Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: **September 21, 2018**

CLAIM NO. 201560004

LESLIE HALL (MORRISON) PETITIONER

VS.

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

HOSPARUS, INC.,
And HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

RECHTER, Member. Leslie Hall (now Morrison) ("Morrison") appeals from the March 9, 2018 Opinion and Order and the April 25, 2018 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"), awarding a period of temporary total disability ("TTD") and medical benefits. On appeal, Morrison challenges the ALJ's reliance on the opinions of Drs. Daniel Wolens and Robert

Sexton, and argues the impairment rating assessed by Dr. Sexton is unreliable. Additionally, Morrison argues the decision lacks specificity regarding whether she sustained a sacroiliac joint injury. Finding no error, we affirm.

Morrison worked for Hosparus, Inc. as an admissions and referral coordinator. She visited prospective patients in their homes to evaluate them for admission. On June 14, 2015, she was at a patient's home for an evaluation and fell on an uneven surface between the porch and the house. She landed on her knees and right hand. She then slid and hit her head on the oven. Morrison testified she initially had pain in her legs, right wrist, neck, and head. A few days later, she began having right hip pain radiating into her buttock.

Prior to this accident, Dr. Melissa Barrett treated Morrison on July 27 and 31, 2012, for complaints of back pain radiating into the right leg after a fall from a bed while working with a dog. Dr. Barrett diagnosed lumbago and referred Morrison to Drs. Joseph Werner and John Guarnaschelli. A July 24, 2012 x-ray of the lumbar spine taken at Baptist Hospital East was negative. Dr. Barrett treated Morrison for low back pain and muscle spasm on December 1, 2014 and prescribed Baclofen. On February 4, 2015, Dr. Barrett again treated Morrison for chronic back pain and recommended physical therapy for her low back condition.

The day after the June 14, 2015 work accident, Morrison visited Dr. Ann Walker. Dr. Walker noted complaints of right wrist pain and neck pain. Her records do not indicate Morrison reported low back pain.

Morrison then returned to Dr. Barrett on July 15, 2015, due to low back pain. Dr. Barrett diagnosed low back pain with sciatica. She prescribed

medications and referred Morrison to an orthopedic surgeon. Dr. Barrett continued to treat Morrison for chronic low back pain, with medication and physical therapy. On June 23, 2016, Dr. Barrett noted Morrison had strained her back again. She recommended a referral to pain management and a neurosurgeon.

During the course of her treatment with Dr. Barrett, a lumbar MRI was ordered. The reviewing physician compared the July 25, 2015 MRI of the lumbar spine to a July 30, 2012, lumbar MRI. The 2015 MRI revealed the development of minimal disc space narrowing and disc desiccation at L4-5 with minimal posterior disc bulge at L4-5 with no canal or foraminal narrowing at L4-5. Otherwise, no changes were noted from the prior MRI.

On July 29, 2015, Morrison visited Dr. Werner, with whom she had treated in 2012. She complained of lumbar back pain radiating into the right buttock. Dr. Werner diagnosed lumbar strain with aggravated mild spondylosis. He recommended physical therapy and no work for four weeks. On August 26, 2015, he noted some improvement with physical therapy. On November 23, 2015, he released her to return to work with restrictions of avoiding heavy lifting, twisting, bending, and work only 8-hour days.

At this point in the course of Morrison's treatment, Dr. Daniel Wolens performed a records review on October 20, 2015. He noted a July 20, 2012 MRI revealed a right paracentral disc protrusion with no nerve root compression. Dr. Wolens found no further discussion of low back pain until December 1, 2014, when Morrison reported a fall to Dr. Barrett that was treated until 2015. He also noted her symptoms after the work accident were similar to her symptoms in 2012. The July

25, 2015 lumbar MRI revealed age-related degenerative changes greater than in 2012, and that the right paracentral disc protrusion from 2012 was smaller on the most recent MRI. He found no evidence of disc pathology as a result of the 2015 event, and noted Morrison did not mention a low back injury when initially seeking medical care on June 15, 2015. Finally, he emphasized that Dr. Barrett's July 15, 2015 office note suggests Morrison had chronic low back pain prior to the 2015 event. Dr. Wolens concluded Morrison suffered chronic and active low back pain prior to the 2015 fall, and the fall did not cause any new injury.

Morrison returned to Dr. Werner on February 1, 2016, with complaints of back pain. He reviewed imaging studies but found "nothing different since 2012." He again diagnosed lumbar strain and aggravated spondylosis. On April 1, 2016, Morrison complained of persistent low back pain. Dr. Werner diagnosed aggravated lumbar disc degeneration and noted conservative treatment had been exhausted. His office notes indicate Dr. Werner could offer no further treatment to Morrison.

Meanwhile, Morrison had continued to treat with Dr. Barrett, who referred her to Dr. Gary Reasor, a pain management specialist, on August 19, 2016, for complaints of back and right buttock pain. He reviewed an August 11, 2016 MRI of the lumbar spine, which revealed degenerative changes that were unchanged since the July 25, 2015 MRI. Dr. Reasor diagnosed sacroiliitis and low back pain. He administered a right sacroiliac joint injection. On October 13, 2016, he recorded 50% relief of symptoms. On December 14, 2016, Dr. Reasor evaluated Morrison for

bilateral SI joint pain. Dr. Reasor performed a radiofrequency ablation of the right SI joint on June 6, 2017, which resulted in an 80% reduction of pain.

In a December 31, 2016 letter, Dr. Reasor assessed a 3% impairment for pain and an 8% impairment for the right SI joint for a combined 11% whole person impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). He noted the AMA Guides do not specifically provide for an impairment associated to the sacroiliac joint. Despite the fact a lumbar MRI revealed no gross injury to the joint, Dr. Reasor was convinced the physical exam findings and the diagnostic injections of the right sacroiliac joint confirmed an injury.

Dr. Reasor also completed a Form 107 on December 31, 2016. He diagnosed right sacroiliitis, low back pain, and degenerative lumbar disc disease with a new annular tear at L5-S1. He concluded Morrison's complaints were due to the work injury in 2015, and she did not retain the physical capacity to return to the type of work performed at the time of her injury. He restricted Morrison from prolonged sitting, standing, driving, repetitive twisting or bending at the waist, and lifting more than five pounds. In the Form 107, Dr. Reasor assessed only a 3% impairment rating for pain.

Around this same time period, Dr. Martin Schiller performed a chart review on November 16, 2016 and an independent medical evaluation ("IME") on November 17, 2016. He noted Morrison had positive Waddell signs in her evaluation. He disagreed with Dr. Reasor's diagnosis of sacroiliac joint disease, finding no scientific or objective basis. Further, Dr. Schiller found no indication in

the medical records prior to Dr. Reasor's treatment that would point towards a sacroiliac joint injury, and disagreed that the success of the injections confirmed a diagnosis.

Rather, Dr. Schiller concluded Morrison had pre-existing symptomatic low back pain from 2012, which was active and recurrent in 2013 and 2015. Dr. Schiller diagnosed a soft tissue low back injury due to the 2015 fall, and determined her low back had returned to baseline status by the time of his examination. Dr. Schiller also relied on the fact Dr. Werner had similarly placed Morrison at maximum medical improvement ("MMI") on January 13, 2016. Dr. Schiller found no permanent injury and declined to assess an impairment rating for the low back, hips or knees. As to Morrison's ongoing complaints of pain, Dr. Schiller found no objective explanation and could not determine if a June 23, 2016 lifting incident might have re-injured her low back.

Dr. Robert F. Sexton conducted an IME on September 20, 2017. Dr. Sexton reviewed medical records, including Dr. Reasor's treatment records and the Form 107, and conducted a physical and neurological examination. He noted a tender right sacroiliac area, but no spasm or deformity. Dr. Sexton diagnosed a lumbar myofibrious strain without additional discopathy, radiculopathy, myelopathy or neuropathy; resolved, and chronic low back pain, secondary to mild/moderate spondylosis at L4-5, L5-S1 with no spinal or foraminal stenosis.

Dr. Sexton concluded the 2015 fall caused a lumbar strain which resulted in an aggravation of Morrison's chronic low back complaints. He further determined she had returned to the baseline condition that predated the fall. Dr.

Sexton supported this opinion by the lumbar MRIs, and his belief Dr. Reasor's diagnosis of sacroiliac joint injury was erroneous. Dr. Sexton found no objective evidence of any sacroiliac joint dysfunction, instead finding a stable sacroiliac joint with no disease as supported on the MRI. Dr. Sexton found no objective documentation to indicate either work-related or degenerative sacroiliac joint disease. Dr. Sexton also noted the mechanism of the accident was not consistent with a sacroiliac injury because no torsion was involved. Rather, he concluded Morrison had a pre-existing back condition immediately prior to the fall on June 14, 2015. Dr. Sexton assessed a 5% impairment rating for pre-existing chronic low back pain, but stated Morrison does not fit any precise category because her complaints were non-radicular in distribution, which does not fit the requirement for non-verifiable radiculopathy. Dr. Sexton theorized Morrison would have reached MMI as of August 1, 2015. He assessed a 0% impairment for sacroiliac joint injury and stated there is no impairment for the knee or hips. Morrison needed no future medical treatment or restrictions relative to the 2015 fall. In a November 15, 2017 supplemental report, Dr. Sexton stated the entire 13% impairment rating assessed by Dr. Reasor is an inappropriate usage of the AMA Guides.

Dr. Reasor submitted a follow-up letter dated October 15, 2017 letter. He again noted the June 14, 2015 work accident caused a distinct right sacroiliac injury and chronic low back pain. He emphasized she had no prior history of right sacroiliac or buttock pain prior to the fall. Dr. Reasor reiterated the AMA Guides provide no clear-cut ratings pertaining to sacroiliitis, but explained the method by which fashioned an appropriate impairment. Dr. Reasor believed the closest rating

would be found on page 428 because it contains some references to the sacroiliac joint, though the reference is to displaced fractures. Dr. Reasor explained, "If I could apply these ratings then I would say, because of her pain and disability, she would fall into the 10% whole person impairment. Chapter 18 of the Guides allows me to add another 3% for pain. Therefore, her whole person impairment would be 13%." Dr. Reasor assessed a 13% whole person impairment pursuant to the AMA Guides and found Morrison had reached MMI. He stated Morrison had no underlying or dormant pre-existing condition brought into disabling reality by the work injury.

The ALJ's findings relevant to this appeal are as follows:

> 17. The ALJ is compelled to reference that the Plaintiff is a compelling and sympathetic figure, however the objective medical evidence does not support her claim. The diagnostic imaging from 2012 as compared to that taken post injury herein showed very little change. This objective evidence lends credence and support to the opinion of Dr. Sexton who stated that the Plaintiff's pre-existing chronic complaints of low back pain had reverted back [sic] to baseline. Dr. Sexton added that the Plaintiff would have been at MMI as of August 1, 2015, and that she had no ratable impairment for the sacroiliac joint.
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> 18. The ALJ is persuaded by the opinion of Dr. Sexton and finds that the supporting opinion of Dr. Wolens is also persuasive. Dr. Wolens noted that the lumbar MRI of July 25, 2015, revealed age-related degenerative changes greater than 2012, but found no evidence of disc pathology as a result of the June 14, 2015, event. Dr. Wolens also noted that the Plaintiff did not mention a low back injury when seeking medical care on June 15, 2015.
>
> 19. The consensus of opinion reached by Drs. Wolens and Sexton that is based upon the objective medical evidence consisting of contrasting imaging studies, has convinced the ALJ and has outweighed the

> contrary opinion issued by Dr. Reasor which is based at least in part on the subjective complaints of the Plaintiff.
>
> 20. The ALJ is also convinced by the opinion of Dr. Sexton that the Plaintiff reached MMI as of August 1, 2015.
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> 21. Temporary total disability means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment…KRS 342.0011(11)(a)
>
> 22. The evidence in this matter establishes that the Plaintiff reached maximum medical improvement as of August 1, 2015. The Plaintiff shall therefore be entitled to temporary total disability benefits from the date of injury through August 1, 2015.
>
> 23. It is the employer's responsibility to pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, hospital treatment, including nursing, medical and surgical supplies and appliances as may reasonably be required at the time of injury and thereafter during disability…KRS 342.020.
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> 24. The ALJ finds in accordance with the medical opinions cited herein that the Plaintiff returned to her baseline condition that predated the June 2015 injury. The ALJ therefore finds that any medical expenses incurred thereafter are not causally work-related.
>
> 25. The remainder of the contested issues have been rendered Moot by the foregoing.

Morrison filed a petition for reconsideration making the same arguments she raises on appeal. By order dated April 25, 2018, the ALJ denied the petition for reconsideration as a re-argument of the merits.

On appeal, Morrison makes four arguments. She first claims the reports of Drs. Wolens and Sexton are unreliable and inaccurate. She next argues the ALJ failed to provide an evidentiary basis for his determination she suffered no sacroiliac joint injury. Third, Morrison challenges the ALJ's reliance on objective medical evidence over medical testing. Finally, she argues Dr. Sexton's impairment rating is not in conformity with the AMA Guides and therefore cannot be relied upon.

Because Morrison's arguments on appeal primarily concern the sufficiency of the evidence, we begin our analysis by reiterating the standard of review. As the claimant in a workers' compensation proceeding, Morrison 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 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).

Morrison first argues the opinions of Drs. Wolens and Sexton are unreliable. According to Morrison, Dr. Wolens conducted only a records review without a physical exam, and did not have the benefit of Dr. Reasor's treatment records after 2016. Citing Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), Morrison argues Dr. Wolens' opinion is based on an entirely incomplete

medical history. She likewise argues Dr. Sexton's report does not adequately identify what type of physical examination he conducted, if any, rendering his opinion insufficient.

The evidence from Drs. Wolens and Sexton constitute substantial evidence supporting the ALJ's conclusion Morrison sustained a temporary injury. 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). Although a party may note evidence that would have supported a different outcome than that 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). If the physicians in a case 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 (Ky. App. 2006). Where evidence is conflicting, the ALJ, as fact-finder, has the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

The ALJ could reasonably rely on the opinions of Drs. Wolens and Sexton. Dr. Wolens conducted his records review on October 20, 2015, after the date the ALJ had determined Morrison reached MMI. Dr. Wolens reviewed the pertinent medical records from before and after the work accident. Morrison accurately cites Cepero for the proposition that an incomplete medical history can render a physician's opinion unreliable. However, Dr. Wolens had an accurate

understanding of the evidence and medical treatment at the time he rendered his opinion. For this reason, Cepero is inapplicable.

More importantly, the fact Dr. Reasor subsequently treated Morrison does not render Dr. Wolens' opinion unreliable under the circumstances of this claim. Drs. Reasor and Wolens offered entirely different diagnoses and views as to the nature of Morrison's injury. Dr. Wolens' opinion reflected his opinion of the medical records at the time he wrote his report. In his discretion, the ALJ determined this opinion was not negated or otherwise derogated by Morrison's subsequent treatment with Dr. Reasor.

We likewise conclude the ALJ was entitled to rely upon Dr. Sexton's opinion, and we disagree his report was incomplete because it did not specify whether he examined the sacroiliac joint. Dr. Sexton was clearly aware of Morrison's claim of pain in the right sacroiliac joint when he conducted his examination because he referenced tenderness over the sacroiliac joint on examination. Dr. Sexton specifically concluded Morrison had not sustained a sacroiliac joint injury based upon lumbar MRIs showing no bone defect. He further indicated the mechanism of injury is inconsistent with a sacroiliac joint injury because no torsion was involved. We are unconvinced Dr. Sexton's report is incomplete, or inadequately defines the basis of his opinion.

Morrison next argues the ALJ's opinion fails to identify the evidentiary basis of his decision so as to permit meaningful review. She claims the ALJ did not address the specific sacroiliac symptoms she suffered after the work accident. Even though the ALJ determined there was no impairment rating for the

sacroiliac joint, Morrison argues he was obligated to determine if she suffered an injury to the sacroiliac joint.

We disagree. The ALJ adopted Dr. Sexton's opinion. Dr. Sexton fully explained why he did not believe Morrison suffered any sacroiliac joint injury. This was a central focus of his report, for which he provided significant support. We conclude the ALJ, through reference to his adoption of Dr. Sexton's report, adequately apprised the parties of the basis of his decision.

In her third argument, Morrison argues the ALJ improperly relied upon objective medical evidence to rule out the presence of an injury to her sacroiliac joint. She notes an injury must be shown by objective medical findings, which includes examinations and diagnostic tools other than imaging studies. By relying heavily on the MRI findings, Morrison claims the ALJ improperly ignored the evidence gathered through Dr. Reasor's alternative diagnostic tools, such as direct observation and testing. Further, Morrison emphasizes evidence suggesting MRI imaging is not an adequate tool to diagnose sacroiliac injury.

This argument is essentially a request for this Board to direct the ALJ to rely upon Dr. Reasor's diagnosis and impairment rating. Dr. Sexton disagreed with the proposition that MRI imaging is inadequate to diagnose sacroiliac injury, and detailed the basis for his rejection of Dr. Reasor's diagnosis. This basis cited objective findings other than the lack of pathology on the MRI. Thus, the ALJ was presented with differing and contradictory medical opinions. Although assigning a permanent impairment rating is a matter for medical experts, determining the weight and character of medical testimony and drawing reasonable inferences therefrom are

matters for the ALJ. Knott Co. Nursing Home v. Wallen, 74 S.W.3d 706 (Ky. 2002). Dr. Sexton's medical opinion constitutes substantial evidence. It is not the function of this Board to reweigh the proof and reach a result different from the result reached by the ALJ.

Finally, Morrison claims Dr. Sexton's 0% impairment rating for the sacroiliac joint is not in conformity with the AMA Guides. Dr. Sexton explicitly states in his report that he did not find any objective data upon which to diagnose sacroiliac joint disease. Therefore, he was under no obligation to attempt to rate the injury pursuant to the AMA Guides.

In Morrison's situation, the physicians agreed that the AMA Guides do not specifically provide for an impairment rating for sacroiliac joint dysfunction. Dr. Reasor attempted to fashion a rating using other, somewhat applicable, tables in the AMA Guides. Dr. Sexton criticized Dr. Reasor's use of the AMA Guides, observing that Morrison does not have a displaced fracture, nor does she have any bony disease of the sacrum or ileum. Dr. Sexton concluded the entirety of Dr. Reasor's impairment rating is not in accordance with AMA Guides. However, ultimately this disagreement is inconsequential because Dr. Sexton found no injury to the sacroiliac joint.

We are satisfied the ALJ considered the entirety of the evidence in reaching his conclusions. While Morrison has identified evidence supporting a different conclusion, there was substantial proof presented to the contrary. As such, the ALJ acted within his 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 March 9, 2018 Opinion and Order and the April 25, 2018 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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