

RENDERED: March 14, 1997; 10:00 a.m.
NOT TO BE PUBLISHED

NO. 95-CA-003376-WC

HARDIN MEMORIAL HOSPITAL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF
 THE WORKERS' COMPENSATION BOARD
 ACTION NO. 92-WC-24106

CLARA MARIE FULKERSON; SPECIAL
FUND; THOMAS A. DOCKTER,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

* * * * *

BEFORE: COMBS, EMBERTON and GUDGEL, Judges.

EMBERTON, JUDGE. The appellant, Hardin Memorial Hospital, maintains that the appellee, Clara Marie Fulkerson, did not sustain a work-related injury resulting in a 100% total occupational disability. Liability was apportioned 50% to appellant and 50% to the Special Fund.

Appellee began working for appellant in 1991 as a housekeeper. Prior to that time, she had no significant work experience outside her home. She was born in 1942 and has only an eleventh grade education. In her capacity as a housekeeper at the hospital, she performed cleaning tasks such as mopping floors, washing windows, and other routine house cleaning duties. She testified that on March 13, 1992, while cleaning on the second floor of the hospital, she was emptying water from a bucket when she twisted and felt pain in her lower back. She continued to work the rest of her shift but claims that she received pain medication from a co-worker.

Appellee worked the following day, a Saturday, but telephoned the hospital on Sunday stating she was unable to work that day because of back pain. Monday was her scheduled day off, and she returned to work Tuesday, but stated that the pain continued. On March 19, 1992, she reported to her supervisor, Robert Crouch, that she was experiencing back pain. Crouch referred her to the emergency room for treatment.

Appellee's family physician, Dr. Catlett, took appellee off work for several days. She then returned for an additional eleven days and was thereafter unable to work. Dr. Paul Gardner, a neurosurgeon, saw appellee on June 17, 1992, and diagnosed a thoracic herniated disc at T10-11 and a Grade III spondylolisthesis between L5-S1. Subsequently, appellee underwent surgery.

The initial question before the Administrative Law Judge was whether appellee suffered a work-related injury. Appellant alleges that appellee was not working at the hospital on March 13, 1992 and submitted documentary evidence, including a schedule sheet prepared four to six weeks prior to March 13, 1993, which showed that appellee was scheduled to be off on that date. The schedule, however, stated that it was subject to change and testimony from various employees indicated that it was frequently changed without written alteration. There is generally a status sheet kept by Mr. Crouch in his office reflecting the hours worked by employees. No notation was made that appellee had worked on March 13, 1992. Additionally, there was no time card punched for appellee on the date of the alleged accident. Appellee's supervisor testified, however, that it was not uncommon for appellee to fail to punch her time card.

Appellee's husband testified that he picked up appellee from work on March 13, 1992, that she complained of pain, and related to him the incident when she picked up the bucket of water. He stated that the date was particularly significant because March 13, 1992, was the day prior to the couple's wedding anniversary.

The ALJ found that appellee had suffered a work-related injury on March 13, 1992. He found the testimony of appellee and her husband persuasive. The ALJ has the exclusive authority to make determinations as to the weight of the evidence and the

credibility of witnesses. Paramount Foods, Inc. V. Burkhardt, Ky., 695 S.W.2d 418 (1985). As noted by the Board, the ALJ viewed the witnesses and was in the best position to judge the credibility of each. It was within the discretion of the ALJ to believe appellee's version of the facts even though the documentary evidence was inconsistent with that testimony. Codell Construction Co. v. Dixon, Ky., 478 S.W.2d 703 (1972).

The appellant also maintains that the ALJ's decision is not based on substantial evidence. "Substantial evidence has been conclusively defined by the Kentucky courts as that which, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person." Transportation Cabinet v. Thurman, Ky. App., 897 S.W.2d 597, 600 (1995). If the ALJ's determination is supported by any evidence of substance, it cannot be said that the evidence compels a different result. Special Fund v. Francis, Ky., 708 S.W.2d 641 (1986).

There is sufficient evidence in the record to support the ALJ's decision. Dr. Gardner testified that appellee's injury to her thoracic spine was, within the realm of reasonable medical probability, brought into disabling reality by the injury described on March 13, 1992, and the lifting of the bucket on the same date caused the spondylolisthesis symptoms in her lower back.

Dr. William Nash, an orthopedic surgeon, first saw appellee in April 1992. He diagnosed a Grade IV spondylolisthesis at L5-S1 with degenerative joint and disk disease. He testified that the injury to appellee's back was work related. The degenerative condition was pre-existing and the lifting injury exacerbated her underlying condition. Dr. Dimar, an orthopedic surgeon, also testified that appellee suffered an injury to the lower back caused by the incident reported in March.

Dr. Gardner testified that appellee is restricted from lifting over twenty-five pounds and no more than ten pounds on a repetitive basis. He also restricted her from sitting for prolonged periods, and in her current condition, from repetitive bending. Based on the medical testimony, appellee's age, employment history, and educational background the ALJ found appellee to be 100% totally occupationally disabled for an indefinite period of time. Ky. Rev. Stat. (KRS) 342.0011(11).

In reviewing the record there is substantial evidence to support the decision and award made by the ALJ. The opinion and order of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE CLARA MARIE
FULKERSON:

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