

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October 12, 2018

CLAIM NO. 201797241

LEISA WIREMAN

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

CINTAS CORPORATION and  
HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Leisa Wireman (“Wireman”) appeals from the May 29, 2018 Opinion, Order and Award rendered by Hon. Chris Davis, Administrative Law Judge (“ALJ”). The ALJ found Wireman sustained a temporary injury due to a January 16, 2017 work accident. The ALJ awarded temporary total disability (“TTD”) benefits, and medical benefits from January 17, 2017 through August 8,

2017. Wireman also appeals from the June 29, 2018 Order denying her petition for reconsideration.

On appeal, Wireman argues the ALJ erred in finding she failed to prove she sustained a permanent work injury, failed to make a determination regarding the presence or absence of pre-existing active impairment, and failed to make sufficient findings of fact to apprise the parties of the basis for his decision. She additionally argues the ALJ overlooked or misconstrued controlling statutes or precedent, and flagrantly erred in assessing the evidence. Finally, she argues that pursuant to McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001), pre-existing dormant conditions aroused into disabling reality are compensable. We determine the ALJ adequately set forth the basis for his decision. We also find substantial evidence supports the ALJ's decision, and a contrary result is not compelled. We additionally note the ALJ's decision does not overlook or misconstrue controlling statutes or precedent, therefore we affirm.

Wireman, a resident of Chillicothe, Ohio, filed a Form 101 on October 26, 2017 alleging she injured her low back when she lifted a box of gloves on January 16, 2017, while working for Cintas Corporation ("Cintas"). Wireman was born on January 26, 1961, and completed the eleventh grade. She does not have a GED, nor does she have any specialized training. The Form 104 indicates Wireman was employed for Cintas from October 2001 through May 2017. However, she testified she never returned to work there after the date of her accident. She began working for the Wright Company as the office manager in September 2017.

Wireman testified by deposition on August 17, 2017, and again at the hearing held December 4, 2017. She has a varied work history prior to her employment with Cintas including waitress, clerk/typist (office work), secretary at a finance company, cashier at the drive-in window of a fast food restaurant, bank teller, manager of a pizza shop, office manager for a nursery, sales director for a cosmetics company, garden center worker, and in advertising sales. While employed by Cintas, she operated an embroidery machine, and worked as a human resources clerk, accounts payable/purchasing clerk, and first aid/safety worker. The job she was performing on the date of the work incident consisted of selling first aid and safety supplies to businesses. The sales job involved extensive travel in a company vehicle. She routinely called on businesses to restock safety supplies. She testified she drove, and thereby sat, for hours at a time. She also indicated she walked up to five miles per day, and had to climb stairs and ladders. She explained this involved lifting up to sixty pounds. She never returned to work for Cintas after the work incident, and now works as the office manager for a heating and air conditioning company in Chillicothe, Ohio.

On January 16, 2017, Wireman was loading boxes of jersey gloves into her work van. She experienced low back pain on the left side, below the belt line, as she was placing a box of gloves into the back of the van. She finished her workday, completed an expense report, and then went home. She had difficulty getting out of bed the next morning. She reported her condition to her supervisor who took her to an occupational physician at Cabell Huntington Hospital Urgent Care. She then treated with Dr. Justin Swann, D.C. Dr. Swann referred her to Dr. Matthew

Werthammer who saw her on only one occasion. She also saw Dr. Bruce Guberman once, solely for an evaluation.

Wireman testified she sustained injuries in 1997 when she was thrown from a horse, striking her head, but denied she injured her back or neck. She also testified she had a back strain in 2013, which resolved after she received chiropractic treatment. She stated she continues to experience back pain, with numbness in both legs, left worse than right. She indicated her left foot goes to sleep. She stated she is unable to return to work at the sales job she held at Cintas, but could perform her previous office work.

In support of her claim, Wireman filed multiple records from the Cabell Huntington Hospital Urgent Care Center dated January 17, 2017, many of which are illegible. She complained of low back pain from lifting a box of gloves at work. That evening, she awoke in the middle of the night and could not roll over due to pain. She was placed on light duty, and was referred for chiropractic treatment. On January 24, 2017, she reported continued low back pain. She additionally submitted records from Dr. Swann for seventeen treatment dates between January 27, 2017 and July 10, 2017 for treatment of lumbago/sciatica.

Wireman filed Dr. Werthammer's March 16, 2017 note. Wireman reported low back, neck and mid-back pain, of which she stated the low back was the worst. She also reported intermittent pain into both legs, primarily posteriorly, and toe numbness. Dr. Werthammer diagnosed lumbar intervertebral disc disorder, and indicated she should continue with her chiropractic treatment. He additionally

stated she needs pain management, and recommended she undergo instruction in biomechanics and smoking cessation.

Wireman also filed the Form 107-I medical report completed by Dr. Guberman after he evaluated her on August 8, 2017. Dr. Guberman noted the history of low back pain that occurred as she was lifting a box of gloves to place in her van. Wireman complained to Dr. Guberman of low back pain into both hips and legs. She reported she has fallen since the incident due to left leg weakness. He diagnosed, “posttraumatic sprain/strain, degenerative disc disease and degenerative joint disease of the lumbosacral spine due to cumulative trauma of her work aggravated by the injury occurring at work on January 16, 2017.” Dr. Guberman found Wireman had reached maximum medical improvement (“MMI”) as of August 8, 2017. He assessed a 13% impairment rating pursuant to the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. He additionally found Wireman does not retain the physical capacity to return to the type of work she performed at the time of her injury. He also recommended restrictions for sitting, standing, carrying, pushing, pulling and climbing. Dr. Guberman stated he agreed with Dr. Werthammer.

Wireman additionally filed the peer review report of Dr. Robert Emig, D.O., dated April 10, 2017. Dr. Emig recommended ten additional chiropractic treatments over a four-week period.

Dr. William Lester evaluated Wireman at Cintas’ request on March 27, 2017. Wireman reported a history of low back pain from lifting the box of gloves. He noted Wireman complained of pain in the back, both arms, thoracic

spine, lumbar spine, and left leg. He found the January 16, 2017 incident was a temporary exacerbation of her pre-existing low back condition. He noted mild bulges on the MRI, with no evidence of radiculopathy. He found the complaints on examination were inconsistent with the objective findings, and noted Wireman exhibited signs of symptom magnification. Dr. Lester opined Wireman had reached MMI, and no additional chiropractic treatments were necessary.

In a supplemental report dated February 16, 2018, Dr. Lester noted he had reviewed additional records, and his opinions remained unchanged. He found no evidence of radiculopathy. He also noted there was no evidence of radiculopathy on EMG/NCV studies. He found the January 16, 2017 injury resulted in no permanent impairment. He also stated Wireman needs no treatment other than home exercises.

Cintas also filed records from King's Daughters Medical Center. An MRI dated March 17, 2005 was performed due to Wireman's complaints of low back and left hip pain. The report from that MRI noted diffuse bulges at L4-L5 with no focal disc herniation. A June 17, 2006 MRI report noted bulging discs at L4-L5 and L5-S1 asymmetric to the left, with an annular tear/radial fissure at L4-L5. A February 1, 2007 MRI noted a slight disc bulge at L3-L4, and mild degeneration superimposed on a disc herniation to the left with mild effacement of the thecal sac. That MRI also noted disc bulges and small osteophytes at L5-S1. The report from a June 19, 2008 lumbar MRI indicated a posterior disc bulge/osteophyte complex at L3-L4 through L5-S1 with mild degenerative disc disease at L4-L5 and L5-S1. The February 28, 2006 record from that facility noted Wireman's complaints of low back

and left leg pain stemming from an injury she sustained several years before. She was diagnosed with subchondral cysts in the superior and left aspects of the left acetabulum with no evidence of acute hip pathology. The October 28, 2010 note from the same facility noted Wireman's complaints of sharp mid and low back pain, and left hip pain.

Cintas additionally filed the treatment records of Dr. Deidra Brumfield, D.C., for treatment administered from May 9, 2013 through June 3, 2013. Those records, although somewhat illegible, reflect treatment for complaints of low back pain and left leg numbness of two months duration. Dr. Brumfield noted Wireman reported an injury occurring in 1997 involving a horse, resulting in low back and left leg pain.

A Benefit Review Conference ("BRC") was held on March 14, 2018. The BRC order and memorandum reflects the issues preserved for determination included whether Wireman sustained a work-related injury or exacerbation, her capacity to return to the type of work performed at the time of the incident, TTD, medical benefits, exclusion for pre-existing active disability, permanent income benefits pursuant to KRS 342.730 with multipliers, and credit for short term or long term disability benefits.

The ALJ rendered the Opinion, Order and Award on May 29, 2018. He first dismissed Wireman's allegation of a cumulative trauma injury. The ALJ stated it is undisputed that Wireman had a long-standing history of pre-existing back problems. He cited to her previous treatment, physical examination, chiropractic care, temporary restrictions, and the multiple MRIs performed long prior to January

16, 2017. In dismissing Wireman's claim for a permanent, work-related low back injury, the ALJ found as follows:

I find the entirety of the Plaintiff's permanent condition to not be work-related. I do not think she has nerve root impingement. Dr. Swann is an outlier on this point. There is no objective evidence of a permanent change to the human organism.

Note, this claim is not being dismissed on permanency because her condition was pre-existing, active. It is being dismissed on permanency because there is no change to the human organism.

The ALJ also determined Wireman is entitled to the payment of additional TTD benefits. Although he believed she suffered only a temporary exacerbation, he found Dr. Lester's determination regarding when she attained MMI was premature. Instead, he found Dr. Guberman's assessment of MMI as of August 8, 2017 was more accurate, and awarded TTD benefits through that date. He also determined she was entitled to medical treatment through the period of exacerbation, and awarded medical benefits only through August 8, 2017.

Both Wireman and Cintas filed petitions for reconsideration. Cintas argued the ALJ erred by including January 16, 2017 in the award of TTD benefits, and that the period should begin on January 17, 2017. The ALJ agreed, and corrected the award of TTD benefits. Wireman listed eleven different errors, which she argued were committed by the ALJ. Although arguably Wireman did not specifically request additional findings of fact by the ALJ, his order denying her petition for reconsideration adequately addressed the listed concerns.

On appeal, Wireman argues the ALJ failed to make sufficient findings of fact to apprise the parties of the basis for his decision to permit an informed review on appeal. She also argues the ALJ overlooked or misconstrued controlling statutes or precedent, and inaccurately assessed the evidence thereby causing an injustice. She additionally argues the ALJ's determination that she did not suffer a harmful change to the human organism is flawed, and should be reversed. Wireman also argues that dormant, pre-existing conditions aroused into disabling reality are compensable. We disagree.

As the claimant in a workers' compensation proceeding, Wireman had the burden of proving each of the essential elements of her cause of action, including causation, and extent and duration of disability. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Wireman 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 that which 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 based on the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

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 not adequate 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.

Wireman has essentially asked this Board to re-weigh the evidence, and determine she sustained a permanent work injury while working for Cintas on January 16, 2017. It is not the function of this Board to re-weigh the evidence. Whittaker v. Rowland, supra. If "the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). Although

a party may point to evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal as long as substantial evidence supports the ALJ's ultimate determination. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The ALJ provided thorough summaries of the medical records and opinions, and articulated his reasoning in finding Wireman sustained only a temporary exacerbation of her low back condition. The evidence clearly establishes she has a longstanding issue with her low back, as evidenced by the numerous MRIs she underwent prior to her work injury. The ALJ noted her history, and appropriately summarized the evidence. He clearly articulated his reasons for finding Wireman sustained only a temporary injury. We do not believe the ALJ erred in his determination as argued by Wireman. We note Dr. Lester's opinion, relied upon by the ALJ, except for the determination of when she reached MMI, constitutes substantial evidence supporting his findings, and a contrary result is not compelled. Based upon the foregoing, the ALJ's determination Wireman did not sustain a permanent injury due to the January 16, 2017 work incident will not be disturbed. While we agree with Wireman that the arousal of pre-existing, dormant conditions into disabling reality may be compensable, in this instance, the ALJ determined she did not sustain a permanent injury. Therefore, the principles set forth in McNutt Construction/First General Services v. Scott, supra, are inapplicable.

We next note that in FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the Supreme Court instructed KRS 342.020(1) does not require proof

of an impairment rating to obtain future medical benefits, and the absence of a functional impairment rating does not necessarily preclude such an award. Therefore, the absence of an impairment rating does not prevent an ALJ from awarding future medical benefits. However, that case likewise does not compel an award of future medical benefits. Here, the ALJ dismissed Wireman's claim for permanent benefits and specifically limited the award of medical benefits to August 8, 2017, the date he determined she reached MMI, consistent with Dr. Guberman's opinion.

The ALJ found Wireman's injury, or exacerbation was limited to a closed period. He specifically noted her condition had returned to baseline as of August 8, 2017. In more than one instance, the ALJ clearly noted Wireman's condition was only temporary. He limited Wireman's recovery to a limited period because he found she did not sustain a permanent injury. He determined Wireman sustained only temporary injuries, which resolved by August 8, 2017, and she is not entitled to future medical benefits after that date. That determination satisfies the requirement of an analysis pursuant to FEI Installation, Inc. v. Williams, supra. The ALJ's decision is supported by substantial evidence, and a contrary result is not compelled.

Accordingly, the May 29, 2018 Opinion, Award and Order, and the June 29, 2018 Order on petition for reconsideration rendered by Hon. Chris Davis, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER:**

**LMS**

HON WILLIAM C O REAVES  
PO BOX 2557  
ASHLAND, KY 41105

**COUNSEL FOR RESPONDENT:**

**LMS**

HON KIMBERLY D NEWMAN  
505 WELLINGTON WAY, STE 225  
LEXINGTON, KY 40503

**ADMINISTRATIVE LAW JUDGE:**

**LMS**

HON CHRIS DAVIS  
657 CHAMBERLIN AVE  
FRANKFORT, KY 40601