

Commonwealth of Kentucky
Court of Appeals

NO. 2009-CA-002128-WC

MAGOFFIN COUNTY BOARD OF EDUCATION

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-07-72814

DELORES OWENS; HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** *

BEFORE: DIXON AND NICKELL, JUDGES; LAMBERT,¹ SENIOR JUDGE.

NICKELL, JUDGE: The Magoffin County Board of Education (Magoffin)

appeals from an opinion of the Workers' Compensation Board (Board) affirming

the Administrative Law Judge's (ALJ) opinion finding causation and ordering

¹ Senior Judge Joseph E. Lambert sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

Magoffin to pay for Delores Owens's total shoulder replacement surgery. On appeal, Magoffin claims the Board erred in affirming the ALJ's decision because there was no objective medical proof of causation and two orthopaedic surgeons attributed Owens's need for surgery to a preexisting condition rather than the workplace slip and fall. We disagree and affirm.

A brief statement of the facts is in order. Since 1995, Owens has worked for the Magoffin County Schools as an instructional aide for special education students. In July of 2007 she experienced sudden shoulder pain that was unrelated to her work. Dr. Mary Ireland, an orthopaedic surgeon, diagnosed her as having degenerative joint disease of the left shoulder but did not recommend surgery. Dr. Ireland referred Owens to Dr. Robert Grant, also an orthopaedic surgeon, who injected cortisone into her left shoulder. The pain resolved, the range of motion in her left shoulder was unimpeded, and no additional treatment was sought.

On October 9, 2007, while working at Middle Fork School, Owens slipped on a wet floor and fell, injuring her neck, left shoulder and left knee.² It was a "different kind of hurt" than she had experienced in July of 2007 and pain medicine provided no relief. When Owens was deposed in November 2008, the pain had developed into a "constant, constant ache." Before the slip and fall, Owens testified she had no problems moving her left shoulder. A post-slip and fall

² This appeal pertains only to the condition of Owens's left shoulder and whether the need for the recommended surgery resulted from the workplace fall or preexisting osteoarthritis.

steroid injection by Dr. Kevah Sajadi afforded minor, temporary relief. Dr. Sajadi recommended total shoulder replacement surgery.

Multiple doctors and orthopaedic surgeons treated and/or evaluated Owens after the slip and fall. An x-ray of her left shoulder, taken within days of the fall, showed “[m]oderate degenerative changes of the glenohumeral joint with hypertrophic change involving the humeral head.” Nine days after the fall, pain in Owens’s left shoulder was radiating both to her left elbow and to the left side of her neck, and her left arm had swelled to the point that she could not raise it above her head. An MRI taken nearly one month after the fall revealed “[s]evere osteoarthritic changes with shoulder joint effusion and small contusion or area of osteonecrosis of the humeral head” and a “[t]ear of the supraspinatus tendon distally.”

Owens filed a claim for benefits in October of 2008. Causation and work relatedness of the need for total shoulder replacement was a contested issue. In recounting the evidence, the ALJ noted that Dr. David Jenkinson believed all of Owens’s shoulder symptoms resulted from her “severe pre-existing osteoarthritis, but indicated that it was possible there may have been a transient increase in her symptoms related to the fall.” The ALJ also noted that Dr. Michael Best “felt that the joint replacement surgery would be the result of her longstanding pre-existing degenerative condition in the left shoulder.” The ALJ further wrote that a third physician, Dr. Anbu Nadar, “felt [Owens’s] work injury was the cause of her complaints and assessed a 10% whole body impairment rating under the A.M.A.

Guides to the Evaluation of Permanent Impairment, 5th Edition. However, he apportioned 50% of that rating to the pre-existing active condition of degenerative arthritis.” As a result of our own review of the record, we note that on the Form 107-1 Medical Report, Dr. Nadar answered “Yes” to the causation question of “Within reasonable medical probability, was [Owens’s] injury the cause of his/her complaints?”

All three doctors assessed shoulder impairment ratings based upon Owens’s loss of motion. Those ratings increased over time, beginning with Dr. Best’s assessment of seven percent on June 17, 2008, and ending with Dr. Jenkinson’s assessment of a fifteen percent impairment rating on January 7, 2009. That increase is important, because Owens testified she had a full range of shoulder motion immediately before she fell.

Following a review of all the evidence, the ALJ found Owens’s shoulder pain and the need for surgery were the result of the workplace fall. That finding was based on the testimony of Dr. Nadar and Dr. Sajadi, and Owens’s own testimony, which he deemed to be “credible.” Owens admitted suffering shoulder pain a few months before she fell, but those symptoms quickly resolved and she was asymptomatic when she fell at work. According to Owens, her shoulder has not been the same since she fell and surgery was not recommended until after her fall. No one has refuted Owens’s testimony. As stated in the ALJ’s opinion,

[b]ased on the medical evidence from Dr. Nadar and Dr. Sajadi, the [ALJ] is convinced the need for surgery is reasonable and necessary medical treatment related to

[Owens's] work related injury which has been superimposed (sic) the (sic) her pre-existing degenerative condition.

Thereafter, the ALJ ordered Magoffin to pay all of Owens's reasonable and necessary medical expenses for the cure and relief of her left shoulder injuries under KRS 342.020, including the recommended total shoulder replacement surgery.

Following the ALJ's denial of Magoffin's petition for reconsideration, Magoffin appealed to the Board which affirmed the ALJ's decision. The Board concluded Owens's testimony provided sufficient grounds for the ALJ to reject the opinions of Dr. Best and Dr. Jenkinson who believed Owens's shoulder pain persisted after its sudden flare-up in July of 2007. Citing *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979), the Board concluded Owens's own testimony could and did constitute substantial evidence about her post-injury abilities. This appeal followed.

The sole issue before us is whether the ALJ's finding of causation was supported by substantial evidence. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735 (Ky. App. 1984) and *Hudson v. Owens*, 439 S.W.2d 565 (Ky. 1969). We are convinced it was. Substantial evidence is that which is of relevant consequence capable of inducing conviction in the minds of reasonable people. *Smyzer v. B.F. Goodrich Chemical Co.*, 474 S.W.2d 367 (Ky. 1971). An ALJ has sole authority to judge the weight, credibility, and inferences to be drawn from the evidence. *Miller v. East Ky. Beverage/Pepsico, Inc.*, 951 S.W.2d 329 (Ky. 1997). As the

trier of fact, an ALJ also has sole discretion to determine the quality, character, and substance of the evidence. *Square D Co. v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Therefore, an ALJ is free to reject any testimony, and to believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same party's proof. *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000).

Magoffin argues that no medical evidence supported the ALJ's finding that Owens's current left shoulder condition and her need for total shoulder replacement surgery resulted from her workplace slip and fall in October 2007 rather than from her preexisting active severe osteoarthritis. Medical causation is a factual determination based on a legal concept. It is to "be proved to a reasonable medical probability with expert medical testimony but KRS 342.0022(1) does not require it to be proved with objective medical findings." *Brown-Forman Corp. v. Upchurch*, 127 S.W.3d 615, 621 (Ky. 2004) (citing *Staples, Inc. v. Konvelski*, 56 S.W.3d 412, 415 (Ky. 2001); *Dupree v. Kentucky Department of Mines and Minerals*, Ky., 835 S.W.2d 887 (Ky. 1992)). When a causal relationship between trauma and injury is not readily apparent to laymen, the question is one properly within the province of medical experts. *Mengel v. Hawaiian-Tropic Northwest & Central Distributors, Inc.*, 618 S.W.2d 184, 187 (Ky. App. 1981). Here, the ALJ based his decision primarily on the opinions of Dr. Nadar and Dr. Sajadi, but he did consider, as allowed by *Hush*, Owens's own testimony that her prior shoulder

pain had resolved after receiving a cortisone injection in July of 2007 and that she had full range of motion at the time of her fall in October of 2007.

Unlike *Mengel*, where the Board improperly substituted its own observations to find an absence of causation and thereby ignored medical evidence establishing causation, this case involves conflicting medical evidence. While two orthopaedic surgeons, Dr. Jenkinson and Dr. Best, attributed Owens's need for surgery exclusively to her preexisting condition, Dr. Anbu Nadar attributed fifty percent of her need for surgery to the workplace fall. Thus, contrary to Magoffin's claim, there was substantial medical evidence of record linking Owen's need for surgery to the slip and fall.

As the fact-finder, the ALJ had to determine causation based upon the evidence in the record. *Hudson*, 439 S.W.2d at 570. We agree with the Board's opinion finding that the ALJ's determination of causation was supported by substantial evidence. The ALJ was free to rely on both Dr. Nadar's medical opinion and Owens's testimony that her shoulder pain was causally related to her workplace fall in finding causation.

For the foregoing reasons, the opinion of the Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Gregory L. Little
Lexington, Kentucky

BRIEF FOR APPELLEE,
DELORES OWENS:

Randy G. Clark
Pikeville, Kentucky

