Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 18, 2014

CLAIM NO. 201098972

DENNIS DOTSON PETITIONER

VS. **APPEAL FROM HON. DOUGLAS W. GOTT, ADMINISTRATIVE LAW JUDGE**

PIKE COUNTY FISCAL COURT
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. Dennis Dotson ("Dotson") seeks review of an Opinion and Order rendered March 3, 2014 by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ"), resolving a medical fee dispute partially in his favor regarding certain medication for his low back condition. However, the ALJ determined Pike County Fiscal Court ("Pike County") is no

longer liable for psychiatric medication because it is neither work-related nor necessary. Dotson also seeks review of the March 27, 2014 order, denying his petition for reconsideration.

On appeal, Dotson argues the doctrine of *res judicata* barred the ALJ from considering the medical fee dispute. We disagree, and because the ALJ's determination is supported by substantial evidence and no contrary result is compelled, we affirm.

Dotson filed a Form 101 on January 6, 2011 alleging he slipped and fell on January 5, 2010 while working as a truck driver for Pike County. He alleged injuries to his back, head, and both legs, as well as associated anxiety and depression. Dotson filed the treatment records of Dr. Mansoor Mahmood, Dr. Sai Gutti and Mountain Comprehensive Care Center ("MCCC"). Dotson sought treatment with Dr. Mahmood the day after the work accident. Dr. Mahmood diagnosed a lumbosacral strain, lumbar radiculopathy and facet arthropathy. Over the course of several months, Dr. Mahmood ordered diagnostic studies, recommended physical therapy and prescribed medication.

Dotson treated with Dr. Gutti, a pain management physician, on a monthly basis beginning in May 2010. His assessment included intractable low back pain, lower

extremity radiculitis, lumbar degenerative disc disease at L4-5 with facet arthropathy, radiculitis and migraine headaches. Dr. Gutti administered several lumbar epidural steroid injections and prescribed medication.

Dotson also received therapeutic sessions and psychiatric medication for depression and anxiety from MCCC on a monthly basis beginning in February 2010. The record indicates Dotson was diagnosed with major depressive disorder, single and moderate; and pain disorder associated with a general medical condition and psychological factors. Both parties submitted reports from independent medical evaluations in support of their claims.

Dotson testified by deposition on May 16, 2011 and at the final hearing held November 22, 2011. Dotson was born on April 14, 1969 and resides in Majestic, Kentucky. He is a high school graduate and has a commercial driver's license. Dotson began working for Pike County on June 1, 2009 as a truck driver. On January 5, 2010, Dotson slipped on ice causing him to fall onto his back and strike his head. At the hearing, Dotson confirmed he was seeing Dr. Gutti on a monthly basis and was prescribed Neurontin, Bupap, Zanaflex, Lorcet, and Ibuprofen. He stated he was also going to MCCC for his depression and was prescribed Remeron, Wellbutrin, Ativan, Celexa, and Colace. Dotson had

not worked anywhere after the January 5, 2010 work event due to pain and swelling.

Hon. Caroline Pitt Clark, Administrative Law Judge ("ALJ Clark"), rendered an opinion, award and order on January 23, 2012, finding Dotson suffered a work-related low back injury on January 5, 2010 warranting a 5% impairment rating. Likewise, ALJ Clark determined Dotson suffered from depression due to the work accident warranting a 10% impairment rating based upon an April 12, 2011 report by Dr. Robert P. Granacher. However, ALJ Clark found Dotson did not sustain permanent work injuries to his neck and thoracic spine. The ALJ found the three multiplier applicable, but determined Dotson was not permanently totally disabled. Therefore, the ALJ awarded Dotson temporary total disability benefits, permanent partial disability benefits and "medical expenses that are reasonable and necessary for the cure and/ or relief of his work-related low back and psychological injuries." The January 23, 2012 opinion was not appealed by either party.

Less than two years following ALJ Clark's opinion, Pike County filed a motion to reopen and a medical fee dispute on August 8, 2013 contesting the compensability of lumbar epidural steroid injections requested by Dr. Gutti. Pike County filed a supplemental medical fee dispute

contesting the compensability of all current treatment, including prescription medication from Dr. Gutti and MCCC based upon the opinions of Drs. Michael Best and David Shraberg. A November 18, 2013 benefit review conference order reflects the parties contested the reasonableness/ necessity and work-relatedness of "prescriptions for Opioids, Flexeril, Gabapentin, Bupap, Abilify, Celexa, Bupropion, Lorazepam, and Mirtazapine" and lumbar epidural steroid injections.

Dotson testified at the hearing held January 28, 2014. He indicated since January 23, 2012, he continued to treat with Dr. Gutti and MCCC for pain, depression and anxiety due to his work injury. He indicated he continues to see Dr. Gutti on a monthly basis and is prescribed Omeprazole, Bupap, a generic of Flexeril, Meloxicam, Gabapentin and Hydrocodone. He continues to go to MCCC every three months for medication and every month for therapy. MCCC prescribes Abilify, Celexa, Bupropione, Lorazepan and Mirtazapine. Dotson stated he is longer interested in receiving lumbar steroid injections due to a prior adverse reaction. However, he desires to maintain his current medication regimen because "I don't think I can make it without it."

Both parties submitted treatment records from Dr. Gutti and MCCC. Following the January 2012 opinion, Dotson continued to treat with Dr. Gutti on a monthly basis where he received several lumbar epidural injections and prescriptions for medication. On October 4, 2013, Dr. Gutti diagnosed intractable low back pain, lower extremity radiculitis, lumbar degenerative disc disease at L4-5 with facet arthropathy, right side radiculitis, neuropathy and headaches. He recommended a lumbar injection and prescribed Bupap, Flexeril, Neurontin, Lorcet, and Prilosec. The record indicates Dotson continued to treat at MCCC as well. In a letter dated October 3, 2013, Dr. Pratap Pothuloori stated Dotson is under treatment for major depressive disorder and pain disorder associated with psychotic factors, and currently takes Celexa, Wellbutrin, Abilify, Remeron and Lorazepram.

In support of the medical fee dispute, Pike County re-filed the reports of Drs. Christopher Stephens and Granacher, which they had previously relied upon in the original proceeding. In the March 23, 2011 report, Dr. Stephens diagnosed a low back strain/contusion due to the January 5, 2010 work injury and an exacerbation of the previous back injury. He found no evidence of a thoracic or cervical injury. Dr. Stephens assigned a 5% impairment

rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") for the low back condition. Dr. Stephens recommended Lortab and quarterly visits for medication management. He found the monthly visits to Dr. Gutti and injective therapy unnecessary and the prescriptions for Zanaflex and Klonopin unrelated to the work injury. Dr. Stephens noted elements of symptom magnification and observed Dotson was over-medicated. Dr. Stephens assigned restrictions, but found Dotson could return to truck driving.

In his April 12, 2011 report, Dr. Granacher noted complaints of depression, sadness, panic, nervousness, and pain. He listed Dotson's medications as Ativan, Celexa, Remeron, Lorcet, Zanaflex and Neurontin. Dr. Granacher diagnosed mood disorder (major depression) due to a painful January 5, 2010 work injury; severe symptom magnification; and probable borderline intellectual capacity or mental retardation. Despite severe symptom magnification, Dr. Granacher opined Dotson suffered from depression warranting a 5% to 10% impairment rating pursuant to the 2nd and 5th Editions of the AMA Guides. He stated his examination and medical evidence is consistent with "a man who sustained a painful work injury, developed depression, but is now

exaggerating his level of both physical and mental complaints." Dr. Granacher found Dotson had reached maximum medical improvement, declined to assign psychiatric restrictions, stated he could return to his prior employment and recommended continuing his current treatment for depression.

Pike County also filed the August 13, 2013 report of Dr. Michael Best who noted five of five Waddell findings were positive during the evaluation. He noted Dotson markedly overreacted to the entirety of the examination process. Dr. Best diagnosed a resolved soft issue lumbosacral strain/sprain/contusion as a result of the work event. He found the injury did not result in a permanent harmful change in the human organism and assigned a 0% impairment rating. He opined Dotson requires no additional diagnostic testing or injective therapy and is not a candidate for surgical intervention. He declined to assign permanent restrictions and stated Dotson could return to his former employment. He specifically opined the regimen provided by Dr. Gutti inappropriate and potentially dangerous noting there is no indication for the chronic use of Opioids, Gabapentin, or Flexeril. He further agreed with Dr. Stephen's treatment recommendations rendered March 23, 2011.

Finally, Pike County filed the August 16, 2013 psychiatric report of Dr. David Shraberg, who evaluated Dotson on August 7, 2013. He observed Dotson appeared over-medicated. He stated he had reviewed Dr. Granacher's April 2011 report. Regarding Dotson's treatment, he noted Dr. Gutti prescribed Zantac, Lortab, Flexeril, Bupap, Neurontin, Ibuprofen on a monthly basis; and MCCC prescribed Celexa, Remeron, Lorazepam, Bupropion and Abilify every month. He also noted Dr. Granacher diagnosed an adjustment disorder of adult life associated with a sprain on January 5, 2010 complicated by underlying personality disorder; narcissistic dependent, with avoidant somatic features; substance induced mood disorder; and symptom magnification.

Other than the presence of mild lumbago, Dr. Shraberg opined Dotson's current physical and psychological symptoms are the result of over-medicalization, rather than his initial injury. Dr. Shraberg posited at the time of Dr. Granacher's March 2011 evaluation, notwithstanding severe symptom magnification, there was an element of a mood disorder due to the initial pain of the January 2010 injury which may have continued producing some psychological symptomatology. However, Dr. Shraberg's evaluation occurring two years later suggests "no active psychiatric disorder, and due to pain, the initial mood disorder being

that of a transient adjustment disorder, which would not have been a permanent nature." He further stated, "Other than symptom magnification and but for personality dysfunction, Mr. Dotson psychiatric complaints have no basis, based upon any mechanism any longer of the injury of January 5, 2010 at this time." He reiterated any mood disorder caused by active back pain at the time of Dr. Granacher's 2011 evaluation was transient and had resolved. Dr. Shraberg concluded as follows:

> [Dotson's] present psychological symptoms are neither work related nor would cause a permanent impairment, and can be readily explained on nonphysiological basis three years subsequent to the injury and two years following the initial psychiatric evaluations of both Dr. Granacher and Dr. Johnson.

Dr. Shraberg opined Dotson's medications are interfering with each other and he is receiving no benefit from them. He further stated Dotson is not a candidate for ongoing Lortab, Neurontin, Flexeril, Bupap, Abilify, Bupropion, Lorazepan, Mirtazapine and Celexa.

In the March 3, 2014 opinion, the ALJ reviewed the evidence and noted Dotson is an "unsophisticated witness whose testimony is further affected by an appearance of being overmedicated." He also noted concerns of symptom magnification have been present throughout the evidence

submitted both during the original claim and in the present medical fee dispute. However, the ALJ found Dotson is entitled to ongoing prescription medication of Lortab, Gabapentin, Cyclobenzaprine, and Omeprazole for his low back condition relying upon the treatment records, Dotson's testimony, and Dr. Stephens' opinion. The ALJ found Pike County is not liable for headache medicines such as Bupap since they are unrelated to the compensable low back injury. The ALJ noted the dispute over injections is now moot since Dotson testified he no longer wants them. The ALJ stated as follows regarding Dotson's psychiatric treatment and *res judicata* argument:

> The ALJ relies on Dr. Shraberg to find that the Defendant is no longer liable for the psychiatric medications that Dotson said he was still taking – Abilify, Lorazepam, Mirtazapine, Bupropion, and Citalopram. The ALJ does not believe Dotson's psychiatric symptoms continue to be related to the January 10, 2010, low back strain, or that all the medications are necessary. Dr. Pothuloori did not establish work relatedness in his report. The ALJ noted that that Dr. Stephens suggested that Dotson was over medicated because he fell asleep during the exam.
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> The ALJ acknowledges Plaintiff's collateral estoppel/res judicata argument, but believes that a time passage of 20 months (from Opinion to supplemental Form 112 when medications were placed at issue) is sufficient time to warrant a challenge to the

> relatedness and necessity of continued treatment based on present circumstances. The Defendant had medical support to maintain its dispute.

Therefore, the ALJ sustained in part Pike County's motion to reopen and resolved in its favor the medical dispute regarding medications prescribed for Dotson's psychiatric complaints. The ALJ resolved the dispute regarding medications prescribed for his low back condition in Dotson's favor, with exception of Bupap. The ALJ also stated Pike County is liable of any weaning program required for any of the medications prescribed by MCCC.

Dotson filed a petition for reconsideration, asserting the same arguments it now makes on appeal. In denying his petition by order dated March 27, 2014, the ALJ noted Dotson essentially re-argues the alleged *res judicata* effect of the prior January 23, 2012 opinion. The ALJ made the following additional findings of fact:

> That said, however, a portion of the petition resonates with the ALJ and therefore he will address the merits of the argument a bit further. Perhaps Plaintiff is concerned that the first paragraph of the Opinion and Order issued by the ALJ failed to state that the 2012 Opinion included a finding of 10% psychiatric impairment in addition to 5% lumbar impairment. While that important fact was omitted, the ALJ was

> plainly aware of it. It is the ALJ's belief that Dr. Shraberg, in this instance, provided the most convincing evidence when he said that Plaintiff's current psychiatric symptoms are a result of being overmedicated. Such a finding does not detract from the 2012 finding of a permanent psychiatric condition arising out of the work injury; however, the relatedness of current symptoms and the reasonableness and necessity of current treatment are subject to being placed at issue follow an original decision; and in this instance the ALJ found that continuation of the disputed psychiatric medications at this point in time was not reasonable and necessary, and that the medications currently sustain a non-work-related condition.

On appeal, Dotson argues the ALJ should have applied the doctrine of *res judicata* since the medical fee dispute amounts to a re-litigation of the case previously decided by ALJ Clark less than two years ago with essentially the same proof, but a different physician and law firm. Dotson first asserts Pike County's concern over his well-being is disingenuous since it did not return him to Dr. Granacher to be re-evaluated. Rather, they hired a new law firm which in turn hired new physicians. Dotson asserts Dr. Granacher's April 12, 2011 report and Dr. Shraberg's August 16, 2013 report make similar observations of Dotson's demeanor, effort during evaluation, and signs of

symptom magnification. Dotson asserts Dr. Shraberg's opinion is an attempt "to re-write [ALJ Clark's] original Opinion by noting that Dr. Granacher was confused." Dotson concludes by stating "this is an absolute classic example where doctrine of *res judicata* can and should be applied to stop doctor shopping and retrying cases" and request this Board overrule the ALJ and dismiss the current medical fee dispute under the doctrine of *res judicata*.

In a post-award medical fee dispute, the burden of proof to determine the medical treatment is unreasonable or unnecessary is with the employer, while the burden remains with the claimant concerning questions pertaining to work-relatedness or causation of the condition. *See* KRS 342.020; Mitee Enterprises vs. 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, 918 (Ky. 1993); and National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991). Because Pike County was successful in demonstrating Dotson's current psychiatric medication regimen was neither casually related to nor medically necessary or reasonable for the January 2010 work injury, the question on appeal is whether the evidence is so overwhelming, upon consideration of the whole record, to compel a finding in his favor. 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 fact-finder, the ALJ has the sole authority to determine the quality, character, and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). 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). Where the 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); 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).

An injured worker's right to medical care for a work-related injury is not unfettered. The ALJ has the right and obligation to determine the compensability of medical treatment based upon the evidence presented. Here, in the March 3, 2014 opinion, the ALJ relied upon Dr. Shraberg's opinion in determining Dotson's current psychiatric symptoms are not related to the January 2010 low back strain and the medications prescribed by MCCC are unnecessary. In addition, the ALJ further explained his analysis in the order on reconsideration stating he found Dr. Shraberg most persuasive in his conclusion Dotson's current psychiatric symptoms are a result of being over-medicated. Therefore, the continuation of psychiatric medications is not reasonable and necessary. Standing alone, Dr. Shraberg's opinions constitute substantial evidence supporting the ALJ's conclusion Pike County is no longer liable for the compensability of Dotson's psychiatric medication, and no contrary result is compelled. Although Dotson may be able to identify conflicting evidence in his favor, this is not adequate for reversal on appeal. The ALJ considered the evidence presented and found Dotson's current psychiatric medication

regimen both unnecessary and unrelated to his work injury. It was within his discretion to do so, and no contrary result is compelled.

Dotson argues the ALJ was barred from considering Pike County's medical fee dispute, alleging the original 2012 opinion by ALJ Clark precluded the ALJ from determining the compensability of specific medical treatment, primarily the medications prescribed by Dr. Gutti and MCCC, based on the doctrine of *res judicata*. We disagree. Pike County filed a motion to reopen and medical fee dispute, and submitted new evidence in support of its position. This they are entitled to do pursuant to 803 KAR 25:012. The finding of a compensable work-related low back and psychological condition is *res judicata* based upon the prior January 23, 2012 opinion, not the compensability of specific medical treatment and/or procedures to treat those conditions. The opinion rendered by ALJ Clark did not address the necessity, reasonableness or work-relatedness of Dotson's medication regimen for his work-related injuries. Rather, she found him entitled to medical expenses which are reasonable and necessary for the cure and/or relief of his work-related low back and psychological injuries. This determination by ALJ Clark was not *res judicata* as to reasonableness and necessity of medication prescribed to

him in the future. What may have been a reasonable and necessary medication regimen at the time ALJ Clark rendered her decision in January 2012 may not be reasonable twenty months later in March 2014. As pointed out in Whittaker v. Reeder, 30 S.W.3d 138, 143 (Ky. 2000):

> Workers' compensation is a creature of statute. As set forth in Chapter 342, workers' compensation proceedings are administrative rather than judicial. Although the principles of error preservation, *res judicata,* and the law of the case apply to workers' compensation proceedings, they apply differently than in the context of a judicial action. For that reason, authority based upon judicial proceedings is not necessarily binding in the context of proceedings under Chapter 342.

Accordingly, the March 3, 2014, Opinion and Order rendered by Hon. Douglas W. Gott, Administrative Law Judge, and the March 27, 2014, order on reconsideration are hereby **AFFIRMED.**

ALL CONCUR.

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