Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 16, 2013

CLAIM NO. 197619345

GENESCO, INC. PETITIONER

VS. **APPEAL FROM HON. WILLIAM RUDLOFF, ADMINISTRATIVE LAW JUDGE**

DELLA WOODARD,
JAMES M. DONLEY, M.D.,
and HON. WILLIAM RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING
* * * * * *

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

ALVEY, Chairman. Genesco, Inc. ("Genesco") seeks review of the opinion and award rendered March 1, 2013 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") resolving a medical fee dispute in favor of Della Woodard ("Woodard"), finding the services of a private certified nurse's aide ("CNA") reasonable and necessary for the cure and relief of her 1974 work-related right arm and low back injuries.

Genesco also appeals from the April 8, 2013 order overruling its petition for reconsideration.

On appeal, Genesco argues the ALJ erred as a matter of law in finding compensable the assistance of a private CNA since no medical evidence establishes such services are reasonable or necessary for treatment of her 1974 work injuries. It also argues the evidence does not establish a causal relationship between the requested services and 1974 work injuries. We vacate and remand for additional findings of fact regarding the reasonableness, necessity, and whether the requested services are causally related to the 1974 work injuries.

Woodard filed a motion to reopen and a medical fee dispute on July 19, 2012 seeking reimbursement of expenses associated with the hiring and compensation of Margaret Turner ("Turner"), a private CNA. The motion states Turner assists Woodard with activities of daily living such as driving, housekeeping, opening food containers, mopping, other household cleaning tasks, tying her shoes, lifting, carrying, caring for indoor cats and assisting in personal grooming tasks.[1] Hon. J. Landon Overfield, Chief

[1] Woodard re-filed the motion to reopen and medical fee dispute on September 7, 2012 to correct deficiencies identified by Hon. J. Landon Overfield, Chief Administrative Law Judge in an order dated August 22, 2012.

Administrative Law Judge, sustained Woodard's motion to reopen and joined Dr. James M. Donley as a party in orders dated September 20 and 21, 2012.

Woodard testified by deposition on November 26, 2012 and at the hearing held February 28, 2013. Woodard was born on April 23, 1938 and resides in Hopkinsville, Kentucky. She has lived by herself since approximately 1983 in a single level home. Woodard confirmed she suffered work-related injuries to her low back and elbow while employed by Genesco in 1974. She underwent two surgical procedures in 1992 and 1997 for her low back condition, including a fusion and several procedures for her right elbow condition.

Woodard testified she has treated with Dr. Donley, an orthopaedic surgeon, since 1997 for her low back and elbow condition, as well as other unrelated conditions. Woodard testified she continues to treat with Dr. Donley biannually, and complains of right elbow and low back symptoms each visit. Generally, Dr. Donley refills her Fiorinal and Mobic prescriptions, which treat both her low back and elbow conditions, and he has recommended use of a TENS unit. Dr. Donley has not recommended any further surgical procedures or treatment for either her low back or elbow. He has recommended someone assist Woodard on a part-

time basis, but did not specify a specific profession. At the hearing, Woodard stated following the deposition she hired Turner, who comes to her house three hours a day, three days a week. Woodard pays Turner ten dollars an hour in cash from her own personal funds. However, Woodard testified she would like Turner to come to her house seven days a week, three hours a day. Woodard explained she had previously hired Turner in 1992 following her first back surgery, and had used her "on and off" since then. Woodard testified Turner's CNA license has lapsed.

Woodard testified Dr. Donley performed right knee surgery in 2011, for a condition un-related to her right elbow or back. Woodard testified she currently experiences knee pain and "charlie horses," and is unable to bend her knee. Woodard receives no right knee treatment due to insurance issues. Woodard testified she also continues to experience right elbow pain and catching, is unable to raise her arm, and has difficulty with lifting. Although she is right-handed, she primarily uses her left hand due to her right elbow symptoms.

Woodard testified she also experiences pain in her low back and hip, cannot stoop or bend, and is unable to lift anything very heavy. Woodard testified she requires assistance with personal activities such as tying her shoes,

changing the litter pans for her four indoor cats, washing dishes, opening cans, cooking, cleaning, cutting her food, washing her hair, bathing, buttoning her blouses, manipulating zippers, and putting on her socks.

Following her 1974 work injuries, Woodard denied any subsequent motor vehicle accidents, personal injuries to any body part, slip and falls requiring medical treatment or falling down stairs. Woodard specifically did not recall a 1997 car accident, falling down steps in 1997, or injuring her right elbow in 1999 trying to catch a falling shampoo bottle. Regarding the alleged 1997 car accident, Woodard testified at the hearing the vehicle she was riding in was "nudged" by another vehicle, resulting in no injuries. She stated she went to the Regional Medical Center at the insistence of a concerned acquaintance, since she just had back surgery to have metal removed in April 1997.

Woodard filed the April 16, 1979 opinion and award rendered by Hon. Creighton E. Mershon, Member of the old Workers' Compensation Board. He found Woodard sustained work-related injuries to her right arm on January 25, 1974 and to her back which became symptomatic in August 1974. He noted Woodard underwent surgery on her right elbow to relieve inflammation in May 1975 and August 1976 by Dr. Charles Barlow. He also found Woodard's pre-existing

spondylolisthesis was a dormant, non-disabling condition which was brought into disabling reality by her working conditions. He assigned a 10% occupational disability, apportioning 5% to the right arm injury and 5% to the back injury. She was awarded temporary total disability benefits, permanent partial disability benefits and medical benefits.

Woodard also attached the May 14, 2012 Utilization Review report prepared by Dr. Donald Lee who concluded Dr. Donley's request for a functional capacity evaluation is not medically appropriate. Dr. Lee noted there is no indication of a complication to recovery, co-morbidity, or extenuating clinical circumstances supporting the request. He also stated there is no documentation indicating Dr. Donley anticipates returning Woodard to full duty work to justify the request.

Woodard also attached the following letter dated October 5, 2011 of Dr. Donley in support of her request for private assistance:

> [Woodard] is a patient of mine and it has come to my attention that I again need to inform you that Ms. Woodard will require routine assistance for life. She is not able to go back to a regular routine in caring for herself. It is my understanding that she only has Ms. Turner (her assistant) 3 hours per day.

Both parties submitted additional treatment records of Dr. Donley from 1997 through 2013, and records from the Regional Medical Center in 1997. Over twenty years following her 1974 work injuries, Woodard presented at the Regional Medical Center on October 5, 1997 complaining of right elbow swelling and tenderness after falling down steps onto her right side the day before. The record noted the two elbow procedures in the 1970s, as well a spinal surgery with hardware removal for lower lumbar fusion in April 1997. Woodard was diagnosed with capitellum fracture and radial head fracture. However, the age of the fractures could not be determined due to degenerative changes. Dr. Donley noted the fall the following day when he saw Woodard. He assessed contusions to both knees and an elbow injury, noting there is a questionable fracture and arthritis at the elbow demonstrated by x-ray. Woodard returned on October 22, 1997. Dr. Donley diagnosed tennis elbow and administered a steroid injection. He also concluded prior x-rays did not show an acute fracture, but demonstrated pre-existing arthritic changes.

Woodard returned to the Regional Medical Center on November 27, 1997 via ambulance following a motor vehicle accident. The records noted the fusion with hardware

removal in April 1997. Due to her April 1997 surgery, Woodard requested her fusion area be assessed.

Woodard returned to Dr. Donley once in 1998. He noted degenerative changes in her right elbow. She underwent a total right elbow replacement in February 1999. On May 21, 1999, Woodard presented to Dr. Donley complaining of right elbow pain after she reached out reflexively to catch a falling bottle of shampoo at the store. Dr. Donley diagnosed a possible stress fracture of the proximal ulna and placed her right arm in a sling immobilizer. On September 29, 1999, after several months of failed conservative treatment, Woodard continued to complain of right elbow pain and ulnar nerve neuropathy. Dr. Donley noted the total elbow replacement had done well until she reached out quickly. He recommended a surgical revision of the elbow. The next record from Dr. Donley is dated February 1, 2002, which notes the last right elbow revision occurred in October 2001. Dr. Donley stated Woodard was stable, but the grafting would eventually fail due to poor bone quality.

In a letter dated March 30, 2009 addressed to a claims specialist, Dr. Donley noted a January 25, 1974 injury date. He further stated Woodard underwent a March 27, 2009 right elbow triceps tendon reconstruction with

Achilles tendon allograft. As a result, Dr. Donley stated Woodard "requires home care and hired the same person that she had used in past elbow and back surgeries, Margaret Turner" for at least six to eight weeks, three hours a day.

Over a year later on May 11, 2010, Dr. Donley performed a lateral meniscectomy to repair a torn lateral meniscus of the right knee at the Regional Medical Center. On October 27, 2010, Dr. Donley requested approval for a raised toilet seat and an elbow guard. He noted he was treating Woodard for essential hypertension; right knee joint osteoarthritis; right knee effusion, pain and synovitis; and right elbow pain.

Woodard returned to Dr. Donley on April 6, 2011 and October 5, 2011 for a follow up of a "previously diagnosed arthroplasty of the right elbow" and complaints of right elbow pain. He diagnosed right elbow osteoarthritis and pain. Beginning in February 2012, Woodard began treating with Dr. Donley every two to three months. Since then, Woodard has been diagnosed with right elbow osteoarthritis and pain, right knee osteoarthritis, lumbar pain, degenerative lumbar/lumbosacral IV disc, lumbar spondylolisthesis, organ or tissue replaced by other means,

hypertension and bilateral carpal tunnel syndrome.[2] The records reflect Dr. Donley referred Woodard for a physical therapy evaluation in February 2012, and requested a functional capacity evaluation which was denied in July 2012.

Woodard was evaluated by Dr. John Stanton at Genesco's request on January 18, 2013. In his report, Dr. Stanton concluded Woodard sustained a work-related muscle strain or direct impact injury resulting in tennis elbow lateral epicondylitis, which was treated appropriately with a lateral release, and has since resolved. He opined the lateral epicondylitis would not result in a condition requiring a total elbow replacement, which he determined was un-related to the 1974 work injury. Regarding the low back condition, Dr. Stanton opined Woodard had non-work-related spondylolisthesis at L5-S1 for which she underwent back surgery. The condition subsequently resolved no longer requiring treatment. He noted Woodard's current back complaints were not present for at least twenty years following her back surgery. Dr. Staton stated the most current treatment note reflects Woodard had significant

[2] In an EMG report dated August 20, 2012, Dr. N. Shireen Mufti concluded the electrical findings are consistent with a mild carpal tunnel syndrome, bilaterally, and right ulnar nerve neuropathy.

degenerative changes in the lumbar spine. Dr. Stanton concluded the following: “Currently, the patient requires assistance with home activities and daily activities, but this is not a work-related requirement.”

In the March 1, 2013 opinion and award, the ALJ noted the following contested issues were identified at the February 12, 2013 benefit review conference: “compensability (work-relatedness and reasonableness/ necessity)” of Woodard’s request for services of, and reimbursement of expenses associated with, a private CNA. The ALJ listed the evidence submitted by each party. He summarized Woodard’s testimony in two sentences. He provided very minimal summaries of Dr. Donley’s October 5, 2011 letter, April 18, 2012 record and December 12, 2012 record, as well as Dr. Stanton’s report. In resolving the medical fee dispute in Woodard’s favor, the ALJ found as follows:

> KRS 342.020 requires the employer to pay for cure and relief from the effects of an injury or occupational disease the medical, surgical and hospital treatment, including nursing, medical and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. Upon reopening, the employer has the burden of proving that a treatment is

> unreasonable and unnecessary, while the employee bears the burden of proving work-relatedness. *Mitee Enterprises v. Yates*, 865 S.W.2d 654, 655 (Ky.1993).
>
> I saw and heard the plaintiff testify at the hearing and found that she was a credible and convincing witness. I also found persuasive the medical evidence from Dr. Donley, the plaintiff's long-term treating orthopedic surgeon. Taking into consideration the plaintiff's sworn testimony and the evidence from Dr. Donley, I make the factual determination that the plaintiff's request for reimbursement of expenses associated for services of a private certified nurse's aide and the plaintiff's request for services for such services by a private certified nurse's aide are reasonable and necessary for the cure and relief of the effects of her work injuries to her right upper extremity and her back. I make the factual determination that the disputed medical treatments are, therefore, compensable.

Genesco filed a petition for reconsideration stating the ALJ's finding of facts did not include a summary of all the evidence it had submitted. It argued Woodard's testimony is largely inconsistent with the medical records. Genesco pointed out the records reflect Woodard fell down steps in October 1997, was involved in a car accident in November 1997 and injured her elbow in 1999 after attempting to catch a falling shampoo bottle. Woodard either did not recall or denied all three instances. It noted several

records of Dr. Donley, including the 1997 and 1998 procedures to the right elbow, Woodard's un-related right knee surgery in 2010, and un-related carpal tunnel syndrome diagnosis in 2012. It argued Dr. Stanton's opinion is supported by the medical record. Genesco requested the following:

> [Genesco] respectfully requests the [ALJ] reconsider the evidentiary record, including the January 18, 2013 report of Dr. Stanton, the medical records of Dr. Donley and the medical records of Regional Medical Center. The request for assistance with indoor cats, routine activities and light house chores is not causally related to, or reasonable and necessary for, the January 25, 1974 work injury. The right elbow and lumbar lateral epicondylitis and lumbar strain injuries have reached an end result with respect to the work injury sustained 39 years ago. Instead, the request for assistance with indoor cats, routine activities and light house chores is necessitated by plaintiff's various health conditions which are not related to the January 25, 1974 work injury.

In the opinion and order on reconsideration rendered April 8, 2013, the ALJ denied Genesco's petition since the March 1, 2013 opinion "discussed the contested issues raised by the parties in the Benefit Review Conference Order."

As noted by the ALJ in the March 1, 2013 opinion, in a post-award medical fee dispute, the employer bears

both the burden of going forward and the burden of proving the contested treatment or expenses are unreasonable or unnecessary. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). The claimant, however, bears the burden of proving work-relatedness. *See* Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

The ALJ's decision, as well as the order on reconsideration, is bereft of any discussion regarding whether Woodard met her burden of proving the contested services provided by Turner are casually related to the 1974 right elbow and low back injuries. Likewise, the ALJ merely made a conclusory statement he relied upon Woodard's testimony and Dr. Donley's records in finding the disputed services reasonable and necessary for the cure and relief of the effects of her work injuries to her right upper extremity and her back without providing any analysis.

The ALJ did not address Genesco's points raised in the petition for reconsideration regarding the age of the original work injury and how the subsequent treatment rendered by Dr. Donley since 1997 affected his ultimate

decision. The basis for this dispute, the October 5, 2011 letter by Dr. Donley, essentially states Woodard will require routine assistance for life and is not able to go back to a regular routine in caring for herself. The letter is silent regarding which of her ailments caused the need for a private CNA, or whether the requested service is related to, and reasonable and necessary treatment of the 1974 work injuries.

This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusions were drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). However, the parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982).

On remand, the ALJ shall specifically address whether Woodard met her burden of proving work-relatedness

and cite to specific evidence upon which he relied. The ALJ shall outline the medical testimony or records establishing the contested treatment or care are causally related to the 1974 work injuries in the form of findings of fact sufficient to advise the parties and this Board of the basis for his decision. Likewise, the ALJ shall specifically address whether Genesco met its burden of proving the contested services of a private CNA are unreasonable or unnecessary, citing to the specific evidence upon which he relied.

Accordingly, the ALJ's determination the disputed medical expenses are compensable as set forth in the March 1, 2013 opinion and the April 8, 2013 order overruling Genesco's petition for reconsideration are **VACATED**. This claim is **REMANDED** for additional findings consistent with the views expressed herein.

ALL CONCUR.

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