Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 24, 2015

CLAIM NO. 200901079

KELLOGG'S COMPANY
d/b/a MOUNTAIN TOP BAKING COMPANY PETITIONER

VS. **APPEAL FROM HON. J. GREGORY ALLEN, ADMINISTRATIVE LAW JUDGE**

SHIRLEY WARD (NOW CLINE)
and HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Kellogg's Company d/b/a Mountain Top Baking Company ("Kellogg's") appeals from the November 17, 2014, Opinion, Order, and Award on Medical Fee Dispute of Hon. J. Gregory Allen, Administrative Law Judge ("ALJ") resolving a medical fee dispute in favor of Shirley Ward

("Ward").[1] The ALJ found the use of the medications Klonopin and Trazadone were related to and reasonable and necessary treatment of Ward's work injury. Kellogg's also appeals from the December 18, 2014, Order overruling its petition for reconsideration.

Kellogg's challenges the ALJ's decision arguing substantial evidence does not support a finding the medications in question are compensable.

In a June 7, 2010, Opinion and Award, Hon. John B. Coleman, Administrative Law Judge ("ALJ Coleman") determined Ward sustained a work-related low back injury on March 7, 2009, while an employee of Kellogg's. He also found Ward sustained a previous injury to the cervical spine on July 7, 1995, in the course of her employment with Kellogg's which resulted in cervical fusion. The claim for the 1995 injury was settled on the basis of a 24% permanent partial disability on October 16, 1996. ALJ Coleman determined the combined effects of the 1995 cervical injury and the 2009 low back injury rendered Ward permanently totally disabled. Since the statute in effect at the time of the July 7, 1995, injury did not require a determination

[1] During the proceedings the claimant married and is now known as Shirley Ward Cline. For purposes of this opinion, we will refer to her as Ward. Further, even though the parties and the ALJ spelled the Petitioner's name, Kellogg, Kelloggs, and Kellogg's, we will use the name Kellogg's in this opinion.

of permanent partial disability to be based upon the impairment rating and the ALJ was not bound by the terms of the settlement agreement, ALJ Coleman determined Ward's cervical injury resulted in a 50% occupational disability.[2] As a result, the award of permanent total disability ("PTD") benefits was reduced by 50% to the rate of $180.00 per week beginning March 8, 2009.

On January 31, 2011, ALJ Coleman approved an agreement as to compensation in which the parties settled the award of PTD benefits for the lump sum of $115,850.43. As part of the agreement, Ward waived her right to reopen and to vocational rehabilitation. She did not waive her right to payment of past medical benefits and entitlement to future medical benefits.

On October 14, 2011, Kellogg's filed a motion to reopen, Form 112 medical fee dispute, and a motion to join Dr. Greg Hackney as a party to the claim. The medical fee dispute contested the ongoing chiropractic treatment rendered by Dr. Hackney at Hackney & Hensley Chiropractic Center. Kellogg's asserted utilization reviews had been performed regarding the chiropractic treatment by Dr. Bart Goldman and Dr. Stephen Carter. It represented both

[2] See KRS 342.125(7).

doctors were unable to recommend the ongoing chiropractic treatment for Ward.

By Order dated November 3, 2011, Hon. J. Landon Overfield, former Chief Administrative Law Judge ("CALJ") sustained Kellogg's motion to reopen to the extent the matter would be referred to an Administrative Law Judge for final adjudication. Thereafter, the case was assigned to Hon. Allison Emerson Jones, Administrative Law Judge ("ALJ Jones").

Significantly, Kellogg's designated as evidence the transcript of Ward's December 4, 2009, deposition. Voluminous medical records were introduced by the parties and Ward testified at a February 23, 2012, deposition and the April 22, 2013, hearing.

On May 20, 2013, Kellogg's filed a motion to amend the medical fee dispute and an amended Form 112 noting at the formal hearing Ward testified she was currently taking Lortab, Klonopin, and Trazadone. Kellogg's cited to the following testimony in the transcript:

Q: What was the Klonopin for?

A: It's for depression.

Q: Has Kellogg's been paying for that?

A: Uh-huh.

> Q: Now, would you agree with me that --
>
> Q: When did you start the Clonapin [sic] for depression?
>
> A: When I started going to Dr. Mahmood.

In the motion to amend the medical fee dispute, Kellogg's also sought to join Dr. Mansoor Mahmood as an indispensible party since he prescribed the Klonopin and Trazadone. The amended Form 112 primarily reiterated the dispute concerning the chiropractic treatment. However, as a basis for this medical fee dispute, Kellogg's alleged Ward testified she was receiving prescriptions for Klonopin and Trazadone from Dr. Mahmood for treatment of anxiety and depression. It asserted Ward did not seek nor was she awarded workers' compensation benefits for a psychological injury relating to the March 7, 2009, incident. Thus, it stated it was contesting the work-relatedness of the prescriptions since they were not related to the work injury.

In an Order dated May 28, 2013, ALJ Jones sustained Kellogg's motion to amend the medical fee dispute. However, she bifurcated the medical fee dispute regarding the medications from the underlying medical fee dispute contesting the chiropractic treatment. ALJ Jones also joined Dr. Mahmood as a party.

On June 20, 2013, ALJ Jones entered an opinion and order resolving the medical fee dispute regarding the chiropractic treatment rendered by Dr. Hackney in favor of Ward and overruling Kellogg's motion to reopen relative to the chiropractic treatment.

On November 15, 2013, since ALJ Jones was appointed to the Kentucky Court of Appeals, the CALJ entered an Order reassigning the medical fee dispute to the ALJ.

On December 22, 2013, the ALJ entered an Order overruling Kellogg's petition for reconsideration relating to ALJ Jones' opinion and order resolving the medical fee dispute concerning the chiropractic treatment in favor of Ward.

Relative to the medical fee dispute in question, Kellogg's relied upon the July 15, 2013, records review report and the March 5, 2014, addendum of Dr. David Shraberg. It also relied upon a July 6, 2013, letter from Dr. Henry P. Tutt.

Ward introduced the records of Dr. Mahmood dated July 12, 2013, February 5, 2014, and April 2, 2014.

At the September 23, 2014, hearing, Ward testified Dr. Mahmood, her treating physician, treats her pain resulting from the work injury. She testified the

work injury causes pain in her low back, hip, and both legs. She takes Klonopin for Restless Leg Syndrome and Trazadone for sleep at night because of leg and back pain. Ward also takes Lortab for pain. Regarding the need for the pain medication, Ward testified as follows:

> Q: Is this pain related to your back when you had your injury?
>
> A: Yes.
>
> Q: Okay – would you be able to sleep without this medication?
>
> A: No.
>
> Q: It would be too much pain?
>
> A: Too much pain and I toss and turn and hurt.

Ward acknowledged she did not assert a claim for a psychological injury, sleep disturbance, or Restless Leg Syndrome. Prior to her work injury, she was prescribed Lexapro for sleep disturbance. In response to a question posed by the ALJ, Ward testified she believes the medications help her.

In his November 17, 2014, decision, after summarizing the medical evidence, the ALJ provided the following analysis:

> **Work-relatedness and reasonableness and necessity of Klonopin and Trazadone prescribed by Dr. Mahmood:** As this is a reopening primarily on the issue of work-

relatedness, the ALJ will address that sub issue first. As noted above, the plaintiff has the burden of demonstrating the contested treatment is due to the plaintiff's work-related injury or condition. In support of this proposition, plaintiff has filed several treatment records from Dr. Mansoor Mahmood, the plaintiff's treating physician. In his treatment record dated July 12, 2013, Dr. Mahmood saw the plaintiff and diagnosed lumbosacral strain, low back pain, lumbar radiculopathy, occupationally related injury and chronic legitimate pain due to injury. His treatment plan included, in part "The patient is also prescribed Trazodone and Klonopin. Klonopin is a benzodiazepine and is also knows as central muscle relaxant to help the pain of the voluntary muscles. Trazodone is to help her sleep, but the patient says that her sleeplessness is because of severe back pain and stiffness whenever she lies in the bed."

Plaintiff also filed the record of Dr. Mahmood dated February 5, 2014 wherein he noted "the patient is also prescribed Klonopin and Trazodone to help her sleep. Her sleep disturbance seems to be related to her back pain."

Defendant argues that plaintiff did not allege either a sleep disturbance or psychiatric condition as part of the original litigation of the case and, therefore, the treatment with Trazodone and Klonopin are not work-related. While defendant may have a valid argument if this was a reopening to alleged income benefits, the issue of medical benefits is not subject to such a bar as enunciated in Slone v. Jason Coal Co., 902 S.W.2d 820 (Ky. 1995). Instead, an employer is liable

for medical benefits for a claimant for the "cure and relief from the effects of an injury or occupational disease…" KRS 342.020(1).

Here, the ALJ is persuaded the treatment by Dr. Mahmood with Trazadone and Klonopin is related to the residuals of the plaintiff's lumbar spine condition which was accepted as compensable by virtue of the settlement agreement entered into by the plaintiff and defendant that was approved on January 31, 2011. The reasons for usage of the prescription medications is clearly set forth in the treatment notes of Dr. Mahmood that were not prepared in the context of litigation.

The ALJ acknowledges the opinions of Drs. Shraberg and Tutt filed by defendant in the claim and their level of expertise that each carries. However, in the case at bar, the ALJ is more persuaded by the testimony and determination of Dr. Mahmood as the plaintiff's treating physician as to the connection between the residuals of the plaintiff's work condition and use of the medications in question over the medical records review of Dr. Shraberg and the medical questionnaire of Dr. Tutt who initially evaluated the plaintiff and assessed a 0% impairment despite the subsequent resolution of the claim.

Having determined the plaintiff has carried her burden of demonstrating the relatedness of the medications to the residuals of her work injury, the ALJ must now determine if the treatment is reasonable and necessary. Now, the defendant bears the burden of demonstrating the use of Trazodone and Klonopin is unreasonable and/or unnecessary.

The ALJ begins this analysis by pointing out a fatal flaw in the defendant's contest of these medications. When contesting the reasonableness and necessity of medical treatment, 803 KAR 25:012(4) requires as an attachment to a form 112 "the final decision from a utilization review or medical bill audit with the supporting physician opinion." At the time of the original contest ultimately resolved by Opinion of ALJ Jones on June 20, 2013, the only issue for determination was the compensability of chiropractic treatment. The defendant moved to supplement the pending contest with that for Trazadone and Klonopin. By order dated May 28, 2013, ALJ Jones bifurcated the underlying contest of chiropractic treatment from that which is currently pending before the undersigned.

However, at no time has the defendant proceeded with the requirement for review of the contested medications through utilization review. Pursuant to 803 KAR 25:190(5) the claims selection criteria requiring review have been met in the case yet no review was undertaken. Defendant did refer to utilization review carried out as part of the contest of the contest of the chiropractic treatment contest as set forth on the form 112 attached to the motion to amend medical fee dispute, however, those utilization review services were provided in regards to chiropractic services and were used to support the contest on the work-relatedness of the use of Trazodone and Klonopin. However, as the issue of reasonableness and necessity was reserved as a contested issue at the final hearing by the defendant it is paramount that it completed the necessary steps to

> property preserve the issue.
>
> Therefore, having failed to support its contest and arguments as to reasonableness and necessity of Trazodone and Klonopin through necessary utilization review, the contest is resolved in favor of the plaintiff.
>
> However, even if the ALJ were to address this issue on the merits, the results would be the same. Again, the defendant supports its arguments with a record review of Dr. Shraberg. The physician indicated the use of Trazadone and Klonopin would have no useful effect on the plaintiff's condition.
>
> However, the plaintiff testified at the final hearing the use of medications were helpful in assisting to sleep against the residuals of the work-related low back condition. Moreover, Dr. Mahmood continues to prescribe these medications as the plaintiff's treating physician whose treatment has not been questioned by the defendant. In addition, plaintiff clearly has the need for additional lumbar spine medical treatment based upon the Opinion of ALJ Jones. It would seem unlikely that Dr. Mahmood would continue to prescribe medications to the plaintiff if they were not providing the intended relief.
>
> Therefore, the ALJ concludes and finds that the treatment with Trazadone and Klonopin is both work-related and reasonable and necessary and continuing treatment shall be the responsibility of the defendant and/or its insurer.

Kellogg's filed a petition for reconsideration asserting the ALJ incorrectly stated it was required to

submit the matter to utilization review in order to challenge the compensability of the Klonopin and Trazadone. It also argued substantial medical evidence supported a finding Klonopin and Trazadone were treatment for an unrelated mood disorder from which Ward suffered prior to the March 2009 work injury and requested a finding and entry of an order to that effect.

In the December 18, 2014, Order the ALJ stated as follows:

> The ALJ considered the issue of work-relatedness of these medications and relied upon the opinion of the plaintiff's treating physician, Dr. Mahmood, that the medications were related to the plaintiff's work injury.
>
> However, as the issue of reasonableness and necessity was also reserved, the ALJ was required to address that issue as well. . . .
>
> The second argument posed by the defendant requests the ALJ reconsider the merits of his opinion and rely upon the opinions of Drs. Tutt and Shraberg over that of Dr. Mahmood. In fact, the petition itself simply points to 'substantial medical proof' in support of the defendant's position. KRS 342.281 permits an ALJ to correct 'errors patently appearing on the face of the award' when such errors are raised in a petition for reconsideration. 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, the ALJ 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.329 (Ky. 1971). The ALJ is not permitted to simply reconsider his opinion based on similarly situated evidence on petition. To this end, the defendant's petition is **OVERRULED**.

Kellogg's contends the ALJ relied upon Ward's testimony in establishing a causal connection between the requested treatment and her work injury. It insists that on multiple occasions Ward testified the Klonopin was for treatment of her depression and/or Restless Leg Syndrome. Kellogg's cites to the April 22, 2013, hearing testimony in which Ward testified Klonopin was treatment for her depression. Kellogg's maintains Ward failed to introduce substantial evidence to support a finding of compensability of the medications. In contrast, Kellogg's argues it presented substantial evidence from Drs. Shraberg and Tutt that the treatment is not related to the work injury.

Kellogg's asserts the ALJ erroneously relied upon Dr. Mahmood's medical records as his medical records do not support a finding of work-relatedness. Kellogg's maintains Dr. Mahmood indicated the medications help Ward sleep. However, he did not provide an opinion as to whether the treatment was for the work-related injury. Thus, Ward failed to produce evidence of the work-relatedness of

Klonopin and Trazadone. Further, Ward testified the medications were not work-related. Kellogg's argues as follows: "Further, as Plaintiff's original award did not include a claim for psychiatric injury compensation for anti-depressant treatment related to the work injury cannot be supported by substantial evidence." It requests the Board vacate the ALJ's determination the medications are compensable.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity of the 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). We are not unmindful of the Supreme Court's ruling in C & T of Hazard v. Stollings, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published, in which it stated:

> "The party responsible for paying post-award medical expenses has the burden of contesting a particular expense by filing a timely motion to reopen and proving it to be non-compensable." *Crawford & Co. v. Wright*, 284 S.W.3d 136, 140 (Ky. 2009) (citing

> *Mitee Enterprises v. Yates*, 865 S.W.2d 654 (Ky. 1993) (holding that the burden of contesting a post-award medical expense in a timely manner and proving that it is non-compensable is on the employer)). As stated in *Larson's Workers' Compensation Law,* § 131.03[3][c], "the burden of proof of showing a change in condition is normally on the party, whether claimant or employer, asserting the change ...". The burden is placed on the party moving to reopen because it is that party who is attempting to overturn a final award of workers' compensation and thus must present facts and reasons to support that party's position. It is not the responsibility of the party who is defending the original award to make the case for the party attacking it. Instead, the party who is defending the original award must only present evidence to rebut the other party's arguments.

Slip Op. at 4.

Since Kellogg's was unsuccessful before the ALJ in proving the medications in question were not reasonable and necessary treatment of and causally related to Ward's work injury, the sole issue in this appeal is whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

Compelling evidence is defined as evidence that 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). In Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986), the Supreme Court instructed:

> If the fact-finder finds against the person with the burden of proof, his burden on appeal is infinitely greater. It is of no avail in such a case to show that there was some evidence of substance which would have justified a finding in his favor. He must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled "clearly erroneous" if it reasonably could have been made. Thus, we have simply defined the term "clearly erroneous" in cases where the finding is against the person with the burden of proof. We hold that a finding which can reasonably be made is, perforce, not clearly erroneous. A finding which is unreasonable under the evidence presented is "clearly erroneous" and, perforce, would "compel" a different finding.

Id. at 643.

As fact-finder, the ALJ has the sole authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight to be accorded the evidence and the inferences to be drawn therefrom. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995). The fact-finder 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 adversary parties' total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

Ward's testimony consistently establishes the 2009 work injury causes pain in the low back, hip, and both legs. Admittedly, at the April 22, 2013, hearing, Ward testified that she takes Klonopin for depression. However, we also note that in the December 4, 2009, deposition, which Kellogg's designated as evidence to be relied upon in the reopened proceedings, Ward testified she could not remember the medications she takes for depression but she takes Zoloft and Trazadone for sleep. As previously summarized, Ward's December 4, 2009, hearing testimony reflects she takes Klonopin for Restless Leg Syndrome and Trazadone for sleep due to back and leg pain. She also confirmed she could not sleep without the medication. Ward specifically denied the medications in question were prescribed for a psychological condition. Within his discretion, the ALJ may find this testimony more credible and rely only on it. Similarly, he is permitted to

discount Ward's testimony she takes Klonopin for depression.

In his July 12, 2013, record, Dr. Mahmood noted Ward had severe chronic and recurrent low back pain in the lower half of the back which is sharp and radiates more to the left lower extremity. The pain aggravates upon activity, and she gets relief with rest and pain medications. Ward has trouble sleeping due to severe pain and tosses and turns because of this pain. Dr. Mahmood concluded Ward had gone through physical therapy before and goes to a chiropractor every two weeks which does not completely resolve her pain. For that reason, Ward needs prescription pain medications to treat her workers' compensation injury. Dr. Mahmood stated Ward is prescribed Lortab twice a day on an as needed basis. Although Ward had been advised to take Motrin, she believes the Motrin does not help her pain. Dr. Mahmood also prescribed Klonopin and Trazadone. With respect to Klonopin and Trazadone, Dr. Mahmood stated as follows:

> Klonopin is a benzodiazepine and is also knows [sic] as central muscle relaxant to help the pain of the voluntary muscles. Trazadone is to help her sleep, but the patient says that her sleeplessness is because of severe back pain and stiffness whenever she lies in the bed.

In a subsequent note dated February 5, 2014, Dr. Mahmood again noted Ward is in severe pain in the lower half of her back which is sharp, radiating constantly, and aggravated upon activity. The pain radiates to the lower left extremity. Relieving factors include rest and pain medications. Ward complained of difficulty performing daily house chores and also difficulty with sleeping due to severe pain. She stated she tosses and turns at night. Dr. Mahmood's treatment plan was to prescribe Volteran and Zanaflex. If that does not cure the pain completely, Ward will also take Lortab for pain. Dr. Mahmood prescribed Klonopin and Trazadone to help Ward sleep. He stated Ward's sleep disturbance seems to be related to her back pain. Dr. Mahmood stated he would follow Ward for her injury.

Dr. Mahmood's April 2, 2014, note again reveals Ward continued to have chronic and recurrent lower back pain which made her disabled. Ward estimated her pain to be seven on a scale of one to ten without medication but even with medication she does have some pain. Dr. Mahmood noted Ward had severe pain in the lower half of her back and numbness in the lower left extremity. The treatment plan was to prescribe a muscle relaxer, NSAIDS, and pain killers. He noted Ward had trouble sleeping for which she has been prescribed Klonopin and Trazadone. He noted

Ward's symptoms are worsening. Dr. Mahmood checked her KASPER and urine drug screen which were appropriate.

The opinions expressed by Dr. Mahmood recited herein and Ward's testimony constitute substantial evidence in support of the ALJ's determination Klonopin and Trazadone are reasonable and necessary treatment of and causally related to the March 7, 2009, work injury. Since the ALJ has the authority to pick and choose the evidence upon which he will rely, he was free to rely upon the opinions of Dr. Mahmood and Ward's testimony, and this Board is not authorized to disturb his choice on appeal. Special Fund v. Francis, supra.

While Kellogg's is correct the contrary opinions espoused by Drs. Shraberg and Tutt could have been relied on by the ALJ to support a different outcome in its favor, in light of the remaining record, the views articulated by those physicians represent nothing more than conflicting evidence compelling no particular result. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (Ky. 2003). As previously noted, where the evidence with regard to an issue preserved for determination is conflicting, the ALJ, as fact-finder, is vested with the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Consequently, we find no error in

the ALJ’s reliance upon the findings and opinions expressed by Dr. Mahmood in his records as well as Ward’s testimony in resolving the medical fee dispute regarding the prescriptions in question in favor of Ward.

Even though Ward may have testified during the April 22, 2013, hearing that she took Klonopin for depression, the ALJ was free to reject that testimony in light of her testimony at the hearing she took the medication for Restless Leg Syndrome and to help her sleep. More importantly, Dr. Mahmood’s records substantiate Ward’s testimony that Klonopin and Trazadone were prescribed for her trouble sleeping. In the last two medical reports, Dr. Mahmood confirms Klonopin and Trazadone were prescribed as sleep aids. In the earlier note of July 12, 2013, Dr. Mahmood specifically linked Ward’s sleeping problems to the pain she experiences from the work injury. Dr. Mahmood stated Klonopin is a central muscle relaxant to help with pain of the voluntary muscles. Trazadone was prescribed to help with sleep. Dr. Mahmood specifically noted Ward has trouble sleeping due to severe back pain and stiffness whenever she lies in bed.

The medical records and Ward’s testimony establish a causal connection between the need for the medication and the work-related injury. Further, they also

establish the medication is reasonable and necessary treatment of the work injury. Ward's testimony and the findings and opinions of Dr. Mahmood establish one of the side effects of Ward's back pain is an inability to sleep.

As noted by the Court of Appeals in Ranger Contracting v. Morley, 2008-CA-001037-WC, rendered August 28, 2009, Designated Not To Be Published:

> Pain is a symptom of an underlying medical condition. It is a consequence of an underlying medical injury or disease, or a response thereto. The experience of pain does not equate to a medical condition, injury or disease, but is merely a symptom or an effect of an underlying medical condition, injury or disease which must be diagnosed and treated. Pain is not a medical condition in and of itself.

Slip Op. at 9.

KRS 342.020 dictates the employer shall pay for the cure and relief from the effects of an injury. The ALJ could easily conclude one of the effects of the injury is an inability to sleep due to pain caused by the injury. Because the outcome selected by the ALJ is supported by the record, we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

Accordingly, the November 17, 2014, Opinion, Order, and Award and the December 18, 2014, Order ruling on the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON MARK R BUSH
250 GRANDVIEW DR STE 550
FT MITCHELL KY 41017

COUNSEL FOR RESPONDENT:

HON WILLIAM L ROBERTS
P O BOX 241
PIKEVILLE KY 41502

ADMINISTRATIVE LAW JUDGE:

HON J GREGORY ALLEN
107 COAL HOLLOW RD STE 100
PIKEVILLE KY 41501