

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 26, 2018

CLAIM NO. 201693249

SOCORRO ROCHA-PEREZ

PETITIONER

VS.

APPEAL FROM HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

GOLDEN CORRAL
AND HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
* * * * *

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

RECHTER, Member. Socorro Rocha-Perez ("Rocha-Perez") appeals from the August 30, 2017 Opinion and Order and the September 25, 2017 Order on Reconsideration rendered by Hon. Brent E. Dye, Administrative Law Judge ("ALJ"). The ALJ dismissed

Rocha-Perez's claim alleging a right shoulder injury. For the reasons set forth herein, we affirm.

Rocha-Perez began working for Golden Corral in 2001. Her position in food-prep at the time of the injury required her to prepare ingredients for the salad bar. On October 16, 2015, she lifted a large box containing a dozen heads of lettuce and felt a sharp pain in her right arm. She continued working the remainder of the day, hoping the pain would dissipate.

Rocha-Perez testified she visited the University of Louisville Hospital emergency room the following day and was prescribed pain pills. However, the hospital records indicate she was treated on November 7, 2015 for upper extremity strain occurring two weeks prior. She denied any specific injury.

Rocha-Perez testified she then treated with her primary care physicians at Family Health Centers. Family Health Centers' records indicate she visited on October 29, 2015 and reported right shoulder pain and decreased range of motion. She characterized the pain as chronic and intermittent, and denied any specific injury. A right shoulder x-ray showed mild degenerative joint disease. She visited again on November 9, 2015 with complaints of neck and

right shoulder pain. Cervical spine x-rays revealed advanced degenerative disc disease. At a follow-up on November 16, 2015, Rocha-Perez again complained of neck pain with numbness and tingling into her right arm.

In December 2015, Rocha-Perez notified her manager at Golden Corral of her injury. She testified she did not report the injury sooner because she hoped it would resolve itself, and she was nervous she would be fired. She visited Mexico in early 2016. When she returned, she visited Family Health Centers on February 1, 2016. She reported that she had been in Mexico and obtained an MRI, which revealed a tendon rupture, bursitis and arthritis. She was referred to Dr. Ryan Krupp, an orthopedist.

Dr. Krupp diagnosed a right shoulder full thickness rotator cuff tear with impingement, bursitis, biceps tenosynovitis and arthritis. On August 5, 2016, he performed a right shoulder arthroscopy with rotator cuff repair and debridement. Dr. Krupp released her to return to work with permanent restrictions against lifting greater than ten pounds. She provided these restrictions to her manager at Golden Corral but no work was offered within her limitations.

Golden Corral submitted medical records from Dr. Stephen Pobst, who treated Rocha-Perez for right shoulder

pain on November 19, 2013. He also diagnosed right shoulder impingement. At a follow-up on November 22, 2013, Dr. Pobst again found right shoulder impingement.

Dr. Michael Best conducted an independent medical evaluation ("IME") on June 28, 2017. Dr. Best noted Rocha-Perez had sustained a rotator cuff tear, but noted this condition is common in persons in their 60s. Dr. Best noted the difficulty in determining exact causation, and considered her age of 63, the fact she had treated for right shoulder in 2013, and the initial diagnosis of a strain. Based on these circumstances, he concluded her right shoulder condition is chronic, and not caused by the work event on October 16, 2015. He assessed a 2% whole person impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

Dr. Warren Bilkey conducted an IME on March 20, 2017. Dr. Bilkey diagnosed right shoulder strain, rotator cuff tear, impingement, labrum tear, and aggravation of chondromalacia. He noted there is no evidence of active impairment prior to the work incident. Dr. Bilkey concluded these conditions were caused by the lifting incident at work on October 16, 2015. He assessed a 5% whole person impairment rating pursuant to the AMA Guides.

The ALJ determined Rocha-Perez failed to meet her burden in establishing her right shoulder condition was caused by the work event. He stated his reliance on Dr. Best's medical opinion, which took into consideration Rocha-Perez's age and past treatment for right shoulder pain. Additionally, the ALJ noted the fact Rocha-Perez never reported a specific injury to any medical provider until August 4, 2016, some ten months after the injury. He dismissed the claim. Rocha-Perez petitioned for reconsideration, which was denied as a re-argument of the merits of the claim.

On appeal, Rocha-Perez argues the evidence compels a finding of a work-related injury. She points to the documented medical treatment she received immediately after the alleged incident. Rocha-Perez additionally claims the ALJ placed undue importance on the fact she did not report the injury to her manager for several months, and her prior treatment for right shoulder pain.

As the claimant in a workers' compensation proceeding, Rocha-Perez bore 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). 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).

There is more than sufficient evidence supporting the ALJ's conclusions, which he thoroughly articulated. Dr. Best's medical opinion constitutes the requisite substantial evidence to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Additionally, the ALJ noted the fact Rocha-Perez failed to report a specific injury during three medical visits in the months immediately after the alleged incident.

We disagree the ALJ considered Rocha-Perez's failure to report the injury to her employer as determinative. Likewise, we find no indication the ALJ unduly relied on Rocha-Perez's past treatment for shoulder pain. Rather, the ALJ considered both of these circumstances within the context

of Rocha-Perez's overall credibility. Also, the ALJ cited Dr. Bilkey's failure to acknowledge her prior medical treatment in explaining why that medical opinion was not persuasive.

Rocha-Perez has identified evidence that would support a decision in her favor. However, it is not the function of this Board to reweigh the evidence and reach a different conclusion. That duty lies within the sole discretion of the ALJ. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). The ALJ's decision is amply supported by the proof, and a different result is not compelled.

Accordingly, the August 30, 2017 Opinion and Order and the September 25, 2017 Order on Reconsideration rendered by Hon. Brent E. Dye, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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