Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 31, 2014

CLAIM NO. 200797230

DAWN MICHELLE COX PETITIONER

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

TOYOTA MOTOR MANUFACTURING, KY, INC.
BALLARD WRIGHT, M.D.;
M. JOSEPH MEDICAL;
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

RECHTER, Member. Dawn Michelle Cox ("Cox") appeals from the June 12, 2014 Order on Reconsideration rendered by Hon. John B. Coleman, Administrative Law Judge ("ALJ"). In a reopening for a medical dispute, the ALJ determined on reconsideration certain medications were non-compensable.

Cox argues the ALJ impermissibly reconsidered the merits of the case, and the order on reconsideration did not merely address a patent error. Alternatively, Cox argues she is not barred from receiving medical benefits for her psychological condition. We disagree and affirm.

Cox initially injured her back on December 16, 1991 while employed by United Parcel Service ("UPS"). She underwent lumbar surgery and settled her claim (1992-48900). She sustained a second lumbar injury on March 30, 1998 (1998-61113) while employed with Toyota Motor Manufacturing Kentucky, Inc. ("Toyota"). She underwent a second lumbar surgery; UPS and Toyota agreed to split future medical expenses relating to the injury. Cox sustained a third injury on October 24, 2005 while working for Toyota. She underwent a three level lumbar fusion. By agreement approved November 1, 2011, Cox and Toyota settled the claim for a lump sum of $125,000.00. The agreement included a buyout of the right to reopen, and a waiver and release from any liability for additional claims with the exception of medical treatment for the back. The agreement provided the ALJ would determine the extent of Toyota's liability for medical benefits. In a December 14, 2011 order, the ALJ found the October 24, 2005 event led to the fusion surgery and was an intervening superseding event which broke the

chain of causation relieving UPS of any further responsibility regarding the low back injury. Thus, Toyota is solely responsible for the subsequent medical treatment.

Toyota filed a motion to reopen and medical dispute on December 12, 2013. It challenged the reasonableness and necessity, as well as work relatedness/causation, of ongoing treatment for pain management, anxiety, depression and constipation. Toyota supported its motion with the October 1, 2013 physician review report of Dr. Timothy Dawson. Dr. Dawson recommended certification of requests for thirty day prescriptions of Hydrocodone-Acetaminophen, Avinza, Cymbalta, Celebrex and Amitiza. He provided a detailed discussion concerning the monitoring and effectiveness of the medications, recommending downward titration of Hydrocodone and Cymbalta. Additional certification of Celebrex would require evidence of measurable subjective and/or functional benefit and the need for continuation. Additional certification of Amitiza would require evidence of continued opioid usage and documentation of gastrointestinal complaints including constipation.

Dr. Russell Travis performed an independent medical evaluation on December 4, 2012. Dr. Travis noted Cymbalta is used to treat depression and anxiety and is

prescribed off-label for diabetic peripheral neuropathy, fibromyalgia or other neuropathic pain. Trazadone and Bupropion are used to treat depression and anxiety. Dr. Travis opined prescriptions for Cymbalta, Trazedone and Bupropion were not related to the October 24, 2005 work injury. He observed Cox had a longstanding pre-existing history of anxiety and depression with multiple life stresses. Cox reported she had been in therapy "my whole life." Dr. Travis opined the use of Celebrex was not related to the 2005 injury because Cox had longstanding degenerative changes related to prior lumbar discectomies and the natural aging process. He felt the multiple anti-constipation medications were not related to the 2005 injury but were related to excessive use of opioids. He recommended weaning Cox from opioids on an outpatient basis.

Cox submitted medical records from Dr. Ballard Wright documenting treatment from September 10, 2013 through January 6, 2014. Dr. Wright diagnosed low back pain; spondylosis without myelopathy; lumbar facet arthropathy; lumbar neuritis and radiculitis; lumbar degenerative disc disease and degenerative joint disease; and myofascial pain syndrome. On September 10, 2013, Dr. Wright listed her current medications as Amitiza, Kristalose, Phenergan, Celebrex, Colace, Cymbalta, Lortab, Vistaril, Anaflex,

Avinza, Detrol La, Lisinopril, Trazadone, and Wellbutrin. He noted her medication allows her to function relatively well. She continues to have difficulty with back pain but gets partial relief with the medication. He noted she has seen her psychiatrist and is being prescribed Xanax. A January 6, 2014 note lists the same medications and indicates Relistor has been helpful for her constipation.

Toyota filed additional records from Dr. Wright and The Pain Treatment Center, Inc. Those records contained an April 22, 2014 note from Rebecca Moore ("Moore"), APRN who noted Cox was initially seen in March 2007 when she was evaluated for low back and left leg pain. Moore noted Cox's medication regimen has remained generally stable since that time. In addition to pain medication, Cox used Cymbalta, a commonly used anti-depressant widely known to improve pain control in chronic pain patients, when used as an adjuvant medication therapy. Cox also used Vistaril to address anxiety and sleep deficiencies resulting from chronic pain. Finally, Moore noted Cox used Colace, Amitiza and/or Relistor as needed for relief of constipation associated with chronic opioid use.

The ALJ rendered his Opinion and Order on May 12, 2014 finding the contested medication allowed Cox to function relatively well, provided good pain control, and

was not outside the type of treatment generally recommended by the medical profession or otherwise dangerous to her health. Accordingly, the ALJ found the treatment to be reasonable and necessary.

Toyota filed a petition for reconsideration arguing the ALJ erred in making Toyota responsible for Relistor because it was not part of the medical dispute. Toyota also argued the ALJ failed to address the issue of causation regarding prescriptions for drugs to treat depression and anxiety.

The ALJ issued his order on reconsideration on June 12, 2014 finding Cox was aware of her depression and anxiety but withdrew her allegation of a mental condition in the original litigation. Citing Ramsey v. Sayre Christian Village Nursing Home, 239 S.W.3d 56 (Ky. 2007) and Slone v. Jason Coal Co., 902 S.W.2d 820 (Ky. 1995), the ALJ determined any claim for treatment of the psychological condition was barred. The ALJ ruled Cymbalta, Trazadone, Bupropion and Vistaril were medications utilized for treatment of the mental health condition and are non-compensable. The ALJ sustained the petition to the extent Relistor was not at issue in the reopening, but noted Toyota is entitled to file an additional medical dispute to contest that medication.

On appeal, Cox argues the ALJ improperly reconsidered the merits of the case. Cox argues the original determination of compensability was supported by substantial evidence. She notes the medical records from the Pain Treatment Center indicate all medications are prescribed for chronic pain due to the low back injury and not for her mental state.

The scope of the ALJ's authority in ruling on a petition for reconsideration is not strictly limited to the correction of clerical errors. KRS 342.281 "precludes an ALJ … from reconsidering the case on the merits and/or changing the findings of fact." Garrett Mining Co. v. Nye, 122 S.W.3d 513 (Ky. 2003). However, the ALJ may also correct any patent errors appearing on the face of the award. Wells v. Beth-Elkhorn Coal Corp., 708 S.W.2d 104 (Ky. App. 1985).

Upon careful consideration, we conclude the ALJ corrected a patent error by amending the opinion. The original opinion did not address the issue of work-relatedness, an issue preserved in the benefit review conference order. The failure to make required findings is an error that is correctable on reconsideration. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985). Thus, after addressing work-relatedness, the ALJ had the authority to

reverse the finding regarding compensability of the contested medications.

Alternatively, Cox argues that if Toyota's petition is not a re-argument of the case and the medications are for depression and anxiety, the medications are still compensable. She notes the ALJ found she suffered from "a great deal of pain with related depressive symptoms" and thus her symptoms stem from the same March 24, 2005 work injury that resulted in the three level fusion surgery.

Substantial evidence exists to support the ALJ's finding any claim Cox might have for a mental health condition is barred by the doctrine expressed in Slone v. Jason Coal Co., 902 S.W.2d 820. In Slone, the injured worker filed a workers' compensation claim and a social security disability claim. The worker introduced psychiatric evidence in support of the disability claim, but failed to assert a psychiatric condition in the workers' compensation claim. The workers' compensation claim was fully litigated and finally adjudicated in a written opinion by an ALJ. The claimant later filed a motion to reopen his workers' compensation claim asserting a worsening of his psychiatric impairment. The Supreme Court held as follows:

> . . . In any event, either by means of a new claim or a motion to reopen, Slone would be prevented from

> presenting psychiatric evidence at this time because it is more than two years after the date of the original injury and it was not raised in the initial complaint although it was known to him by the use of ordinary prudence and diligence.
>
> It is the holding of this Court that a motion to reopen pursuant to KRS 342.125 may not be based on a condition known to the claimant during the pendency of his original claim but which he did not present.

In Ramsey v. Sayre Christian Village Nursing Home, 239 S.W.3d 56 (Ky. 2007), an ALJ dismissed a post-award claim for medical benefits related to depression because the claimant knew of her condition but failed to bring a claim for depression in her initial back injury claim. Shortly after the back injury, she saw a doctor and was crying and complaining of muscle spasms. The doctor prescribed medication for depression and anxiety in addition to the pain medication. Ramsey also testified the doctor had recently prescribed anti-depressants. Medical notes documented depression and prescriptions for Prozac and Elavil. The medical testimony and Ramsey's own testimony established Ramsey had significant psychological problems as a result of the work injury. The back injury and her depression were the basis of the social security disability award. In spite of that fact, Ramsey failed to amend her

workers' compensation claim to include a claim for depression. The ALJ awarded benefits based solely upon the physical injury and found the employer responsible for appropriate medical benefits. The ALJ concluded, pursuant to KRS 342.185(1), KRS 342.270(1) and Slone, Ramsey's present claim for psychological symptoms and any medical treatment from the effects of that injury were barred. The Supreme Court affirmed the ALJ's dismissal of Ramsey's claim for medical benefits related to the depression. Because the initial opinion and award referred only to the back injury and chronic pain, and no reference was made in the medical or lay testimony to depression or treatment for depression due to chronic pain, it could not reasonably be inferred the ALJ intended the award to include treatment for depression. The Supreme Court concluded the ALJ did not err in dismissing the claim for depression because Ramsey obviously knew of her depression in the initial proceeding and failed to assert entitlement to medical benefits until more than two years after the award.

Here, as noted by the ALJ, Cox asserted a psychological component in the original litigation. However, she withdrew it and only pursued the physical injury claim. Following a settlement agreement, the ALJ resolved any remaining issues in the December 14, 2011

order. The April 22, 2014 note from Moore indicated the medication regimen has remained generally stable since March, 2007, including Cymbalta, an anti-depressant, and the use of Vistaril to address anxiety as well as sleep deficiencies resulting from chronic pain. It is clear substantial evidence supports the ALJ's finding that the doctrine expressed in Slone precludes compensability of the medications for treatment of the psychological condition.

Additionally, Dr. Travis unequivocally stated use of Cymbalta, Trazadone, and Bupropion is unrelated to the 2005 work injury, but rather due to a long pre-existing history of anxiety and depression and multiple life stresses. His opinion is substantial evidence indicating those medications are not treatment for a work-related condition. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Finally, we note the ALJ's statement that Cox suffered "a great deal of pain with related depressive symptoms" appears to be part of the ALJ's summary of Cox's position on appeal rather than a finding of fact.

Accordingly, the June 12, 2014 Order on Reconsideration rendered by Hon. John B. Coleman, Administrative Law Judge is hereby **AFFIRMED**.

ALL CONCUR.

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