Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 24, 2016

CLAIM NO. 200990242

JOEY R. SPURLOCK PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

HALCOMB JACK SUNSET RANCH
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Joey R. Spurlock ("Spurlock") appeals from the July 30, 2015, Medical Fee Opinion and Order and the August 31, 2015, Order on Petition for Reconsideration of Hon. Jane Rice Williams, Administrative Law Judge ("ALJ"). In the July 30, 2015, decision, the ALJ resolved the medical fee dispute filed by Holcomb Jack Sunset Ranch ("Sunset Ranch") in favor of Sunset Ranch. On appeal,

Spurlock argues the ALJ's decision is not supported by substantial evidence and must be reversed as a matter of law and makes five sub-arguments. First, Spurlock asserts the ALJ erred in relying upon the opinions of Dr. Michael Chunn. Second, Spurlock argues the ALJ erred in limiting Spurlock's diagnosis. Third, Spurlock argues Dr. Chunn's opinion is without merit. Fourth, Spurlock asserts the ALJ failed to consider all of the evidence. Fifth, Spurlock asserts the claim should be remanded to the ALJ for additional findings.

The Form 101 alleges on April 27, 2009, Spurlock sustained injuries to his right arm, back, hips, legs, feet, and groin in the following manner: "The plaintiff injured his back when he was digging up a water line that needed to be repaired." Spurlock also alleged erectile dysfunction and an emotional component due to the work injury.

The record contains a November 17, 2011, Form 110-I Agreement as to Compensation and Order Approving Settlement approved by Hon. Edward Hays, Administrative Law Judge ("ALJ Hays"). Under "nature of injury(ies)" is the following:

> lumbar strain superimposed on congenital spinal canal stenosis, facet arthropathy, ligamentum flavum

> hypertrophy, and degenerative annular bulging at L4-5; Plaintiff is status-post 10/26/2009 bilateral laminoforaminotomy L4-L5; depression.

On March 6, 2015, Sunset Ranch filed a "Motion to Reopen File Form 112" and a Form 112 Medical Fee Dispute. In the Form 112, the nature of the dispute is described as follows:

> Plaintiff filed this claim against the Defendant-Employer to recover benefits as a result of a work injury of April 27, 2009. On November 17, 2011, Plaintiff received a settlement for $116,000.00 in a lump sum. Future medical expenses for the low back injury were preserved and not waived.
>
> Defendant/Employer has been billed by Plaintiff and Louisa Medical Clinic/Dr. Mark Workman and Elizabeth Saul, nurse practitioner, for office visits and prescriptions of Naproxen, Gabapentin, Cyclobenzaprine, Morphine Sulfate, Oxycodone/APAP, Lidocaine, Citalopram, Amitriptyline and Omeprazole. This medical billing has been submitted to Utilization Review. Attached is a Utilization review report of Dr. Michael Chunn, a Board-certified family practice physician, Index No. 8408. Dr. Chunn found that Citalopram was reasonable and necessary but that the other medical bills were not. Omeprazole is a stomach medication which is not for the work injury and there is no indication of gastroesophageal reflux disease or peptic ulcer disease. Dr. Chunn stated that office visits every six months would be reasonable and necessary to renew prescriptions of Citalopram. Also attached is a reconsidered Utilization

> Review of Dr. Bart Olash, a Board-certified internal medicine specialist, Index No. 2394. Dr. Olash agreed that these drugs were not medically reasonably and necessary for the cure and/or relief of the work injury of April 27, 2009. Also attached is a medical report of Dr. Gregory Snider, a Board-certified family practice physician, who examined Plaintiff on December 29, 2014. Dr. Snider agreed that Plaintiff was over medicated and that Neurontin, Amitriptyline and high dose narcotics, were not reasonable and necessary. Relief from this and any other unreasonable and unnecessary or unrelated medical billing is respectfully requested.

The January 27, 2015, Physician Review Report of Dr. Chunn was introduced by Sunset Ranch. After performing a medical records review, Dr. Chunn opined as follows regarding the reasonableness and necessity of Naproxen, Gabapentin, Cyclobenzaprine, Morphine Sulfate, Oxycodone/APAP, Lidocaine, Citalopram, Amitriptyline and Omeprazole:

> With regard to followup every four months, it is my opinion that the patient has a resolved musculoligamentous strain of his lumbar spine and possible ongoing depression that is being allowed on this claim. The use of citalopram in the followup for depression would be the only allowed followup for this individual at this time based on my review of the records. It is reasonable to have followup one or two times per year, which would be a minimum interval of

> every six months. Therefore, in my opinion, of all the medications noted above, citalopram would be medically reasonable and necessary for the treatment of the workplace injury of 04/26/2009 and all the maximum of two followup visits in a 12-month period. Therefore, Office visits every four months, and the medications naproxen, gabapentin, cyclobenzaprine, morphine sulfate, oxycodone/APAP, lidocaine, amitriptyline, and omeprazole are not medically reasonable and necessary for the cure and/or relief of the 04/27/2009 work injury.

The record also contains the January 28, 2015, Utilization Review Approval Letter of Dr. Chunn stating, in part, as follows: "Citalopram and 1-2 office visits per year (use of citalopram in the followup for depression would be the only allowed followup for this individual at this time)."

On March 13, 2015, Spurlock filed a "Designation of Evidence" which states:

> Comes now the Plaintiff, Joey F. Spurlock, by counsel, and hereby gives notice that he will adopt as proof on this claim all evidence filed by Plaintiff in the original claim as evidence on behalf of the Plaintiff herein pursuant to the Rules and Regulations of the Department of Workers' Claims.

The May 26, 2015, "BRC Order in Medical Fee Dispute" lists the following contested issues: "The

issue(s) to be determined are the reasonableness/necessity [check-marked] and/or work-relatedness [not check-marked] of: Neurontin; Amitriptyline; Oxycodone; Morphine Sulfate; Lidocaine; Gabapentin; Cyclobenzaprine; Omeprazole."[1]

In the July 30, 2015, Medical Fee Opinion and Order, the ALJ provided the following Findings of Fact and Conclusions of Law:

> A Telephonic Benefit Review Conference was held on May 26, 2015, a Formal Hearing on June 18, 2015 and the Medical Fee Dispute was submitted on the record for a decision.
>
> Plaintiff testified at the Formal Hearing on June 18, 2015. His low back injury occurred when he hurt his back shoveling in a hole. He currently has back pain with numbness in his foot and has treated with Dr. Workman, his family physician, for many years. He was asked about each medication. He takes each medication daily and most he finds helpful. He does not believe the Omeprazole helps his stomach and he has resorted to the use of apple cider vinegar to treat stomach problems. Plaintiff had throat cancer and takes other medications related thereto.
>
> Plaintiff introduced a January 28, 2015 precertification letter approving Citalopram for depression and one to two office visits per year.
>
> Plaintiff introduced an MRI report dated March 26, 2012, a large stack of Dr. Workman's treatment records, and the April 6, 2015 questionnaire

[1] Gabapentin is the generic name for Neurontin.

completed by Dr. Workman who has treated Plaintiff related to his work injuries since April 30, 2009. He treats him for lumbar disc disease and chronic pain with neuropathy and depression. The prescribed medications are to treat chronic pain, muscle spasms and depression. He believes Plaintiff needs treatment for life and the medications help him with the activities of daily living. He believes Plaintiff has improved with the medications.

The Defendant Employer introduced the January 27, 2015 report of Michael Chunn, M.D., who reviewed records and determined the contested medication were not reasonable or necessary. Plaintiff takes at least two schedule II narcotics, with no qualifying criteria for these medications. He found the injury from four and a half years ago would not require the ongoing medications for various reasons:

Gabapentin (Neurontin) - not reasonable, as there is no record of neuropathic pain.

Lidocaine – for neuralgia, not for a muscle strain, as in this case.

Amitriptyline – for depression, too many side effects to be found reasonable.

Oxycodone – strong schedule II narcotic, not reasonable.

Morphine Sulfate – schedule II narcotic, for severe or malignant pain.

Cyclobenzaprine – a muscle relaxer, spasms would not be present 4 years after the injury.

> Omeprazole – for GERD – not documented in this case.
>
> In a post-judgment Motion to Reopen to Assert a Medical Fee Dispute, Defendant Employer has the burden of proving that the contested medical expenses and/or proposed medical procedure is unreasonable or unnecessary while Plaintiff maintains the burden of proving that the contested medical expenses and/or proposed medical procedure is causally related treatment for the effects of the work-related injury. *Mitee Enterprises vs. Yates*, 865 SW2d 654 (KY 1993) *Square D Company vs. Tipton*, 862 SW2d 308 (KY 1993) *Addington Resources, Inc. vs. Perkins*, 947 SW2d 42 (KY App. 1997). In addition, the legislature's use of the conjunctive "and" which appears in subsection 1 of KRS 342.020 "cure and relief" was intended to be construed as "cure and/or relief". *National Pizza Company vs. Curry*, 802 SW2d 949 (KY 1991).
>
> In the specific instance, Defendant Employer has moved to reopen this claim to challenge the reasonableness and necessity of prescriptions for Gabapentin, Lidocaine, Neurontin, Amitriptyline, Oxycodone, Morphine Sulfate, Cyclobenzaprine and Omeprazole. The ALJ finds persuasive the report of Dr. Chunn who finds the current medication regimen is not reasonable and necessary, as related to a musculoligamentous strain and depression. Therefore, the contested medications are non-compensable.

Spurlock filed a petition for reconsideration which was denied by order dated August 31, 2015.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity of medical treatment falls on the employer. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991). However, the burden remains with the claimant concerning questions of work-relatedness or causation of the condition. Id; *see also* Addington Resources, Inc. vs. Perkins, 947 S.W.2d 421 (Ky. App. 1997). Pursuant to the May 26, 2015, "BRC Order in Medical Fee Dispute," there is no question the issue was the reasonableness and necessity of the contested medication as listed in the BRC Order. Since Sunset Ranch was successful in proving the contested medications are neither reasonable nor necessary for Spurlock's work-related injuries, the sole issue on appeal is whether substantial evidence supports the ALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367, 369 (Ky. 1971). Although a party may note evidence that would have supported a conclusion that is contrary to the ALJ's decision, such evidence is not an adequate basis

for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46, 47 (Ky. 1974).

Spurlock's first argument on appeal is the ALJ erred in relying upon Dr. Chunn because he only conducted a medical records review and allegedly did not specify the entirety of the medical records he reviewed. Spurlock argues the case of Cepero v. Fabricated Metals Corporation, 132 S.W.3d 839 (Ky. 2004), is applicable.

Cepero, supra, is an unusual case involving not only a complete failure to disclose, but affirmative efforts by the employee to cover up a significant injury to the left knee only two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury left Cepero confined to a wheelchair for more than a month. The physician upon whom the ALJ relied was not informed of this prior history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero’s left knee impairment was not work-related but, instead, was attributable to the non-work-related injury two and a half years previous.

Dr. Chunn's January 27, 2015, Physician Review Report reflects he reviewed the independent medical examination ("IME") report of Dr. Gregory Snider. Dr. Chunn

also provided a review of each medication at issue within the context of Spurlock's work-related injury as set forth in the settlement agreement.

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. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

Dr. Chunn was not required to go into the minutia of the medical records he reviewed. Additionally, an ALJ, the ultimate gatekeeper of the evidence, is entitled to rely upon a physician who has conducted merely a medical records review without also performing a physical examination. "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). Dr. Chunn's January 27, 2015, Physician Review Report

constitutes substantial evidence. The ALJ deemed Dr. Chunn's opinions credible and reliable and this determination is well within her discretion. The ALJ's reliance upon Dr. Chunn's opinions may not be disturbed.

Spurlock's second argument on appeal is the ALJ erred in limiting Spurlock's diagnosis. He asserts, in part, as follows:

> The ALJ erred in limiting the Plaintiff's injuries to a musculoligamentous strain and depression. The Settlement Agreement which was approved on 11/17/11 reflects that the Plaintiff's diagnosis [sic] were: 'lumbar strain superimposed on congenital spinal canal stenosis, facet arthropathy, ligamentum flavum hypertrophy, and degenerative annular bulging at L4-5; Spurlock is status-post 10/26/2009 bilateral laminoforaminotomy L4-L5; depression.'"

In his petition for reconsideration, Spurlock set forth this same argument on this issue. In the August 31, 2014, Order on Petition for Reconsideration, the ALJ stated as follows:

> Plaintiff correctly points out that the Medical Fee Opinion did not include in the introduction that the original settlement agreement included lumbar strain superimposed on congenital spinal canal stenosis, facet arthropathy, ligamentum flavum hypertropy and degenerative annular bulging at L4-5; depression. However, after further review of the opinion and

> the medical evidence, the Opinion of July 30, 2015 is unchanged.

We acknowledge the following language contained in the July 30, 2015, Medical Fee Opinion and Order:

> The ALJ finds persuasive the report of Dr. Chunn who finds the current medication regimen is not reasonable and necessary, as related to a musculoligamentous strain and depression. Therefore, the contested medications are non-compensable.

The above-cited language in the August 31, 2014, Order on Petition for Reconsideration demonstrates the ALJ understood the settlement agreement included injuries that were not set forth in their entirety in the July 30, 2015, Medical Fee Opinion and Order. However, the ALJ conducted a further review of the July 30, 2015, Medical Fee Opinion and Order and the medical evidence, and her opinion remained unchanged. More significant is the fact that Dr. Chunn, upon whom the ALJ relied, considered the contested medication in the context of *the complete list of injuries as reflected in the settlement agreement*. Indeed, the January 27, 2015, report of Dr. Chunn begins with the following:

> Please perform a retrospective physician review for medical necessity and reasonableness. Note: Please review the provided medical records and

> advise: Note: Examiner Writes: This is post litigated that settled in 11/17/2011. Medicals are open on lumbar strain superimposed on congenital spinal canal stenosis, facet arthropathy, ligamentum falvum hypertrophy, and degenerative annular bulging at L4-5 (status post 10/26/2009 bilateral laminoforaminotomy L4-5) and depression.

In light of the ALJ's acknowledgement of her oversight and the fact Dr. Chunn considered the contested medications in the context of the full list of injuries as set forth in the settlement agreement, the ALJ's incomplete recitation of the injuries in the July 30, 2015, Medical Fee Opinion and Order is, at most, harmless error.

Spurlock's third argument on appeal is that Dr. Chunn's opinion is without merit and "Dr. Marc Workman has been treating Spurlock since his original injury and has developed a medical treatment plan that best suits the Plaintiff."

We have previously explained why Dr. Chunn's opinions constitute substantial evidence. Spurlock's argument that Dr. Workman's opinions should be given precedence over Dr. Chunn's is without merit. As fact-finder, the ALJ is vested with the authority to weigh the medical evidence, and if “the physicians in a case genuinely express medically sound, but differing, opinions

as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe." Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). The ALJ may consider the qualifications of the medical witnesses, but need not give greater weight to testimony from a particular specialist over another. Yocom vs. Emerson Elec. Co., 584 S.W.2d 744 (Ky. App. 1979). The ALJ is free to pick and choose among the various medical experts offering medical opinions on the issues to be decided.

Here, the ALJ relied upon Dr. Chunn's opinions regarding the contested medications in lieu of Dr. Workman's contrary opinions, despite the fact he was Spurlock's treating physician. Since the ALJ is vested with the discretion to pick and choose whom and what to believe, this Board cannot infringe upon her discretion. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

Spurlock's fourth argument on appeal is the ALJ failed to consider Spurlock's testimony as well as the evidence from the original litigation designated by Spurlock pursuant to a March 13, 2015, "Designation of Evidence." Spurlock argues as follows:

> Thus, the ALJ should amend the Opinion and Order to reflect that Naproxen, Gabapentin, Cyclobenzaprine, Morphine

> Sulfate, Oxycodone/APAP, Lidocaine, Amitriptyline and Omeprazole is reasonable and necessary for the cure and/or relief of Plaintiff's work-related injuries.

This argument lacks merit, as we find no indication in the July 30, 2015, Medical Fee Opinion and Order the ALJ ignored evidence filed in this reopening, including Spurlock's testimony and the evidence Spurlock designated pursuant to his March 13, 2015, pleading.

Spurlock's allegation on appeal that the ALJ did not consider his testimony is contradicted by the July 30, 2015, Medical Fee Opinion and Order in which the ALJ summarized Spurlock's hearing testimony. Additionally, we note the ALJ specifically mentioned reviewing a January 28, 2015, precertification letter approving Citalopram, an MRI report dated March 26, 2012, a "large stack" of medical records generated by Dr. Workman, and the April 6, 2015, questionnaire completed by Dr. Workman.

The ALJ provided the required findings to support her resolution of the medical fee dispute in favor of Sunset Ranch. While authority generally establishes the ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for her decision, she is not required to recount the

record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Cmty. Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). In a post-award medical fee dispute, the ALJ is not required to discuss in detail evidence designated from the original litigation.

Here, the ALJ was clearly persuaded by the January 27, 2015, Physician Review Report of Dr. Chunn. The ALJ was not required to discuss in detail the medical records she considered, including records Spurlock designated from the original litigation. We are persuaded the ALJ adequately considered all evidence in the record before resolving this medical fee dispute.

Lastly, Spurlock asserts the claim should be remanded to the ALJ for additional findings. For the reasons cited above, we reject this argument. Once again, it is clear the ALJ relied upon the January 27, 2015, Physician Review Report of Dr. Chunn. For each contested medication, the ALJ summarized Dr. Chunn's ultimate conclusions and made it abundantly clear she was relying upon those conclusions in resolving this post-award medical fee dispute. As stated above, the ALJ is not required to

recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of her reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Min. Co., supra; Big Sandy Cmty. Action Program v. Chaffins, supra.

Accordingly, the July 30, 2015, Medical Fee Opinion and Order and the August 31, 2015, Order on Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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