

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT ANCHORAGE

B J,)
)
 Appellant,)
)
 vs.)
)
 STATE OF ALASKA, DEPARTMENT)
 OF ADMINISTRATION, DIVISION)
 OF RETIREMENT AND BENEFITS,)
)
 Appellee.)
 _____)

Case No. 3AN-15-00000 CI

DECISION AND ORDER

I. INTRODUCTION

This case presents the question of whether substantial evidence supports the Administrative Law Judge’s determination¹ that B J’s workplace injury on December 27, 2013, was not a substantial factor in causing her current disability. The State of Alaska, Department of Administration, Division of Retirement and Benefits, originally denied Ms. J’s application for occupational disability benefits on December 30, 2015. After appealing that decision twice, the case was remanded to the Office of Administrative Hearings. The DRB petitioned the Alaska Supreme Court for review of the Order of Remand. Upon granting the

¹ Decision after Remand, OAH No. 15-0062-PER (Aug. 3, 2015).

petition for review, the Court vacated the Order of Remand and ordered the case be reviewed by the Superior Court to determine if the Administrative Law Judge's decision affirming the denial of benefits was proper. This court finds that there is substantial evidence to support the ALJ's determination, and affirms the decision denying Ms. J's occupational disability benefits.

II. FACTS

Ms. J worked as a Medical Assistance Administrator for the state for many years. In 2009, Ms. J was involved in a motor vehicle accident in which she injured her knee and broke her wrist. She also began to experience back pain. Her back pain was diagnosed as degenerative disc disease. In 2012, Ms. J saw Dr. A for her back and knee pain. In October 2013, Ms. J was referred to Dr. B for pain management. On November 20, 2013, Ms. J received an intralaminar epidural steroid injection to reduce her back pain by easing the irritation and inflammation in the lower spine. On December 27, 2013, Ms. J, while at work, encountered a five pound dog named Burke. Ms. J testified that she encountered Burke in a central hallway while walking from her cubicle to the printer. While en route to the printer, Ms. J suddenly noticed that Burke was in her path and she jumped backwards to avoid stepping on him. In the process of stepping back she hit her knee and elbow against the wall and twisted or jolted her back. There is no documentation of Ms. J reporting her encounter with Burke, or her resulting

injury, until January 23, 2014. At that time, Ms. J filed a workers' compensation claim, alleging an on-the-job injury from tripping over Burke. On July 9, 2014, Ms. J applied to the DRB for occupational disability benefits. On December 30, 2014, the DRB granted Ms. J's nonoccupational disability benefits.² The DRB determined that Ms. J's back pain permanently prevented her from performing her usual duties but that the back pain was not sustained in the scope of her employment. On January 13, 2015, Ms. J filed a notice of appeal of the denial of her application for occupational disability benefits. On August 3, 2015, the OAH issued a decision affirming the DRB's denial. Ms. J appealed the decision to the Superior Court on August 14, 2015. Superior Court Judge Charles Ray issued an Order of Remand on August 16, 2017. The DRB filed a petition for review of the Order of Remand to the Alaska Supreme Court. The Court granted the petition for review and vacated the Order of Remand issued by Judge Ray. The Court remanded the case to this court for "appellate review of the August 2, 2015 Decision after Remand of the Office of Administrative Hearings, and specifically the Administrative Law Judge's determination that Ms. J's workplace encounter

² *See* AS 39.35.680(24). A nonoccupational disability is any physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee's usual duties. A nonoccupational disability differs from an occupational disability in that the proximate cause of the condition is not sustained while in the performance or within the scope of the employee's duties.

with the dog in December 2013 was not a substantial factor in causing her disability.”³ The case now comes before this court to conduct the appropriate review.

III. STANDARD OF REVIEW

When the superior court acts as an intermediate court of appeal in an administrative matter, the court independently reviews the merits of the administrative board’s decision.⁴ The administrative board’s factual findings are reviewed “to determine whether they are supported by substantial evidence.”⁵ Substantial evidence is defined as “such relevant evidence as a reasonable mind might accept as adequate to support the Board’s conclusion.”⁶ The court

³ Order, Supreme Court No. S-00000 (Nov. 21, 2017).

⁴ *Shea v. State, Dep’t of Admin., Div. of Ret. and Benefits*, 267 P.3d 624, 630 (Alaska 2011) (citing *Hester v. State, Pub. Employees’ Ret. Bd.*, 817 P.2d 472, 474 (Alaska 1991)).

⁵ *Lopez v. Adm’r, Public Employees’ Ret. Sys.*, 20 P.3d 568, 570 (Alaska 2001) (citing *Hester v. State, Pub. Employees’ Ret. Bd.*, 817 P.2d 472, 476 (Alaska 1991)).

⁶ *Id.*

determines only whether substantial evidence exists and does not choose between competing inferences or evaluate the strength of the evidence.⁷

“The conclusion that a work-related injury or hazard is not a substantial factor in causing an employee’s disability must be supported by substantial evidence. It is a legal question whether the quantum of evidence is substantial enough to support such a conclusion in the contemplation of a reasonable mind.”⁸ Here, the court is reviewing whether there is substantial evidence to support the ALJ’s determination that Ms. J’s workplace encounter with Burke on December 27, 2013, was not a substantial factor in causing her disability.

In her brief on appeal, Ms. J mischaracterizes the purpose of this appeal. She explains that two main points must be proven: “the in the office dog injury occurred and if the accident in the office caused [her] medical disability.” This court is not considering either of those points. The purpose of this court’s review is to determine whether substantial evidence supports the ALJ’s determination.

⁷ *Shea v. State Dep’t of Admin., Div. of Ret. and Benefits*, 267 P.3d 624, 630 (Alaska 2011) (citing *Lopez v. Adm’r, Public Employees’ Ret. Sys.*, 20 P.3d 568, 570 (Alaska 2001)).

⁸ *Id.* at 630.

IV. DISCUSSION

A. The Statutory Requirements for Occupational Disability Benefits

Alaska Statute 39.35.410(a) provides that “An employee is eligible for an occupational disability benefit if employment is terminated because of a total and apparently permanent occupational disability.”⁹ Alaska Statute 39.35.680(27) defines occupational disability as:

A physical or mental condition that, in the judgment of the administrator, presumably permanently prevents an employee from satisfactorily performing the employee’s usual duties for an employer or the duties of another comparable position or job that an employer makes available and for which the employee is qualified by training or education; however, the proximate cause of the condition must be a bodily injury sustained, or a hazard undergone, while in the performance and within the scope of the employee’s duties and not the proximate result of the willful negligence of the employee.¹⁰

“An employee claiming occupational disability benefits bears the burden of proving by ‘a preponderance of the evidence that the disability was proximately caused by an injury which occurred in the course of employment.’”¹¹ Where a

⁹ AS 39.35.410(a).

¹⁰ AS 39.35.680(27).

¹¹ *Shea v. State, Dep’t of Admin., Div. of Ret. and Benefits*, 267 P.3d 624, 631 (Alaska 2011) (citing *State, Pub. Employees’ Ret. Bd. v. Cacioppo*, 813 P.2d 679, 682 (Alaska 1991)).

disability has multiple causes, one or more being occupational, the record must establish that the occupational injury is a substantial factor in the disability in order for benefits to be awarded.¹²

The Alaska Supreme Court has adopted the substantial factor causation standard in occupational disability benefits cases. “The substantial factor test requires a claimant to demonstrate that: ‘(1) the disability would not have happened ‘but for’ an injury sustained in the course and scope of employment; and (2) reasonable persons would regard the injury as a cause of the disability and attach responsibility to it.’”¹³ The ALJ determined that Ms. J did not carry her burden of demonstrating that the encounter with Burke was the “but for” or proximate cause of her disability.

B. Substantial Evidence Supported the ALJ’s Finding that Ms. J’s Workplace Incident Was Not a Substantial Factor in Causing Her Current Disability.

The ALJ concluded that Ms. J did not prove that the encounter with Burke was a substantial factor in causing her disability.¹⁴ Four doctors offered opinions regarding Ms. J’s disability, with three of the doctors giving opinions of whether

¹² *Id.* at 631.

¹³ *Id.* at 633 (quoting *Doyon Universal Servs. v. Allen*, 999 P.2d 764, 770 (Alaska 2000)).

¹⁴ Decision after Remand at 20.

the encounter with Burke was a substantial factor. The ALJ did not consider Dr. B's opinion because he did not express any opinion as to causation.¹⁵ The ALJ gave no weight to Dr. E's opinion because the record did not support it.¹⁶ The ALJ found the opinions of Dr. D and Dr. C to be most persuasive.¹⁷ The ALJ's description of each doctor's opinion is supported by the record and establishes substantial evidence for the ALJ's finding.

Dr. D reviewed medical documentation, compared the results of the MRI's taken before and after Ms. J's encounter with Burke, and conducted an in-person physical examination of Ms. J. Dr. D did not find "any progression of the previously documented disc pathology."¹⁸ He concluded that Ms. J "had a subjective worsening of a pre-existing discogenic, chronic low back problem, but

¹⁵ *Rivera v. Wal-Mart Stores, Inc.*, 247 P.3d 957, 964 (Alaska 2011) (finding no error when Worker's Compensation Board discounted treating physician's opinion when it fails to make a definitive statement on causation).

¹⁶ Dr. E supported her opinion by explaining that before the work-related injury on December 27, 2013, back pain had never been a primary complaint of Ms. J. This is contradicted by the record which shows that Ms. J has complained of extreme back pain to medical providers on numerous occasions before December 2013.

¹⁷ *See Ayele v. Unisea, Inc.*, 980 P.2d 955, 958 (Alaska 1999) (favoring expert opinions on causation over lay opinions).

¹⁸ Admin. R. at 219.

has no objective evidence of worsening of the underlying condition.”¹⁹ In summary, Ms. J’s feels that her condition has worsened, but no medical evidence supports her claim.

Dr. C reviewed Ms. J’s records, conducted a physical examination of Ms. J, and reviewed Dr. D’s independent medical examination. Dr. C determined that Ms. J’s encounter with Burke on December 27, 2013, could have led to a strain of the lumbar muscle or a mild aggravation of her existing condition that would heal within a couple of weeks. This opinion is consistent with Dr. D’s opinion that no objective worsening of Ms. J’s back condition has occurred.

This court’s review of the record reveals substantial evidence to support the finding that Ms. J’s disability is the result of degenerative disc disease.²⁰ Degenerative disc disease is caused by a combination of genetics, age, and weight. One symptom of degenerative disc disease is pain. Ms. J experienced this symptom and at such a significant level that she received an MRI and steroid injection, prior to her encounter with Burke. Because surgery is not appropriate for Ms. J, due to her degree of deterioration, the back pain she experiences will recur over time.

¹⁹ *Id.*

²⁰ *Id.* at 189-90, 199, 203, 219.

Ms. J's own categorization of her back pain does not align with the opinions of her own medical professionals. Dr. B, who Ms. J was referred to for chronic knee and back pain, diagnosed the underlying source of Ms. J's back pain as "secondary lumbar disc disease."²¹ However, Ms. J's self-diagnosis is "simple back pain" that she "got fixed in November 2013."²² This mischaracterizes her back pain in two ways: First, her complaints of back pain prior to the encounter with Burke were extreme, not simple, rating it an 8/10.²³ And second, degenerative disc disease to the extent seen in Ms. J is not "fixed" with a steroid injection, rather the pain is managed temporarily.

This court finds the ALJ's determination to be supported by substantial evidence. In addition to the opinions of Dr. D and Dr. C, Ms. J testified to two other falls around the time of her encounter with Burke that could also have caused a subjective worsening in the level of pain she experienced.²⁴

²¹ *Id.* at 199, 203.

²² Brief of Appellant at 4.

²³ Admin. R. at 190.

²⁴ Ms. J testified that in December 2013 she slipped in the parking lot on the way to her car resulting in a trip to the emergency room because her knee was bleeding. Ms. J disputes a second slip and fall on January 30, 2014, which resulted in her trip to the emergency room.

V. CONCLUSION

For the reasons set forth above, this court affirms the ALJ's determination that Ms. J's encounter with Burke on December 27, 2013, was not a substantial factor in causing her disability.

Dated this 8th day of January, 2018, at Anchorage, Alaska.

Signed

FRANK A. PFIFFNER
Superior Court Judge

I certify that on 1-8-18 a copy
of the above was delivered to:

J. Wilkerson
B. J

Signed

B. Cavanaugh, Judicial Assistant

[This document has been modified to conform to the technical standards for publication.]