OPINION ENTERED: July 31, 2012

CLAIM NO. 200500744

BOBBY WORKMAN PETITIONER

VS. **APPEAL FROM HON. J. LANDON OVERFIELD, CHIEF ADMINISTRATIVE LAW JUDGE**

TWIN RESOURCES, LLC
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING
* * * * * *

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

STIVERS, Member. Bobby Workman ("Workman") appeals from the December 12, 2011, Order of Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") summarily resolving a medical fee dispute in favor of Twin Resources, LLC ("Twin Resources") and relieving Twin Resources "from the responsibility of payment of the contested medical expenses" and "from the responsibility of payment of any

similar medical expenses for treatment of the same condition by the same medical provider."

Because of the issue raised on appeal, a recitation of the procedural history is necessary. In a January 20, 2006, opinion and award, the Hon. Donna H. Terry, Administrative Law Judge ("ALJ Terry") determined Workman sustained compensable neck and back injuries, each of which resulted in a 2% impairment for a total impairment of 4%.[1] ALJ Terry subsequently issued a March 23, 2006, final opinion and order determining Workman's average weekly wage ("AWW"). On April 17, 2006, ALJ Terry entered an amended opinion and final order correcting a mistake contained in the March 23, 2006, final opinion and order. ALJ Terry's decision was affirmed by this Board on September 1, 2006.

In 2008, Twin Resources filed a motion to reopen and Form 112 medical fee dispute.[2] A portion of the medical fee dispute related to treatment rendered or proposed to be rendered by Dr. David Weinsweig, since on October 23, 2008, CALJ Terry entered an order joining Dr. Weinsweig as a party. On November 26, 2008, CALJ Terry sustained Twin

[1] In a February 27, 2006, order, ALJ Terry amended her opinion to correct a typographical error.

[2] Although we are unable to find Twin Resources' motion and Form 112 in the record, it is apparent from the subsequent orders entered, Twin Resources filed both pleadings.

Resources' motion to reopen to the extent the matter would be referred to an ALJ for final adjudication. The medical fee dispute was assigned to Hon. Douglas W. Gott, Administrative Law Judge ("ALJ Gott"). In a September 1, 2010, opinion and order, ALJ Gott noted initially the primary issue was the compensability of low back surgery proposed by Dr. Weinsweig and the medical fee dispute was later supplemented to contest various medications. In his findings and conclusions, ALJ Gott noted as follows: "The first issue raised was the recommendation for surgery, but that issue is now moot based on Dr. Weinsweig's note of February 24, 2009." ALJ Gott then resolved the remaining issues. Workman filed a notice of appeal appealing the September 1, 2010, opinion and order of ALJ Gott, which was subsequently dismissed by order December 8, 2010.

On September 6, 2011, Twin Resources filed another motion to reopen and Form 112 stating in the motion that the purpose of filing the Form 112 is as follows:

> [F]or the purpose of determining whether a request for pre-approval of cervical fusion surgery consisting of an anterior cervical discectomy and allograft fusion with plating at C4-5 and probably also C3-4 is for the work-related injury that is the subject of this case and reasonable and necessary and compensable under the K.R.S. 342.020.

Twin Resources stated it had already filed one medical fee dispute involving Workman and Dr. Weinsweig regarding proposed L3-4 lumbar microdiscectomy. Twin Resources noted Dr. Weinsweig subsequently withdrew the surgical request. Twin Resources stated Dr. Weinsweig has now billed it for another surgery consisting of anterior cervical discectomies and allograft fusion with plating at C3-4 and C4-5. Twin Resources stated as follows:

> Attached is an [sic] utilization review report of Dr. Richard Mortara, a Board-certified neurosurgeon, Index No. 3024. Dr. Mortara found that there was no evidence of a radiculopathy or myelopathy. Dr. Mortara indicated that clinical examination and neurosurgical examination of the cervical spine was normal. While Plaintiff reports chronic neck and back pain the MRI scan did not show any specific abnormality at C3-4 or C4-5 where the request for anterior cervical discectomy and fusion was targeted according to Dr. Weinsweig's records. Dr. Mortara stated that there was a significant lack of correlation with MRI scan and clinical examinations and that it is very questionable as to how the determination was made by Dr. Weinsweig as to what levels to operate on. Dr. Mortara stated that the Plaintiff did not meet the guidelines for anterior cervical fusion from the Official Disability Guidelines publication or Milliam Care Guidelines. Relief from liability for this medical billing is respectfully requested.

The Form 112 filed by Twin Resources notes a final utilization review decision with supporting medical

opinions is attached. In describing the nature of the dispute, Twin Resources stated, in part, as follows:

> The official record from the prior litigation is absent any mention of herniated disc at any cervical level. Defendant/Employer has been billed by Plaintiff and Dr. David Weinsweig for an anterior cervical discectomy and fusion C4-5 and probably C3-4. These conditions are not work-related and not covered under the open medical obligation of the Defendant/Employer for the October 15, 2004 work accident which involved neck and low back strains only. Also attached is an utilization review of Dr. Richard Mortara, Index No. 3024. His report establishes that the proposed cervical fusion surgery is not reasonable and necessary for the cure and/or relief of Plaintiff's work-related injury. Relief from liability for this medical billing is respectfully requested.

Among the documents attached to the Form 112 are the August 2, 2011, "Utilization Review Physician Pre-Certification Determination" of Dr. Richard H. Mortara and the "Utilization Review Notice of Denial." Twin Resources also attached numerous records from the Spine and Pain Center, the March 10, 2011, "MRI Cervical Spine WO Contrast," report, and the March 10, 2011, "MRI Lumbar Spine WO Contrast" report. Also attached is the July 27, 2011, letter of Dr. Weinsweig to Dr. Lon Lafferty.

On September 28, 2011, CALJ Overfield entered the following order:

This matter comes before the undersigned Chief Administrative Law Judge (CALJ) upon the Frankfort Motion Docket for consideration of a motion to reopen and Form 112, medical fee dispute. Therein, the Defendant Employer is seeking to reopen Plaintiff's claim to resolve a dispute regarding the compensability of Plaintiff's medical treatment, specifically treatment rendered or to be rendered by David Weinsweig, M.D. Therefore, being otherwise duly and sufficiently advised, **IT IS HEREBY ORDERED** as follows:

1. David Weinsweig, M.D. is JOINED as a party to this medical fee dispute in order to have the opportunity to present proof regarding the compensability of the contested medical expenses or proposed procedure.

2. Defendant Employer has made a *prima facie* showing for reopening and the motion to reopen is **SUSTAINED** and the claim is assigned to the CALJ.

3. Proof taking for all parties shall commence as of the date of this notice and shall extend for **fifteen (15) days**, followed by **thirty (30) days** for Plaintiff and Dr. Weinsweig only, and **fifteen (15) days** thereafter for rebuttal by Defendant Employer. All evidence must include a certificate of service stating that a copy of the evidence has been provided to all parties. The evidence submitted with the motion to reopen and/or the Form 112 shall not be considered unless notice is given by Defendant Employer of its intent to rely on the evidence for support of its position in this medical fee dispute.

> 4. If no evidence is filed by Plaintiff or Dr. Weinsweig this matter may be submitted on the record to the CALJ and may result in this dispute being resolved based upon the pleadings and evidence in record.
>
> **FAILURE OF THE CLAIMANT OR JOINED PROVIDER TO FILE EVIDENCE IN RESPONSE TO THE PROOF SUBMITTED IN SUPPORT OF THE MEDICAL FEE DISPUTE BY THE END OF THE PROOF DEADLINES MAY RESULT IN A FINDING THAT THE CHALLENGED TREATMENT IS NOT COMPENSABLE.**

(emphasis in original).

After no evidence or response was submitted by Workman or Dr. Weinsweig, on December 12, 2011, the CALJ entered the following order:

> This matter comes before the Chief Administrative Law Judge (CALJ) upon the Frankfort Motion Docket for consideration of a motion by the Defendant Employer to contest certain medical expenses pursuant to K.R.S. 342.020. The motion was supported by the report of Richard Mortara, M.D., who opined that the contested medical treatment is not reasonable and necessary for the cure and relief from the effects of Plaintiff's work-related injury. An order rendered on September 28, 2011 granted the Plaintiff and the joined medical provider forty-five (45) days to submit evidence and noted that failure to do so many result in a summary resolution of the medical fee dispute. No evidence or any other type of response was filed by the Plaintiff or the joined medical provider. The CALJ having reviewed the pleadings and being fully and sufficiently advised thereby,

> **IT IS THEREFORE ORDERED** as follows:
>
> 1. Defendant Employer has established a *prima facie* showing to establish the basis for reopening and the motion to reopen is **GRANTED**.
>
> 2. The contested medical expenses are, based on the evidence and pleadings in the record, unreasonable and/or unnecessary for treatment of Plaintiff's work-related condition pursuant to K.R.S. 342.020. Further, said expenses were timely challenged pursuant to *Phillip Morris, Inc. v. Poynter*, Ky., 786 SW2d 124 (1990).
>
> Therefore, **IT IS HEREBY ORDERED** that the medical fee dispute is **RESOLVED** in favor of the Defendant Employer. Defendant Employer is relieved from the responsibility of payment of the contested medical expenses and further is relieved from the responsibility of payment of any similar medical expenses for treatment of the same condition by the same medical provider.

No petition for reconsideration was filed and on January 12, 2012, Workman filed a notice of appeal.

On appeal, Workman cites to the various medical records in the record arguing Dr. Mortara's Utilization Review is incorrect on its face and should not have been the basis for the denial of the proposed medical treatment. Workman argues Dr. Mortara's medical opinion is flawed on its face and clearly incorrect based on the medical records submitted with the motion to reopen. Those records show

that despite Dr. Mortara's assertion conservative treatment had not been initiated, Workman had been undergoing conservative treatment for months prior to the surgical request. Workman maintains the MRI clearly indicates "multiple level involvement." Therefore, Workman argues based on the mistakes in Dr. Mortara's report, the ALJ erroneously relied on Dr. Mortara's report in finding in favor of Twin Resources. Workman argues he is entitled to an award of the appropriate medical benefits for the treatment and cure of his cervical condition, including the proposed fusion surgery.

Because we believe the CALJ's orders clearly violate the Kentucky Supreme Court's holding in Crawford & Co. v. Wright, 284 S.W.3d 136 (Ky. 2009), we vacate the CALJ's December 12, 2011, order and numerical paragraphs three and four of the CALJ's September 28, 2011, order.

In Crawford & Co. v. Wright, supra, Crawford & Co., the employer's third-party insurance adjuster, had filed a post-award medical dispute. An Administrative Law Judge ("ALJ") had vacated the order of the CALJ which "reopened the underlying the claim for additional proof to be taken and the merits in dispute adjudicated." In vacating the order, the ALJ considered only the evidence Crawford submitted with the Form 112 and determined

Crawford had no responsibility for future medical treatment of Wright's knee problem and also denied a petition for reconsideration. This Board reversed and remanded the matter "for proof to be completed and the merits considered." The Court of Appeals affirmed this Board, and the Supreme Court affirmed the Court of Appeals. In so doing, the Supreme Court stated:

> We affirm. Although 803 KAR 25:012, § 1(6)(c) permits a motion to reopen to contest medical expenses to be decided summarily on the pleadings, its purpose is not to enable the second step of the reopening process to be short-circuited if the worker fails to respond within 20 days. It simply permits a motion that is not supported with an adequate *prima facie* showing to be denied summarily but a motion that is supported with the required showing to be assigned for further proof time and an adjudication of the merits.

Id. at 138.

After discussing the facts of the case, the Supreme Court further held as follows:

> The courts afford an administrative agency's construction of its own regulation great weight when determining the regulation's meaning. We find the Board's interpretation of the disputed regulations to be reasonable. Moreover, we agree with its ultimate conclusion. [Footnote omitted]
>
> The party responsible for paying post-award medical expenses has the

burden of contesting a particular expense by filing a timely motion to reopen and proving it to be non-compensable. Thus, 803 KAR 25:012, § 6 requires both a motion to reopen and Form 112 to be filed in a post-award medical dispute. Reopening a final workers' compensation award is a two-step process. The first step involves the filing of a motion to reopen together with a *prima facie* showing of a reasonable possibility that the movant will be able to prevail on the merits. Only if the movant makes the required showing will the adversary be put to the expense of re-litigating or will further proof be authorized. [Footnotes omitted]

Drs. Scott and David Watkins, who provided medical treatment for the effects of the claimant's injury, recommended an orthopedic consultation. As the party responsible for paying medical expenses regarding the injury, Crawford had the burden to contest them in a timely manner and to prove in the subsequent reopening proceeding that they were unreasonable and unnecessary for the injury's effects. Crawford filed a motion to reopen together with *prima facie* evidence although it failed to comply with 803 KAR 25:010, § 4(6)(a)7 and perhaps also with 803 KAR 25:012, § 1(6)(b) because it failed to serve the claimant's counsel of record.

Despite Crawford's assertion to the contrary, 803 KAR 25:010, § 4(6)(c)2 does not require a response to a motion to reopen. It provides that "[a]ny response shall be filed within twenty (20) days of filing the motion." Medical expenses that a worker submits are presumed to be compensable unless the employer challenges them in a timely manner and proves ultimately

> that they are not. Although 803 KAR 25:012, § 1(6)(c) states that a motion to reopen to contest medical expenses may be decided summarily on the pleadings, its purpose is not to permit the second step of the reopening process to be short-circuited if the worker fails to respond to the motion within 20 days. 803 KAR 25:012, § 1(6)(c) simply permits a motion that is not supported with an adequate *prima facie* showing to be denied summarily but a motion that is supported with the required showing to be assigned to an ALJ for further proof time and an adjudication of the merits. [Footnotes omitted]

Id. at 140-141.

Based on the holding in Crawford & Co. v. Wright, supra, we conclude once the CALJ established Twin Resources made a *prima facie* showing in support of reopening, the matter should have been assigned to an ALJ for further proof time and an adjudication on the merits. The September 28, 2011, order should not have contained numerical paragraphs three and four since these paragraphs are not in conformity with the Supreme Court's holding in Crawford & Co. v. Wright, supra, and 803 KAR 25:012(6)(c). Crawford & Co. v. Wright, supra, prohibits the CALJ from assigning the matter to himself, ordering "proof taking for all parties shall commence" as of the date of the order, and granting Workman and Dr. Weinsweig forty-five days to submit proof and Twin Resources fifteen days for rebuttal.

It certainly appears the CALJ retained control of the matter and established an abbreviated proof schedule to see if Workman and Dr. Weinsweig would file evidence or a response to Twin Resources' motion. The CALJ did not have the authority to order that if no evidence is filed by Workman or Dr. Weinsweig, the matter would be submitted on the record and may result in the dispute being resolved based on the evidence in the record. We conclude the CALJ's order was an attempt to short circuit the holding in Crawford & Co. v. Wright, supra. The CALJ entered an order determining Twin Resources had made a *prima facie* showing for reopening and then attempted to resolve the medical fee dispute in contravention of the holding in Crawford & Co. v. Wright, supra. In Crawford & Co. the Supreme Court instructed that once the motion to reopen is made with the required *prima facie* showing, the matter is to be assigned to an ALJ for further proof time and an adjudication of the merits. Therefore, once the CALJ determined a *prima facie* showing had been made, the provisions of 803 KAR 25:010 Sections eight through eighteen are applicable and the parties are entitled to conduct discovery, introduce evidence, attend a Benefit Review Conference ("BRC"), and have a hearing.

This is consistent with 803 KAR 25:012(6)(a)(b)(c) which reads as follows:

> (6) Following resolution of a workers' compensation claim by final order, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112.
>
> (a) Unless utilization review has been initiated, the motion to reopen and Form 112 shall be filed within thirty (30) days following receipt of a complete statement for services pursuant to 803 KAR 25:096.
>
> (b) The motion to reopen and Form 112 shall be served on the parties, upon the employee, even if represented by counsel, and upon the medical providers whose services or charges are at issue. If appropriate, the pleadings shall also be accompanied by a motion to join the medical provider as a party.
>
> (c) This dispute shall be assigned to the Frankfort motion docket, where it shall be either summarily decided upon the pleadings, or assigned to an administrative law judge for further proof time and final resolution.

Section 6(a) does not permit the CALJ to retain jurisdiction of the matter and unilaterally set an abbreviated proof schedule. Significantly, after noting no evidence or other type of response was filed by Workman or Dr. Weinsweig, the December 12, 2011, order again ordered there had been a *prima facie* showing to establish the basis for reopening and summarily ruled in Twin Resources' favor.

This repetitive finding buttresses our conclusion the September 28, 2011, order was intended to require Dr. Weinsweig and Workman to file evidence or responses to the motion to reopen. As pointed out in Crawford & Co. v. Wright, supra, no response is required to the motion to reopen. The CALJ must make a determination as to whether a *prima facie* showing has been made and, if so, the matter should be assigned to an ALJ for further proof-taking.

That said, contrary to Twin Resources' assertions we note Dr. Mortara did not state that "while [Workman] reports chronic neck and back pain the MRI scan did not show any specific abnormality at C3-4 or C4-5 where the request for anterior cervical diskectomy and fusion was targeted." Dr. Mortara stated as follows:

> The patient has had prior problems of chronic neck and back pain. The records do not indicate a recent period of conservative therapy for his neck and epidural steroid injections, etc. In addition, the MRI scan shows multiple levels of pathology. The request is for a C4-5 anterior cervical discectomy and fusion and possible C3-4. The actual medical records indicate that there are no multiple levels and because there is a lack of correlation with the neuroimaging study and the exam, it is impossible to know which is the appropriate level to operate on based on the information provided. I suggest that the patient have conservative therapy for his neck and if he fails, possibly consider

> selective nerve root block to see if they would provide relief and then possibly consider surgery.

What is omitted from Twin Resources' motion to reopen is Dr. Mortara's suggestion Workman have conservative therapy for his neck. If this fails, Dr. Mortara suggested Workman "possibly consider selective nerve root block" to see if the procedure provided relief; after that, then possibly consider surgery. While Dr. Mortara stated that at the present time Workman does not meet the usual standard guidelines as seen in Milliman Care Guidelines for anterior cervical fusion as well as the ODG Guidelines, he did not express the opinion surgery, at some point, would not be reasonable and necessary treatment of and causally related to the work injury.

The reason Dr. Mortara denied the surgery was because, at that time, Workman did not meet the "usual standard guidelines as seen in Milliman Care Guidelines for anterior cervical fusion as well as the ODG Guidelines." Dr. Mortara did not set out or explain the guidelines to which he was referring.

Assuming, *arguendo*, the CALJ had the authority to order a makeshift proof schedule, the opinion of Dr. Mortara did not entitle Twin Resources to summary relief as

granted by the CALJ. Dr. Mortara's report clearly establishes that surgery, at some point, may be a consideration. Consequently, we believe the CALJ's December 12, 2011, order was clearly erroneous and an abuse of discretion.

So that there is no confusion in the future, once the CALJ determines the party filing the motion to reopen and the Form 112 has made a *prima facie* showing in support of its motion to reopen, the CALJ is only authorized to sustain the motion and then assign the matter to an ALJ for further proof time and an adjudication of the merits. Crawford & Co. v. Wright, supra, at 141. The CALJ is to do no more.

In the case *sub judice*, after determining Twin Resources had made a *prima facie* showing sufficient to merit reopening the claim to resolve the medical fee dispute, the CALJ could not then set up his own makeshift proof schedule which required Workman and Dr. Weinsweig to submit proof in contravention of that introduced by Twin Resources in its motion to reopen. Clearly, the action of the CALJ required Workman and Dr. Weinsweig to respond to the motion to reopen. The CALJ impermissibly revisited Twin Resource's motion to reopen and summarily decided the medical fee dispute on the basis of Workman's and Dr.

Weinsweig's failure to file a response to the motion to reopen.

Accordingly, the CALJ's December 12, 2011, order and numerical paragraphs three and four of the CALJ's September 28, 2011, order are **VACATED**, and this matter is **REMANDED** to the CALJ for entry of an order on Twin Resources' motion to reopen and Form 112 consistent with the views expressed in this opinion.

MEMBER, SMITH, CONCURS.

CHAIRMAN, ALVEY, DISSENTS AND FILES A SEPARATE OPINION.

ALVEY, Chairman. I respectfully dissent from the opinion rendered by the majority. This is not the same situation as that set forth in Crawford & Co. v. Wright, 284 S.W.3d 136 (Ky. 2009).

It is well established the procedure for reopening a prior workers' compensation claim pursuant to KRS 342.125 is a two-step process. Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 216 (Ky. 2006). The first step is the *prima facie* motion, requiring the moving party to provide sufficient information to demonstrate a substantial possibility of success in the event evidence is permitted to be taken. Stambaugh v. Cedar Creek Mining, 488 S.W.2d 681 (Ky. 1972). "*Prima facie* evidence" is

evidence which "if unrebutted or unexplained is sufficient to maintain the proposition, and warrant the conclusion [in] support [of] which it has been introduced ... but it does not shift the general burden ...." Prudential Ins. Co. v. Tuggle's Adm'r., 254 Ky. 814, 72 S.W.2d 440, 443 (1934).

The burden during the initial step is on the moving party and requires that party to establish the grounds for which the reopening is sought under either KRS 342.125(1) or (3). Jude v. Cubbage, 251 S.W.2d 584 (Ky. 1952); W.E. Caldwell Co. v. Borders, 301 Ky. 843, 193 S.W.2d 453 (Ky. 1946). If the moving party prevails in making a *prima facie* showing as to all essential elements of the grounds alleged for reopening, only then will the adversary party be put to the expense of further litigation. Big Elk Creek Coal Co. v. Miller, 47 S.W.3d 330 (Ky. 2001). It is at this point that step two of the reopening process commences, with additional proof time being set so the merits of the reopening can be fully and finally adjudicated. Campbell v. Universal Mines, 963 S.W.2d 623 (Ky. 1998).

In Crawford & Co. v. Wright, *supra*, the Kentucky Supreme Court held the same two-step process applies to reopening involving post-award medical disputes brought

pursuant to KRS 342.125(3). The Court in Crawford & Co. specifically instructed:

> Although 803 KAR 25:012, § 1(6)(c) permits a motion to reopen to contest medical expenses to be decided summarily on the pleadings, its purpose is not to enable the second step of the reopening process to be short-circuited if the worker fails to respond within 20 days. It simply permits a motion that is not supported with an adequate *prima facie* showing to be denied summarily but a motion that is supported with the required showing to be assigned for further proof time and an adjudication of the merits.

Id. at 138.

> The party responsible for paying post-award medical expenses has the burden of contesting a particular expense by filing a timely motion to reopen and proving it to be non-compensable. Thus, 803 KAR 25:012, § 6 requires both a motion to reopen and Form 112 to be filed in a post-award medical dispute. Reopening a final workers' compensation award is a two-step process. The first step involves the filing of a motion to reopen together with a *prima facie* showing of a reasonable possibility that the movant will be able to prevail on the merits. Only if the movant makes the required showing will the adversary be put to the expense of re-litigating or will further proof be authorized. [Footnotes omitted.]

Id. at 140.

> . . . 803 KAR 25:010, § 4(6)(c)2 does not require a response to a motion to reopen. It provides that "[a]ny response shall be filed within twenty

> (20) days of filing the motion." Medical expenses that a worker submits are presumed to be compensable unless the employer challenges them in a timely manner and proves ultimately that they are not. Although 803 KAR 25:012, § 1(6)(c) states that a motion to reopen to contest medical expenses may be decided summarily on the pleadings, its purpose is not to permit the second step of the reopening process to be short-circuited if the worker fails to respond to the motion within 20 days. 803 KAR 25:012, § 1(6)(c) simply permits a motion that is not supported with an adequate *prima facie* showing to be denied summarily but a motion that is supported with the required showing to be assigned to an ALJ for further proof time and an adjudication of the merits. [Footnotes omitted.]

Id. at 140.

In this instance, the Chief Administrative Law Judge ("CALJ") found Twin Resources, LLC, met the requirements for reopening the claim. In an order dated September 28, 2011, the CALJ ordered Dr. Weinsweig be joined as a party and ordered the claim reopened. The CALJ ordered proof taking for all parties to commence on September 28, 2011, "and shall extend for fifteen (15) days, followed by thirty (30) days for Plaintiff and Dr. Weinsweig only, and fifteen days (15) days thereafter for rebuttal evidence by Defendant Employer." The CALJ warned "if no evidence is filed by the Plaintiff or Dr. Weinsweig

this matter may be submitted on the record to the CALJ and may result in this dispute being resolved based upon the pleadings and evidence of record." Neither Workman nor Dr. Weinsweig filed any evidence regarding the medical dispute before the ALJ, nor did they otherwise respond.

803 KAR 25:012(6)(c) states as follows:

> Following the resolution of a workers' compensation claim by final order, a motion to reopen pursuant to 803 KAR 25:010, Section 4(6), shall be filed in addition to the Form 112.
>
> This dispute shall be assigned to the Frankfort motion docket, where it shall be either summarily decided upon the pleadings, or assigned to an administrative law judge for further proof time and resolution.

The CALJ satisfied the requirements set forth in the applicable administrative regulation, previous opinions from this Board, and the directive of the Kentucky Supreme Court in Crawford & Co., *supra*. The two-part process was observed. The claim was reopened, and a proof schedule was issued. Contrary to the opinion of the majority, no specific guidance is set forth in 803 KAR 25:012 regarding how much proof time is to be afforded to the parties. The proof time provided by the CALJ was reasonable, and neither Workman nor Dr. Weinsweig submitted any evidence or responded in any other manner.

For purposes of KRS Chapter 342, it has long been accepted the ALJ has the authority to control the taking and presentation of proof in a workers' compensation proceeding in order to facilitate the speedy resolution of the claim and to determine all disputes in a summary manner. Dravo Lime Co., Inc. v. Eakins, 156 S.W.3d 283 (Ky. 2005); Yocum v. Butcher, 551 S.W.2d 841 (Ky. App. 1977); Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991); Searcy v. Three Point Coal Co., 134 S.W.2d 228, 231 (Ky. 1939). Since no evidence was submitted during the applicable proof time, the CALJ did not err in exercising his discretion in finding in favor of Twin Resources, LLC, and I would affirm.

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