Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 20, 2014

CLAIM NO. 201201092

JOSE SANCHEZ SATEY PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

TREE TECH LAWN & TREE SERVICE
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

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

ALVEY, Chairman. Jose Sanchez Satey ("Satey") seeks review of the orders rendered December 6, 2013, and January 24, 2014 by Hon. Jonathan Weatherby, Administrative Law Judge ("ALJ"), finding Tree Tech Lawn & Tree Service ("Tree Tech") only responsible for medical benefits through March 16, 2012.

On appeal, Satey argues the ALJ erred in only awarding medical benefits through March 16, 2012, and failed to apply the correct standard of review. Because the ALJ failed to perform an appropriate analysis, or set forth the basis for his determination regarding future medical benefits pursuant to FEI Installation v. Williams, 214 S.W.3d 313 (Ky. 2007), we vacate and remand for additional findings.

A brief history of the claim is necessary. Satey filed a Form 101 on August 16, 2012, alleging injuries to his head, neck, left shoulder, low back and left hip when he was involved in a motor vehicle accident at work on September 16, 2011. Tree Tech denied the claim. A benefit review conference was held on January 17, 2013 at which time the parties agreed the contested issues were benefits per KRS 342.730; work-relatedness/causation; average weekly wage; unpaid or contested medical expenses; temporary total disability ("TTD"); occurrence of an "injury" as defined by KRS 342.0011; extent and duration; and offset for unemployment or employer funded benefits.

A Hearing was held on February 1, 2013 and the ALJ rendered an opinion and order on March 27, 2013, finding Satey did not sustain an injury, and dismissing the claim. Satey appealed. In an opinion entered by this Board on

August 28, 2013, the ALJ's decision was vacated and remanded to the extent the evidence compelled the finding of an injury. On remand, the ALJ was requested to make additional findings regarding TTD benefits and medical benefits.

On October 25, 2013, the ALJ rendered an order and award finding as follows:

> **IT IS HEREBY ORDERED AND ADJUDGED** as follows:
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> 1. The Plaintiff, Jose Sanchez Satey, shall recover from the Defendant, and/or its insurance carrier temporary total disability benefits in the weekly amount of $360.00 beginning on September 17, 2011 and continuing for a period not to exceed 2 weeks together with interest at the rate of 12% per annum on all past due and unpaid installments of such compensation. The Defendant shall take credit for any payment of such compensation heretofore made. All benefits shall terminate pursuant to KRS 342.730(4) as of the date on which Plaintiff qualifies for normal old-age Social Security retirement benefits.
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> 2. Plaintiff shall recover of Defendant-employer and/or its insurance carrier, such medical expenses including but not limited to provider's fees, hospital treatment, surgical care, nursing supplies, and appliances as may be reasonably required for the cure and relief from the effects of the work-related injury. Defendant's obligation shall commensurate with the limits set by the Kentucky Medical Fee Schedule.

Tree Tech filed a petition for reconsideration arguing the medical benefits should have only been awarded through March 16, 2012, the period the ALJ found Satey entitled to TTD benefits. Satey responded. On December 6, 2013, the ALJ entered an order revising the award of medical benefits to terminate on March 16, 2012, without providing a rationale for doing so. Satey filed a petition for reconsideration which the ALJ denied by order dated January 24, 2014.

Because the ALJ failed to provide any analysis regarding the award of medical benefits, we must again vacate and remand his orders for additional findings. The ALJ failed to provide any analysis regarding his award of medical benefits pursuant to FEI Installation v. Williams, supra.

As the claimant in a workers' compensation proceeding, Satey had the burden of proving each of the essential elements of his cause of action, including entitlement to future medical benefits. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Satey was unsuccessful, the question is whether a contrary result is compelled, however in this instance that cannot be determined because the ALJ failed to provide a basis for his determination.

KRS 342.285 designates the ALJ as the finder of fact. Therefore, the ALJ has the sole discretion to determine the quality, character, and substance of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). The ALJ, as fact-finder, may choose whom and what to believe and, in doing so, may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977); Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977).

That said, the ALJ must provide a sufficient basis to support his or her determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). 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., supra. This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably

apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). We also find instructive the holding of the Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354, 358 (Ky. 2004), where the claim was remanded to the ALJ "for further consideration, for an exercise of discretion, and for an explanation that will permit a meaningful review."

The ALJ failed to set forth adequate findings of fact and explanation which would allow meaningful review regarding his determination regarding the award of medical benefits. Likewise his determinations appear to be somewhat inconsistent. As Satey points out, the ALJ apparently reversed himself regarding the award of medical benefits. The ALJ may not reverse himself on findings of fact. While the scope of the ALJ's authority in ruling on a petition for reconsideration is not strictly limited to the correction of clerical errors, he does not have the authority to reverse himself on the merits of the claim. Garrett Mining Co. v. Nye, 122 S.W.3d 513 (Ky. 2003); Beth-Elkhorn Corp. v. Nash, 470 S.W.2d 329 (Ky. 1971). In Wells v. Beth-Elkhorn Coal Corp., 708 S.W.2d 104, 106 (Ky. App. 1985), the Court of Appeals stated:

> The Board is limited in its granting of the petition in one respect, however. The petition may not be granted if it appears that the Board has reconsidered the case on its merits and/or changed its factual findings. [Citation omitted]

On remand, the ALJ may make any determination regarding the extent of entitlement to medical benefits so long as it is supported by the evidence.

The December 6, 2013 order on reconsideration merely recites his conclusions, and is bereft of any analysis or reasons for the determination set forth therein. Therefore, the Board and the parties are left to guess what evidence the ALJ relied upon in reaching his decision.

Mere conclusory determinations are insufficient, especially in light of the previous direction of this Board. On remand, the ALJ is directed to conduct an analysis in accordance with both statutory and case law referenced above and to provide with more specificity the rationale supporting his determination of entitlement to future medical benefits. This Board may not, and does not direct any particular result because we are not permitted to engage in fact-finding. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, supra.

Accordingly, those portions of the December 6, 2013, and January 24, 2014 orders on reconsideration by Hon. Jonathan Weatherby, Administrative Law Judge, relating to the award of medical benefits, are **VACATED**. This claim is **REMANDED** to the ALJ for entry of an amended opinion and award in conformity with the views expressed herein.

ALL CONCUR.

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