OPINION ENTERED: September 10, 2012

CLAIM NO. 200401074 & 200268070

CAVE SPUR COAL LLC/
BLACK MOUNTAIN RESOURCES PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

JAMES INGLE
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Cave Spur Coal LLC/Black Mountain Resources ("Cave Spur/Black Mountain") appeals the May 21, 2012, opinion and order by Hon. John B. Coleman, Administrative Law Judge ("ALJ Coleman") resolving a medical fee dispute filed by Black Mountain in favor of both Cave Spur/Black Mountain and James Ingle ("Ingle").

Cave Spur/Black Mountain did not file a petition for reconsideration.

The Form 101 (Claim No. 2002-68070) asserts on March 6, 2002, Ingle was injured while employed at Cave Spur/Black Mountain. The injury occurred as follows: "Slipped on wet surface underground in the mine, and grabbed to stop his fall, twisting his body, causing injury." Ingle alleged injuries to his back, left leg, and an emotional component. Also in the record is a Form 103 (Claim No. 2004-01074) against Cave Spur Coal/Black Mountain alleging cumulative trauma hearing loss sustained over a twenty-seven year period, manifesting on May 10, 2002, while working in the underground coal mines. By order dated July 28, 2004, rendered by Hon. James L. Kerr, Administrative Law Judge ("ALJ Kerr"), the two cases were consolidated. In an opinion dated January 7, 2005, ALJ Kerr awarded Ingle temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical expenses for the injury and psychiatric claim and medical expenses for the hearing loss claim.

On June 4, 2009, Cave Spur Coal/Black Mountain filed a motion to reopen/medical fee dispute describing the dispute as follows:

> 1. The Plaintiff received an award of benefits on January 7, 2005. Since that time, the Defendant has continued to pay reasonable and necessary medical expenses.
>
> 2. Recently, a request for treatment was submitted to Utilization Review. Paroxitine, Tizanidine, and quarterly office visits for the above name client were approved.
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> 3. Lyrica, Seroquel Voltaren Gel and Flector Patch was [sic] denied as not reasonable and necessary for the work injury. The UR Denial was issued on April 29, 2009 and the doctor was given an opportunity to appeal. No appeal was filed. However, on June 1, 2009, the Defendant/Movant received a bill for treatment from Dr. Collins.
>
> 4. The Defendant/Movant seeks relief from payment for Voltaren Gel, Flector Patch, and monthly office visits.

On October 16, 2009, Cave Spur Coal/Black Mountain filed a "Notice of Withdrawal of Medical Fee Dispute." By order dated November 24, 2009, Hon. Lawrence Smith, Administrative Law Judge ("ALJ Smith") ordered that the medical fee dispute was withdrawn.

On September 21, 2011, Cave Spur Coal/Black Mountain filed a motion to reopen/medical fee dispute describing the dispute as follows:

> 1. The Plaintiff received an award of benefits on January 7, 2005. Since that time, the Defendant has continued to pay reasonable and necessary medical expenses.

2. Recently, the claim was submitted to Utilization Review and an IME was conducted by Dr. Russell Travis to determine the claimant's current condition and need for ongoing treatment.

3. Paxil, Tizanidine, Lyrica, Serouel, Oxycodone and NSAID patches were determined to be not reasonable and necessary for treatment of the work injury.

4. Dr. Travis stated that the claimant suffered from, at most, a lumbar strain. Certainly, one could not incriminate a lumbar strain for anxiety and depression so many years after a work incident. Therefore, Paxil would not be related to the work injury.

5. Dr. Travis explained that Tizanidine is prescribed for muscle spasm. However, there was no evidence of muscle spasm on examination nor evidence of chronic muscle spasm. In fact, Dr. Travis stated that one would not find muscle spasm nine years after an injury.

6. Dr. Travis stated that the claimant does not have neuropathic pain; therefore, the Lyrica is not reasonable or necessary nor related to the work injury.

7. Seroquel is for treatment of bipolar disorder and is not related to a work injury.

8. Oxycodone appears to be for treatment of Claimant's non work related [sic] headaches.

9. There is no indication of the efficacy of Voltaren Gel or Flector Patch for treatment of the work injury.

> Dr. Travis thought that an NSAID such as Naprosyn would be appropriate.
>
> 10. The Defendant/Movant seeks relief from payment for Paxil, Tizanidine, Lyrica, Serouel, Oxycodone and NSAID patches such as Voltaren Gel, Flector Patch, and monthly office visits.

ALJ Coleman made the following findings regarding the dispute over the use of Lyrica:

> The next medication to be discussed is Lyrica. Dr. Travis offered the opinion that it was not reasonable or necessary as the plaintiff did not have neuropathic pain. Dr. Novak questioned whether the medication was being utilized for the treatment of diabetic neuropathy. However, she conceded the plaintiff did not have the diagnosis of diabetes and apparently had not been tested for that disease. The notes of the treating physician do indicate the presence of radiculopathy. It appears plaintiff was placed on that medication as early as 2006 for the diagnosis noted above. The physician noted a burning sensation in the plaintiff's left calf along with pain. Therefore, it appears the treating physician disagrees with the opinion of Dr. Travis who did not believe the plaintiff suffered from neuropathic pain. The medical evidence does not support the opinion of Dr. Novak that the medication was being utilized for the treatment of a diabetic condition. Therefore, the defendant has failed to show this medication is unreasonable and unnecessary for the treatment of the plaintiff's injury as well.

ALJ Coleman ultimately resolved the medical fee dispute as follows:

> 1. The medical fee dispute filed by the defendant herein is resolved in favor of the defendant as the defendant is relieved of its obligations under KRS 342.020 for the payment of the medication Seroquel as well as topical NSAIDs such as Flector patches or Voltaren gel.
>
> 2. The medical fee dispute is resolved in favor of the plaintiff as the defendant shall remain obligated under KRS 342.020 for payment of all reasonable and necessary medical expenses for the cure and relief of the plaintiff's work related injury including his treatment with Dr. Ricky Collins along with the prescriptions for Paxil (Paroxetine), Tizanidine (Zanaflex), Lyrica and Oxycodone.

On appeal, Cave Spur Coal/Black Mountain asserts continued treatment with Lyrica is not reasonable or necessary for the cure and relief of Ingle's work injury. Cave Spur Coal/Black Mountain asserts as follows:

> Dr. Collins' records and report failed to support his assertion that prescriptions of Lyrica would be reasonable and necessary for treatment of Ingle's work-related low back strain. Both Dr. Novak and Dr. Travis pointed out that nothing in Dr. Collins' records supported a finding of radiculopathy. Dr. Travis noted that there were no indications of radiculopathy on his examination. The evidence therefore compels a finding that continued treatment with Lyrica is not reasonable or necessary for the cure of relief of Ingle's work injury.

In a post award medical fee dispute, the burden is on 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, 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). Complicating our review is the fact that Perry County failed to file a petition for reconsideration. Pursuant to KRS 342.285, in the absence of a petition for reconsideration, the ALJ's order "shall be conclusive and binding as to all questions

of fact" as long as there is some evidentiary support in the record in support of the ALJ's factual findings.

Here, the record contains evidence from Dr. Ricky Collins in support of ALJ Coleman's findings of fact regarding Lyrica. Medical records of Dr. Collins dated November 14, 2005, state as follows:

> The patient is here for a check up. Having a lot of pain in the left leg. Having burning sensation into the calf and also crepitation feelings in the knee. He has been taking Neurontin, but it is not doing good. His back is still very tender and sore most of the time and he has been walking and turned suddenly and noted a severe pain in his left knee, which has been unstable for several days, requiring the use of a cane.

Dr. Collins also noted "degenerative joint disease with radiculopathy."

Records of Dr. Collins dated January 16, 2006, indicate Ingle was being prescribed Lyrica and state as follows: "He is having no problems with Lyrica, 50 mg t.i.d. He would like to increase the dose, if possible." The record indicates the dosage was increased to 75 mg t.i.d. Dr. Collins also indicated in this record that Ingle suffers from degenerative joint disease with radiculopathy.

Records of Dr. Collins dated November 16, 2006 indicate as follows:

> The patient is still having a lot of muscle spasms in his back, especially recent since he has not been able to be as active as usual; seems to be controlled with his medications.

Dr. Collins also indicated that Ingle suffers from degenerative joint disease with radiculopathy.

Certainly there is medical evidence indicating Lyrica is not reasonable or necessary, which includes the July 22, 2011, independent medical examination ("IME") of Dr. Russell L. Travis. However, 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). 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). Additionally, if “the physicians in a case genuinely express medically sound, but differing, opinions as to the

severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). As is his prerogative, the ALJ chose to rely on the records of Dr. Collins in resolving the dispute over the continued use of Lyrica. Dr. Collins' medical records constitute substantial evidence in support of the ALJ's determination the use of Lyrica is reasonable and necessary treatment, and a different finding is not compelled. The ALJ's finding cannot be disturbed.

Accordingly, the May 21, 2012, opinion and order is **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

SMITH, MEMBER, NOT SITTING.

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