OPINION ENTERED: APRIL 19, 2013

CLAIM NO. 200575648

BATES CONTRACTING & CONSTRUCTION, INC. PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

DAVID SCOTT WILBURN,
DR. MITCHELL WICKER, HAZARD CLINIC
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman, STIVERS and SMITH, Members.

ALVEY, Chairman. Bates Contracting and Construction, Inc. ("Bates") appeals from the October 16, 2012 opinion and order rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") and from the November 8, 2012 opinion and order on reconsideration. Relying on the testimony of David Scott Wilburn ("Wilburn") and the medical records of Dr.

Mitchell Wicker, the ALJ ruled in Wilburn's favor in a medical dispute filed by Bates. Bates argues the ALJ's findings are not supported by substantial evidence. We disagree and affirm.

Wilburn sustained a cervical injury on July 27, 2005 while working as a roof bolter. Wilburn underwent a cervical discectomy and fusion performed by Dr. James Bean on October 5, 2005. Wilburn settled his claim by agreement approved on March 5, 2007.

Bates filed a Form 112, Medical Fee Dispute, and a motion to reopen on March 12, 2012, contesting the reasonableness and necessity of monthly office visits with Dr. Wicker and prescriptions for Tramadol, OxyContin and Lidoderm.

In support of the reopening, Bates filed the report of Dr. Henry Tutt, who performed an independent medical evaluation ("IME") on January 17, 2012 at its request. Dr. Tutt stated Wilburn has a solid arthrodesis with no finding correlative with his persisting complaints. Dr. Tutt considered Wilburn's radiculopathy resolved. Dr. Tutt indicated Wilburn's present problem is simply iatrogenic opioid dependence. Dr. Tutt found no need for prescribed pain medication beyond six to twelve weeks following surgery. Dr. Tutt stated Wilburn had no objective medical

findings relating to the work injury. Rather, he had non-physiologic findings compatible with symptom magnification.

Bates filed the February 13, 2012 report of Dr. F. Albert Olash, who conducted peer review of the ongoing monthly visits with Dr. Wicker and the contested medications. Dr. Olash opined monthly visits and narcotic analgesics were not medically necessary or appropriate. Dr. Olash agreed with the opinions expressed by Dr. Tutt in his report.

Wilburn filed records from Dr. Wicker documenting treatment from July 6, 2011 through June 20, 2012. The records indicate Wilburn was seen on a monthly basis for chronic neck and shoulder pain. Notes from August 31, 2011; September 28, 2011; and October 26, 2011 indicate increasing neck pain. Additionally, notes from June 8, 2012 and June 20, 2012 indicate Wilburn's neck condition had deteriorated.

Wilburn testified at the hearing held September 26, 2012. He stated the medications prescribed by Dr. Wicker provided some relief from his pain. He described Dr. Wicker as "very strict" and doubted the doctor would allow quarterly visits to monitor medications.

In the October 16, 2012 opinion and order, the ALJ found Wilburn's testimony credible and made the following findings:

> In this case I find compelling the evidence from Dr. Wicker, the plaintiff's treating physician. He has explained the reasons and need for the plaintiff's continued monthly office visits and prescriptions for Tramadol, Oxycontin and Lidoderm. For these reasons, I find the disputed ongoing monthly office visits with Dr. Wicker and his prescriptions for Tramodol, Oxycontin and Lidoderm to be reasonable and necessary for the cure or relief of the effects of the plaintiff's work injury. These disputed monthly office visits and prescriptions for Tramodol, Oxycontin and Lidoderm are, therefore, compensable.

On October 26, 2012, Bates filed a petition for reconsideration arguing Dr. Wicker did not offer an explanation of the need of continued office visits and the contested medications. Further, Bates contended the ALJ did not adequately explain his rejection of the evidence from Drs. Tutt and Olash.

The ALJ issued his opinion and order on reconsideration on November 8, 2012 indicating he heard Wilburn's testimony, reviewed the medical evidence, and reaffirmed the opinion.

On appeal, Bates argues the ALJ's decision is not supported by substantial evidence. Bates contends the records from Dr. Wicker do not explain the reasonableness or necessity of the contested treatment and prescriptions. Bates contends the records do not address the subject of whether the treatment was reasonable or necessary for the

cure and relief of the work-related injury. Bates contends the records do nothing more than document that treatment was rendered. Bates again argues the ALJ erred in offering no explanation for the rejection of the evidence from Drs. Tutt and Olash.

In a post-award medical fee dispute, the burden is on the employer to prove the contested medical expenses are unreasonable and/or unnecessary. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991). The claimant, however, bears the burden of proving work-relatedness. *See* Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

Kentucky law holds when the party with the burden of proof before the ALJ is unsuccessful, the sole issue on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). As long as any evidence of substance supports the ALJ's opinion, it cannot be said the evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Although the reports of Dr. Tutt and Dr. Olash indicate the contested office visits and prescribed medications were not reasonable or necessary, the mere presence of such evidence is not sufficient to reverse the decision of the ALJ. Pursuant to KRS 342.275 and KRS 342.285, the ALJ, as the fact-finder, determines the quality, character, and substance of all the evidence and is the sole judge of the weight and inferences to be drawn from the evidence. Square D Company v. Tipton, supra; Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it was presented by the same witness or part of the same party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).

As is his prerogative, the ALJ chose to rely on the records of Dr. Wicker in resolving the dispute. Those records document deterioration in Wilburn’s condition and persistent complaints of pain. Wilburn testified regarding his ongoing symptoms and stated the medications provided some relief of his pain. Treatment which provides even temporary relief from the effects of the work injury may be determined to be compensable. National Pizza Company v. Curry, 802 SW2d 949 (Ky. App. 1991).

Wilburn’s testimony, which the ALJ found credible, and Dr. Wicker's medical records constitute substantial evidence in support of the ALJ's determination the contested office visits and medications were reasonable and necessary treatment, and a different result is not compelled. While the ALJ’s findings were minimal, they were sufficient to apprise the parties of the basis for his decision. An ALJ is only required to make sufficient findings of fact to permit meaningful review on appeal. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). There being substantial evidence to support the ALJ’s conclusion, the ALJ's finding cannot be disturbed.

Accordingly, the October 16, 2012 opinion and order of Hon. William J. Rudloff, Administrative Law Judge and the November 8, 2012 opinion and order on reconsideration are **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

SMITH, MEMBER, NOT SITTING.

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