

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 5, 2015

CLAIM NO. 200182030

JENNIFER WATTS

PETITIONER

VS.

APPEAL FROM HON. ROBERT L. SWISHER,
CHIEF ADMINISTRATIVE LAW JUDGE

HAZARD ARH
and HON. ROBERT L. SWISHER,
CHIEF ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING

* * * * *

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

STIVERS, Member. Jennifer Watts ("Watts") appeals from the July 10, 2014, Opinion and Order and the August 5, 2014, Order of Hon. Robert L. Swisher, Chief Administrative Law Judge ("CALJ"). In the July 10, 2014, Opinion and Order, the CALJ sustained the Motion to Reopen and resolved a portion of the medical fee dispute filed by Hazard ARH

Medical Center ("Hazard ARH") in favor of Hazard ARH. The CALJ found the medications Seroquel, Clonazepam, Lorcet, Flexeril, Orphanedrine, and Klonopin, as well as psychotherapy are not reasonable and necessary treatment and ordered submission of a weaning plan as follows:

The defendant/employer and/or its workers' compensation carrier are relieved from liability for these contested prescription medications as well as ongoing regularly and routinely scheduled psychotherapy sessions, provided, however, that the parties are ordered to submit an agreed to weaning plan within 30 days. Should plaintiff decline to participate in a weaning process or participate in the process of development of a weaning plan, the defendant/employer shall submit an appropriate plan from a qualified physician designed to offer a timetable over which plaintiff can be safely weaned from medications deemed herein to be non-compensable. The defendant/employer and/or its workers' compensation carrier shall remain liable for payment of the contested non-compensable medication until such time as the weaning program has been completed or, in the absence of plaintiff's participation in a weaning program, that point in time at which plaintiff would reasonably have completed an appropriate weaning plan. The Administrative Law Judge will review the weaning plan or plans submitted by the parties and issue a final order with respect to the extent of the defendant/employer's obligation to continue to provide all medications [sic] deemed non-compensable during the selected weaning process.

The CALJ rejected that portion of Hazard ARH's medical fee dispute contesting its liability for prescription medications Abilify, Cymbalta, and either Lyrica or Neurontin (but not both simultaneously) and ordered Hazard ARH shall remain liable for payment for these medications.

On appeal, Watts argues the CALJ relied upon an improper standard in resolving the medical fee dispute by discounting and disregarding the medical records she filed in the record. Also, Watts argues the CALJ failed to adequately define the weaning process.

Watts' Form 101 (Claim No. 01-82030) alleges she sustained work-related injuries on September 4, 2000, and July 7, 2001, while working as a registered nurse.¹ Watts alleged she strained her back on September 4, 2000, while lifting a patient. Watts also alleged she was pulling a patient on July 7, 2001, when her back popped. This later incident also allegedly injured Watts' "head, neck, back, arms, legs & and possible psychological."²

¹ The Form 101 alleges both September 4, 2000, and September 4, 2001, as the dates of injury. The record indicates the correct date of injury is September 4, 2000.

² By order dated December 19, 2001, Hon. John B. Coleman, Administrative Law Judge ("ALJ Coleman") consolidated Claim No. 2001-82030 with Employer's First report of Injury, No. 2000-68913.

In an award dated February 20, 2004, Hon. John B. Coleman, Administrative Law Judge ("ALJ Coleman") determined as follows:

The Administrative Law Judge is persuaded by the testimony of Dr. Bean, Dr. Templin and Dr. Cooley. It is found that the plaintiff has a 23% functional impairment resulting from the physical aspects of the July 27 [sic], 2001 injury and the sequela of that injury as the result of the physical injury, the lumbar fusion surgery, and the sequela thereof it is found that Ms. Watts would not [sic] able to perform the physical activities of her employment as a floor nurse at anytime [sic] in the foreseeable future.

The Administrative Law Judge is persuaded by the testimony of Dr. Andrew Cooley that the plaintiff has sustained a 5% functional impairment due to the psychiatric aspects of her injury. The Administrative Law Judge further finds that the psychiatric condition would not preclude the plaintiff continuing to perform the same type of work which she was performing at the time of injury.

ALJ Coleman awarded permanent partial disability benefits and medical benefits.

On March 13, 2013, Hazard ARH filed a medical fee dispute describing the nature of the dispute as follows:

Based on the attached Utilization Review report of Dr. Kelly Clark, the movant contests the relatedness and reasonableness of the respondent's treatment with Dr. Mitchell Wicker and

Kentucky River Community Care, Inc. (Ryan McPeak, Jane Bowen, and any other KRCC medical providers), including, but not limited to treatment for bipolar disorder and any non-work related conditions, including but not limited to psychotherapy and prescriptions for psychotropic medications.

On October 10, 2013, Hazard ARH filed an "Amended Medical Fee Dispute" stating as follows:

This claim was previously reopened to challenge the plaintiff's ongoing psychotherapy and prescriptions for psychotropic medications. Based on the attached report of Dr. Timothy Kriss, the undersigned additionally contests the reasonableness/necessity and work relatedness of the plaintiff's ongoing treatment for low back pain, including, but not limited to, frequency of office visits, emergency medical treatment, and prescriptions including, but not limited to, Lorcet (Hydrocodone), Flexeril, Orphenadrine (Norflex), Lyrica and/or Neurotin, Klonopin and Seroquel.

Watts introduced voluminous medical records of Dr. Mitchell Wicker spanning the periods of January 14, 2013, through June 3, 2013 and July 1, 2013, through March 12, 2014. Watts also introduced medical records of Kentucky River Community Care, Inc. dated November 9, 2011; December 21, 2011; and August 1, 2013.

Hazard ARH introduced Dr. Wicker's records; a Utilization Review Report of Dr. Kelly Clark; a report of Dr. Douglas D. Ruth; and a report of Dr. Timothy Kriss.

In his September 24, 2013, independent medical evaluation report, Dr. Kriss opined Watts has a "documented poly-substance abuse problem" and on nine separate occasions had tested positive for controlled substances which were not prescribed to her. Dr. Kriss opined "Ms. Watts further tested POSITIVE for MULTIPLE non-prescribed controlled substances simultaneously, with a single drug test." He outlined the following:

HYDROCODONE narcotic on 6 (SIX) occasions when it was not prescribed.

OXYCODONE narcotic on 3 (THREE) occasions when it was not prescribed.

HYDROMORPHONE narcotic when it was not prescribed.

CLONAZEPAM benzodiazepine anxiolytic 3 (THREE) times when it was not prescribed.

BENZODIAZEPINE controlled substances on 6 (SIX) occasions when they were not prescribed.

Neurontin on 2 (TWO) occasions when it was not prescribed.

METHAMPHETAMINES which were not prescribed.

Opiates excluding oxycodone on at least 3 occasions when no opiates were prescribed.

Tricyclic antidepressants when it was not prescribed (June 29, 2010, Doctor Mick)

Phencyclidine ("PCP" or "Angel Dust") when it was not prescribed (June 29, 2010, Doctor Mick)

Dr. Kriss also noted Watts tested negative on numerous occasions for narcotic medications prescribed for her. He offered the following opinions:

The medications Ms. Watts repeatedly takes without doctor authorization, as well as the doctor-prescribed medications that Ms. Watts fails to take, are not 'routine' or by any means 'ordinary' medications: these are almost all controlled substances and highly addictive.

It is a very, very serious medical issue when a patient takes addictive substances without a physician's prescription and without the prescribing physician's knowledge.

It is also a different type of very serious problem when powerful, addictive substances are prescribed and provided to the patient, who then leads the physician to believe that she is taking those medications, when in fact she is not. This is why Ms. Watts was discharged from Kentucky Pain Physicians (Doctor Windsor).

When Ms. Watts subsequently misinforms the next prescribing physician (Dr. Mick) as to why she was so recently

discharged, 'covering up' the real reason she has no medications (blatant narcotics noncompliance), in a clear effort to obtain even MORE narcotics, this greatly compounds both the medical and behavioral (substance abuse) pathology.

Dr. Kriss provided an in depth explanation of why Lorcet (Hydrocodone) is "medically totally inappropriate for ongoing treatment of Ms. Watts' long-term back and leg pain complaints." Dr. Kriss believed "[t]he same reasoning and rationale for unequivocally avoiding all narcotics in Ms. Watts, as discussed above in great detail, applies to Flexeril." Dr. Kriss opined Watts should not use Orphenadrine because the risk of abuse far outweighs any potential benefit. Similarly, he believed Klonopin, used as a sleeping aid by Watts, is "totally inappropriate" as a sleep aid for all patients, but particularly a patient like Watts who has a history of polysubstance abuse. Finally, Dr. Kriss opined Seroquel is "totally inappropriate."

Dr. Ruth performed a psychiatric evaluation of Watts on August 6, 2013, and generated a report on August 8, 2013. As part of his diagnoses, he added "R/O substance abuse" and opined as follows: "She denies a history of substance abuse. However, there are several incidents documented in her medical records that would suggest to

healthcare professionals that the possibility of substance abuse should be considered."

Dr. Ruth opined as follows:

The prescription of Seroquel is not considered reasonable and productive for her depressive disorder. The records do not document an indication for this medication, such as a psychosis or bipolar disorder. There are no symptoms of a psychosis acknowledged during examination today or documented in available records. Ms. Watts' records reveal that the diagnosis of bipolar disorder is assigned by the Kentucky River Community Care. If that were the diagnosis, the prescription of either Seroquel or Abilify would be reasonable, although not the treatment of choice. But both would not be needed simultaneously. Regardless, Ms. Watts denies a history of symptoms of bipolar disorder, the symptoms and behaviors of that condition are not documented in available records, and examination findings are not indicative of a bipolar disorder. Ms. Watts' impression is that Seroquel was prescribed to assist sleep; but the Remeron she currently takes has improved her sleep, and other medications with less risk than Seroquel are still available for use for that purpose. Therefore, the use of Seroquel would not be considered reasonable and productive for her depressive disorder.

Bupropion is no longer prescribed according to Ms. Watts.

Clonazepam would not be considered reasonable and productive treatment for [sic] effects of the work incident. The medical records indicate that, while it

had been prescribed and discontinued earlier, its current use was initiated following the death of Ms. Watts' fiancée's mother and was intended as a temporary measure to alleviate the anxiety arising from that grief. It was not intended for long term use, and it was not prescribed for [sic] effects of the work incident.

Psychotherapy sessions have been reasonable and productive. However, Ms. Watts has undergone psychotherapy for over one and one-half years. Generally if an individual is capable of responding to psychotherapy he or she is able to learn the techniques needed to deal with the psychiatric problems within a matter of some [sic] few to several months. If psychotherapy extends much beyond that time then it may produce no further benefit, and it might potentially even be counterproductive, such as by promoting unnecessary dependence. Therefore, continued psychotherapy beyond a few additional sessions would not be considered reasonable and productive for [sic] effects of the work incident of 2001.

Regarding continued psychotherapy sessions, Dr.

Ruth opined further:

Continued psychotherapy sessions on a long terms basis likely would not be of benefit. Usually when the termination of psychotherapy is anticipated it is useful to devote a few psychotherapy sessions to dealing with the termination of therapy. Therefore, if it is decided to terminate psychotherapy sessions, having three to four additional sessions to reinforce the principles previously learned and

to deal with the termination would be considered reasonable and within expectations of therapy.

The prescription of medications for the depressive disorder could be managed by brief follow up appointments about every three to four months. These medications could be managed by follow up visits with a psychiatrist or with Ms. Watts' current psychiatric healthcare provider.

The January 27, 2014, Benefit Review Conference Order in Medical Dispute listed the contested issues as the reasonableness/necessity and work-relatedness of "prescription medications Abilify, Seroquel, Cymbalta, Bupropion and Clonazepam and psychotherapy, and prescription medications Lorcet, Flexeril, Orphenadrine, Lyrica and/or Neurontin, and Klonopin."

The July 10, 2014, decision contains the following findings of fact and conclusions of law:

2. Compensability of prescription medications for Abilify, Seroquel, Cymbalta, Bupropion, Clonazepam, Lorcet, Flexeril, Orphanedrine, Lyrica and/or Neurontin, and Klonopin as well as psychotherapy on the basis of reasonableness/necessity and work-relatedness.

In a post-award medical fee dispute, it is the employer who bears the burden of proving that the contested medical expenses are unreasonable or unnecessary. *National Pizza Company v. Curry*, 802 S.W.2d 949

(Ky. App. 1991). 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 Co. v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Plaintiff retains the burden of proof on the issue of work-relatedness. *Addington Resources, Inc. v. Perkins*, 947 S.W.2d 421 (Ky. App. 1997).

While the defendant/employer has preserved for adjudication the threshold issue of work-relatedness/causation, the reports of its own evaluating medical experts, Drs. Kriss and Ruth, establish that plaintiff's ongoing physical and psychological symptoms are, at least in part, directly and causally related to the residual effects of the underlying work injury. There is no evidence to the contrary. The evidence submitted by the defendant/employer is, therefore, sufficient in and of itself to establish the requisite causal link between plaintiff's ongoing physical and psychological symptoms and complaints and the work injury. The issue of work-relatedness/causation is, therefore, resolved in favor of plaintiff.

Turning next to the more significant issue of reasonableness and necessity, the ALJ will address the medications prescribed by Dr. Wicker separately from the medication prescribed by Kentucky River Community Care, Inc. Plaintiff testified that Dr. Wicker presently prescribes pain medication which she indicated is Percocet as opposed to Lorcet, Flexeril and Neurontin. She denied knowing what

Orphanedrine Citrate is. Beside her testimony that the medications provide some relief, plaintiff has submitted treatment notes from Dr. Wicker which document plaintiff's prescription medication regimen from that provider. The most recent office note describes a visit occurring March 12, 2014, at which plaintiff presented with her longstanding low back and hip complaints resulting in a diagnosis of "back pain, lumbar, chronic" which was felt to be "unchanged." Plaintiff's medication list for that problem included Endocet, Flexeril, and Orphanedrine Citrate (generic for Norflex). Although it is somewhat unclear from the record, it appears that plaintiff was prescribed following that office visit Endocet and Flexeril without any additional mention of Orphanedrine. Significantly, at no point in the multiple office visit notes submitted from Dr. Wicker is there any specific discussion of the reasonableness and necessity of plaintiff's ongoing prescription medication regimen nor concern expressed about aberrant drug screens nor discussion regarding possible drug interactions or side effects. The defendant/employer, on the other hand, has submitted a highly detailed and very thorough report from Dr. Kriss who, while believing that plaintiff has legitimate complaints of low back pain which are at least to some extent related to the original work injury, opines that ongoing prescription narcotics, including therefore, Percocet, as well as prescriptions for Skelaxin, Flexeril, a controlled substance muscle relaxer, and Orphanedrine, a non-controlled substance "muscle relaxer", are not medically reasonable and necessary. Dr. Kriss points to the lack of

efficacy, cumulative risk, current medical literature concerning the treatment of chronic benign pain and plaintiff's history of documented poly-substance abuse as collectively militating against the medical appropriateness of ongoing prescriptions of narcotic pain medication and muscle relaxers, controlled or otherwise. In the face of this specific and detailed challenge to the medical appropriateness of the medications which he has prescribed, Dr. Wicker chose not to participate in this proceeding and has not offered any explanation or defense as to his prescribing/treatment practices. In *Sleep Inn v. Kristi Lain Helton*, WCB 2012-96126 (rendered January 8, 2014), the Workers' Compensation Board held that written prescription notes issued by a treating physician "absent an express statement that the medications are reasonably necessary for the relief of Helton's injury, are insufficient to establish compensability." Stating the principle in different terms, the Board held that "the simple fact a physician prescribes a medication is [sic] not conclusively establish it is medically reasonable within the meaning of KRS 342.020." Applying that standard to the present case, the defendant/employer's evidence in the form of a report of Dr. Kriss is un rebutted and compels a finding that the contested prescriptions of Lorcet (or any narcotic substitute including Percocet), Flexeril and Orphanedrine Citrate are not medically reasonable and necessary for the treatment of plaintiff's underlying work injury. The ALJ finds Dr. Kriss' report to be additionally credible in that he acknowledged that plaintiff has credible, although inflated, symptoms and requires some non-narcotic

treatment as well as the prescription of either Lyrica or Neurontin (but not both simultaneously). In other words, the import and impact of Dr. Kriss' report is not to preclude the provision of prescription medication for plaintiff completely, but only to eliminate the prescription of certain types of medication which have not proven to be effective and are not medically reasonable and necessary. This aspect of the medical dispute is resolved in favor of the defendant/employer, except to the extent that the defendant/employer shall remain liable for the cost of either Lyrica or Neurontin, but not both.. [sic]

Turning next to the disputed medications and psychotherapy with respect to plaintiff's compensable psychological condition, the ALJ notes that the defendant/employer's evaluating expert, Dr. Ruth, is of the opinion that plaintiff does require treatment for her work-related depressive disorder and that prescriptions for Cymbalta and Abilify are reasonable, productive and, therefore, necessary and appropriate. That said, Dr. Ruth objects to the prescription of Seroquel inasmuch as while that medication may be appropriate for the treatment of bipolar disorder, there is no evidence that plaintiff has bipolar disorder. It appears, moreover, that Dr. Ruth felt the Seroquel was prescribed to assist with sleep but that plaintiff has subsequently been prescribed Remeron which has actually improved her sleep and has less risk than Seroquel making that medication, therefore, unreasonable and unproductive for her depressive disorder. Bupropion is no longer prescribed for plaintiff and she

confirmed that at the Formal Hearing. Clonazepam/Klonopin are not considered reasonable and productive treatment for the effects of the work incident according to Dr. Ruth. In so finding, he explained that it appeared that the current use of that medication was initiated following the death of plaintiff's fiancé's mother and was intended as a temporary measure to alleviate the anxiety arising from that grief and was not intended for long term use and not prescribed for the effects of the work incident. As was the case with respect to plaintiff's medication prescribed by Dr. Wicker, Kentucky River Community Care has not offered any detailed explanation as to the reasonableness and appropriateness of the medication prescribed for plaintiff to address psychological symptoms which are, at least to some extent, work-related. Specifically, no evidence has been submitted to counter the employer's evidence regarding the lack of medical reasonableness and necessity of prescriptions for Seroquel and Clonazepam/Klonopin. In the absence of such evidence, Dr. Ruth's expert opinion is un rebutted. Unrebutted evidence compels a finding for the party that it favors unless the fact finder has a proper basis for rejecting it. *Franklin Ins. Agency, Inc. v. Simpson*, 2008 WL 5051613 (Ky.). Having carefully reviewed the evidence herein, the ALJ discerns no compelling reason to disregard the unrebutted expert medical/psychiatric opinion of Dr. Ruth, and in reliance thereon, the ALJ finds that prescriptions for Seroquel, Clonazepam and/or Klonopin are not medically reasonable and necessary for treatment of plaintiff's work-related psychological condition. Inasmuch as plaintiff no longer is prescribed or takes Bupropion (Wellbutrin), that

aspect of the medical dispute is dismissed as moot. The defendant/employer shall remain liable for the cost of Abilify and Cymbalta.

The final objection raised by the defendant/employer pertains to ongoing psychotherapy provided by Kentucky River Community Care, Inc. Plaintiff testified that she is seen on a quarterly basis by a counselor at that facility and that she finds the treatment beneficial. While Dr. Ruth acknowledges that the psychotherapy treatment received by plaintiff has been reasonable and productive in the past, plaintiff has now undergone that treatment for a year and a half and she is able to learn the techniques needed to deal with her psychiatric problems without ongoing psychotherapy. He further notes that that [sic] ongoing therapy "might potentially even be counterproductive, such as by promoting unnecessary dependence." He concluded, therefore, that continued psychotherapy beyond a few additional sessions would not be considered reasonable and productive for the effects of the work incident in 2001. Again, the joined medical provider has not offered any substantial evidence defending or addressing the reasonableness and necessity of this contested treatment modality. The expert opinion of Dr. Ruth is, therefore, unrebutted, and the ALJ finds no compelling evidence in the record to support compensability of regular recurring psychotherapy sessions this far removed from the date of injury. That said, however, the ALJ is not finding that psychotherapy would never be compensable under any set of circumstances and it may well be, should plaintiff have an acute exacerbation of symptoms, that such conservative treatment would be

completely appropriate. The ALJ simply finds that regularly scheduled ongoing psychotherapy sessions are not medically reasonable and necessary for treatment of the residual effects of plaintiff's work injury.

With respect to plaintiff's present narcotic medication regimen including narcotic pain relievers, the ALJ is aware that that treatment cannot be safely stopped on an abrupt basis. Instead, it will be necessary to wean plaintiff from the contested prescription medication. Accordingly, the parties are ordered to submit an agreed to weaning plan within 30 days. Should plaintiff decline to participate in a weaning process or participate in the process of development of a weaning plan, the defendant/employer shall submit an appropriate plan from a qualified physician designed to offer a timetable over which plaintiff can be safely weaned from medications deemed herein to be non-compensable. The defendant/employer and/or its workers' compensation carrier shall remain liable for payment of the contested non-compensable medication until such time as the weaning program has been completed or, in the absence of plaintiff's participation in a weaning program, that point in time at which plaintiff would reasonably have completed an appropriate weaning plan. The Administrative Law Judge will review the weaning plan or plans submitted by the parties and issue a final order with respect to the extent of the defendant/employer's obligation to continue to provide all medications deemed non-compensable during the selected weaning process.

Watts filed a petition for reconsideration alleging several errors which was overruled by order dated August 5, 2014. The Order reads as follows:

This matter is before the Administrative Law Judge on the plaintiff's petition for reconsideration. Therein, the plaintiff states that the undersigned committed patent error in partially resolving the present medical dispute in favor of the defendant/employer and in so doing relying on the reports of the defendant's evaluating physicians, Dr. Kriss and Dr. Ruth. Plaintiff contends that the undersigned ought to have inferred from the plaintiff's testimony that the treatment provided by Dr. Wicker and Kentucky River Community Care, Inc., is medically reasonable and necessary and should have resolved the medical dispute in its entirety in her favor. The defendant/employer has filed a response to the petition for reconsideration which has been likewise reviewed.

Pursuant to KRS 342.281, Administrative Law Judge is precluded from reconsidering a case on the merits and/or changing findings of fact on a petition for reconsideration. *Garrett Mining Company v. Nye*, 122 S.W.3d 513 (Ky. 2003). Petitions for reconsideration are limited to addressing errors patently appearing on the face of an opinion. Having carefully reviewed the plaintiff's petition for reconsideration the Administrative Law Judge notes that it is, in essence, requests that the undersigned reweigh the evidence and arrive at a different conclusion with respect to the resolution of the pending medical dispute. The petition

for reconsideration does not demonstrate in patent errors on the face of the opinion in order of July 10, 2014.

The Administrative Law Judge understands the plaintiff's frustration with the medical dispute process. Contrary to her contention, however, the ALJ was not required to advise either Dr. Wicker or Kentucky River Community Care, Inc., that their participation was "compulsory or mandatory", or that the potential effect of their failure to provide a written report or otherwise respond to or participate in the medical dispute process would be a finding that their treatment was non compensable. That both Dr. Wicker and Kentucky River Community Care, Inc., failed to respond to challenges to the medical care which they provide is a choice each provider made for reasons unknown.

Watts' first argument on appeal is the CALJ applied an incorrect standard in resolving the medical fee dispute by allegedly discounting and disregarding the treatment records she submitted. She maintains:

The ALJ conducted no analysis or review of the Plaintiff's treatment records to see whether those treatment records contained sufficient information to justify that the Plaintiff's treatment was reasonable and necessary or that the treatment plan contained in those office notes was sufficient to satisfy the regulations which require a treatment plan.

Watts requests remand to the CALJ for a review of the medical records in question and a determination whether they support a finding her treatment is reasonable and necessary.

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 v. 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).

As Hazard ARH was the party with the burden of proof in this post-award medical fee dispute and was successful regarding the matters on appeal, the sole issue in this appeal is whether substantial evidence supports the CALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Substantial evidence has been defined as evidence of substance and relevant consequence and having the fitness to induce conviction in the minds of reasonable

people. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). Although a party may note evidence that would have supported a conclusion that is contrary to the CALJ's decision, such evidence is not an adequate basis for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

Pursuant to KRS 342.275 and KRS 342.285, the CALJ, as fact-finder, determines the quality, character, and substance of all the evidence and is the sole judge of the weight and inferences to be drawn from the evidence. Square D Company v. Tipton, *supra*; Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997).

In the July 10, 2014, Opinion and Order, the CALJ found Hazard ARH met its burden of proving the contested prescription medications Seroquel, Clonazepam, Lorcet, Flexeril, Orphanedrine, and Klonopin as well as continued psychotherapy sessions are not reasonable and necessary treatment. In so finding, the CALJ expressly relied upon the opinions of Drs. Kriss and Ruth. Significantly, *the sufficiency and accuracy of the CALJ's findings of fact regarding Dr. Kriss' and Dr. Ruth's opinions are not challenged on appeal.* We note the reports of Drs. Kriss and Ruth do not utilize the precise language of "unreasonable" and "unnecessary" regarding the contested medical

treatment. For instance, regarding the use of Lorcet, Dr. Kriss explained at length why Lorcet is contraindicated for Watts. He opined Lorcet and other narcotics "are medically totally inappropriate for ongoing treatment of Ms. Watts' long-term back and leg pain complaints on several grounds."

Those grounds are:

- 1) Lack of Efficacy
- 2) Cumulative Risk
- 3) Current medical literature concerning the treatment of chronic benign (non-cancer) pain, such as that of Ms. Watts
- 4) Ms. Watts' substance abuse, and the unacceptable risks of prescribing long-term controlled substances in any patient with documented, clear, and ever-recurrent abusive behavior.

Concerning Watts' use of Lorcet, Dr. Kriss opined as follows:

It is quite possible that high-dose, daily narcotics given to Ms. Watts for the last 10 years have in fact INCREASED her susceptibility to pain (pain hypersensitization), and WORSENE her depression, anxiety, panic attacks and bipolar disorder, in addition to the almost certain tachyphylaxis ('getting used to a drug' such that ever-higher and higher dosages are required to obtain the same clinical effect), psychological addiction, and physical dependence.

Dr. Kriss invoked equally unequivocal language (i.e. "totally inappropriate," etc.) regarding the need for Flexeril, Orphenadrine, Klonopin, and Seroquel.

Dr. Ruth couched his opinions regarding Seroquel and Clonazepam in terms of the contested medication being not "reasonable and productive."

Drs. Kriss and Ruth did not use the words "unreasonable" and "unnecessary." However, within his province and discretion the CALJ could easily infer from the strong language used by Drs. Kriss and Ruth, particularly in light of Watts' documented narcotic abuse, that both physicians believe Seroquel, Clonazepam, Lorcet, Flexeril, Orphanedrine, and Klonopin are unreasonable and unnecessary for the treatment of Watts' work-related injury. The CALJ's decision concerning the continued psychotherapy sessions will be addressed separately. Since Watts has not challenged the sufficiency or accuracy of the CALJ's findings of fact regarding the opinions of Drs. Kriss and Ruth, the CALJ's decision concerning the medication must be affirmed.

Watts contends the CALJ rejected outright the medical records she submitted because they were medical records instead of reports containing an expert opinion regarding the need for the medications in question. The

CALJ analyzed and reviewed the treatment records filed in the record by Watts as evidenced by his summary of these records in the "Summary of the Evidence" and his discussion of these records in the "Findings of Fact and Conclusions of Law" contained in the July 10, 2014, decision. Based on his review of these medical records, the CALJ concluded they did not directly address the reasonableness and necessity of the contested medical treatment. We find no error regarding the CALJ's analysis of these medical records.

Similarly, while the CALJ discussed the Board's holding in Sleep Inn v. Kristi Lain Helton, WCB 2012-96126 (rendered January 8, 2014), it is clear the CALJ did not ignore everything but the prescription notes filed in the record by Watts. We decline to remand the claim for reconsideration of the medical evidence submitted by Watts.

Watts' second argument on appeal is the CALJ failed to define the weaning process. Watts requests remand to the CALJ for a determination as to the "appropriate weaning process." We also decline this request.

In the July 10, 2014, Opinion and Order, the CALJ ordered the parties to submit an agreed weaning plan within thirty days. Despite Watts' arguments to the contrary, the CALJ is not responsible for defining the details of this

weaning plan, including "how the weaning process should occur." This is clearly a determination to be made by medical professionals and not the CALJ.

For reasons not asserted by Watts, we vacate the CALJ's decision concerning the need for continued psychotherapy sessions.

In the July 10, 2014, Opinion and Order, the CALJ relied upon Dr. Ruth's opinions in finding regularly scheduled psychotherapy sessions were neither reasonable nor necessary. However, a review of Dr. Ruth's August 8, 2013, report reveals his belief that while continued psychotherapy **"beyond a few additional sessions"** would not be "reasonable and productive" for Watts, **"it is useful to devote a few psychotherapy sessions to dealing with the termination of therapy."** (emphasis added). Dr. Ruth further opined, "[t]herefore, if it is decided to terminate psychotherapy sessions, having three to four additional sessions to reinforce the principles previously learned and to deal with the termination would be considered reasonable and within expectations of therapy."

More importantly, the CALJ determined, based upon Dr. Ruth's opinions, Hazard ARH "shall remain liable for the cost of Abilify and Cymbalta" for the treatment of

Watts' depression. In Dr. Ruth's August 8, 2013, report, he recommended as follows:

The prescription of medications for the depressive disorder could be managed by brief follow up appointments about every three to four months. These medications could be managed by follow up visits with a psychiatrist or with Ms. Watts' current psychiatric healthcare provider.

The above language appears to indicate Dr. Ruth believed continued psychotherapy sessions were appropriate. We believe the CALJ should address this seemingly conflicting language in Dr. Ruth's report.

On remand, should the CALJ choose to again rely upon Dr. Ruth's opinions regarding psychotherapy sessions, he must directly address the advice of Dr. Ruth regarding the need for "a few additional sessions" of psychotherapy in order to deal with the termination of therapy and his suggestion Watts would need to see either a psychiatrist or her current psychiatric healthcare provider every three to four months for the maintenance of her prescription medication for depression for which Hazard ARH is still liable. It is clear from Dr. Ruth's report that the "few additional sessions" of psychotherapy to deal with the termination of therapy refer to actual psychotherapy sessions. However, what is unclear is whether the sessions

for maintaining Watts' medication for depression would be actual psychotherapy sessions or something different. The ALJ must resolve these questions.

Accordingly, the CALJ's decision the prescription medications Seroquel, Clonazepam, Lorcet, Flexeril, Orphanedrine and Klonopin are not reasonable and necessary treatment set forth in the July 10, 2014, Opinion and Order and the August 5, 2014, Order is **AFFIRMED**. The CALJ's decision regarding the need for continued psychotherapy sessions set forth in the July 10, 2014, Opinion and Order and the August 5, 2014, Order is **VACATED**. The claim is **REMANDED** to the CALJ for additional findings and a decision regarding the need for continued psychotherapy sessions in accordance with the views expressed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON THOMAS W MOAK
P O BOX 510
PRESTONSBURG KY 41653

COUNSEL FOR RESPONDENT:

HON BRADLEY HAYES
303 N HURSTBOURNE PKWY STE 1100
LOUISVILLE KY 40222

CHIEF ADMINISTRATIVE LAW JUDGE:

HON ROBERT L SWISHER
657 CHAMBERLIN AVE
FRANKFORT KY 40601