

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 17, 2020

CLAIM NO. 201757204

SHERRY TEAGLE

PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE**

KNOX COUNTY EMS and
HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER¹, Members.

ALVEY, Chairman. Sherry Teagle (“Teagle”) appeals from the Opinion, Award, and Order rendered August 27, 2019 by Hon. Jane Rice Williams, Administrative Law Judge (“ALJ”). The ALJ found that Teagle only established she sustained a temporary left knee injury, for which she awarded temporary total disability

¹ Although Board Member Rechter’s term expired on January 4, 2020, she is permitted to serve until January 22, 2020 pursuant to KRS 342.213(7)(b), and will participate in decisions rendered by this Board through that date.

(“TTD”), and temporary medical benefits. The ALJ dismissed Teagle’s claim for permanent benefits, and for an alleged work-related low back injury when she fell down steps at work on November 19, 2017 while working for the Knox County Ambulance Service (“Knox County”). Teagle also appeals from the September 23, 2019 and October 15, 2019 orders denying her petition for reconsideration.

Teagle argues the ALJ erred in finding she had a prior active condition, and did not sustain an injury as defined the Kentucky Workers’ Compensation Act on November 19, 2017. Teagle additionally argues the ALJ failed to perform an analysis pursuant to either Finley v. DBM Technologies, 2017 S.W.3d 261 (Ky. App. 2007), or McNutt Const./First Gen Servs. V. Scott, 40 S.W.3d 854 (Ky. 2011), which she asserts are required in this case. We disagree. The ALJ performed the appropriate analysis and because substantial evidence supports her decision, and a contrary result is not compelled, we affirm.

Teagle filed a Form 101 on July 30, 2018 alleging she tripped and fell down stairs while working as an EMT for Knox County on November 19, 2017. She alleged that as a result of her accident, she sustained injuries to her left leg, left hip and buttock, and low back. The Form 101 indicates Teagle had previously sustained work-related injuries in 1997 (low back), 2010 (right hip), and 2016 (right shoulder). In the Form 104 filed in support of the Form 101, Teagle noted her work history includes working as an EMT/paramedic, cashier/customer service representative, and as a deputy jailer.

Teagle testified by deposition on October 8, 2018, and at the final hearing held May 23, 2018. Teagle was born March 18, 1973, and is a resident of

Evarts, Kentucky. Teagle is a high school graduate, and completed some college courses. She also has an EMT certification. Teagle began working for Knox County in October 2016. She was already working for Bell County EMS (“Bell County”), performing essentially the same job, and continued to work there concurrently until the November 19, 2017 accident.

Teagle testified that her job as an EMT required a lot of lifting (both patients and equipment), climbing, squatting, and repetitive motion when performing CPR. Teagle testified she had previously sustained a right shoulder injury while working for Bell County in January 2016. She slipped and fell on ice, caught herself with the right hand, and injured her right shoulder. Dr. Michael Wells performed right shoulder surgery for that injury. She had physical therapy for seven months after that surgery, but she was able to return to her job despite some ongoing soreness.

Teagle reported that she had previously sustained another work injury in 2012 when the ambulance she was working out of was involved in a motor vehicle accident (“MVA”) with another vehicle. She injured her right hip, and indicated she missed only a few days of work for that accident. She received a \$20,000.00 settlement from the other driver for settlement of that claim. Teagle also reported she was involved in a MVA in May 2018 when she was rear-ended at a traffic light. She went to the emergency room after the accident, but testified she sustained no injuries in that incident. She received \$1,500.00 as settlement of that accident to repair her vehicle. Teagle testified she was not actively treating for any of her previous injuries on November 19, 2017.

On November 19, 2017, Teagle was working a forty-eight hour shift at Knox County Station One, located in Barbourville. She began working at 8:00 a.m. that day. At approximately 9:00 p.m., she was on her way to respond to an emergency call. She caught her foot as she was descending a four-step stairwell. She reported that she fell on her left leg, which was trapped under her. After the fall, she was placed on a long board by her co-workers and transported to a stretcher. She was then transported by ambulance to the Knox County Emergency Room where she was treated and released. She was advised to follow up with Dr. Gregory Dye, her treating physician.

Teagle testified that initially after the November 19, 2017 accident, she only experienced problems with her left hip, leg, and groin, but later developed low back pain. At the time of the accident, she noticed she had a knot in her left knee. She continues to see Dr. Dye, and takes Flexeril and 800 mg Ibuprofen. Dr. Dye referred her to Dr. Wells for additional care. Teagle testified she does not believe she can return to her work as an EMT because her left leg gives way, and she falls. Teagle stated that all of her medical bills had been paid until she started low back treatment.

In support of her claim, Teagle filed Dr. Wells' records. He first saw her on December 8, 2017 after she fell down stairs at work on November 19, 2017. Teagle complained of left thigh and buttock pain radiating to the left knee and left ankle. He ordered an MRI, and stated her complaints were most likely due to an exacerbation of her sciatica. He next saw Teagle on January 19, 2018. She denied any improvement in her condition. He stated the MRI showed nerve root

compression at L3-L4 on the left, and he referred her to his partner, a spine specialist. On April 25, 2018, he noted Teagle was still symptomatic with left L3-L4 and L4-L5 radiculopathy, all of which he related to the November 19, 2017 injury. He referred her to his partner, Dr. Richard Duncan. Dr. Wells noted Teagle was unable to perform all job duties, and stated she is to remain off work. He prescribed Cyclobenzaprine.

Dr. Wells testified by deposition on November 9, 2018. He noted he first saw Teagle on January 27, 2016 for a January 24, 2016 injury. She had stepped on ice, and when she tried to catch herself from falling, she extended her right arm, and jerked her right shoulder. He performed right shoulder surgery, and she fully recovered. He next saw Teagle on December 8, 2017 for an injury she sustained on November 19, 2017. She complained of left thigh pain radiating into her left ankle. He believed she had an exacerbation of sciatica and left hip problems, and ordered an MRI.

He stated the MRI demonstrated nerve root compression on the left at L3-L4 consistent with her symptoms. He referred her to Dr. Duncan. He was aware she had a history of disc bulges. He testified it is reasonable to assume she had pre-existing, non-active conditions brought into disabling reality by the fall. He stated Teagle has not reached maximum medical improvement (“MMI”). He was unaware that she had previously sustained a low back injury.

Teagle filed Dr. Wells December 12, 2018 note. He noted changes between the May 16, 2012 MRI, and the one performed on December 21, 2017, but did not outline what those changes were.

Dr. David Muffly evaluated Teagle on July 6, 2018. He noted the reported November 19, 2017 accident. Teagle complained of low back and left leg pain during the examination. Dr. Muffly reviewed the April 16, 2012 CT-scan which showed a small left posterolateral calcified disc herniation at L5-S1 and bulging at L4-L5; the May 4, 2012 MRI which showed a small disc protrusion or herniation at L5-S1, small central bulge at L4-L5, a mild diffuse bulge at L3-L4, and degenerative disc disease at L5-S1; the November 19, 2017 x-ray of the left tibia revealing no acute change; the December 21, 2017 lumbar MRI showing a central disc protrusion at L5-S1 with no sign of nerve root impingement or stenosis, minor bulges at L3-L4 and L4-L5, degenerative disc disease at L5-S1, and normal hips; and a May 21, 2018 CT-scan revealing disc bulging at L5-S1.

Dr. Muffly diagnosed Teagle with resolved contusions of the left leg due to the November 19, 2017 accident. He also noted her delayed onset of low back pain. He noted she complained of low back and left leg pain during the neurological examination. He stated she had a pre-existing lumbar disc herniation at L5-S1 and chronic lumbar bulging at L3-L4 and L4-L5, all of which were identified at the time of the 2012 MVA. He found her low back conditions were exacerbated by the unrelated May 21, 2018 MVA. Dr. Muffly stated Teagle had reached MMI for her left leg conditions. He recommended treatment only with home exercises and over-the-counter medications. He stated Teagle would have no impairment rating for her left leg, and she sustained no harmful change of the lumbar spine when she fell on November 19, 2017. He noted all of her lumbar conditions were present in

2012. Dr. Muffly would impose no restrictions, and stated Teagle could return to work as an EMT.

Knox County filed Dr. Muffly's supplemental report dated January 28, 2019, after he had reviewed additional records. He again opined Teagle did not sustain a lumbar injury in the November 19, 2017 accident. He found no difference in the imaging studies from 2012 to those taken in 2017. He noted she had a normal neurological examination on July 6, 2018, with no evidence of radiculopathy. He stated she had a 5% impairment rating based upon the DRE tables contained in the Fifth Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, based upon the 2012 MVA, and no impairment for the November 19, 2017 incident. Dr. Muffly stated he disagreed with the assessment of radiculopathy by Dr. Wells.

Dr. David Jenkinson evaluated Teagle on October 15, 2018 at Knox County's request. He noted the history of the fall at work on November 19, 2017, with the immediate onset of left leg pain. He noted the emergency room records indicated a diagnosis of a left leg contusion, with no reference to low back pain. Dr. Jenkinson diagnosed Teagle with a left leg contusion, with no evidence of a lumbar injury. He found no objective evidence to support a diagnosis of radiculopathy. He assessed 0% impairment for the left leg injury, which he determined had resolved. He found no additional treatment is needed, and Teagle can return to work as an EMT or other similar employment.

Knox County also filed records from Mountain Comprehensive Health Corporation for treatment on May 3, 2012. Jody Carlton, ARNP, treated

Teagle on that date. Teagle complained of lumbar tenderness after a MVA. A CT-scan revealed a disc herniation at L5-S1 with diffuse bulging at L4-L5. Teagle was diagnosed with lumbago, and pain in the pelvis and thigh.

Knox County additionally filed records from Harlan ARH. The April 16, 2012 note from Dr. Donald Ramsey noted Teagle's complaints of low back and left hip pain. He noted she reported tenderness to palpation. Dr. Amir Ahmad diagnosed back pain with radiculopathy on April 30, 2012. On July 20, 2012, Teagle treated with Dr. Veronica Trent. Teagle advised she had an upcoming appointment with Dr. Ronald Dubin, but her pain was so bad that she needed treatment. Dr. Trent administered an injection. She had a lumbar MRI on December 21, 2017.

On September 25, 2018, Teagle filed a Form 112 medical dispute. She asserted Knox County had refused to reimburse her for travel expenses to her treating physician, Dr. Wells, for a June 7, 2017 office visit. Teagle also filed a motion to bifurcate the claim to compel payment of the bill.

On October 2, 2018, Knox County filed a Form 112, disputing the necessity and work-relatedness of treatment with Drs. Wells and Duncan. Knox County noted the issue was whether Teagle's low back condition was causally related to the work injury. In support of the medical dispute, Knox County filed multiple medical reports, and a copy of the 2012 settlement agreement from the MVA.

In his note of June 7, 2012, Dr. Dubin noted Teagle had tenderness in her lumbar spine. He noted an MRI revealed she had degenerative disc disease at L5-S1, bulging discs at L3-L4 and L4-L5, and a small central disc protrusion at L5-

S1. Dr. Dubin noted he would see Teagle in one week for the fitting of a back brace. He diagnosed a lumbar spine injury.

Knox County also attached to the medical dispute the utilization review report prepared by Dr. Thomas Loeb dated February 5, 2018. Dr. Loeb stated that any lumbosacral radiculopathy experienced by Teagle is unrelated to the November 19, 2017 work injury. He noted she did not complain of any back problems until December 8, 2017. He also noted that the knee injury she sustained was not significant. Dr. Loeb specifically stated, "In my opinion, the current complaints and diagnosis of lumbar radiculopathy is not related, either by causation or brought into disabling reality by the 11/19/17 work injury."

A Benefit Review Conference was held on December 5, 2018. The issues preserved for determination included whether Teagle retains the capacity to return to the type of work performed on the date of the injury, work-relatedness/causation, injury as defined by the Act, exclusion for pre-existing disability/impairment, effect of subsequent injury, House Bill 2, and the medical dispute.

In her decision issued August 27, 2019, the ALJ noted the claim had been bifurcated on the issues of work-relatedness and causation. She noted Knox County had paid TTD benefits to Teagle at the rate of \$416.10 from November 20, 2017 to July 13, 2018, in the total amount of \$14, 208.52, and medical expenses in the amount of \$49,030.04. The ALJ found Teagle did not meet her burden of proof regarding causation. She stated she did not find Dr. Wells' testimony or opinions persuasive. The ALJ found persuasive Dr. Dubin's records outlining Teagle's problems from the 2012 MVA. She also found that Drs. Loeb's and Jenkinson's

opinions “added value”, but she found Dr. Muffly’s opinions the most persuasive. The ALJ found Teagle sustained only a temporary left leg injury. She specifically found as follows:

In *Robertson v. United Parcel Service*, 64 S.W.3d 284, 286 (Ky. 2001), the Kentucky Supreme Court stated that where the claimant suffered a work-related injury but that its effect was only transient, the claimant was not entitled to income benefits for permanent, partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident.

Plaintiff suffered a temporary injury as a result of her fall on November 19, 2017 and reached MMI on the day she saw Dr. Muffly, July 6, 2018. She is entitled to medical expenses through this date, including the April 25, 2018 visit to Dr. Wells. Treatment after her date of MMI is non-compensable.

The ALJ made the following award of benefits:

Plaintiff shall recover from Defendant Employer, Knox County EMS, and/or its insurance carrier, temporary total disability benefits at a rate of \$416.10 per week from November 20, 2017 through July 13, 2018 with interest at the rate of and 6% per annum on all due and unpaid installments of such compensation. Defendant Employer shall take credit for any payment of such compensation heretofore made.

Plaintiff shall recover medical expenses from Defendant/Employer, including but not limited to provider’s fees, hospital treatment, surgical care, nursing, supplies, appliances, prescriptions, and mileage reimbursements as may be reasonably required under KRS 342.020 for the cure and relief from the effects of the temporary injury to the left leg, left hip and lower back through the date she reached MMI on July 6, 2018. Defendant’s obligation shall be commensurate with the limits set by the Kentucky Medical Fee Schedule.

For the reasons set forth above, the claim of Sherry Teagle against Knox County EMS for additional benefits is **DISMISSED as NONCOMPENSABLE**.

Teagle filed a petition for reconsideration asserting the ALJ erred by making determinations beyond the bifurcated issues. She argued the issue of TTD benefits was not before the ALJ. Teagle specifically requested additional findings regarding the date she reached MMI, and the appropriate impairment rating. She argued that the 2012 settlement was for the right shoulder (despite the evidence that the right shoulder injury did not occur until 2016). She also argued the findings on the MRIs compel a finding of a new injury, or worsening of her condition.

The ALJ issued two orders on reconsideration. In the first order, dated September 23, 2019, the ALJ denied the petition insofar as it reargued the merits of the claim. The ALJ ordered a telephone conference to determine if additional evidence should be introduced on remaining issues. On October 15, 2019, the ALJ entered an order denying Teagle's petition. She noted Teagle sought a revision of the merits of the claim rather than the correction of patent errors contained in the decision. Specifically, Teagle requested the ALJ to find Dr. Wells' opinions dispositive. The ALJ provided additional findings, and outlined why she found the evidence she relied upon as persuasive. The ALJ denied the petition in its entirety, and clearly outlined her basis for doing so.

On appeal, Teagle argues the ALJ abused her discretion in finding she only sustained a temporary left leg injury, for which she awarded TTD benefits, and a temporary period of medical benefits. Teagle argues the ALJ erred in finding she had a prior active condition, and did not sustain an injury on November 19, 2017 as

defined the Kentucky Workers' Compensation Act. Teagle additionally argues the ALJ failed to perform an analysis pursuant to either Finley v. DBM Technologies, supra, or McNutt Const./First Gen Servs. V. Scott, supra. Teague essentially argues that the ALJ should have relied upon her testimony and that of Dr. Wells, rather than the evidence relied upon in dismissing the claim.

As the claimant in a workers' compensation proceeding, Teagle had the burden of proving each of the essential elements of her claim, including causation and work-relatedness. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Teagle 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 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). An ALJ is vested with broad authority to decide questions

involving causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). 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 an 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 could otherwise 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 the ALJ accurately summarized the evidence. She relied upon substantial evidence in determining Teagle sustained only a temporary left leg injury, and did not sustain a low back injury when she fell down steps at work on November 19, 2017. The ALJ clearly explained why she found Dr. Muffly's opinions, bolstered by the reports from Drs. Jenkinson and Loeb, the most probative in this claim. She also outlined the importance of Dr. Dubin's notes from 2012, and the fact that the MRI performed in 2017 was consistent with the one performed in 2012.

We acknowledge Teagle is able to point to conflicting evidence supporting her position on appeal. However, the ALJ as fact-finder determines the credibility of the evidence. The ALJ may also choose whom and what to believe when faced with conflicting evidence. The ALJ is not required to afford Dr. Wells' opinion more weight because he was a treating, rather than an evaluating, physician. Sweeney v. King's Daughters Medical Center, 260 S.W.3d 829 (Ky. 2008). It was the ALJ's prerogative to rely on evidence she outlined in her opinion. Because we find substantial evidence supports the ALJ's determination regarding causation, and a contrary result is not compelled, we affirm.

As a final note, the ALJ was not required to determine whether Teagle's lumbar condition was symptomatic and impairment ratable prior to the work injury pursuant to Finley v. DBM Technologies, supra. This is not a case where the ALJ concluded Teagle sustained a permanent, work-related injury and then was required to engage in a carve-out for pre-existing active impairment pursuant to Finley v. DBM Technologies, supra. In this instance, the ALJ determined the November 19, 2017 fall did not cause Teagle's low back condition.

Therefore, the August 27, 2019 Opinion, Award, and Order, and the September 23, 2019 and October 15, 2019 Orders on petition for reconsideration rendered by Hon. Jane Rice Williams, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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