

RENDERED: NOVEMBER 2, 2012; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-000608-WC

VILLAGE OF LEBANON, LLC

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-10-94564

SONDRA THOMPSON; HONORABLE
EDWARD D. HAYS, ADMINISTRATIVE
LAW JUDGE; AND WORKERS'
COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: KELLER, TAYLOR, AND VANMETER, JUDGES.

VANMETER, JUDGE: Village of Lebanon, LLC petitions for review of an
opinion of the Workers' Compensation Board ("Board") affirming the opinion and

order of the Administrative Law Judge (“ALJ”) which awarded vocational rehabilitation benefits to Sondra Thompson. For the following reasons, we affirm.

On March 3, 2010, Thompson fell and sustained a knee injury while employed as a nurse for Village of Lebanon. She filed a claim for workers’ compensation benefits and following a hearing, the ALJ awarded her vocational rehabilitation benefits, in addition to other benefits. The Village of Lebanon appealed the ALJ’s award, arguing in part that the ALJ erred by determining that Thompson was entitled to vocational rehabilitation benefits. The Board affirmed the ALJ’s award and this petition for review followed.

The standard for appellate review of a Board decision “is limited to correction of the ALJ when the ALJ has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.” *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 866 (Ky.App. 2009) (citing *W. Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992)). We review an award by the ALJ to determine whether its findings were reasonable under the evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). The ALJ is the finder of fact and “has the sole authority to determine the quality, character, and substance of the evidence.” *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993) (citation omitted). The determination of whether to award vocational rehabilitation benefits is within the ALJ’s discretion. *Commonwealth, Transp. Cabinet v. Guffey*, 42 S.W.3d 618, 621 (Ky. 2001).

On appeal, the Village of Lebanon challenges the ALJ's award of vocational rehabilitation benefits on the basis that Thompson had already gained "suitable employment" and thus an award of vocational rehabilitation benefits was unwarranted. We disagree.

A goal of workers' compensation laws is "to restore the injured worker as soon as possible and as near as possible to a condition of self-support as an able-bodied worker." *Wilson v. SKW Alloys, Inc.*, 893 S.W.2d 800, 802 (Ky.App. 1995). Indeed, "Workers' Compensation was developed not just to compensate a worker who has been injured on the job, but also to enable the worker to reenter the job market and become employed again in a position as near as possible in pay and status to the one the claimant has been forced by injury to leave." *Id.* (citations omitted).

KRS¹ 342.710 addresses rehabilitation benefits available to injured employees, providing in pertinent part:

(3) . . . When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment.

A factual finding that an employee "is unable to perform work for which he has previous training or experience" is mandatory to a determination that a claimant qualifies for vocational rehabilitation benefits. *Edwards v. Bluegrass*

¹ Kentucky Revised Statutes.

Further, “suitable employment” has been defined as

work which bears a reasonable relationship to an individual’s experience and background, taking into consideration the type of work the person was doing at the time of injury, his age and education, his income level and earning capacity, his vocational aptitude, his mental and physical abilities and other relevant factors both at the time of the injury and after reaching his post-injury maximum level of medical improvement.

Wilson, 893 S.W.2d at 802.

Thompson is a 47-year-old woman who is a registered nurse with over fifteen years of experience in the nursing field. She is a high school graduate and has earned an associate’s degree in nursing. She worked for Village of Lebanon as a charge nurse from September 2009 until March 2010, when she was injured. Her duties involved supervising the care given to residents and the employees administering such care, and assisting patients with walking, standing and sitting. Her job required her to kneel, stoop, bend, lift, carry, turn and transfer patients.

In June 2010, Thompson returned to work at Village of Lebanon in the same capacity, but with restrictions not to bend, stoop, climb stairs, or assist patients with walking. Upon her return, she effectively reassumed her supervisory role but was unable to perform the physical activities required by the position. She felt that her coworkers resented her for not doing her share of the work and in December 2010, she resigned.

In April 2011, Thompson began working for a company by the name of Caretenders as a home health care nurse, which involved fewer hours and similar, but less, pay. In her new job, Thompson earns approximately \$900 per week, as opposed to the \$942.35 weekly salary she earned while working for Village of Lebanon. Her job at Caretenders involves making home visits and instructing patients on care. She is compensated per visit, and the number of daily visits can fluctuate. While her tasks at Caretenders are more sedentary than those required by her position at Village of Lebanon, she is still required to undertake a certain level of physical activity. Thompson indicated a desire to return to college to obtain at least a four-year degree that will enable her to find a job within the healthcare field that is full time and in compliance with her physical restrictions, and will not force her to sustain the loss of income which she is currently experiencing. Her current education level only qualifies her for hands-on nursing positions which she is physically incapable of performing. The ALJ found that additional formal education will afford Thompson a better chance at steady employment consistent with her restrictions and awarded vocational rehabilitation benefits accordingly. Based on our review of the record, we find that the ALJ applied the correct legal standard, his findings were reasonable under the evidence, and he properly exercised his discretion in awarding these benefits.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

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