Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: NOVEMBER 2, 2011

CLAIM NO. 200200482

DONNA LEE JONES and
BALLARD WRIGHT, MD, PSC PETITIONER

VS. **APPEAL FROM HON. DOUGLAS W. GOTT, ADMINISTRATIVE LAW JUDGE**

SPEEDWAY/SUPERAMERICA
AS ADMINISTERED BY AVIZENT
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman; COWDEN and STIVERS, Members.

ALVEY, Chairman. Donna Lee Jones ("Jones"), appeals from an opinion and order rendered July 18, 2011 by Administrative Law Judge, Douglas W. Gott ("ALJ"), resolving a medical dispute on reopening in favor of Speedway/SuperAmerica ("Speedway"). The ALJ found Jones'

October 24, 2011 work-related back injury, for which she was awarded benefits based upon a 5% impairment rating by opinion rendered August 20, 2004, was not the cause of the need for her current treatment. No petition for reconsideration was filed.

On appeal, Jones essentially argues the ALJ's findings her ongoing medical treatment was not work-related is not supported by substantial evidence. We affirm.

Jones, a resident of Mount Sterling, Kentucky, resided in Louisville on October 24, 2001 on the injury date. She testified at the hearing held on June 21, 2011. Jones testified she injured her low back on October 24, 2001 when she was cleaning up debris at work subsequent to a tornado. Jones stated she experienced immediate low back pain as she attempted to upright a trash can. She further testified she has treated for low back pain since the date of the injury. She treated with Dr. Reasor in Louisville for management of her low back pain which she stated provided no relief. She later treated with Indiana Pain Management until she moved to Mount Sterling and began treating with Dr. Ballard Wright.

Jones continues to complain of low back pain into her buttocks, with burning sensation into her legs. Jones testified she is taking Prozac, Oxycontin, Lyrica, and

Robaxin for her low back complaints. She has also had facet joint injections which initially provided some relief. Later injections provided no relief. Despite her pain waxing and waning, her pain has never gone away.

Jones filed a response to the motion to reopen filed by Speedway which consisted of a summary of her injury and treatment. She also filed numerous internet articles, explanation of benefits statements, records from unrelated cervical treatment, and pharmacy receipts.

Jones was evaluated by Dr. Russell Travis on June 10, 2010. A report was generated at that time. Dr. Travis recommended an MRI be performed of the lumbar spine. The MRI was performed on August 8, 2010. Dr. Travis prepared an addendum to his original report on November 18, 2010, and both reports were submitted with the motion to reopen challenging Jones' ongoing medical treatment. Dr. Travis later testified by deposition on June 20, 2011. Dr. Travis noted the history of the injury, and observed Jones takes numerous medications for various conditions, including thyroid conditions and diabetes. For her low back complaints, Jones takes Prozac, Lyrica, Oxycontin and Tramadol. Physical examination demonstrated no spasm, normal motor function and inconsistent straight leg raising.

Dr. Travis opined Jones requires no additional treatment due to the low back strain/sprain she sustained on October 24, 2001 which had resolved. Dr. Travis stated, "I don't think any treatment at this point would be related to that ten years ago." He opined her current condition is due to the natural aging process, which he related to significantly progressing lumbar degenerative disk disease not caused by her work-related injury. Dr. Travis further testified no injections, whether facet blocks or epidural steroid injections, were appropriate, or would provide any relief.

The ALJ found as follows:

> **Findings and Conclusions**
>
> In a post-award medical fee dispute, the burden regarding the reasonableness and necessity of treatment is with the employer while the burden remains with the claimant concerning questions pertaining to work-relatedness or causation of the condition. See KRS 342.020; *Mitee Enterprises v. Yates*, 865 S.W.2d 654 (Ky. 1993); *Addington Resources, Inc. v. Perkins*, 947S.W.2d 421 (Ky. App. 1997); *R.J. Corman Railroad Construction v. Haddix*, 864 S.W.2d 915, 918 (Ky.1993); and *National Pizza Company v. Curry*, 802 S.W.2d 949 (Ky. App. 1991).
>
> The ALJ carefully considered the evidence in this case. Jones' attorney made an impressive argument at the Hearing that the evidence supported a finding that Dr. Wright's treatment was

compensable. And, initially, the ALJ observed that this MD[1] was somewhat duplicative of its 2004 MD over similar treatment rendered by a different physician. However, the ALJ found that the circumstances have changed since the previous MD, and that a) the Plaintiff has not sustained its [sic] burden of proving the work relatedness of that treatment; and b) the Defendant has sustained its burden of showing that the disputed treatment is not reasonable or necessary.

As to work relatedness of the disputed treatment, the ALJ relies on Dr. Travis to find that the treatment sought by Jones from Dr. Wright is not related to the 2001 work injury. The ALJ notes that unlike in the prior MD where Dr. Reasor supported his treatment recommendations with "very concise and detailed" opinions of work relatedness and reasonableness/necessity, Dr. Wright's records do not establish work relatedness of the treatment he has rendered or was recommending. (6/17/05 Opinion, p. 12) The ALJ further notes that there is no documentation of medical treatment for nearly two-and-a-half years after January 2005 to when Jones first saw Dr. Wright in May 2008. This fact supports Dr. Travis' conclusion that the symptomatic nature of Jones' degenerative condition since beginning treatment with Dr. Wright at that time is not related to the effects of the earlier work injury. Dr. Travis overstated the fact that Jones' leg pain began only a year prior to his 2010 evaluation; treatment records suggest ongoing leg pain. However, the evidence shows that the leg pain developed into a radiating, burning pain that was different in character

[1] Medical Dispute

> than that suffered from previously, and, again, supports Dr. Travis' conclusion that the degenerative disc disease producing current symptoms is not related to the 2001 back strain that produced only 5% impairment.
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> As to reasonableness/necessity, the ALJ found persuasive Dr. Travis' opinion that Oxcontin [sic] and Lyrica are not indicated in this instance for a 10-year-old strain injury. Dr. Travis' opinion that facet injections and epidural injections are contraindicated was also found persuasive; such opinion was supported by the fact that Jones testified that the most recently administered injections had not provided much benefit.
>
> **Order**
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> Based on the foregoing Findings and Conclusions, it is ordered that the Defendant's motion to reopen in [sic] sustained, and this medical dispute is resolved in its favor.

In a post-award medical fee dispute, the burden of proof to demonstrate whether the medical treatment is unreasonable or unnecessary is with the employer, while the burden remains with the claimant concerning questions pertaining to work-relatedness or causation of the condition. See KRS 342.020; Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915, 918 (Ky.

1993); National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991).

Since Jones, the party with the burden of proof regarding work-relatedness of the continuing medical treatment was unsuccessful before the ALJ, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 supra. Compelling evidence is defined as evidence which is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). We conclude there was no such evidence.

Likewise, in the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is any substantial evidence contained in the record to support the ALJ's conclusion. Stated otherwise, where no petition for reconsideration was filed prior to the Board's review, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record that supports the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally,

688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

Speedway supported its position with evidence from Dr. Travis. This constitutes substantial evidence which could be and was relied upon by the ALJ regarding the work-relatedness of Dr. Wright's treatment.

Here, the ALJ found in favor of Speedway on the medical fee dispute regarding whether the continued treatment was causally related to the work injury. As noted in his opinion, the ALJ was particularly persuaded by the absence of any notation of treatment between 2005 and 2008. Likewise, the ALJ relied upon the fact ongoing treatment was providing no benefit. Accordingly, it cannot be said the record compels the result Jones seeks on appeal. This Board may not substitute its judgment for that of the ALJ in matters involving the weight to be afforded evidence on questions of fact. *See* KRS 342.285(2).

Accordingly, the opinion and order of July 18, 2011 is hereby **AFFIRMED**.

ALL CONCUR.

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