OPINION ENTERED: May 14, 2012

CLAIM NO. 200600205

CASTELLINI COMPANY PETITIONER

VS. **APPEAL FROM HON. OTTO D. WOLFF, IV, ADMINISTRATIVE LAW JUDGE**

EVERETT HOLLAND
and HON. OTTO D. WOLFF, IV,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AFFIRMING

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

ALVEY, Chairman. Castellini Company ("Castellini") seeks review of a decision rendered March 9, 2012, by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ"), who found compensable a recommended lumbar epidural steroid injection to determine whether Everett Holland ("Holland") requires a left total knee replacement. No petition for reconsideration was filed. Castellini does not appael the

ALJ's determination of the compensability of the left knee replacement surgery. We affirm.

Holland, a produce delivery driver, sustained an injury to his left knee on September 10, 2004 when he was pulling produce off of a truck and the pallet jack he was using slipped hitting his left knee. Holland filed a Form 101 (Application for Resolution of Injury Claim), on February 14, 2006. A Form 110-I settlement agreement was approved by ALJ Grant Roark on March 16, 2009. The settlement agreement reflects the parties settled Castellini's liability for permanent partial disability ("PPD") benefits based upon a 20% impairment rating. The agreement specifically sets forth it did not include a waiver of past medical benefits, future medical benefits, vocational rehabilitation, or the right to reopen the claim. The agreement also contains the following statement:

> Mr. Holland agrees to not seek workers' compensation benefits/reimbursement for any total knee replacement from defendant employer for any such procedure performed in the next eighteen (18) months.

On February 17, 2010, Castellini filed a motion to reopen and medical fee dispute challenging an MRI recommended by Dr. Giordani to the lumbar spine as being

not causally related to the left knee injury. Castellini supported the medical fee dispute with the January 3, 2010, report of Dr. Ronald Fadel, an orthopedic surgeon, who had performed a utilization review. Dr. Fadel did not believe an MRI of the lumbar spine was causally related to the knee injury. Dr. Fadel stated:

> He has had persistent complaints including the onset of lateral buttock and thigh pain with numbness and tingling along the lateral aspect of his operative limb.

Holland filed records from Dr. Mauro Giordani, an orthopedic surgeon with the University of Kentucky, Department of Orthopaedic Surgery. In his note dated May 12, 2009, Dr. Giordani stated Holland had left leg pain, and was status post left knee medical compartment arthroplasty. He further noted symptoms may be referable to the back, and he recommended a lumbar MRI to determine the source of the pain.

In an opinion and order rendered October 21, 2010, the ALJ found as follows:

> At this juncture, it is impossible to determine the cause of plaintiff's persistent left leg complications, but so as to make that determination, the diagnostic tool, an MRI, must be utilized to refine the possible causes. So as to better treat the left leg work injury, it must be determined exactly what is causing the persistent pain.

> The diagnostic MRI is necessary to ascertain the possible effects of the work injury.
>
> As noted by Dr. Giordani, the left leg pain could be the result of an unrelated low back injury, but it could also be a consequence of the work related left knee surgery. He explained, "Lower extremity pain, which is present after total joint arthoroplasty [sic], needs to have complete work up to rule out spinal involvement, which requires plain radiographs as well as MRI scanning if necessary."
>
> This ALJ is persuaded that the need for the diagnostic MRI is to treat the left knee injury by narrowing the possible cause of Plaintiff's persistent left knee pain.

Castellini filed a petition for reconsideration asserting the ALJ erred in finding Holland met his burden of proving whether the requested MRI was causally related to the work injury. Holland also filed a petition for reconsideration asserting the ALJ failed to order Castellini to pay for certain medical bills. In the order on reconsideration entered December 19, 2010, the ALJ denied Castellini's petition for reconsideration, and ordered it to pay the contested bills.

Castellini appealed from the opinion and order, and the order on reconsideration. The ALJ's decision was affirmed by this Board on April 27, 2011.

On April 29, 2011, Castellini filed a motion to reopen, and medical fee dispute challenging the revision and total left knee implant recommended by Dr. Giordani. Castellini later amended the medical fee dispute to include a challenge of a lumbar epidural steroid injection recommended by Dr. Selby, an orthopedic surgeon with the University of Kentucky, Department of Orthopaedic Surgery.

Castellini again supported the challenge with a utilization review report of Dr. Fadel. In his report dated April 1, 2011, Dr. Fadel opined the recommended total knee replacement should be avoided until weight loss was attempted. Dr. Fadel stated it was possible the weight loss would lead to remission of the pain for a considerable period of time without invasive treatment.

In his office note dated May 6, 2011, Dr. Giordani stated the following:

> At this time he appears to have loosened his prosthesis. C-reactive protein and sedimentation rate have all been within normal limits, but the bone scan shows increased uptake which is consistent with the loosening of the prosthesis.
>
> It is recommended that the patient undergo total knee arthroplasty. At the same time because of the persistent peroneal nerve pain I am recommending a MRI scan of the lumbosacral spine to rule out any spinal pathology. That is still my recommendation as it has been

> all along. The recommendations I have made are consistent and I would recommend that the patient continually lose weight prior to pursuing any revision knee surgery. In the meantime the other workup should be completed to make sure that there is no longer pathology going on in the spine.

Castellini filed a subsequent report of Dr. Fadel dated July 29, 2011. In that report, Dr. Fadel stated any disorder of the axial skeleton or diagnostic work-up is not related to the work injury. Dr. Fadel opined, “The local knee block however would be considered work injury/claim related and approval is recommended.”

Holland filed the July 22, 2011 and August 26, 2011 office notes of Dr. Selby. In the July note, Dr. Selby assessed Holland as status post left unicompartmental knee arthroplasty with possible loosening and L4 radiculopathy. His plan at that time was to inject the left knee with Lidocaine to determine if the pain is coming from the knee. He also recommended, “an epidural injection to the lumbar spine to help evaluate if this is the source of his pain.” In his office note dated August 26, 2011, Dr. Selby stated the Lidocaine injection to the left knee provided significant relief to the left knee, and he recommended a left total knee arthroplasty.

In finding the left knee surgery and lumbar epidural injection compensable, the ALJ stated as follows in the opinion and order rendered March 19, 2012:

> Dr. Fadel has never seen Plaintiff; he has only reviewed the medical records provided to him by Defendant's workers' compensation carrier. In contrast, Drs. Selby and Giordani have seen, touched and examined Plaintiff on numerous occasions. The most persuasive proof usually comes from the most qualified expert; herein, the most qualified experts are the ones who have had opportunities to actually see, touch and treat Plaintiff. Dr. Selby's and Dr. Giordani's input is most persuasive. Defendant's Medical Dispute, pertaining to the reasonableness and necessity of Plaintiff[sic] requested total knee surgery, is overruled.
>
> As to Defendant's denial of Plaintiff's request for a lumbar epidural block, which was intended to determine the source of Plaintiff's pain, Defendant again relied on Dr. Fadel's input. On July 29, 2011, Dr. Fadel opined, that since Plaintiff did not injure his spine in the work injury then an "evaluation relating to the axial (spinal column) skeleton" should be denied by Defendant.
>
> As previously determined by the ALJ, in Defendant's prior Medical Dispute, the need for the diagnostic test, "Is[sic] to treat the left knee injury by narrowing the possible cause of Plaintiff's persistent left leg pain." On July 22, 2011 Dr. Selby wrote, "We will also refer the patient to pain management to get an epidural injection to the lumbar spine to help evaluate if

> this is the source of his pain." This ALJ is persuaded Plaintiff needs the lumbar epidural injection to more precisely determine the source of Plaintiff's left leg pain. For the reasons previously noted herein, the ALJ is so persuaded based upon the medical records of Plaintiff's treating orthopedic surgeon, Dr. Selby. Also persuasive is the fact Dr. Fadel merely dismisses the reasonableness of the requested test simply because there was not an acute back injury component in Plaintiff's initial work injury. Dr. Fadel's reasoning is too simple; he knows the nerves form[sic] the back can cause pain in the lower extremities.

No petition for reconsideration was filed.

In a post-award medical fee dispute, even one involving pre-authorization of a medical procedure, the employer bears both the burden of going forward and the burden of proving the contested treatment or expenses are unreasonable or unnecessary. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993). After going forward, the burden is upon the employer to prove the contested medical expenses are unreasonable or unnecessary. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); National Pizza Company vs. Curry, supra. The claimant, however, bears the burden of proving work-relatedness. *See*

Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

Pursuant to KRS 342.275 and KRS 342.285, the ALJ, as 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). He or she may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it was presented by the same witness or the same party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).

Because the ALJ determined the lumbar steroid injection was reasonable and necessary for diagnostic purposes, the question on appeal is whether the evidence is so overwhelming, upon consideration of the whole record, as to compel a finding in Logsdon's favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence 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). Where evidence is conflicting, the ALJ may choose whom or what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). The ALJ has the discretion and sole

authority to reject any testimony and believe or disbelieve parts of the evidence, regardless of whether it comes from the same witness or the same party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995). The ALJ, as fact-finder, may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal v. Fox, 19 S.W.3d 88 (Ky. 2000); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Castellini appeals only the determination of compensability of the lumbar epidural steroid injection, not the left knee surgery. The ALJ found from the record the requested lumbar injection was reasonable and necessary for diagnostic purposes in order to establish the source of Holland's knee pain to determine whether the pain was due to the work injury. The injection apparently was requested

to make a determination as to whether or not to subject Holland to an extremely invasive procedure requiring an extensive period of rehabilitation. In the opinion and order, the ALJ set forth the reasons for finding in Holland's favor regarding both the proposed surgery and the lumbar injection. The ALJ's determination regarding compensability of the lumbar injection for diagnostic purposes is supported by substantial evidence and the ALJ's determination is not so unreasonable under the evidence that it must be reversed as a matter of law. Ira Watson Department Store vs. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the decision rendered March 12, 2012, by Hon. Otto Daniel Wolff, IV, is hereby **AFFIRMED**.

ALL CONCUR.

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