

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-000253-WC

JANICE M. HALL

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-02-64803

HOLLEY PERFORMANCE PRODUCTS;
HON. LANDON OVERFIELD, ADMINISTRATIVE
LAW JUDGE; AND KENTUCKY WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; BUCKINGHAM AND KNOPF, JUDGES.

COMBS, CHIEF JUDGE: Janice Hall petitions for review of an opinion of the Workers' Compensation Board (Board) of January 7, 2005. An Administrative Law Judge (ALJ) had dismissed her application for permanent occupational disability benefits, and the Board affirmed the dismissal. Because Hall's arguments involve factual issues that are not a matter of record, there is

no basis for us to second-guess the reasoning of the Board.
Therefore, we affirm.

For more than thirty-five years, Hall was employed by the appellee, Holley Performance Products. In her application for workers' compensation benefits, she stated that on September 2, 2002, she injured her right shoulder and neck while working on an assembly line. She underwent surgery to repair her shoulder in November 2002. However, she testified that her symptoms worsened after the surgery and that she continues to suffer debilitating pain. She also charged that her surgeon committed malpractice that produced damage to her lungs, requiring her to use oxygen every day. She contends that she is totally disabled. She has been awarded Social Security Disability.

Hall's claim for workers' compensation benefits cited disability based on both physical and mental components. It was filed by attorney Michael Lindsey on August 4, 2003. However, Hall later discharged Mr. Lindsey as her attorney due to her belief that he was engaged in a conspiracy with her employer to deny her benefits. Hall's new lawyer, William Rudloff, proceeded to obtain and to submit medical evidence in Hall's behalf.

On December 2, 2003, Hall was scheduled to be evaluated by an independent medical examiner (IME) with respect

to her psychiatric claim. Hall and her husband appeared for the evaluation. When the psychiatrist refused to allow Mr. Hall to record the examination on videotape, Hall refused to allow the examination to proceed.

Prior to the benefit review conference (BRC) of January 14, 2004, Hall settled the psychiatric portion of her claim in exchange for her employer's agreement to pay a fee of \$700 owed to the IME. Hall was present at the BRC when her attorney waived an evidentiary hearing. In the order following the BRC, the ALJ gave all parties a deadline of February 4, 2004, for filing briefs. At that point, the matter would be deemed to be submitted.

Citing a breakdown in the attorney/client relationship, Mr. Rudloff filed a motion on January 22, 2004, seeking to withdraw immediately as Hall's counsel. The ALJ granted the motion and allowed Hall additional time of thirty (30) days in which to obtain new counsel; the date of submission was extended sixty days. The ALJ subsequently granted Hall more time (through April 30, 2004) to obtain counsel and left the case open for the filing of briefs until June 30, 2004.

Hall did not obtain new counsel. However, she did submit a brief in which she alleged: (1) that she had "found a lot of lies" in the brief filed by Holley Performance Products and (2) that she had not voluntarily waived her right to a

hearing at the BRC. She argued in general terms that relevant evidence had been previously withheld and requested that the ALJ re-schedule the matter for an evidentiary hearing.

On August 27, 2004, the ALJ rendered an opinion and order dismissing Hall's claim. After summarizing the medical evidence submitted by Hall and by Holley Performance Products, the ALJ expressed his belief that Hall had "not told the truth to her medical providers or the medical experts evaluating her condition." He was not persuaded that Hall had sustained a work-related injury:

[Hall] has failed to sustain the burden of proving to the satisfaction of the trier of fact that she has had an injury as defined by the statute or that her right shoulder condition was caused by or [is] in any way related to her work for [Holley Performance Products]. In making this finding, I have relied on Dr. [Michael] Moskal's opinions. It is his opinion that [Hall] has no work related condition which results in a functional impairment rating. Moreover, he is of the opinion that [Hall] has no work related harmful change in the human organism. Dr. Moskal's opinions, particularly when considered in conjunction with the records from Drs. [John T.] Burch and [James] Phillips, are the most credible and convincing opinions in the record relating to [Hall's] claimed injury.

In her appeal to the Board, Hall argued that she was deprived of due process before the ALJ because of allegedly scandalous, collusive, and conspiratorial behavior on the part of both of her attorneys and the ALJ. She claimed that Mr.

Lindsey did not intend to file her claim until after the statute of limitations had expired and that his secretary was responsible for the timely filing of her claim. Numerous charges included: that Mr. Lindsey appeared at the BRC and physically intimidated her; that Mr. Rudloff and Mr. Lindsey conspired against her; that Mr. Rudloff coerced her into settling the psychiatric portion of her claim; that Mr. Rudloff hand-picked the ALJ; that Holley Performance Products paid off both of her attorneys and the ALJ; and that the ALJ had already decided to dismiss her case prior to the BRC. On the merits, she argued that the ALJ erred in giving more weight to the opinions of the doctors who merely evaluated her rather than deferring to the opinions expressed by her treating physician.

After reviewing and reciting the evidence submitted by the parties, the Board addressed the issues raised by Hall as follows:

It is obvious from Hall's pro se brief that she believes she has been dealt with unfairly, to the point of claiming collusion. Those rash accusations are without any substantive basis. By all accounts, the litigation of Hall's claim proceeded normally and in accord with the procedural regulations, and she was afforded every opportunity to submit medical evidence in support of her claim. By the time of the Benefit Review Conference ("BRC"), proof time had closed and, as noted on the BRC order, the hearing had been waived. Waiver of final hearing often occurs when counsel concludes it would serve no useful benefit.

While it is obvious Hall is dissatisfied with the outcome of her claim, waiver of a final hearing does not equate to a denial of due process.

Addressing the substantive aspect of the case, the ALJ found the evidence from Dr. Moskal to be the most persuasive. He relied on the testimony of Dr. Moskal that Hall did not sustain a work-related injury and could return to work with no restrictions. As reviewed above, the matter of whom to believe is solely before the ALJ. It is not enough for Hall to show there is evidence to the contrary, which would support a finding in her favor. So long as there is evidence in the record which supports the ALJ's decision, this Board is without authority to reverse. Since there is evidence in the record which supports the ALJ's conclusion, this Board does not have authority to make different findings of fact. [Citations omitted.]

Review of a decision of the Board before this Court is carefully limited. It is our function:

to correct the Board only where the [*sic*] Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.

Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992); KRS¹ 342.290. Hall has not raised any issues undermining the validity of the legal precedents cited by the Board or concerning its assessment of the evidence. Hall argues instead that the Board's decision "must be quashed on grounds of

¹ Kentucky Revised Statutes.

improper, unethical and illegal conduct of [her] attorneys.”
(Appellant’s brief, at p. 5.) Her brief is wholly concentrated upon her belief in the inferior quality of the representation that she received from attorneys Lindsey and Rudloff, detailing numerous ethical violations.

We agree with the Board that the record refutes Hall’s claims that she was deprived of procedural due process in presenting her claim. We cannot say that there is no merit to the issues raised in her brief. We simply note that there is no actual evidence in the record for us to review.

The opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Janice Hall, *pro se*
Bowling Green, KY

BRIEF FOR APPELLEE:

James O. Fenwick
Lexington, KY