

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 19, 2021

CLAIM NO. 201759528

SANDRA WILLIAMS

PETITIONER

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

LAKE CUMBERLAND MHMR AND
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

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

ALVEY, Chairman. Sandra Williams (“Williams”) appeals from the November 6, 2020 Opinion, Order, and Award rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ found Williams sustained work-related right hand and wrist injuries while working for Lake Cumberland MHMR (“Lake Cumberland”) on November 2, 2017. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits based

upon a 2% impairment rating assessed by Dr. Michael Nicoson, and medical benefits. The ALJ determined Williams is not entitled to an enhancement of her PPD benefits pursuant to KRS 342.730(1)(c)1. Williams also appeals from the November 23, 2020 Order denying her Petition for Reconsideration.

On appeal, Williams argues the ALJ erred in relying upon the impairment rating Dr. Nicoson assessed. She also argues the ALJ erred by not enhancing her PPD benefits by the three-multiplier contained in KRS 342.730(1)(c)1. Because substantial evidence supports the ALJ's decision, and the evidence does not compel a contrary result, we affirm.

Williams filed a Form 101 on November 13, 2019, alleging injuries to her right wrist and upper back caused by two work-related incidents occurring on November 2, 2017. She alleged she was helping the same client up from the ground in two separate incidents occurring on that date. She alleged she sustained pain in her right wrist during both incidents. Williams' Form 104 indicates she began working for Lake Cumberland in April 1992, and at the time of the incidents, she worked as an adult mental health case manager. She retired from Lake Cumberland in January 2018.

Williams testified by deposition on January 21, 2020, and at the final hearing held September 8, 2020. Williams, a resident of Eubanks, Kentucky, was born on November 19, 1965. She is a college graduate, and has a bachelor's degree in psychology and social work. Williams is right hand dominant.

Prior to her employment with Lake Cumberland, Williams worked in restaurants, was a childcare worker, and later director, for another entity. Williams

performed different jobs for Lake Cumberland during her tenure. She initially worked as a children's therapist. She later worked as a case manager, as an adult therapist, and as a therapeutic rehabilitation director. She earned an annual salary of \$31,000.00 when she retired from Lake Cumberland. Her job duties included assisting adult clients with paying bills, budgeting, grocery shopping, and additional activities that varied from case to case.

Williams previously sustained a low back injury. She experienced problems with rheumatoid arthritis prior to the work incidents. At the time of the incidents, she was taking Tramadol, and undergoing monthly injections for unrelated problems. In addition to her ongoing low back complaints, Williams sustained previous knee injuries in motor vehicle accidents ("MVA"). She also previously sustained a right arm injury in 2010 as she was assisting her son with changing a tire.

On November 2, 2017, Williams was assisting adult clients in Somerset, Kentucky. In particular, she assisted an elderly client into a car so they could go grocery shopping. The client decided to sit on the ground, and she assisted in getting him up. When she pulled on him, she experienced a burning sensation and pain in her right hand and wrist. Afterward, she took the clients to the grocery. When she attempted to assist the same client into the car after shopping, he again sat on the ground and she had to assist him up. She again experienced right hand and wrist problems, in particular a tearing sensation. After taking the clients home, she drove to the office and reported the incident. She was sent to urgent care, and was taken off work for a few days. She was prescribed rest, ice, and a wrist brace. She had X-rays, and an MRI was ordered.

Williams eventually treated with Dr. Srinath Kamineni, an orthopedic surgeon, who performed right wrist surgery on February 28, 2018. Afterward, she followed up with physical therapy. A nerve conduction study was eventually ordered. Dr. Kamineni eventually discharged her as a patient, and her case manager then scheduled her to treat with Dr. Ronald Burgess. Dr. Burgess performed a second right hand/wrist surgery on January 28, 2019. She testified the second surgery improved her wrist range of motion, but she still cannot move two fingers. She also testified she continues to have pain shooting into her right elbow and shoulder. She has had no treatment for the right hand or wrist since Dr. Burgess released her in May 2019.

Williams applied for and received a disability retirement. She initiated the process for her retirement prior to the work incidents due to ongoing problems with arthritis. She testified that since the accident and surgeries, she is no longer able to engage in activities she enjoyed in the past. She testified she is no longer able to use power tools or quilt. She also stated she continues to have burning in two fingers and pain into her arm. She testified she also has problems with depression and anxiety. She additionally testified she cannot type or carry groceries, and has problems with sleeping. She testified she had never previously experienced right hand or wrist problems.

In support of her claim, Williams filed Dr. Leela Farr's August 27, 2019 evaluation report. Dr. Farr is an orthopedic surgeon. Dr. Farr noted Williams sustained a right wrist injury on November 2, 2017. X-rays were reported as normal, but a December 19, 2017 MRI revealed mild capsulitis of the dorsal aspect of the

common carpal-metacarpal joint in the radiosaphoid joint, and inflammation along the medial aspect of the triangular fibrocartilage complex with small joint effusion of the distal radioulnar joint. She noted Williams had pre-existing problems with depression, anxiety, chronic low back pain, osteoarthritis at multiple sites, rheumatoid arthritis, Sjorgens Syndrome, and a left meniscal tear (stemming from a 2012 MVA).

Dr. Farr diagnosed Williams with right wrist distal radioulnar joint instability with a triangular fibrocartilage complex tear and status post repair of a peripheral detachment of the right triangular fibrocartilage complex tear with persistent pain, along with scarring of the dorsal branch of right ulnar nerve. She found Williams had reached maximum medical improvement (“MMI”) by August 27, 2019. Dr. Farr assessed a 5% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). She recommended Williams avoid lifting greater than one pound with the right hand. She also stated Williams might need additional treatment, including possible injections and surgery.

Both Williams and Lake Cumberland submitted Dr. Burgess’ treatment records, including the January 22, 2019 operative note. On November 26, 2018, he noted Dr. Kamineni had previously performed surgery, and additional repair was necessary. After the surgery, he sent her to physical therapy. On March 4, 2019, he noted Williams was progressing well from her surgery. In the May 9, 2019 office note, he stated Williams reached MMI as of May 2, 2019, and assessed a 0% impairment rating pursuant to the AMA Guides. He additionally stated there is

no physiologic basis for her ongoing complaints. Dr. Burgess found Williams does not need restrictions on her activities.

Williams submitted treatment records from various medical providers including Total Rehab Center for over twenty-five dates of physical therapy for her right hand. She also submitted records from UK Healthcare, including Dr. Kamineni's operative report, indicating he performed right wrist arthroscopic surgery. He diagnosed her with right distal radial ulnar joint instability, and a triangular fibro cartilage complex rupture. He recommended the use of a splint after the surgery to maintain supination. Williams also filed the February 7, 2019 note from Commonwealth Hand Therapy reflecting Williams wore a brace to protect her wrist post-operatively.

Williams additionally filed the treatment records from Lake Cumberland Occupational Health, where she treated with Robin Goff, APRN, after the accident until she saw Dr. Kamineni. Williams also filed records from Commonwealth Pain and Spine for treatment with Michele McClure, APRN, on September 21, 2018, and October 25, 2018. She also filed the September 4, 2018 note from Dr. G. B. Richardson at Laurel County Physiatry and Pain who performed a nerve conduction study on September 4, 2018. The study revealed mild electrodiagnostic evidence of right median neuropathy, with no evidence of cervical radiculopathy. She also filed the December 9, 2017 MRI report from Pro-scan which revealed mild capsulitis in the dorsal part of the carpal-metacarpal joint. The August 13, 2018 wrist scan from McKesson revealed no acute findings. She additionally

filed the February 26, 2018 X-ray report from UK Healthcare, which revealed only expected post-op changes.

Dr. Nicoson evaluated Williams on April 27, 2020, at Lake Cumberland's request. He noted the November 2, 2017 injuries and the initial surgery by Dr. Kamineni, as well as the second surgery performed by Dr. Burgess. Williams reported continuing limitations with the right upper extremity, specifically numbness and tingling in the small fingers, and weakness in the right wrist. He noted she treats with injections for unrelated back pain. Dr. Nicoson diagnosed Williams with right distal radio ulnar joint instability, and a right triangular fibro cartilage complex tear, both surgically repaired. He found she reached MMI for her condition on May 2, 2019, opining that is normal after this type of surgery. He assessed a 2% impairment rating pursuant to the AMA Guides. He found no future treatment is indicated, and he recommended no formal restrictions or limitations.

A Benefit Review Conference was held on September 4, 2020. The parties stipulated to a \$618.33 average weekly wage. TTD benefits were paid from December 13, 2017 to May 2, 2019 at \$412.55 per week. \$36,138.32 was paid in medical benefits. The issues preserved for determination included benefits per KRS 342.730 and the proper use of the AMA Guides.

In his decision rendered November 6, 2020, the ALJ found Williams is not entitled to any TTD benefits in addition to those Lake Cumberland has already paid. Relying upon Dr. Nicoson, he found Williams is entitled to an award of PPD benefits based upon a 2% impairment rating. He also found Williams is entitled to

future medical treatment for the injuries she sustained at work on November 2, 2017.

He specifically found *verbatim* as follows:

16. The ALJ finds that the Plaintiff credibly described the occurrence of the work injury and the ongoing issues with her right wrist and hand.

17. The ALJ finds that the opinion of Dr. Nicoson in this matter was thorough, well-stated, and rooted in the AMA Guides as Dr. Nicoson provided a credible long form calculation of the Plaintiff's impairment rating referencing Table 16-3, on page 439. The opinions of Dr. Nicoson shall be given significant weight herein.

18. Dr. Nicoson diagnosed right distal radioulnar joint instability and a right triangular fibrocartilage complex tear, relating both to the work incident of November 2, 2017. He assessed a 2% whole person impairment pursuant to the AMA Guides but added that the ulnar claw deformity could not be related to the prior surgeries.

19. The ALJ finds that the credible opinion of Dr. Nicoson constitutes objective medical evidence upon which a finding of harmful change may be made and as such finds that the Plaintiff has satisfied her burden to establish a harmful change in the human organism arising out of and in the course of her employment for the Defendant.

20. Dr. Nicoson deferred to Dr. Burgess for a determination on maximum medical improvement and both doctors pronounced that the Plaintiff had no permanent restrictions for the right upper extremity as a result of the work injury.

21. These opinions have convinced the ALJ and the ALJ thus finds based thereupon along with the foregoing findings, that the Plaintiff has sustained a 2% whole person impairment to the right upper extremity and that she retains the physical capacity to return to the same type of work.

Williams filed a Petition for Reconsideration arguing the 2% impairment rating assessed by Dr. Nicoson is incorrect, and the ALJ should have relied upon the 5% impairment rating Dr. Farr assessed, which she asserts is more accurate. She also argued the ALJ incorrectly noted Dr. Farr recommended no restrictions on her activities. The ALJ denied the Petition for Reconsideration on November 23, 2020.

On appeal, Williams argues the ALJ erred in awarding PPD benefits based upon the 2% impairment rating Dr. Nicoson assessed. She also argues the ALJ erred by not enhancing the award of PPD benefits by the three-multiplier contained in KRS 342.730(1)(c)1.

We initially note that as the claimant in a workers' compensation proceeding, Williams 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 Williams was unsuccessful, 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, 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 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.

After careful review, we find substantial evidence supports the ALJ's determination that Williams is entitled to PPD benefits based upon the 2% impairment rating Dr. Nicoson assessed. We likewise determine the evidence supports the ALJ's determination that she is not entitled to an enhancement of her award of PPD benefits pursuant to KRS 342.730(1)(c)1, and a contrary result is not compelled. The ALJ found the assessments by Drs. Burgess and Nicoson more

persuasive than the evidence Williams presented, and explained the basis for his determination. Williams' appeal amounts to little more than an invitation for this Board to substitute its judgment for that of the ALJ, which we cannot do. Because we find the ALJ's determination is supported by substantial evidence, and a contrary result is not compelled, we affirm.

Therefore, the November 6, 2020 Opinion, Order, and Award, and the November 23, 2020 Order denying her Petition for Reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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