

COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
FILE NO. 2007-SC-000688-WC

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JAN 23 2008  
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SUPREME COURT

ST. JOSEPH HOSPITAL

APPELLANT

VS.

PAMELA LITTLETON-GOODAN;  
HONORABLE R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE and  
WORKERS' COMPENSATION BOARD

APPELLEES

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**BRIEF FOR APPELLEE,  
PAMELA LITTLETON-GOODAN**

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Brief was served by mailing same, postage pre-paid, to: Ronald J. Pohl, Esq., Pohl, Kiser & Aubrey, 167 West Main Street, Suite 100, Lexington, KY 40507, the Hon. R. Scott Borders, ALJ, 8120 Dream Street, Florence, KY 41042 and Workers' Compensation Board, Office of Workers' Claims, 657 Chamberlin Avenue, Frankfort, KY 40601. Ten copies were mailed via U.S. Registered Mail to Susan Stokley Clary, Clerk, Kentucky Supreme Court, 209 New Capitol Building, 700 Capital Avenue, Frankfort, Kentucky 40601-3488, all on this the 22<sup>nd</sup> day of January, 2008.

  
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**STATEMENT CONCERNING ORAL ARGUMENT**

Appellee, Pamela Littleton-Goodan (hereinafter "Goodan"), does not believe oral arguments are necessary.

**STATEMENT OF POINTS AND AUTHORITIES**

	<u>PAGE(S)</u>
<i>Western Baptist Hospital v. Kelly,</i> 827 S.W.2d 685 (Ky. 1992) . . . . .	1
<i>W. E. Caldwell Co. v. Borders,</i> 193 S.W.2d 453 (Ky.1946) . . . . .	2
<i>Copar, Inc. v. Rogers,</i> 127 S.W.3d 554 (Ky.2003) . . . . .	2
803 KAR 25:010 Section 8(4) . . . . .	3

## COUNTER-STATEMENT OF THE CASE

Goodan filed her original claim alleging bilateral carpal tunnel syndrome, rotator cuff impingement and bilateral thoracic outlet syndrome. The parties entered into a settlement agreement in 1997 which did not include a waiver of future medical expenses; however, it was noted that the Employer disputed work-relatedness. On April 13, 2005, the Employer filed a motion to reopen and a medical fee dispute contending that Goodan's carpal tunnel syndrome and thoracic outlet syndrome were not causally related to her work and contesting approximately \$500.00 per month prescription medication bills.

In his decision, the ALJ relied upon medicals records from Dr. Atasoy which were dated back from 1994, as well as a Form 107 attached to the original application for benefits, to find for Goodan on the issue of causation and that the medical treatment in question was, indeed, related to the 1991 work injury, and reasonable and necessary. The Employer filed a Petition for Reconsideration arguing that the ALJ had relied upon a medical report that was not identified as evidence in the record and misinterpreted another medical report in the rendering of his decision, which was overruled. The Employer appealed to the Board, who ruled that the ALJ did not err in relying upon Dr. Atasoy's report because it was attached to the original Form 101.

The Kentucky Court of Appeals affirmed the Board. The Employer now requests review by this Honorable Court.

COUNTER-ARGUMENT

The function of appellate courts is to correct the Board only where the 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 (Ky. 1992).

In this case, the decision of the ALJ, which has been affirmed by both the Board and the Court of Appeals, was proper under the law and must be affirmed by this Honorable Court.

The Employer argues that because Goodan did not specifically designate the Form 107 of Dr. Atasoy that was attached to her Form 101, it was error for the ALJ to rely upon same. However, the Board and the Kentucky Court of Appeals disagreed. The decisions below in this case were not erroneous or characterized by an abuse of discretion. Goodan filed a copy of her entire chart from Dr. Atasoy's office, and Dr. Atasoy is listed on the Hearing Order as evidence to be considered by the ALJ. The fact that the ALJ

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In this case, the decision of the ALJ, which has been affirmed by both the Board and the Court of Appeals, was proper under the law and must be affirmed by this Honorable Court.

The Employer argues that because Goodan did not specifically designate the Form 107 of Dr. Atasoy that was attached to her Form 101, it was error for the ALJ to rely upon same. However, the Board and the Kentucky Court of Appeals disagreed. The decisions below in this case were not erroneous or characterized by an abuse of discretion. Goodan filed a copy of her entire chart from Dr. Atasoy's office, and Dr. Atasoy is listed on the Hearing Order as evidence to be considered by the ALJ. The fact that the ALJ considered the totality of the medical records/reports of Dr. Atasoy, including the Form 107 submitted with her initial Form 101, to determine that her condition was in fact work related, is proper under the law, and his decision should not be disturbed.

The ALJ, in his opinion, noted that the Employer had submitted evidence from Drs. Primm and Goldman, both of whom concluded that her condition was not work related. It is very important to note the fact that neither Dr. Primm nor Dr. Goldman had been provided any medical records from Dr. Combs, Goodan's prior surgeon, before rendering an opinion on causation. The third physician who examined Goodan at the Employer's request, Dr. Burgess, indicated that he could not render an opinion on causation due to the fact that he had not been provided medical records of her prior treatment. The ALJ simply did not feel that the Employer had met its burden of proof in the medical fee dispute and he was within his authority to so find.

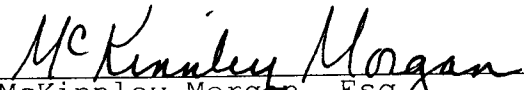
As noted by the Board, once a claim is reopened with the Office of Workers Claims the "Case Files" section of the OWC reconstructs a paper file for the ALJ containing the original Form 101 as well as its attachments. The Board, relying on *W. E. Caldwell Co. v. Borders*, 193 S.W.2d 453 (Ky.1946) and *Copar, Inc. v. Rogers*, 127 S.W.3d 554 (Ky.2003), ruled that the ALJ properly relied upon Dr. Atasoy's Form 107 as it was attached to the original Form 101 which he had received as part of the reconstructed file from the OWC in Frankfort, and as evidence with probative value then it was proper for the ALJ to rely upon it in formulating his conclusion regarding causation. 803 KAR

25:010 Section 8(4) provides that all medical reports filed with Form 101, 102, or 103 shall be admitted into evidence without further order if: (a) an objection is not filed prior to or with the filing of Form 111; and (b) the medical reports comply with Section 10 of this administrative regulation. Since the Form 107 was properly attached to the original 101 then the report of Dr. Atasoy was properly considered by the ALJ.

**CONCLUSION**

The decisions of the ALJ and the Board were properly affirmed by the Court of Appeals, and should not be disturbed by this Honorable Court.

Respectfully submitted,

  
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