either as a registered nurse (“R.N.”) or as a nurse case manager for multiple employers from 2002 through the date of her accident. She returned to light duty briefly after the accident, but then resigned from Catholic Health. At the time of her deposition, Chesnut testified she was working for Lake Cumberland Regional Hospital. At the hearing, she testified she was no longer working, and had not worked since January 1, 2016. Chesnut had previously sustained multiple injuries involving several body parts. Chesnut also has multiple additional health issues for which she treats and takes medication including diabetes, acid reflux, and high blood pressure. She also indicated she sustained a mini-stroke at some point after undergoing left knee surgery.

Chesnut testified by deposition on February 17, 2017, and at the hearing held April 27, 2018. At the time of her deposition, Chesnut was forty-five years old, and resided in East Bernstadt, Kentucky. She has an associate's degree in nursing, and is an R.N. As a nurse case manager for Catholic Health, Chesnut reported to work, received patient assignments, gathered equipment, traveled to patient's homes, provided services, and called physicians if necessary.

Chesnut testified that on January 12, 2015, she was leaving a patient's residence. As she was descending wet stairs, her feet slipped out from under her and she slid down, striking the back of her head, and sliding out into the yard. She was carrying a nursing bag and equipment. She reported the incident to her supervisor, who instructed her to go to the emergency room. She was given some medications and referred to Dr. William Lester's office where she treated with Ruth Ann Combs, APRN ("Nurse Combs"). She eventually underwent left knee surgery in 2016.

Chesnut testified she treats with a neurologist for residuals from her stroke. At her deposition, she continued to complain of headaches, as well as neck, shoulders, back, right wrist, knee, right foot, and right ankle pain. She testified she continues to take medication, engages in home exercises, and gets massages.

At the hearing, Chesnut testified that on January 6, 2015, she stepped on a vent cover at home. The cover gave way, and her foot fell into the vent. She experienced right wrist and left knee pain as a result of that incident. She was treated at the emergency room at St. Joseph's Hospital in London, Kentucky, where she subsequently treated for the January 12, 2015 incident. She was prescribed a left knee immobilizer and crutches for this incident, but testified she did not use them.

Chesnut admitted she continued to experience left knee pain after this incident. She continued to work after the January 6, 2015 incident, and testified her pain was greater after the January 12, 2015 accident. Chesnut was unsure if she advised Dr. Jay Shah, who performed the surgery, of the January 6, 2015 incident. She also admitted she did not advise Dr. Stephen Autry, her evaluating physician, of the January 6, 2015 incident.

In support of her claim, Chesnut filed records from St. Joseph Hospital and Dr. Lester's office. Nurse Combs first saw Chesnut on January 16, 2015, and was provided a history of falling down steps at work. There is no record she was ever provided a history of the January 6, 2015 incident. Nurse Combs saw Chesnut on six occasions between January 16, 2015 and February 23, 2015. On the first office visit, she took Chesnut off work. On January 23, 2015, she stated Chesnut could return to work with restrictions. On February 23, 2015, she released Chesnut to work with no restrictions.

Chesnut also filed the Form 107-I medical report prepared by Dr. Autry from an evaluation he performed on February 8, 2017. Chesnut reported she slipped and fell on stairs on January 12, 2015 while leaving a client's house. She advised she struck her head, both knees, back and neck, and missed twelve days of work, then returned to light duty. She did not report the January 6, 2015 accident. She underwent left knee surgery in January 2016, and has not returned to work since. At the time of the evaluation, she complained of neck pain extending into her shoulders, headaches, and left knee pain. Dr. Autry diagnosed Chesnut with a cervical/lumbar strain, left ACL tear, tenosynovitis of the right foot, right foot pain

secondary to convalescence from the anterior cruciate substitution, and resolved right shoulder contusion. He assessed a 7% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Dr. Autry found Chesnut had reached maximum medical improvement (“MMI”), and stated she does not have the physical capacity to return to the type of work performed on the date of the injury. He also advised her to avoid stair climbing without assistive devices, and no bending, stooping, squatting or kneeling.

Dr. Daniel D. Primm, Jr., examined Chesnut on June 9, 2017 at Catholic Health’s request. Chesnut advised him of the January 12, 2015 incident when she slipped and fell on a patient’s porch. He also noted she sustained another fall in March 2016. He diagnosed Chesnut as status post a work-related left knee injury resulting in an ACL tear requiring reconstructive surgery, and multiple chronic medical problems. He found she had a good result from the left knee surgery. He believed she could have returned to work absent her other health problems. He also found her current complaints are not related to her left knee injury. He additionally found she had no permanent neck or low back injury. He also stated she does not need formal treatment for her left knee, and she reached MMI nine months after her work injury. He assessed a 3% impairment rating for her knee pursuant to the AMA Guides. He recommended she avoid frequent or regular squatting, crawling, or climbing.

Dr. Primm testified by deposition on January 26, 2018. He testified he reviewed Chesnut’s emergency room reports from both January 6, 2015 and January

12, 2015, noting both reflected complaints of left knee pain. He stated stepping into a vent hole is a typical mechanism for a meniscal or ligamentous injury. He noted a knee stabilizer was prescribed after the January 6, 2015 injury, but not after the January 12, 2015 incident. He stated such a stabilizer is used to prevent a knee from flexing or extending and is consistent with a meniscal injury. He determined Chesnut's left knee injury was caused by the incident when she stepped into a vent at home. He found Chesnut had an excellent surgical result, and she needs no restrictions for medical treatment for the left knee. He stated the 3% impairment rating he assessed was due to mild cruciate ligament laxity. He also stated that falling/sliding down stairs on the buttocks is not consistent with an ACL tear.

Catholic Health also filed Nurse Combs' records, which were the same as those Chesnut previously filed. It also filed the emergency room record from St. Joseph Hospital from January 6, 2015. The record reflects she stepped in a vent hole at home, landing on her left knee. She was reported to have mild swelling. The emergency room physician diagnosed her with left knee and right wrist sprains, and prescribed Lortab 7.5 mg., a left knee immobilizer, and crutches.

Catholic Health also filed Dr. Dan Wolens' March 28, 2016 records review report. Dr. Wolens reviewed the emergency room records from January 6, 2015, and January 15, 2015. He noted she sustained two distinct, separate injuries within six days, and either could have caused her ACL tear. He diagnosed her as post-op left ACL reconstruction, chondromalacia of the left femoral condyle, and low-grade chondromalacia of the lateral patellar facet.

A benefit review conference (“BRC”) was held on March 23, 2018. The BRC order and memorandum reflects the issues preserved for determination included work-relatedness/causation, TTD benefits, unpaid or contested medical expenses, and entitlement to income benefits per KRS 342.730.

In his decision issued June 21, 2018, the ALJ found Chesnut’s complaints of left knee, right ankle/foot tenosynovitis, and right wrist tenosynovitis are not work-related. He additionally found the injuries to the neck, low back and shoulders were temporary and have resolved. He declined to award any TTD benefits or medical benefits in addition to those already paid. He specifically found as follows:

The ALJ finds, in consideration of the totality of the circumstances, that the Plaintiff has failed to meet her burden of proof of a permanent injury under the Act.

The Plaintiff’s most significant alleged work-related condition, and the only condition for which she has an impairment rating, is her left knee. The ALJ finds the Plaintiff’s left knee condition is not work-related; specifically, that her current left knee condition is due to the January 6, 2015, fall at home – not the January 12, 2015, fall at work.

First, the objective finds [sic] documented in the medical records appear [sic] document more injurious left knee finding after the first fall as compared to the second. It is undisputed that just six days prior to the Plaintiff’s January 12, 2016, work-related fall, she was at home, stepped on a vent cover in the floor, the vent broke, and the Plaintiff’s left foot went into the hole causing her to fall on her left knee. The Plaintiff’s left knee symptoms were so significant after the incident that she was taken to the emergency room, where her left knee pain was listed as 5-8/10. On examination at the hospital, physicians could not even perform gait testing due to the Plaintiff’s pain. Further, the Plaintiff had 2+ pitting edema, tenderness, swelling, and limited range of

motion of the left knee. She was diagnosed with sprain of [sic] left knee and prescribed narcotic pain medication, a left knee immobilizer, and crutches. The Plaintiff acknowledged that she had continued pain in the knee put[sic] until the time of the second fall.

In contrast, after the June 12, 2015, work-related fall, the Plaintiff had pain in multiple body parts. Interestingly, the Emergency Provider Record signed by the treating physician noted the Plaintiff reported pain in her head, neck, low back, right shoulder, left shoulder, and right ankle pain. The severity of pain was listed as “mild.” The history of symptoms on the first page of the report do not list any left knee pain, and left knee is not circled in the location of pain section. However, the Physical Examination section of the report refers the reader to a diagram. The diagram shows, among other things, what appears to be complaints of “tenderness” in the left knee. No swelling or other objective pathology was documented for the Plaintiff’s left knee. She was only prescribed a left knee ace wrap, as opposed to the knee immobilizer prescribed after the first fall. Accordingly, the ALJ finds there were more significant objective medical finding[sic] documented for the left knee after the first fall as compared to the second.

Second, the medical treatment the Plaintiff received from Dr. Lester after the second fall focused on more significant problems that she was having with other body parts – specifically her neck, back, and shoulder, and there was a lack of any objective medical findings for her left knee. Specifically, on examination of the Plaintiff’s left knee during this time, she had full flexion /extension, no laxity, no swelling, and no crepitus.

Third, any subjective report of left knee symptoms seemed to essentially resolve by the time she completed treatment with Dr. Lester in later February, 2015. On January 23, 2015, the Plaintiff presented for follow-up on her neck, shoulder, and back pain. The patient also stated that her wrist and ankle were doing better. There is no mention of left knee pain in the “chief complaint” section. On January 29, 2015, the Plaintiff presented for a follow-up on her neck, shoulder, and back pain. The Plaintiff stated that her neck and shoulder pain was the worst. There was again no mention of any left knee pain

in the “chief complaint” section. Ms. Combs diagnosed right wrist, neck, and shoulder pain. There was no mention of any left knee diagnosis at this point. Later, on February 11, 2015, Ms. Combs noted the Plaintiff’s left knee was resolving. Lastly, by February 23, 2015, the Plaintiff only had complaints of neck and shoulder pain. It was noted that here[sic] left knee pain was resolved. The Plaintiff was released to return to work regular duty on that day.

Lastly, Dr. Primm opined the mechanism of injury listed in the January 6, 2015, emergency room report was very typically associated with ligamentous and meniscal injuries to the knee. Further, he stated the knee immobilizer the Plaintiff was prescribed after the January 6, 2015, injury was something used for knee injuries, particularly if the physician was concerned about a ligamentous injury and derangement of the knee. Dr. Primm testified that the description of the Plaintiff’s second injury was that she fell on her buttocks and slid down the stairs – a mechanism would be less consistent with the usual mechanism for an ACL injury. Dr. Primm stated that the first incident probably caused the Plaintiff’s ACL injury.

The ALJ finds Dr. Primm[sic] opinion to [sic] most persuasive and consistent with the medical records. As such, the Plaintiff has failed to meet her burden of proof and a work-related left knee injury, and that condition is dismissed. Dr. Primm’s opinion was based on a full review of the relevant medical records including the records that pre-dated the work injury. Conversely, Dr. Autry was completely unaware of the January 6, 2015, injury at home because the Plaintiff did not tell him about it believe[sic] she did not believe it was a significant contributor to her knee problem. As such, his opinion on causation [sic] unreliable and cannot reasonably be relied upon by the ALJ given the complex causation issue in this claim. The ALJ would also note that this result would not change even if Dr. Shah’s report dated April 25, 2018, were to be considered. There is no indication that Dr. Shah reviewed any of the medical records from the January 6, 2015, emergency room visit, which would have been absolutely critical in this claim. Instead, he simply relied on a very generic history given to him from the Plaintiff that does not even

identify how the time period between the two falls. As such, his opinion, even if considered, is not as persuasive as the opinion of Dr. Primm, who did review the relevant records.

Concerning the other body parts, while the focus of the litigation has been the Plaintiff's left knee, she has also alleged a work related cervical and lumbar strain, right shoulder strain / contusion, and tenosynovitis right wrist and right foot. The ALJ notes that no physician has attributed any permanent impairment to any of these conditions. The Plaintiff's IME physician has agreed that the Plaintiff's cervical strain, lumbar stain, and right shoulder strain / contusion have now completely resolved. As such, there is no permanency for those conditions and they are dismissed. Further, while the Plaintiff was initially diagnosed with a contusion of her right wrist and right ankle, her only current alleged diagnosis for the right wrist and right foot / ankle is tenosynovitis of right wrist and right foot. These diagnosis[sic] were given by Dr. Autry, the Plaintiff's IME physician. However, Dr. Autry has specifically stated that the right wrist and right ankle tenosynovitis diagnoses were secondary to "convalescence from anterior cruciate substitution" surgery and later specified that they were due to "stress off loading due to the[sic] protecting the anterior cruciate repair on the left side." As noted above, the ALJ found that the Plaintiff's left knee condition and resultant surgery were not work related. As such, the conditions that developed as a result of the surgery are also not work-related, and those conditions are dismissed.

Chesnut filed a petition for consideration, arguing the ALJ failed to provide essential findings of fact, and misinterpreted the evidence. She argued the evidence compelled a finding in her favor. While she admitted she sustained the previous left knee injury, she denied this was active or debilitating prior to the January 12, 2015 incident. The ALJ denied the petition in an order issued July 27, 2018. He provided his reasoning and the basis for his decision.

As the claimant in a workers' compensation proceeding, Chesnut had 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 her 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 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).

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). (Emphasis added). 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*.

As explained by the ALJ, there is no dispute that Chesnut was involved in a work-related incident on January 12, 2015, or that she was also involved in an incident on January 6, 2015 involving the left knee. Likewise, there is no dispute she later underwent left knee surgery. While evidence exists supporting Chesnut's allegation that her left knee problem was caused by the work incident, it does not compel a decision in her favor. The ALJ clearly reviewed all evidence of record, and adequately provided a basis for his decision. The ALJ acted within his discretion in relying upon Dr. Primm's opinions. It is noted Dr. Autry was not provided a history of the January 6, 2015 incident. Likewise, Nurse Combs does not reference the January 6, 2015 incident.

Evidence clearly supports the ALJ's determination that Chesnut's left knee, right wrist and right ankle conditions are not work-related. The ALJ determined the work-related low back and neck injuries were temporary in nature. He then determined she is not entitled to an award of future medical benefits for those conditions pursuant to FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007). He performed the appropriate analysis, and his decision will not be disturbed.

Substantial evidence supports the ALJ's determination, and no contrary result is compelled.

Accordingly, the June 21, 2018 Opinion and Order, and the July 27, 2018 order on petition for reconsideration rendered by Hon. Richard E. Neal, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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