

OPINION ENTERED: JANUARY 25, 2013

CLAIM NO. 200201192

JOHN HOOPER

PETITIONER

VS.

**APPEAL FROM HON. JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE**

KERRY, INC.
and JEANIE OWEN MILLER,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

SMITH, Member. John Hooper ("Hooper"), *pro se*, appeals from the June 16, 2012 Opinion and Order rendered by Hon. Jeanie Owen Miller, Administrative Law Judge ("ALJ") denying Hooper's medical fee dispute and reopening.¹ The ALJ determined Kerry, Inc. ("Kerry") was not responsible for building a house or relocating Hooper to a home which would

accommodate his work-related medical condition. The entirety of Hooper's argument on appeal is as follows:

Comes the petitioner, John Hooper, pro se, and states as follows: the error of law by the administrative law judge, the Hon. Jeanie Owen Miller, did not base her facts on the findings and conclusion of the testimony given in the formal hearing on March 23, 2012 by the petitioner, John Hooper and the petitioner's wife, Sharon Hooper. The Hon. Jeanie Owen Miller disregards Dr. Tarter's medical report in regard to his statement that petitioner needs a home without steps due to his workers claim injury, and current and future safety to enter and exit his home. The Hon. Jeanie Owen Miller also falsely states in this opinion and order that the petitioner, John Hooper had surgery on June 11, 2002, for his workers claim injury. However, during the hearing on March 23, 2012 the petitioner, John Hooper and petitioner's wife, Sharon Hooper, both stated the plaintiff has never had surgery for his workers claim injury.

Hooper filed a Form 101, Application for Resolution of Injury Claim, on August 8, 2002, alleging he sustained fractures of his left foot when he jumped from the back of a truck. The claim was resolved by agreement approved on February 16, 2004. The agreement indicated Hooper had undergone a fusion of his ankle. Hooper received a lump sum payment of \$45,000.00, which included a waiver of his right

¹ Hooper untimely filed a petition for reconsideration on June 8, 2012 which was overruled on that basis by order on remand dated August 21,

to reopen the claim for additional income benefits, but retained his right to medical benefits for his leg injury.

Previously, on October 11, 2010, Kerry filed a medical fee dispute challenging a bill it received from a construction company for modification to Hooper's home. Kerry argued as follows:

The respondent contracted with Hawk Construction for modifications to his home consisting of the removal of an existing ramp and replacement of same with a concrete patio and steps. The medical payment obligor had no knowledge of the aforementioned construction until after the fact when a bill for \$13,285.00 was received from the construction company. There are no clinical records from a physician or other medical provider stating that the home modifications were medically necessary for the effects of the respondent's work injury. A preauthorization request for the construction project was never sent to the medical payment obligor. Therefore, the medical payment obligor was not afforded the opportunity to conduct a utilization or peer review for a determination as to whether the home modifications were medically necessary and/or related to the effects of the work injury. Moreover, had the home modifications been found medically necessary, the medical payment obligor was deprived of the opportunity to bid the job out to other construction companies.

However, the matter was resolved when Kerry agreed to pay the disputed bill.

Hooper filed a Form 112, Medical Fee Dispute, and a motion to reopen on August 29, 2011, asserting "CARRIER WILL NOT AGREE TO RELOCATE PLAINTIFF IN A HOME THAT IS MORE NAVIGABLE." Hooper supported the reopening with his affidavit stating:

I am currently unable to navigate effectively throughout my current home. I'm also unable to go in and out of my home without great difficulty. Ramps were installed but had to be removed because they were too steep. Property restrictions prohibit the installation of an accessible ramp and other structures which improve movement in and out of my residence.

Hooper submitted medical records from Dr. Jeremy W. Tarter, who stated on March 3, 2011, Hooper had to transition to a locked brace and could not ambulate safely down steps. Dr. Tarter noted Hooper had fallen several times and would continue to struggle with mobility on steps. Dr. Tarter stated ramps would be preferable, but stated "I don't think his house will accommodate that according to engineering studies." In a June 9, 2011 treatment note, Dr. Tarter stated Hooper "continues to struggle about the house" and was "unable to take steps." Dr. Tarter noted that, despite exhaustive efforts, he had not obtained a ramp or

"anything else functional." Dr. Tarter stated "Relocation I think is the only other option available, in my opinion."

Hooper filed an October 25, 2010 evaluation report from HomeLink indicating the evaluator did not believe a compliant ramp system could be installed which would be acceptable to Hooper and his family. With regard to the steps from the kitchen to the basement and from the garage to the basement, the evaluator stated he did not believe handrails or other hardware could be added to the stair systems to provide safe, compliant entry and egress. The evaluator concluded the home was not easily made accessible and stated "We do not believe we can provide access solutions that will be safe and acceptable to the Hooper family."

A benefit review conference ("BRC") was held on March 6, 2012. The BRC order indicates the contested issue is the "reasonableness and necessity of building a home or relocating Hooper to a home that would accommodate his work related medical condition."

Hooper testified at the hearing held March 23, 2012. Hooper acknowledged he filed the motion to reopen asking for a determination of whether it was reasonable for Kerry to build a new home or relocate him to a home that would accommodate his medical condition. At other points in his

testimony, Hooper expressed dissatisfaction with the previous settlement agreement. Hooper stated:

I said I want Liberty Mutual to pay me what they owe me for damage done to me. I don't want them to buy me nothing. I want to buy my own home. I don't want nothing to do with them, I've had enough of them, and that's what I want. I ain't said nothing about no new home. I'll get my own home. I just want them to pay me what they owe me.

Later, Hooper stated, "Well, I done told you, I want them to pay me what they owe me, and I want to hear what they think they owe me for my life is what I want to hear." Hooper also expressed dissatisfaction with the medical treatment he received in the months following the injury. Hooper noted he had fallen down his basement stairs on three occasions. Hooper stated he "went through" five braces in the past six months. Hooper stated he did not want a ramp, but wanted a house on one level with only one step up to enter.

Sara M. Dodd, a claims handler for Liberty Mutual, testified at the hearing. Ms. Dodd has handled Hooper's claim since January 2009. She stated Liberty Mutual continues to pay for Hooper's medical expenses, including braces, and has paid for modifications to Hooper's home. She stated Liberty Mutual would pay for medically necessary modifications if Hooper moved to a different home.

In her May 16, 2012 Opinion and Order, the ALJ provided the following analysis and findings:

The analysis begins with a review of the statutory requirements. KRS 342.020(1) provides in pertinent part:

In addition to all other compensation provided in this chapter, the employer shall pay for the 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. (Emphasis ours).

The undersigned admits to being unable to locate any published or unpublished authority from our appellate bodies that address the compensability, reasonableness or medical necessity of a relocation or structural alteration to the injured worker's home. Initially, it should be noted that building a house or purchasing a house is not medical, surgical, or hospital treatment. It cannot be argued that building or purchasing a house is a substitute for institutional care as was discussed in the unpublished case of Senninger vs. Kentucky Farm Bureau, 2009-SC-000381-WC (Ky. 2010) referred to by the defendant/employer. The building of a house or purchasing a house is not "nursing, medical and surgical supplies and appliances". In short, the building or purchasing of a house is not within the purview of the statute which may be determined a medical necessity.

In a medical fee dispute, the employer bears the burden of proving that the contested expenses are unreasonable or unnecessary, while the claimant bears the burden of proving the work-relatedness of the contested expense. National Pizza Co. Vs. Curry, Ky. App., 802 SW2d 949 (1991); Snawder vs. Stice, Ky. App. 576 SW2d 276 (1979).

In applying the statutory language to the proof in this case, it must be noted that there is no report from any doctor **prescribing** the building of a house or a purchase of a house as a medical necessity for the cure and/or relief of the Plaintiff's work injury. The closest the treating physician comes to this threshold requirement is the March 3, 2011 letter "to whom it may concern" wherein Dr. Tarter stated in part:

I feel he will continue to struggle with mobility on steps and quite clearly he will still mandatorily need the brace. Ramps would be preferable; however, I don't think his house will accommodate that according to engineering studies. I thus don't think there is much more to add other than the fact that it is important to realize he will continue to struggle with steps, and perhaps to some degree will be unsafe because of the new bracing requirement.

Dr. Tarter stated in a medical record dated June 9, 2011:

He continues to struggle about the house. He is unable to take steps. Exhaustive efforts have not prove (sic) to be effective in getting

him a ramp or anything else functional. It has gone on for several years and I think in the end this proves that nothing, in fact, is going to be achievable to modify his current home to make it more navigable for him. Relocation I think is the only other option available, in my opinion.

Dr. Tarter described "exhaustive" efforts. He noted a ramp or anything else functional had not been achievable. This summarizes the defendant/employer's insurance carrier's efforts in accommodating plaintiff's medical needs.

Whether a ramp or other apparatus is a medical aid - and thus compensable under the Act - is one question. That question would warrant an affirmative answer in this case. However, building a new house or purchasing another house is a step not contemplated by our statute, even if a ramp or other apparatus is not feasible in the current house. In the broadest sense the building or purchasing of the house cannot be considered reasonable and proper medical aides and/or physical aides made necessary by the injury.

The Defendant/employer has taken the position that if Plaintiff relocates to another house, it will continue to make attempts at providing the access necessary for him to be able to ambulate and have access to the home. Requiring the Defendant/employer to build a house is beyond the scope of the statutory requirements in my opinion.

It should be noted that Plaintiff rejected numerous suggestions and offers of the Defendant/employer and its insurance carrier. It was clear to the undersigned, after observing Plaintiff

and listening to his testimony, that Mr. Hooper is very upset with the outcome of the underlying workers' compensation case. He expressed great hostility and resentment directed toward the insurance carrier in this case. Plaintiff's unwillingness to accept further attempts of the Defendant/employer to do anything other than provide additional monies to him make his position uncompromising. However, those outcomes are not issues before the undersigned and therefore beyond the scope of this opinion. In light of the unique facts in this case, and expenditure for the building or purchasing of a house is neither reasonable nor necessary for the cure and relief of plaintiff's injury. National Pizza Co. vs. Curry, supra.

We agree with the ALJ's determination that building or purchasing a different home for Hooper is not contemplated by the Act. As the ALJ noted, ramps and handrails would certainly qualify as "medical aids" and the carrier has expressed a willingness to provide such modifications. We do not believe purchasing or building a home can be viewed as a medical aid or appliance. As the Supreme Court noted in Senninger vs. Kentucky Farm Bureau, 2009-SC-000381-WC (Ky. 2010), "Injured workers generally are responsible for providing their own personal care, housing, and house-keeping services, just as they would have been had they not been injured."

As the ALJ observed, it is readily apparent Hooper is unsatisfied with the settlement agreement initially reached

in the claim. Hooper, in his testimony set forth above, indicates his motivation is to be paid what he is "owed" for his physical injury. The ALJ noted Hooper rejected numerous suggestions and offers from Kerry and the insurance carrier. Additionally, the HomeLink evaluation repeatedly indicates the conclusions regarding accommodations are based in part on the acceptability to Hooper and his family of proposed changes. It states the home is not easily made accessible, but does not state it cannot be made more accessible.

The reopening is limited to the specific contested issue as set forth in the BRC memorandum and order. There, it clearly stated the only issue before the ALJ was the reasonableness and necessity of the building or purchase of a home by the carrier to accommodate Hooper's work-related medical condition. The ALJ noted no doctor prescribed the building or purchase of a home and recited Dr. Tarter's statement that relocation was "the only other option available". We are convinced the ALJ considered all evidence filed in the claim in reaching her conclusions. The ALJ was not convinced the building or purchase of a different home was reasonable and necessary for the cure and relief of Hooper's injury. Based upon the totality of the evidence, we cannot say the ALJ's determination was clearly erroneous.

The ALJ was not obligated to accept Hooper's testimony or that of his wife. The law is well settled the testimony of a claimant or interested party, even if unrebutted, compels no particular result. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

With regard to Hooper's objection to the ALJ's statement concerning surgery, the statement, at most, constitutes harmless error. The ALJ correctly noted the settlement agreement recorded Hooper had undergone ankle fusion. Medical records filed in the original claim indicate surgery was contemplated in 2002. Whether Hooper had surgery in 2002 is not significant in determining the question on reopening, i.e. whether the employer is responsible for building or purchasing a home.

Accordingly, the May 16, 2012 Opinion and Order rendered by Hon. Jeanie Owen Miller, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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