

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 15, 2013

CLAIM NO. 201188580

HAROLD LOCKARD

PETITIONER

VS.

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

SOLID MASSEY ENERGY
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * *

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

STIVERS, Member. Harold Lockard ("Lockard") appeals from the February 6, 2013, opinion, order, and award and the March 7, 2013, and April 17, 2013, orders ruling on Lockard's and Solid Massey Energy ("Solid Massey") petition for reconsideration of Hon. R. Scott Borders,

Administrative Law Judge ("ALJ").¹ In the February 6, 2013, opinion, order, and award, the ALJ awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits for lumbar spine and right knee injuries. On appeal, Lockard asserts the ALJ erred by not awarding future medical benefits for his left knee.

The first Form 101 (Claim No. 2009-76443) filed by Lockard alleges on October 1, 2009, he was injured in the following manner: "Harold was going down a slope, stepped on a water line, it was really muddy and fell." The Form alleges Lockard sustained injuries in the form of three ruptured discs and lumbar radiculopathy. The Defendant listed is "Massey Coal Services Inc."

A second Form 101 (Claim No. 2011-88580) alleges on May 10, 2011, Lockard was injured while in the employ of Solid Massey in the following manner: "Foot slipped in mud, fell on knees hit face first." Lockard alleges sustaining injuries to his back, knees, and foot. The Defendant listed is "Solid Massey Energy."

¹ The April 17, 2013, order on reconsideration re-issues the March 7, 2013, order on reconsideration as "Hon. Roy Downey was inadvertently not placed on the certificate of service on the original March 7, 2013, order."

Lockard filed a "Motion to Consolidate Claims" dated August 27, 2012, in which he asserted both claims should be consolidated because they are against the same employer and insurance carrier. By order dated September 24, 2012, of Hon. Chris Davis, Administrative Law Judge ("ALJ Davis") the two claims were consolidated and reassigned to ALJ Borders.

A February 17, 2012, report of Dr. David E. Muffly, generated after Dr. Muffly performed an orthopedic examination on Lockard, was introduced. Dr. Muffly set forth the following assessment:

Bilateral lumbar radiculopathy. His first injury from 10-1-09 caused the central disc herniation at L4-5 with instability at that level requiring fusion with a good result. The re-injury date of 5-10-11 has now caused bilateral lumbar radiculopathy confirmed on EMG/NCV findings and noted with right leg numbness and pain. The 5-10-11 injury has caused bilateral patellar chondromalacia related to direct trauma right knee more painful than the left knee.

Dr. Muffly opined as follows regarding impairment ratings:

Impairment is 2% to the right knee using the foot note on Table 17-31 related to direct trauma to his patella confirmed by MRI. The left knee has 0% impairment. He has 26% impairment for the lumbar spine using the range of motion model Tables 15-7, 15-8, 15-9

and 15-18. 20% of this impairment would be related to the 10-1-2009 injury and 6% of this impairment is related to the 5-10-2011 injury. Combined impairment is 27%. The 5th edition AMA Guides is used.

A "progress note" dated November 4, 2011, of Dr. Vellaiappan Somasundaram, one of Lockard's treating physicians, indicates "sprain/strain of knee/leg unspec" under assessment.

The benefit review conference was held off-record before the hearing on December 11, 2012.

In the February 6, 2013, opinion, order, and award, the ALJ made the following findings regarding Lockard's alleged injuries and impairment ratings:

In this specific instance, after careful review of the lay and medical testimony, the Administrative Law Judge finds that the Plaintiff retains a 20% functional impairment rating as a result of his October 1, 2009, low back injury based upon the persuasive testimony of Dr. Scott upon which the undersigned Administrative Law Judge relies. The Administrative Law Judge finds that Plaintiff retains a 0% functional impairment rating to his lumbar spine as a result of the 2011 work-related incident also based upon the opinion of Dr. Scott who is found persuasive.

In regard to the 2011 work-related accident, the Administrative Law Judge finds persuasive and relies upon the opinion of Dr. Muffly and finds that Plaintiff retains a 2% functional

impairment rating is result of his right knee injury.

In Lockard's February 15, 2013, petition for reconsideration, he argues as follows:

The Plaintiff filed for benefits for both knees. The ALJ in the Opinion granted PPD benefits and medical benefits for the right knee. However, the medical benefits were not addressed in reference to the left knee. The decision is silent on the left knee. Although, Plaintiff agrees that there was not any evidence to warrant an award for PPD for the left knee, Plaintiff feels that he should be entitled to continued medical treatment for the left knee. All doctors that have examined the Plaintiff in this case have noted that Plaintiff complained of pain in both knees. Plaintiff, during the hearing, testified that he has been able to continue working because of the pain injections that he receives for his back and both his knees.

Medical benefits are not tied to an award of PPD. Medical [sic] need to [sic] reasonable and necessary and to offer either a cure or relief of symptoms. Although, he does not have a PPD rating for his left knee, Plaintiff has testified that he has pain in that knee and that the injection given to him relieves the pain and allows him to continue to work. All of the medical evidence submitted in this case describes the Plaintiff has [sic] having pain in both knees from his injury of May 10, 2011.

Plaintiff testified at his hearing that he wished to continue to work. He could be a 'poster child' for workers

compensation rehab. Plaintiff respectfully asks the ALJ to review this case and award medical benefits for the left knee.

In the March 7, 2013, order overruling Lockard's petition for reconsideration, the ALJ ruled as follows:

In regard to Plaintiff's Petition for Reconsideration, the petition is likewise OVERRULED. The ALJ found that the Plaintiff's claim for Worker's Compensation benefits resulting from a left knee injury is DISMISSED, as Plaintiff did not meet his burden of proving he suffered a work-related left knee injury to the extent he suffered any level of impairment as to entitle him to medical benefits for his left knee condition.²

On appeal, Lockard argues pursuant to FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), he is entitled to continued medical benefits for his left knee injury. Lockard concedes no doctor in the record assessed an impairment rating for his left knee.

The language in the February 6, 2013, opinion, order, and award and the March 7, 2013, order on reconsideration offers no insight into whether Lockard sustained a work-related injury to his left knee. In the

² In the March 7, 2013, order on reconsideration, the ALJ also sustained in part and overruled in part Solid Massey's February 22, 2013, petition for reconsideration.

February 6, 2013, opinion, order, and award, the ALJ stated as follows:

The first issue for determination is entitlement to benefits per KRS 342.730. It has been stipulated that the Plaintiff suffered two separate work-related injuries while employed for Solid Massey Energy. The first incident occurred on October 1, 2009, when the [sic] fell at work injuring his lumbar spine and as a result underwent a discectomy and fusion at the L4-L5 level. Mr. Lockard successfully returned to work thereafter without restrictions until May 10, 2011, when he suffered his second injury as a result of falling forward onto his knees and face allegedly suffering injury to his knees, and re-injuring his lumbar spine.

(emphasis added).

While Lockard failed to ask for additional findings in his petition for reconsideration and, instead, argued entitlement to medical benefits for his left knee, the ALJ was obligated to clarify his ruling regarding the alleged left knee injury because of the obvious ambiguity in the February 6, 2013, opinion, order, and award on this issue. Instead of doing so, in the March 7, 2013, order on reconsideration, the ALJ simply stated Lockard "did not meet his burden of proving he suffered a work-related left knee injury to the extent he suffered any level of

impairment as to entitle him to medical benefits for his left knee condition."

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). The ALJ, in neither the February 6, 2013, opinion, order, and award nor the March 7, 2013, order on reconsideration, definitively determined whether Lockard sustained a work-related injury to his left knee. As the ALJ relied upon Dr. Muffly concerning the right knee injury and Dr. Muffly diagnosed "bilateral patellar chondromalacia related to direct trauma," there is medical evidence in the record that is clearly supportive of Lockard having sustained a work-related left knee injury. On remand, the ALJ must determine, *clearly and unambiguously*, whether Lockard sustained a work-related injury to his left knee.

Additionally, on remand, the ALJ must clarify what he meant in the February 6, 2013, opinion, order, and award when he determined Lockard "did not meet his burden of proving he suffered a work-related left knee injury to the extent he suffered any level of impairment as to entitle him to medical benefits for his left knee

condition." (emphasis added). While this Board acknowledges the ALJ did not use the phrase "impairment rating," the language "to the extent he suffered any level of impairment" strongly implies he is referring to an impairment rating. Thus, we are compelled to emphasize that in FEI Installation, Inc. v. Williams, supra, the Supreme Court instructed that KRS 342.020(1) does not require proof of an impairment rating to obtain future medical benefits, and the absence of a functional impairment rating does not necessarily preclude such an award. Therefore, if Lockard sustained a work-related injury to his left knee, the absence of an impairment rating would not preclude an award of future medical benefits. Lockard only needed to prove that he suffered a work-related left knee injury and the work-related injury continues to cause impairment regardless of whether the impairment rises to a level that it warrants a permanent impairment rating, permanent disability rating, or permanent income benefits. Id. at 319-320.

On remand, the ALJ must determine whether Lockard sustained a work-related left knee injury and whether the injury continues to cause impairment. If the work-related left knee injury continues to cause impairment, Lockard is entitled to future medical benefits pursuant to FEI

Installation, Inc. v. Williams, supra. We *sua sponte* vacate the April 17, 2013, order and award of medical benefits in the February 6, 2013, opinion, order, and award and remand for additional findings.

Accordingly, that portion of the February 6, 2013, opinion, order, and award pertaining to the award of medical benefits and the March 7, 2013, and April 17, 2013, orders ruling on Lockard's and Solid Massey's petition for reconsideration are **VACATED**. This claim is **REMANDED** for rendition of an amended opinion, order, and award in conformity with the views expressed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON KIMBERLY S DOWNEY
P O BOX 3850
PIKEVILLE KY 41502

COUNSEL FOR RESPONDENT:

HON A STUART BENNETT
P O BOX 2150
LEXINGTON KY 40588

COUNSEL FOR RESPONDENT:

HON JEFFREY DAMRON
P O BOX 351
PIKEVILLE KY 41502

ADMINISTRATIVE LAW JUDGE:

HON R SCOTT BORDERS
8120 DREAM STREET
FLORENCE KY 41042