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IN THE
COURT OF APPEALS OF INDIANA

MARIA LOPEZ GARCIA,	)	
	)	
Appellant-Plaintiff,	)	
	)	
vs.	)	No. 93A02-1012-EX-1425
	)	
AGILE RESOURCES, INC.,	)	
	)	
Appellee-Defendant.	)	

APPEAL FROM THE INDIANA WORKER'S COMPENSATION BOARD
Linda P. Hamilton, Chairperson
Cause No. C-175367

September 12, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Maria Lopez-Garcia appeals the decision of the Full Worker's Compensation Board of Indiana (Full Board) adopting and concurring in the Single Hearing Member's decision denying Lopez-Garcia's application for adjustment of claim. Lopez-Garcia presents the following restated issue for our review: Did the Full Board fulfill its statutory duties when reviewing Lopez-Garcia's claim?

We affirm.

Agile Resources, Incorporated (Agile) hired Lopez-Garcia on October 14, 2003. On January 19, 2005, during the course of her employment with Agile, Lopez-Garcia reported that she had sustained a back injury while pushing a pallet at work. She was provided medical treatment with US Health Works where she was diagnosed with lumbar strain and cervical strain. Despite receiving treatment, Lopez-Garcia continued to complain of pain and was referred to a physiatrist for evaluation.

On February 16, 2005, she was seen by Dr. Julie Tuttle, who confirmed the diagnosis and assigned work restrictions and further conservative care. At subsequent visits Dr. Tuttle was of the opinion that Lopez-Garcia's complaints of pain were out of proportion to the doctor's findings in her neck and back and that she was tolerating physical therapy exercises without difficulty. As of April 11, 2005, Dr. Tuttle continued to believe that Lopez-Garcia's complaints of pain were disproportionate to the doctor's findings and released her to return to regular duty at work, having been deemed at maximum medical improvement with no work restrictions. On August 29, 2005, Dr. Tuttle provided a 0% permanent partial impairment rating by letter, confirming that Lopez-Garcia had reached maximum medical improvement by April 11, 2005.

Lopez-Garcia continued to complain of pain and treated with another doctor who ordered x-rays and an MRI performed. Those tests results were normal and that doctor opinioned that Lopez-Garcia had a musculoligamentous, or lower back, strain. Lopez-Garcia filed her application with the Indiana Worker's Compensation Board on June 17, 2005.

Agile Resources referred Lopez-Garcia to another doctor for an evaluation. That doctor found that she had suffered a minor strain to the neck and low back in January 2005, and that she did not require any additional care or evaluation. The doctor also agreed with the 0% permanent partial impairment rating. Lopez-Garcia's employment with Agile was terminated on May 6, 2005. On July 21, 2008, she was seen by a board certified neurosurgeon, who, after conducting a series of tests, recommended a fusion of her spine, and that the surgery was reasonable and necessary to alleviate Lopez-Garcia's back pain.

On March 2, 2010, her claim proceeded to a hearing before the Single Hearing Member of the Indiana Worker's Compensation Board. On July 7, 2010, the Single Hearing Member issued his decision denying Lopez-Garcia's claim. She sought review of her claim by the Full Board, and on November 30, 2010 issued its decision adopting the findings and concurring in the decision of the Single Hearing Member denying her claim.

Lopez-Garcia appeals, claiming that the Full Board did not fulfill its statutory duties when reviewing her claim. In particular, she argues that by statute the Full Board is required to conduct a hearing *de novo* or conduct a careful review of the evidence submitted to the Single Hearing Member. Ind. Code Ann. § 22-3-4-7 (West, Westlaw current through 2011 1st Reg. Sess.). Lopez-Garcia claims that because the Full Board's order states only that the Full Board "heard arguments of counsel" and being duly advised in the premises adopted and

concurred in the Single Hearing Member's decision, there was no meaningful review of the submitted evidence by the Full Board. *Appellant's Appendix* at 4-5. As such, she argues that the Full Board's decision was arbitrary and capricious and violated her right to procedural due process. We disagree.

When a decision of the Full Board is challenged on appeal, we are bound by the factual determinations of the Full Board and may not disturb them unless the evidence is undisputed and leads inescapably to a contrary conclusion. *Kovatch v. A.M.General*, 679 N.E.2d 940 (Ind. Ct. App. 1997). We must consider only the evidence and reasonable inferences therefrom which support the Full Board's findings. *Id*. We neither reweigh the evidence nor reassess the witnesses' credibililty as these are the functions of the Full Board. *Id*. If the Full Board reaches a legitimate conclusion from the facts before it, this court cannot disturb that conclusion although it might prefer another equally legitimate conclusion. *Id*.

Lopez-Garcia claims that the following factors point to the conclusion that the Full Board did not properly review the evidence in her case: (1) The Full Board's decision makes reference only to the "arguments of counsel"; (2) the decision does not itself contain findings of fact; and (3) the record was in the possession of the court reporter for a period of time.

If review of the Single Hearing Member's decision is requested, the Full Board may either look over the transcript or conduct a full hearing *de novo*. I.C. § 22-3-4-7. The Full Board should "cautiously scrutinize any statements or rationale offered by a hearing officer in the initial and summary disposition of a workmen's compensation claim." *Rork v. Szabo Foods*, 436 N.E.2d 64, 67 (Ind. 1982). "Where those statements or findings are supported by

the evidence and embody the requisite specificity to satisfy the various purposes of the requirement, the [Full] Board should not hesitate to adopt and incorporate by reference the hearing officer's work." *Id*. The Full Board is not prohibited from adopting the Single Hearing Member's decision. *Wayman v. J & S Petroleum, Inc.*, 694 N.E.2d 767 (Ind. Ct. App. 1998).

Here, the Full Board concurred with the Single Hearing Member's decision and adopted and incorporated it by reference in its own order. Furthermore, the fact that the Full Board's order did not explicitly state that it reviewed the record made during the hearing before the Single Hearing Member does not support the implication that it failed to do so. Quite to the contrary, the only way the Full Board could determine that the Single Hearing Member's findings were supported by the evidence such that the decision was worthy of adoption by the Full Board is through a careful review of the record. Furthermore, to the extent Lopez-Garcia's suggests that the court reporter's possession of the evidence in February of 2011 supports her argument that the Full Board did not review the evidence, this argument is not persuasive. The Full Board held oral argument on the matter on October 18, 2010 and issued its decision on November 30, 2010. Lopez-Garcia filed her notice of appeal on December 20, 2010. The Full Board's clerk issued its notice of completion of the record on January 13, 2011. We find no error here.

Judgment affirmed.

DARDEN, J., and VAIDIK, J., concur.