

Commonwealth of Kentucky
Court of Appeals

NO. 2007-CA-000344-WC

KAREN MEADE

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-04-88375

UPS LOGISTICS;
WORKERS' COMPENSATION BOARD; AND
HON. IRENE STEEN, ADMINISTRATIVE LAW
JUDGE

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: COMBS, CHIEF JUDGE; CAPERTON AND MOORE, JUDGES.

CAPERTON, JUDGE: Karen Meade (Meade) appeals the January 12, 2007 opinion of the Workers' Compensation Board (WCB) which affirmed the Administrative Law Judge's (ALJ) opinion of June 20, 2006. On appeal Meade claims that the ALJ erred in dismissing her claim for a lower back injury. We disagree and affirm.

On April 23, 2004, Meade attempted to lift an 84 pound monitor while working for UPS Logistics (UPS). Meade notified her supervisor that she had injured her back. A few days later Meade was unable to complete her shift and, again, went home. She then sought treatment from her family physician Dr. Michael Needleman. After working for a few days at a desk job at UPS, Meade visited the ER at Jewish Hospital. UPS referred Meade to Dr. Ellen Ballard. Dr. Ballard recommended an MRI. The MRI from June 7, 2004 revealed some degenerative changes and a small focal protrusion. On August 12, 2004, Dr. Ballard declared that Meade had reached maximum medical improvement and assigned her a five percent permanent impairment rating. Starting in September 2004 Meade received treatment from Dr. Terry Davis, a pain management specialist. Dr. Davis assigned her a 58.5 total pain impairment score with an impairment class of moderately-severe impaired. Dr. Davis determined that Meade was totally disabled on November 30, 2005.

Meade also suffers from other serious medical conditions including diabetes, hypertension, and cardiac problems. Due to these conditions, Dr. Ballard recommended that Meade terminate her employment and seek Social Security benefits.

Meade's prior back issues are at the crux of this appeal. Meade acknowledged a prior back injury in the 1980s while working for the U.S. Postal Service. She was involved in a motor vehicle accident in the year 2001 but denied any injury

to her low back as a result. Meade denied she received any treatment for back issues between the years 1999 and 2004. However, the records of her family physician clearly indicate otherwise. Dr. Needleman's records indicate treatment for back pain and leg pain from a slip and fall accident on February 22, 2000, in addition to the car accident. The records indicate that on April 26, 2000, a MRI was performed after complaints of chronic persistent low back pain. Dr. Needleman's records reveal that complaints of low back pain and or leg pain continued up to December 9, 2003, when Meade's sciatica was addressed.

Throughout the proceedings, Meade did not mention the slip and fall accident in the year 2000 for which she sought treatment. She denied any low back treatment from between the years 1999 to 2004 at the final hearing on May 3, 2006. When UPS questioned this statement with medical records, Meade offered no audible response. Meade also failed to mention prior back issues to her treating physicians based on Dr. Davis' medical records indicating that Meade denied any previous back injuries.

The ALJ found that Meade suffered nothing more than a temporary exacerbation of a pre-existing active problem and that her other severe health problems were likely the reason that Meade could not return to work. In making this determination, the ALJ cited the medical record evidence that showed Meade had prior ongoing back problems before the incident. Further, the

ALJ found that Meade had been less than candid about her prior back problems. Thus, the ALJ found that Meade had failed in her burden of proof and risk of non-persuasion showing that her current back problems were due to the work incident.

Meade argues that the ALJ erred in finding that the current back problems were not caused by the alleged work injury and in dismissing her claim. Meade claims that the ALJ's findings were outside the record and were not supported by any evidence, as there was not any medical testimony to suggest a pre-existing active condition.

The WCB on appeal correctly determined that Meade's argument is without merit. An injured worker has the burden to prove every element of a claim for benefits. KRS 342.285 designates the ALJ as the finder of fact. Therefore, the ALJ, rather than the Board or a reviewing court, has the sole discretion to determine the quality, character, and substance of evidence; to draw reasonable inferences from the evidence; and to decide whom and what to believe. The court in *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky.1986) explained that a finding that favors the party with the burden of proof must be upheld if it is supported by substantial evidence and, therefore, is reasonable. A party with the burden of proof who fails to convince the finder of fact has an even greater burden on appeal. The party must show that the favorable evidence was so overwhelming that no reasonable person could have failed to have been persuaded. *Paramount Foods, Inc. v. Burkhardt*, 695

S.W.2d 418 (Ky. 1985) and *REO Mechanical v. Barnes*, 691 S.W.2d 224 (Ky.App. 1985).

Upon a thorough examination of the record, we agree with the WCB that the evidence is not so overwhelming as to compel a finding in Meade's favor.

For the aforementioned reasons, we affirm the Workers' Compensation Board.

ALL CONCUR.

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