Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 17, 2015

CLAIM NO. 200691520

GAYLE J. JACKSON PETITIONER

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

COPPAGE CONSTRUCTION COMPANY
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

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

STIVERS, Member. Gayle J. Jackson ("Jackson"), *pro se*, appeals from the March 30, 2015, Opinion and Order of Hon. John B. Coleman, Administrative Law Judge ("ALJ") resolving a medical fee dispute in favor of Coppage Construction Company ("Coppage"). The ALJ determined pain management, including opioid prescriptions, provided by the Blatman Health & Wellness Center (hereinafter referred to as

"Blatman Pain Clinic") is not reasonable and necessary or causally related to Jackson's alleged right arm injury.

In Jackson's Form 101 filed March 19, 2008, she alleged an injury occurring on March 27, 2006, to the "[r]ight [a]rm from the elbow to the right hand."

On August 29, 2009, Hon. Joseph Justice, Administrative Law Judge, approved the Form 110 executed by the parties settling Jackson's claim. The Form 110 reveals Dr. James Templin assessed a 3% impairment rating on February 25, 2008. His diagnosis was chronic right arm and hand pain syndrome and chronic right wrist pain syndrome. The Form 110 states Jackson returned to light duty after the injury. Jackson settled for a lump sum of $3,314.29 based on a 3% permanent disability plus temporary total disability benefits previously paid. Jackson did not waive her right to medical benefits, vocational rehabilitation, and to reopen with the exception the parties agreed the claim "cannot be reopened with regard to adjustment of the multipliers under KRS 342.730(1)(c)."

Jackson subsequently sought to reopen her claim based on a worsening of her condition and asserting she is permanently totally disabled. During these proceedings, Coppage filed a medical fee dispute contesting the treatment provided by Dr. Janalee Rissover. Specifically,

it contested the prescriptions for Elavil, Norco Amitriptyline, and sympathetic blocks.

Relying primarily upon the opinions of Drs. Joseph Zerga and Michael Rozen, in an Opinion and Order rendered July 17, 2012, Hon. Otto D. Wolff, IV, Administrative Law Judge ("ALJ Wolff") found Jackson had not presented persuasive evidence she experienced a worsening of impairment since her settlement, and she was not permanently totally disabled. In an August 20, 2012, Order ruling on a petition for reconsideration, relying upon the opinion of Dr. Zerga, ALJ Wolff resolved the medical fee dispute in favor of Coppage and ordered it was not liable for the disputed treatment and medications.

Jackson appealed to the Board and the Court of Appeals and both affirmed.[1]

On September 19, 2014, Coppage filed a Form 112 medical fee dispute, a "motion to reopen for medical fee dispute and motion to join medical provider." Coppage cited to the settlement documents and the previous opinions of ALJ Wolff, this Board, and the Court of Appeals. It asserted that in spite of the litigation, Jackson continued

[1] This Board affirmed the ALJ's opinion in an opinion rendered August 8, 2013. The Court of Appeals affirmed the Board in an opinion rendered November 14, 2014.

to treat with Dr. Rissover who subsequently transferred her treatment to the Blatman Pain Clinic in 2012. Since that time, Blatman Pain Clinic has continued to treat Jackson without a request by her to change the designated treating physician. Coppage represented Jackson has continued to take multiple medications and pursue other forms of treatment including massage therapy. Based on the opinions of Dr. Michael J. Rozen who undertook a recent review of the medical records, it asserted Jackson did not have Reflex Sympathetic Dystrophy ("RSD") or Complex Regional Pain Syndrome ("CRPS") and there is insufficient medical documentation to support chronic opioid medication as treatment of her 2006 work injury. It contended the injury alleged in 2006 was a soft tissue injury which should have resolved within a period of one week. Coppage noted when Jackson was seen by Dr. Zerga in 2010 he indicated a diagnosis could not be made and Jackson had subjective complaints with no objective findings. It also noted Dr. Zerga concluded there was no objective reason for any continued medical treatment. Thus, it asserted continued medical treatment including medications provided to Jackson are not reasonable and necessary or causally related to the 2006 work injury.

On that same date, Coppage also filed Dr. Rozen's September 9, 2014, report. In his report, Dr. Rozen stated any medical treatment based on the work injury was not appropriate.

On October 23, 2014, the ALJ entered an order finding Coppage had made a *prima facie* showing for reopening, sustaining the motion to reopen, and joining Blatman Pain Clinic as a party. The order also set a telephonic conference and directed the parties not to re-file or designate medical reports or records attached to the motion to reopen and Form 112. Further, filing a Form 111 was not required.

The November 24, 2014, Scheduling Order reflects the challenged and unpaid procedure at issue was "chronic opioid prescriptions." The basis for the challenge was reasonableness/necessity and causation/work-relatedness.

Coppage filed Dr. Rozen's January 13, 2011, report and Dr. Zerga's December 22, 2010, report filed in the medical fee dispute resolved by ALJ Wolff as well as Dr. Zerga's October 6, 2014, report and Dr. Rozen's February 25, 2015, report.

Jackson introduced the December 17, 2014, report of Dr. Hal S. Blatman and Blatman Health & Wellness

Center's medical records dated February 25, 2015, May 21, 2013, and December 4, 2012.

Only Jackson testified at the February 23, 2015, hearing. She testified she had been treated by Dr. Rissover who referred her to Dr. Blatman in 2012. She only treats with Dr. Blatman. Jackson had just started seeing Dr. Blatman every month. His treatment consisted of prescribing medication and administering "2 trigger shots." Jackson pays for the treatment she receives from Blatman which she believes helps. She currently takes "Percocet, a sleep aid, and anti-depressants." Her current symptoms are "burning and throbbing in [her] arms, legs, head, back, neck, and all over." Her most discomfort occurs in her right arm extending to her neck. She also has throbbing muscle spasms which extend to her back and burning and numbness in her arms and legs. Her next worst symptom is in the lower body. Her left arm is the most functional. She believes her condition has remained the same. She has been on medication since she was hurt and cannot function without the pain medication and sleep aids. She performs some therapy at home.

In resolving the medical fee dispute in favor of Coppage, the ALJ provided the following analysis:

It is the employer's responsibility to pay for the cure and relief from the effects of an injury or occupational disease, all medical, surgical, hospital treatment, including nursing, medical and surgical supplies and appliances as may be reasonably be required at the time of the injury and thereafter during disability... K.R.S.342.020. However, treatment which is shown to be unproductive or outside the type of treatment generally accepted by the medical profession is unreasonable and non-compensable. This finding is made by the Administrative Law Judge based upon the facts and circumstances surrounding each case. *Square D Company v. Tipton* 862 SW2d 308 (Ky. 1993). In a post-award medical fee dispute, the employer has the burden of proving that contested medical treatment is not reasonable or necessary for the cure and relief of a work injury. *National Pizza Company v. Curry*, 802 SW2d 949 (Ky. App., 1991). However, the burden of proving work relatedness and causation remains with the claimant. *R.J. Corman R.R. Construction Company v. Haddix, Ky.,* 864 SW2d 915 (1993).

After a careful review of the facts and circumstances presented herein, I am convinced the defendant has met its burden of proving the contested medical expenses are unreasonable and unnecessary for the cure and/or relief of the plaintiff's work related injury. In making this determination, I am convinced by the opinion of Dr. Zerga the plaintiff has no objective evidence of injury for which the type of treatment prescribed by Dr. Blackman would be reasonable or necessary. While the plaintiff's claim for benefits involved only the right arm, she relates to Dr. Blackman pain

> in her neck, shoulders, arms, lower back, thighs, left arm and tingling down the back of both thighs. While the plaintiff may have other conditions for which the pain management regimen is necessary, there is nothing relating the need for this pain management to the alleged right arm injury for which the plaintiff has no objective evidence to substantiate. The defendant as a workers compensation insurer is not a general insurer and is not responsible for payment of expenses associated with treatment for non-work related conditions. Therefore, I am convinced the contested treatment is not compensable pursuant to KRS 342.020.
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> No petition for reconsideration was filed.

On appeal, Jackson asserts the history of this litigation should have led the ALJ to conclude the previous opinion and order were erroneous and he should have ruled in her favor. She maintains Coppage has failed to pay all the medical expenses to which she is entitled. As a result, she is forced to pay her own medical expenses for the treatment of RSD which arose "from the initial work injury." Jackson maintains she sees Dr. Blatman every month only for the treatment of work-related RSD. She asserts Dr. Blatman would have noted any treatment unrelated to her work injury. Similarly, he would have stated if the treatment for RSD was unrelated to her work injury. Jackson contends Dr. Blatman has never prescribed

medications for non-work-related RSD pain. She maintains Drs. Zerga and Rozen have not seen her on a regular monthly basis and should not have been relied upon over the findings and opinions of Dr. Blatman. Jackson cites to the opinions of Dr. Blatman which indicate the treatment provided is medically necessary for her work injury. She notes Dr. Rissover agreed with these findings. Jackson concludes with the following:

> According to the International Research Foundation for RSD/CRPS it states, '[t]he objective finding of differences in temperature and color of the skin can be missed by the physician if only a single physical examination is made. Therefore, the evaluating physician must assess more than just subjective complaints. The physician must aggressively seek and document objective findings.' This alone proves that Dr. Zerga and Dr. Rozen's opinion have no medical relevance to whether or not Petitioner should continue treatment. A person with RSD have good days and bad days, also stated by the International Research Foundation for RSD/CRPS, so if only seen once every few years, such as Dr. Zerga and Dr. Rozen has, shows and proves nothing on what evidence is found to prove any case.

Jackson requests the Board reverse the ALJ's decision and remand for further proceedings.

In his January 13, 2011, report, based upon physical examination and a records review, Dr. Rozen

concluded there was no diagnosis. He noted even though Jackson had subjective right arm pain complaints, she did not have objective findings or criteria to support a diagnosis of RSD or CRPS. Consequently, she did not have a diagnosis related to the March 27, 2006, injury. At most, she sustained a soft tissue contusion which resolved within a short period of time. Consequently, her condition no longer exists and she did not have a permanent impairment based on the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment. Since Jackson did not have any permanent work restrictions, Dr. Rozen believed she retained the physical capacity to return to the same type of job performed at the time of injury. Finally, he did not recommend any future medical treatment due to the work injury.

In his September 9, 2014, report, Dr. Rozen cited his findings based upon his previous medical examination and his opinions set out in his January 2011 report. He indicated he had reviewed the medical records of Dr. Rissover and the medical report of Dr. Craig M. Uejo. Dr. Rozen stated his previous examination of Jackson revealed she had numerous Waddell findings without any objective physical findings to support her subjective pain complaints. Further, she did not have any findings to

support the criteria required for a diagnosis of RSD or CRPS. A review of the additional medical records did not support the presence of RSD or any other condition related to the subject work injury. Dr. Rozen concluded the additional medical documentation "is insufficient to support chronic opioid medication prescriptions in [Jackson]." He again reiterated Jackson's previous injury was at most a soft tissue injury which should have resolved within a fairly short period of time.

Dr. Rozen's February 25, 2015, report reveals he conducted a physical examination on February 10, 2015, and reviewed the records of Dr. Rissover, Blatman Pain Clinic, and the report of Dr. Zerga. Based on his examination and review of the medical records, Dr. Rozen again concluded there was no diagnosis. Even though Jackson had subjective right arm pain complaints she did not have objective findings or criteria supporting a diagnosis of a right upper extremity condition including CRPS. Consequently, Jackson did not currently have any diagnosis relating to the March 27, 2006, injury. At most, Jackson had a soft tissue injury which resolved within a very short period of time. He concluded the treatment provided by Dr. Blatman and any future treatment of Jackson's right arm would not be reasonable, medically necessary, or related to her 2006

work injury. Dr. Rozen reaffirmed his opinions expressed in his previous reports.

The December 22, 2010, report of Dr. Zerga reflects he obtained a history, conducted a physical examination, and reviewed various medical records. Based on this information, Dr. Zerga stated there “is no specific diagnosis.” She had subjective complaints of inability to move her right arm with tenderness in the right arm, but no objective findings to indicate a specific diagnosis. Thus, Jackson did not have a specific condition which he could relate to the March 27, 2006, injury. Jackson had reached maximum medical improvement relative to the work injury. Based on the vagueness of her complaints and non-specific presentation, Dr. Zerga agreed with Dr. Templin’s 3% impairment rating. Dr. Zerga found no objective reason for any permanent restrictions and believed Jackson retained the physical capacity to return to the type of work she performed at the time of injury. There was no objective reason for any continued medical treatment.

In his October 6, 2014, report, Dr. Zerga indicated he had reviewed various medical records including the records of Dr. Rissover, Dr. Rozen, and Blatman Pain Clinic. Dr. Zerga stated the information and records do not change the opinions expressed in his December 22, 2010,

report as there was no indication Jackson has any specific physical condition which would require any further medical treatment related to the 2006 work injury. Dr. Zerga concluded by stating:

> There are no objective findings in this individual. She has a multitude of complaints now including her right arm, her right thigh, her low back, and intermittent weakness in her legs, none of which have any objective basis on evaluation.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity for the medical treatment falls on the employer. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991).

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). Similarly, the ALJ has the sole authority to judge the weight to be accorded the evidence and the inferences to be drawn therefrom. 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). The fact-finder may 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 parties' total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

Furthermore, in the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Stated otherwise, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record that supports the ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, supra.

Our only task is to determine whether substantial evidence supports the ALJ's decision in this case. Here, substantial evidence supports the ALJ's finding the pain management regimen, including opioid prescriptions, is not reasonable and necessary treatment of Jackson's alleged right arm injury. Substantial evidence also supports the ALJ's determination the medical treatment provided by Blatman Pain Clinic is not treatment of a condition caused by the alleged March 27, 2006, work injury. The ALJ stated he was convinced by the opinions of Dr. Zerga that there

was no objective evidence of an injury for which the type of treatment prescribed by Dr. Blatman would be reasonable or necessary. The opinions of Dr. Zerga as recited herein constitute substantial evidence supporting the ALJ's decision. The ALJ also stated there was a lack of objective evidence to substantiate the need for treatment of the right arm as outlined by Dr. Zerga and confirmed by Dr. Rozen. As such, we believe the opinions of Dr. Rozen also constitute substantial evidence supporting the ALJ's determination regarding the medical treatment in question. Because the ALJ's decision is supported by substantial evidence in the record, we are without authority to disturb his decision on appeal. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Accordingly, the March 30, 2015, Opinion and Order of Hon. John B. Coleman, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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