OPINION ENTERED: January 25, 2013

CLAIM NO. 199764294

BRENDA BRANSCUM PETITIONER

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

TRIANGLE PACIFIC CORP.
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * * *

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

ALVEY, Chairman. Brenda Branscum ("Branscum"), *pro se*, seeks review of the opinion rendered October 22, 2012, by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), relieving Triangle Pacific Corp. ("Triangle") of reimbursement to Anthem for payments made to the University

of Kentucky Medical Center in September, 2011. No petition for reconsideration was filed by either party.

The basis of Branscum's appeal appears to be the episode of paralysis she sustained in September 2011, and compensability of ensuing medical treatment, including that administered at the University of Kentucky Medical Center. Thus, the issue was whether the treatment was causally related to the 1997 lumbar strain injury she sustained while working for Triangle. She asserts the ALJ erred by finding Triangle not responsible for reimbursement, and for payment of all treatment received for that episode. We vacate and remand.

Branscum, a resident of Burnside, Kentucky, sustained a low back injury on September 12, 1997 while working for Triangle. On July 21, 1999, Branscum and Triangle executed a Form 110-I settlement agreement, settling her claim for a lump sum of $6,477.28, based upon a compromised 10.5% impairment rating. Future medical benefits were to remain open pursuant to KRS 342.020. This agreement was approved by Hon. Vonnell C. Tingle, Arbitrator, on August 17, 1999.

In February 2012, Triangle's insurer received a notice from Anthem asserting Branscum's treatment was due to her work-related injury, and requesting reimbursement

for payments made for her treatment. On March 12, 2012, Triangle filed a Form 112, medical fee dispute contesting Anthem's request for reimbursement. Triangle also filed a motion to reopen the claim and to join additional parties, including Anthem, and all medical providers it had paid.

On April 18, 2012, Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ"), entered an order sustaining the motion to reopen and joining additional parties. In the order, the CALJ specifically ordered the following parties to be joined: John A. Patton, M.D.; Stephen J. Ryan, M.D./Karin R. Swartz; June Kim, M.D.; Franca Cambi, M.D.; Mansoor Ahmed, M.D.; Eaton Medical Transport; Scott Swabb, M.D.; Pulaski County EMS; and Labcorp Patient Service Center. However, Anthem was not listed among the parties joined despite being named in both the Form 112 and the motion to join additional parties filed by Triangle. The order failed to address the joinder of Anthem in any fashion, and Anthem was excluded from the service list. On May 16, 2012, Hon. Dwight T. Lovan, the Commissioner of the Kentucky Department of Workers' Claims, issued a scheduling order assigning the claim to the ALJ and scheduling a benefit review conference ("BRC"). There is no evidence a copy of the scheduling order was ever served upon Anthem.

Triangle proceeded with taking Branscum's deposition on May 29, 2012. Branscum testified she continued to receive some treatment for her back and returned to work for Triangle after the 1997 injury. She continued to work there until 2006 or 2007. In early September 2011, Branscum experienced a headache and a "cold feeling" at home and went to bed early. The next morning, she had difficulty waking up, and had complaints of paralysis in her extremities. She was taken by ambulance to the Lake Cumberland Hospital, and then transferred by ambulance to the University of Kentucky Medical Center. She was later transported by ambulance back to her home. She eventually sought treatment at the Cleveland Clinic, and was confined to a nursing home in Ohio for approximately two months.

Triangle also submitted the report of Dr. Henry Tutt dated April 11, 2012. The record does not reflect a copy of the report was served upon any of the medical providers joined, nor does it reflect service upon Anthem.

Dr. Tutt evaluated Branscum at Triangle's request. Branscum complained of pain in her low back extending to the mid back, into her left shoulder and left leg. She also complained of paralysis affecting her right leg since September 2011. Dr. Tutt outlined Branscum's

1997 injury and follow up care. He also discussed the events of September 2011 with the allegation of paralysis and multiple transfers by ambulance. Dr. Tutt stated in 1997 Branscum sustained a lumbar sprain/strain, a transient myofascial condition, for which maximum medical improvement ("MMI") should have been achieved within a few weeks. He further noted Branscum has a strong dependent personality. He opined she has no organic spine disease of any relevance, and the September 12, 1997 work event resulted in no permanent injury. He opined no further treatment is necessary, and the treatment she has received since she reached MMI has been unnecessary. He noted she is not a surgical candidate, does not need medication for the residuals from the 1997 work injury, and does not need to use a walker, stretcher or gurney.

Branscum did not appear at the BRC held September 7, 2012. Likewise, she failed to appear at the formal hearing held September 28, 2012.

In the opinion rendered October 22, 2012, the ALJ held as follows:

> KRS 342.020(1) requires the employer to pay for the "cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be

required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits."

In a post-award medical fee dispute, the burden of proof regarding work-relatedness is with the employee while the reasonableness or necessity of treatment is with the employer. *Mitee Enterprises v. Yates*, 865 S.W.2d 654 (Ky. 1993); *Addington Resources Inc. v. Perkins*, 947 S.W.2d 421 (Ky. App. 1997); *R.J. Corman Railroad Construction v. Haddix*, 864 S.W.2d 915 (Ky. 1993); and *National Pizza Co. v. Curry*, 802 S.W.2d 949 (Ky. App. 1991).

The plaintiff has presented no evidence and did not attend the Benefit Review Conference or the hearing. Absent any proof on her behalf, the Administrative Law Judge must find for the defendant-movant Triangle Pacific Corp. In this case I find persuasive the medical report of Dr. Henry Tutt, in which he stated that Ms. Branscum would not require any future medical treatment for the cure and/or relief of her 1997 injury. Dr. Tutt also stated that it was his opinion that none of the medical treatment she had received over the years since 1997 has been appropriate and/or necessary, and that the events occurring between June, 2011 and November, 2011 had no relationship to the transient myofascial injury sustained in 1997.

SECTION VI – ORDER

> In view of the above-stated findings of fact and conclusions of law, IT IS HEREBY ORDERED AND ADJUDGED that the Motion to Reopen of the defendant/ movant is granted. **The defendant/ movant Triangle Pacific Corp. is relieved from responsibility for the repayment to Anthem for the $3,943.35 Anthem apparently paid on plaintiff's behalf**, some of which apparently stems from plaintiff's hospitalization at the UK Hospital in September 2011, for a condition or injury that may have arisen out of or in the course of her employment, as well as dates of treatment ranging from 6-29-11 to 11-9-11 by numerous medical providers, which are not reasonable and necessary for the cure or relief of plaintiff's work injury in 1997.
> (Emphasis added)

After carefully scrutinizing Triangle's motion to join additional parities, the Form 112, and the order reopening the claim and joining additional parties, we conclude the CALJ erred as a matter of law in failing to determine whether Anthem should have been joined as a party. In the Form 112, Triangle outlined the medical dispute was filed because the workers' compensation insurer received correspondence from Anthem demanding reimbursement for payments made on Branscum's behalf "for a condition or injury that may have arisen out of or in the course of their employment." The Form 112 specifically notes a copy was served upon Anthem. Likewise, Triangle filed a motion

to join additional parties on March 12, 2012, requesting *inter alia*, Anthem be joined as a party. The motion reflects a copy was served upon Anthem. In the order joining additional parties, entered by the CALJ on April 18, 2012, Anthem was not listed nor is there any documentation supporting it was ever served with any subsequent pleadings.

That said, KRS 342.285(2)(c) provides the Board may determine on appeal whether an order, decision, or award is in conformity to the provisions of KRS Chapter 342, and KRS 342.285(3) provides, in relevant part, the Board may, "in its discretion," remand a claim to an ALJ "for further proceedings in conformity with the direction of the board." These provisions permit the Board to *sua sponte* reach issues even if unpreserved in order to properly apply the law. George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004).

Despite being named in the Form 112 and in the motion to join additional parties, Anthem was never joined in this action. The CALJ failed to list it as a joined party, and there is no evidence in the record Anthem was ever subsequently served with any pleadings or orders.

It is well established in order for the requirements of due process of law to be satisfied, a

litigant must be afforded procedural due process as well as substantive due process. Kentucky Alcoholic Beverage Control Board v. Jacobs, 269 S.W.2d 189 (Ky. 1954); Utility Regulatory Commission v. Kentucky Water Service Co., Inc., 642 S.W.2d 591 (Ky. 1982). The fundamental requirement of due process of law is the opportunity to be heard at a meaningful time and in a meaningful manner. *See* U.S.C.A. Const. Amends. 5, 14; Const. § 2. Among the rights in the due process guarantee is the right to present relevant, probative evidence in support of one's claim and in rebuttal of adverse evidence. Bartrum v. Hunter Excavating, 168 S.W.3d 681 (Ky. 2005). Thus, parties to administrative proceedings must be afforded a reasonable time in which to demonstrate the incompleteness, the untruth, the partiality or any other weakness or defect in the testimony of a witness. Kaelin v. City of Louisville, 643 S.W.2d 590, 592 (Ky. 1982).

Since Anthem was never joined as a party, it was never a litigant, and never afforded due process rights. The ALJ therefore had no jurisdiction to determine Triangle was not responsible for reimbursing Anthem. We therefore vacate and remand his decision. On remand, the ALJ shall determine whether Anthem should be joined as a party, as originally requested by Triangle, and overlooked by the

CALJ. If the ALJ determines Anthem should be joined as a party, he shall conduct all proceedings necessary, including the entry of an order providing a reasonable period of time for the introduction of evidence, along with conducting a BRC and Hearing if required.

Accordingly, the ALJ's opinion and order entered October 22, 2012 is hereby **VACATED** and **REMANDED** for the ALJ to conduct proceedings consistent with the views expressed in this opinion.

ALL CONCUR.

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