Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 29, 2014

CLAIM NO. 197931491

ELDORADO COAL CO. PETITIONER

VS. **APPEAL FROM HON. STEVEN BOLTON, ADMINISTRATIVE LAW JUDGE**

JACK CHAPMAN;
MEDI HOME CARE;
MEDICAL SERVICES OF AMERICA;
and HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Eldorado Coal Co. ("Eldorado") appeals from the February 26, 2014 Order on Remand and the April 7, 2014 Order Overruling Petition for Reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"). On appeal, Eldorado claims the ALJ's decision, finding in

favor of the claimant in a post-award medical fee dispute, was not based on substantial evidence. For the reasons set forth herein, we affirm.

Jack Chapman ("Chapman") in 1979 filed a claim alleging he had contracted coal worker's pneumoconiosis ("CWP") while employed by Eldorado. He was awarded permanent total disability benefits by Order dated July 28, 1980. His right to ongoing medical treatment was preserved in the award.

On September 17, 2012, Eldorado filed a medical dispute challenging bills submitted by Medical Services of America on August 15, 2012 for treatment with a nebulizer. Attached to his response, Chapman submitted a one-page prescription pad note from Dr. Michael Trivette, his family physician, dated September 20, 2012. The note reads, "Jack is using a Nebulizer/needs a Nebulizer for the Tx of Blacklung – not controlled with MDIs." Chapman later filed a letter from Dr. Trivette dated February 13, 2013, in which he indicated he had been treating Chapman for CWP and that, in his opinion, the nebulizer is required to adequately treat the condition. Eldorado filed a utilization review report prepared by Dr. Bart Olash, who opined there is no association between the nebulizer treatment and simple CWP.

The ALJ ultimately found the treatment reasonable and necessary, and Eldorado appealed. In an Opinion rendered October 25, 2013, this Board vacated the ALJ's opinion and remanded the matter. Specifically, we determined the ALJ had failed to make a specific determination regarding whether the nebulizer treatment is causally related to Chapman's CWP.

The ALJ issued an Order on Remand dated February 26, 2014. He noted Dr. Trivette's hand written prescription pad note, though he did not specifically reference the February 13, 2013 letter. Emphasizing his position as Chapman's treating physician, the ALJ determined Dr. Trivette's opinion to be the most compelling and persuasive evidence. Furthermore, the ALJ explained why he was not persuaded by Dr. Olash's report, noting the fact he did not personally examine Chapman. Eldorado's subsequent petition for reconsideration was denied.

On appeal, Eldorado argues the ALJ's determination with respect to causation is not supported by substantial evidence. It emphasizes a point not directly addressed by the ALJ in his Order on Remand. On the health insurance claim forms submitted by Eldorado, the diagnosis code noted related to chronic airway obstruction, not CWP. Dr. Trivette signed a physician's order form submitted with

each of these bills which also designates a code relating to chronic airway obstruction, not CWP. However, as noted by the ALJ, there is no evidence in the record that Chapman has ever been diagnosed with chronic airway obstruction.

In a post-award medical dispute, the burden of proof regarding work-relatedness lies with the employee, while the employer bears the burden of challenging reasonableness and necessity.[1] Mitee Enterprises v. Yates, 865 S.W.2d 654 (Ky. 1993). Because Chapman successfully established causation, the question on appeal is whether substantial evidence supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Magic Coal Co. v. Fox, 19 S.W.3d 88

[1] It appears debate currently exists as to the burden of proof in post-award medical fee disputes, and the weight to be afforded the unpublished decision of the Kentucky Supreme Court in C&T of Hazard v. Stallings, 2013 WL 5777077 (Ky. 2013). *See* Sumitomo Elec. Wiring v. Kingery, ___ S.W.3d ____, 2014 WL 2916965 (Ky. App. 2014). In this case, we have stated the law as it presently stands under final and published authority. Furthermore, we do not believe it alters our holding herein, as our ultimate determination is that the ALJ's decision is based on substantial evidence.

(Ky. 2000). Rather, it must be shown there was no evidence of substantial probative value to support the decision.

There was scant evidence presented in the case. Chapman relied solely on Dr. Trivette's opinion, while Eldorado submitted only Dr. Olash's report. Upon review of the totality of the evidence, we cannot conclude the ALJ's conclusions are so unreasonable as to require reversal. Notwithstanding the codes on the physician's order form, Dr. Trivette subsequently stated in his medical opinion that the nebulizer is required for treatment of Chapman's CWP. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979) (an ALJ may draw reasonable inferences from the evidence, 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). Dr. Trivette's opinion, though not elaborated upon, is unequivocal and constitutes the requisite substantial proof necessary to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). For this reason, the Board is without authority to reweigh the evidence and find in Eldorado's favor.

For the foregoing reasons, the February 26, 2014 Order on Remand and the April 7, 2014 Order Overruling Petition

for Reconsideration rendered by Hon. Steven G. Bolton, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON SARAH K MCGUIRE
P.O. BOX 351
PIKEVILLE, KY 41502

COUNSEL FOR RESPONDENT:

HON HERBERT DESKINS
PO BOX 1199
PIKEVILLE, KY 41502

ADMINISTRATIVE LAW JUDGE:

HON STEVEN BOLTON
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601