

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 25, 2019

CLAIM NO. 201692443

TOYOTA MOTOR MANUFACTURING  
OF KENTUCKY, INC.

PETITIONER

VS.

APPEAL FROM HON. JEFFREY V. LAYSON,  
ADMINISTRATIVE LAW JUDGE

ROBERTA ANDERSON and  
HON. JEFFREY V. LAYSON,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Toyota Manufacturing (“Toyota”) appeals from the August 27, 2018 Opinion, Award and Order rendered by Hon. Jeff V. Layson, III, Administrative Law Judge (“ALJ”), awarding temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits and medical benefits to

Roberta Anderson (now Arcure) (“Anderson”).<sup>1</sup> The ALJ determined Anderson sustained a work-related right hip injury caused by placing all her weight on her right leg while performing job duties on an assembly line at Toyota. Toyota also appeals from the September 28, 2018 Order denying its petition for reconsideration.

On appeal, Toyota argues Anderson failed to prove she has an impairment rating to her hip based upon substantial evidence. It argues Dr. James Owen, who assessed a 6% impairment rating purportedly in accordance with the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”), failed to reference a table or page number. It argues Dr. Owen stated he based this rating in accordance with the Diagnosis Related Estimate (“DRE”) contained in the AMA Guides. However, those guidelines do not have such a category for a hip condition. Toyota also argues Dr. Owen’s assessment of an impairment rating is invalid because he found Anderson had not reached maximum medical improvement (“MMI”). We determine the ALJ could reasonably rely upon the impairment rating assessed by Dr. Owen. We also determine the ALJ acted within the scope of the authority afforded to him, and because his determination is supported by substantial evidence, we affirm.

Anderson filed a Form 101 on January 19, 2018 alleging she injured her right hip on January 18, 2016 while working for Toyota. In the Form 104 employment history, Anderson noted she had previously worked in production at a glass factory, as a warehouse employee, and in a fast food restaurant.

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<sup>1</sup> Anderson was married in 2018, and her last name is now Arcure. Because she filed the Form 101 under her maiden name, and there has been no amendment to her claim, we will refer to her as Anderson throughout this opinion.

Anderson testified by deposition on March 9, 2018, and at the hearing held June 28, 2018. Anderson was born on November 14, 1987. She received a bachelor's degree in child and family studies from Berea College in January 2010. She began working for Toyota in 2013. At the time of her accident, she was a team leader.

Anderson testified her position did not usually require her to work on the assembly line, but on January 17 and 18, 2016, she was doing so due to a personnel shortage. She explained the work she performed on those dates required her to stand primarily on the right leg, placing more pressure on her right hip. She performed the pillar job on the assembly line four times in two days in two-hour increments, gradually developing right hip pain. She reported the pain to her supervisor, began physical therapy, and continued working as a team leader until she was restricted to seated work only. She was sent home when the limited duty allowed by Toyota expired. She was given an injection in her right hip in June 2016, after her son was born, and she returned to work. The pain developed again in August 2016. She continued to work until November 2016 when she was again sent home. She has not returned to work at Toyota since that time, and she receives long-term disability benefits.

At the hearing, Anderson testified she had a medical appointment scheduled for July 2018 to discuss the possibility of right hip surgery. In addition to continued physical therapy, Anderson receives manipulation therapy for the right hip, which provides relief for approximately a month at a time, although she experiences pain on a daily basis. She testified that extended walking, housework,

and long periods of driving increase her pain. She testified that she limps after shopping for approximately forty-five minutes.

In support of her claim, Anderson filed Dr. Owen's Form 110-I medical report. Dr. Owen evaluated her on November 13, 2017. Dr. Owen noted Anderson complained of right low back and hip pain, which she developed from standing primarily on the right leg to install door columns at Toyota. She reported that Dr. Jeffrey Selby advised her she had an inflamed right hip bursa for which he administered a steroid injection in June 2016, temporarily relieving her hip condition until the pain returned in August 2016. Dr. Selby continued to treat her with physical therapy and injections. Dr. Owen diagnosed Anderson with persistent piriformis syndrome, weakness of the right piriformis abductor muscle group associated with marked tendinosis over the SI joint posteriorly, and associated paraspinal muscle spasm. He stated she also has a right hip labral tear. He related the diagnoses to Anderson's work. Although he stated Anderson had not reached MMI, he assessed a 6% impairment rating pursuant to the AMA Guides. Dr. Owen stated Anderson does not retain the physical capacity to return to the type of work performed on the date of the injury, and she should avoid standing or walking for more than an hour at a time.

Dr. Daniel D. Primm, Jr. evaluated Anderson at Toyota's request on April 20, 2018. Anderson reported she injured her right hip at work on January 18, 2016 while performing a job where she was required to lean into a car. She was initially seen at the Toyota Health Clinic, and was then referred to Dr. Stephen Duncan, an orthopedic surgeon at the University of Kentucky. Dr. Duncan ordered

an MRI which he advised demonstrated a labral tear. Dr. Duncan administered a steroid injection to the right hip which provided some relief. She also advised she undergoes physical therapy, IT band massage and electrical stimulation. She reported she had pain in the right hip. She stated she cannot lie on the right hip, and she experiences pain with extended walking, squatting, and occasionally with prolonged sitting. She did not describe having catching or locking of the right hip.

At the time of the examination, Dr. Primm noted Anderson was five-feet, three-inches tall, and weighed one-hundred and ninety pounds. She did not limp, and was not using a cane, crutch, or any type of bracing. She also walked on her heels and toes, but reported right hip pain while doing so. He observed no muscle spasm or muscle tightness over the right hip or low back. Dr. Primm diagnosed Anderson with nonspecific right-hip pain, and noted she has probable psychosocial overlay versus somatization. Regarding whether Anderson sustained a right hip injury, Dr. Primm stated, "I do not believe there is any objective evidence this individual sustained any type of harmful change or permanent impairment regarding her right hip." He stated she reached MMI no later than six months after she delivered her first child. He specifically determined she did not sustain a work-related right hip injury. Likewise, he determined she does not have any impairment based upon the AMA Guides. He also stated she needs no additional right hip treatment.

Dr. David Jenkinson evaluated Anderson at Toyota's request on September 25, 2017. Anderson reported she developed right hip pain while working on the assembly line at Toyota after standing with most of her weight on her right

leg. She reported she was pregnant at the time of the incident, and her first child was born on May 10, 2016. She outlined her treatment, including the June 2016 injection by Dr. Selby. Anderson reported she has constant right hip pain, and it “stays swollen”. When she was asked to indicate the location of the pain, Anderson pointed to a generalized area on the right side of her hip and pelvis, but could not indicate a specific location. She stated squatting aggravates her pain, and she has a tingling sensation and pain in the right thigh which occasionally radiates to her knee and ankle. Dr. Jenkinson stated Anderson appeared to sit comfortably during the examination, and she did not have a limp. Examination of the right hip revealed a full range of motion with no apparent discomfort and no signs of joint irritability.

Dr. Jenkinson stated Anderson “has no objective abnormality to substantiate her continued complaints.” He stated she complains of diffuse right hip and pelvis pain, but there is no objective abnormality to substantiate a specific diagnosis. Dr. Jenkinson stated Anderson does not have any current condition related to her work at Toyota, and she requires no additional treatment. Dr. Jenkinson specifically stated, “There is no convincing evidence that Ms. Anderson suffered any significant injury. If we give the benefit of the doubt and assume that she may have had a minor soft tissue sprain or strain then it is my opinion that she has already reached MMI.” Dr. Jenkinson opined Anderson could return to her regular job duties.

A Benefit Review Conference (“BRC”) was held on June 13, 2018. The BRC Order and Memorandum lists the issues preserved for consideration by the ALJ as work-relatedness/causation, injury as defined by the Act, benefits per KRS

342.730, TTD, medical benefits, credit for overpayment of income/medical benefits, overpayment of TTD benefits as to rate, underpayment of TTD benefits as to duration, and whether Anderson retains the capacity to return to the type of work performed at the time of the injury.

The ALJ rendered a decision on August 27, 2018, finding Anderson sustained a work-related right hip injury, and awarded TTD benefits from March 2, 2016 through July 24, 2016, and again from November 28, 2016 through September 25, 2017. The ALJ allowed Toyota to take credit for any benefits that had been paid. The ALJ also awarded PPD benefits based upon the 6% impairment rating assessed by Dr. Owen, with the application of the three multiplier contained in KRS 342.730(1)(c)1, and medical benefits.

Toyota filed a petition for reconsideration requesting the ALJ to find Anderson did not sustain an injury to her spine. It also requested additional findings regarding the impairment rating, and how the DRE relates to a hip condition. Finally, it argued the impairment rating assessed by Dr. Owen could not be relied upon because he determined Anderson had not yet reached MMI.

The ALJ denied the petition by order dated September 28, 2018. The ALJ specifically found as follows:

This matter is before the Administrative Law Judge upon a Petition for Reconsideration filed by the Defendant/Employer regarding the Opinion, Award and Order issued on August 27, 2018. The Defendant/Employer seeks additional findings regarding the ALJ's award of benefits based on the impairment rating from Dr. Owen. The Plaintiff has filed a response.

The main argument made by the Defendant/ Employer in this Petition is that the Plaintiff sustained an injury to

her hip whereas Dr. Owen's AMA rating was based on DRE Category II, which relates only to the back and not the hip. The term DRE stands for "Diagnosis Related Estimate." Clearly, Dr. Owen used this term to reflect the fact that his AMA rating was based on the Plaintiff's diagnosis. If the hip is not included as part of the lower back, it is certainly included as part of the lower extremity. Chapter 17 of the Guides addresses lower extremity impairment. Section 17.2j "Diagnosis-Based Estimates" states that "[s]ome impairment estimates are assigned more appropriately on the basis of a diagnosis than on the basis of findings on physical examinations."

Section 17.2 "Methods of Assessment" on page 525 of the Guides states "[d]iagnosis-based estimates are used to evaluate impairments caused by specific fractures and deformities, **as well as ligamentous instability**, bursitis, and various surgical procedures, including joint replacements and meniscectomies," (Emphasis added). The Plaintiff's diagnosis in this case was "persistent piriformis syndrome with definite weakness of the right piriformis adductor muscle group associated with marked tenderness on her right directly over the SI joint posteriorly with paraspinal muscle spasms associated" and "a labral tear."

The Administrative Law Judge believes that the use of the term "DRE" simply indicates that Dr. Owen was using a diagnosis-based estimate, which is permissible for hip injuries.

A second point raised by the Defendant/Employer in its Petition attacks Dr. Owen's AMA rating because it was rendered prior to the Plaintiff being placed at MMI. It is true that Dr. Owen said that the Plaintiff was not at MMI at the time he assessed his AMA rating on November 13, 2017. In the Opinion and Award, however, the ALJ specifically determined that the Plaintiff had reached MMI on September 25, 2017. This finding was based on the testimony of one of the Defendant/Employer's IME physicians, Dr. Jenkinson. It is well established that the Administrative Law Judge may believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or

the same adverse party's total proof. *Magic Coal Company v. Fox*, 19 S.W.3d 88 (Ky. 2000). The AMA rating given on November 13, 2017 was after the Plaintiff reached MMI on September 25, 2017.

Based on the foregoing, the Defendant/Employer's Petition for Reconsideration is overruled.

On appeal, Toyota argues Anderson failed to prove that she has a hip impairment due to her claimed injury. It challenges the impairment rating assessed by Dr. Owen, which it argues is not in accordance with the AMA Guides. It also argues any impairment rating assessed by Dr. Owen could not be relied upon because he found she had not reached MMI.

We initially note that as the claimant in a workers' compensation proceeding, Anderson had the burden of proving each of the essential elements of her claim. *See* KRS 342.0011(1); *Snawder v. Stice*, 576 S.W.2d 276 (Ky. App. 1979). Since she was successful in his burden, the question on appeal is whether substantial evidence of record supports the ALJ's decision. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. *Smyzer v. B. F. Goodrich Chemical Co.*, 474 S.W.2d 367 (Ky. 1971).

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). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An ALJ is vested with broad authority in determining causation. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003). Although a party may note evidence supporting a different outcome than reached by an ALJ, this is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206, 210 (Ky. 2003), the Kentucky Supreme Court explained that the extent of a worker's impairment at particular points in time and the proper interpretation of the AMA Guides are medical questions solely within the province of medical experts. The AMA Guides make it clear within the confines of that treatise that its purpose is to provide objective standards for the "estimating" of permanent impairment ratings by physicians. While it is true an assessment by a physician of a workers' physical

impairment which wholly disregards the express terms of AMA Guides cannot constitute substantial evidence to support an award of benefits, the Court of Appeals of Kentucky has instructed that so long as a physician's opinion concerning impairment is "grounded in the AMA Guides", the rating assessed may be relied on by the fact-finder for purposes of determining PPD. Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 154 (Ky. App. 2006). For that reason, this Board has routinely held that except under compelling circumstances where it is obvious even to a layperson that a gross misapplication of the AMA Guides has occurred, the issue of whether a physician's impairment rating is properly assessed and, therefore, credible is a matter of discretion for the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

In this instance, the ALJ determined Anderson sustained a work-related right hip injury based upon her testimony, along with the opinions that Dr. Owen expressed in his report. The ALJ also determined Anderson reached MMI approximately one and half months prior to Dr. Owen's evaluation on November 13, 2017. That finding is reasonable based upon the evidence, and it is supported by Dr. Jenkinson's determination in his September 25, 2017 report. We also note Dr. Primm determined Anderson would have reached MMI six months after the birth of her first child on May 10, 2016, or no later than November 10, 2016. When Dr. Owen evaluated Anderson on November 13, 2017, he assessed a 6% impairment resulting from her injury at Toyota based on the AMA Guides. Although Dr. Owen indicated Anderson was not yet at MMI from the effects of her injury, that portion of his report was rejected by the ALJ. Given these findings, we discern no error. It is

well established that where the evidence regarding the extent and duration of a claimant's work-related harmful change is conflicting between the medical experts, the ALJ as fact-finder is free to pick and choose whom and what to believe. Copar, Inc. v. Rogers, 127 S.W.3d 554, 561 (Ky. 2003).

Regarding the accuracy of the impairment rating assessed by Dr. Owen, we note that he was not cross-examined. We likewise note the impairment rating he assessed was not challenged by the other medical evidence of record. Our courts have consistently stated that the proper method for impeaching a physician's methodology under the AMA Guides is through cross-examination of the opinion or through another medical expert. Brasch-Barry General Contractors v. Jones, 175 S.W.3d 81 (Ky. 2005). That did not occur in this case.

Because we determine Dr. Owen's permanent impairment rating was plainly grounded in the AMA Guides, we cannot say the ALJ's reliance on that rating was beyond the scope of his discretion as fact-finder or unreasonable as a matter of law. Speedway/Super America v. Elias, 285 S.W.3d 722, 730 (Ky. 2009); Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985). Therefore, it was permissible to rely upon that rating as a basis for the award of PPD benefits. The ALJ clearly explained why he relied upon the rating. We will not disturb the ALJ's determination based upon Dr. Owen's assessment of impairment, which constitutes substantial evidence.

Accordingly, the August 27, 2018 Opinion, Award, and Order, and the September 25, 2018 Order on petition for reconsideration rendered by Hon. Jeff V. Layson, III, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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