

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 6, 2013

CLAIM NO. 200200482

DONNA JONES

PETITIONER

VS.

APPEAL FROM HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE

SPEEDWAY/SUPERAMERICA
AS ADMINISTERED BY AVIZENT (YORK)
(and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE)

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Donna Lee Jones ("Jones"), appeals from an opinion and order rendered June 14, 2013 by Hon. R. Scott Borders, Administrative Law Judge ("ALJ"), resolving a medical dispute on reopening in favor of Speedway/SuperAmerica ("Speedway"). The ALJ found the contested medical treatment, medications, and ongoing treatment was

not caused by Jones' October 24, 2001 work-related back injury, for which she was awarded benefits based upon a 5% impairment rating in an opinion rendered August 20, 2004 by Hon. James L. Kerr, Administrative Law Judge. He also found the treatment was not reasonable and necessary. Jones also appeals from the order denying her petition for reconsideration rendered August 28, 2013.

On appeal, Jones generally disputes the ALJ's determinations the treatment is not reasonable, necessary, or causally related to her October 24, 2001 work injury. Because the ALJ's determinations are supported by substantial evidence, and a contrary result is not compelled, we affirm.

In an opinion rendered November 2, 2011, this Board affirmed the July 18, 2011 decision rendered by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ Gott") finding noncompensable treatment contested by Speedway. In finding in Speedway's favor, ALJ Gott found as follows:

However, the ALJ found that the circumstances have changed since the previous MD, and that a) the Plaintiff has not sustained its [sic] burden of proving the work relatedness of that treatment; and b) the Defendant has sustained its burden of showing that the disputed treatment is not reasonable or necessary.

. . .

The ALJ further notes that there is no documentation of medical treatment for nearly two-and-a-half years after January 2005 to when Jones first saw Dr. Wright in May 2008. This fact supports Dr. Travis' conclusion that the symptomatic nature of Jones' degenerative condition since beginning treatment with Dr. Wright at that time is not related to the effects of the earlier work injury. Dr. Travis overstated the fact that Jones' leg pain began only a year prior to his 2010 evaluation; treatment records suggest ongoing leg pain. However, the evidence shows that the leg pain developed into a radiating, burning pain that was different in character than that suffered from previously, and, again, supports Dr. Travis' conclusion that the degenerative disc disease producing current symptoms is not related to the 2001 back strain that produced only 5% impairment.

As to reasonableness/necessity, the ALJ found persuasive Dr. Travis' opinion that Oxcontin [sic] and Lyrica are not indicated in this instance for a 10-year-old strain injury. Dr. Travis' opinion that facet injections and epidural injections are contraindicated was also found persuasive; such opinion was supported by the fact that Jones testified that the most recently administered injections had not provided much benefit.

In affirming ALJ Gott's decision, this Board determined the decision was supported by substantial evidence, and a contrary result was not compelled.

While the previous appeal was pending, Jones filed a motion to reopen based upon newly discovered evidence, which consisted of treatment records from early 2005 through March 2008 with New Albany Pain Management of Southern Indiana. Apparently those records had been sealed due to a federal investigation of the facility. Jones sought review of the medical dispute in light of the additional records. Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ"), issued an order on January 11, 2012, stating Jones had set forth a *prima facie* showing to allow the claim to be reopened. Speedway filed a petition for reconsideration, which was denied by the CALJ. Speedway then filed an appeal to this Board, which was dismissed as interlocutory in an opinion rendered August 7, 2012. A scheduling order was issued on October 16, 2012, assigning the claim to the ALJ.

Jones filed numerous records and reports from Dr. Gary Reasor; New Albany Pain Center; Dr. William Brooks; Dr. James Owen; Dr. Zaheer Ahmed; Dr. Ballard Wright; Dr. Mazen Dahbar; St. Joseph Mount Sterling; St. Clare Regional Medical Center and Dr. Rezkalla Butros. Dr. Wright also filed additional records. Speedway filed Dr. Travis' March 5, 2013 report. Dr. Travis stated he had reviewed the additional records filed by Jones and Dr. Ballard,

including those for the approximately two and a half years alluded to in ALJ Gott's decision. Dr. Travis stated after reviewing this additional information, his opinions remain unchanged. He again determined the contested treatment was not reasonable, necessary, or causally related to the work injury.

In his decision rendered June 14, 2013, the ALJ found in Speedway's favor in determining the contested treatment is not compensable. Specifically the ALJ stated the following:

For the reasons to be set forth herein, the Administrative Law Judge finds that after review of the additional medical proof submitted by the Plaintiff, that the Plaintiff still has not met her burden of proving that the challenged medical treatment is related to her October 24, 2001 work-related accident and further finds that the Defendant Employer has proven that the proposed medical treatment challenged by them is neither reasonable or necessary for treatment of her lumbar spine condition.

The ALJ stated he found Dr. Travis' opinions most persuasive in determining the contested treatment was not reasonable, necessary, or caused by the work injury. Specifically, the ALJ determined as follows:

In this specific instance, the Administrative Law Judge finds persuasive and relies upon the opinions of Dr. Russell Travis in finding that

the Plaintiff has not met her burden of proving that her ongoing treatment at the Pain Treatment Center is causally connected to treat the effects of her October 24, 2001, lumbar strain superimposed upon degenerative disc disease, and further finds that based on the opinions of Dr. Travis that the treatment the Plaintiff is receiving at the Pain Treatment Center is unreasonable and/or unnecessary treatment.

Therefore, the Defendant Employer shall make a reasonable attempt and pay for the Plaintiff to undergo detoxification from her narcotic pain medication under the supervision of a licensed physician. Once the successful weaning has occurred, or a reasonable attempt thereto, the Defendant Employer shall no longer be responsible for payment of narcotic pain medications for the Plaintiff to be treated at the Pain Treatment Center.

Jones filed a petition for reconsideration generally disagreeing with the ALJ's determination. In an order entered August 28, 2013, the ALJ denied the petition for reconsideration as being a re-argument of the merits of the claim.

As we stated in our previous opinion, in a post-award medical fee dispute, the burden of proof to demonstrate whether 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); National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991).

Since Jones, the party with the burden of proof regarding work-relatedness of the continuing medical treatment, was unsuccessful before the ALJ, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence which 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). We conclude there was no such evidence.

Speedway supported its position with the report of Dr. Travis. Dr. Travis reviewed the additional medical information which he had not had the opportunity to review prior to the entry of ALJ Gott's decision. Dr. Travis again determined the contested treatment was not reasonable, necessary, nor causally related to the October 2001 work injury. This constitutes substantial evidence

which could be and was relied upon by the ALJ regarding the work-relatedness of the treatment.

Here, the ALJ found in Speedway's favor regarding whether the continued treatment was causally related to the work injury, and in finding it was not reasonable or necessary. The opinions of Dr. Travis constitute substantial evidence supporting the ALJ's determination, and it cannot be said the record compels the result Jones seeks on appeal. This Board may not substitute its judgment for that of the ALJ in matters involving the weight to be afforded evidence on questions of fact. See KRS 342.285(2).

Finally, Jones requested an oral argument be held. After having reviewed the record, it is determined an oral argument is unnecessary in arriving at a decision, and therefore the request is **DENIED**.

Accordingly, the opinion and order rendered by Hon. R. Scott Borders, Administrative Law Judge on June 14, 2013, and the order on reconsideration issued August 28, 2013 are hereby **AFFIRMED**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

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