Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 31, 2014

CLAIM NO. 199339365

LINDA DYSON PETITIONER

VS. **APPEAL FROM HON. J. LANDON OVERFIELD, CHIEF ADMINISTRATIVE LAW JUDGE**

LOURDES HOSPITAL, INC.
LAXMAIAH MANCHIKANTI, M.D.,
and HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Linda Dyson ("Dyson"), *pro se*, seeks review of the June 23, 2014, Opinion and Order of Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ") resolving a medical fee dispute in favor of Lourdes Hospital, Inc. ("Lourdes"). The CALJ overruled Dyson's motion to reopen and ordered Lourdes was "absolved for any

further liability for payment of medical benefits" in relation to Dyson's workers' compensation claim against Lourdes and dismissed her claim for additional medical benefits as a result of the July 22, 1993, work injury. No petition for reconsideration was filed.

The initial pleadings filed for consideration by Hon. Thomas Nanney, Administrative Law Judge ("ALJ Nanney") are not in the record. However, ALJ Nanney's March 7, 1996, Opinion is in the record. ALJ Nanney stated the disputed issues were extent and duration of disability, the existence of psychological impairment or injury, the appropriate amount of temporary total disability ("TTD") benefits, and apportionment. He indicates that on July 22, 1993, Dyson was employed as a cafeteria worker and was injured when she slipped and fell on a wet floor landing on her buttocks. Dyson alleged injuries to her neck, low back, and tailbone. She also alleged depression as a result of her injuries. Dyson claimed to have continuing pain in her back, right leg, right arm, neck, and shoulder. She had not returned to work in any capacity since the injury, although she was released to return to light duty by Dr. Theodore Davies on May 30, 1994. No surgical procedures were performed. The medical evidence came from Dr. Kurt Klauburg, Dr. Davies, Dr. John Grenfeld, Dr.

Randall Stahly, and Dr. John J. Griffin. Based on the opinions of Dr. Davies, ALJ Nanney found Dyson sustained work-related cervical and lumbar strains. However, there were no objective findings to justify her continuing subjective complaints. Based on the findings of Dr. Stahly, ALJ Nanney concluded Dyson's injuries were temporary and she had no permanent impairment as a result of the injuries. Relying upon the findings of Dr. Griffin, ALJ Nanney concluded there was no evidence of psychological disability caused by the work injuries. Further, any psychological impairment Dyson suffered was a result of a pre-existing psychological disorder. Consequently, ALJ Nanney dismissed her claim for permanent occupational disability arising from the injuries. However, he awarded TTD benefits from July 22, 1993, through May 31, 1994. The termination date was based on the date Dr. Davies released Dyson to light duty work. The ALJ stated Dyson was to recover from Lourdes "for the cure, relief, and effects of the injury such medical, surgical, and hospital treatment including nursing, medical and surgical supplies and appliances, as may be reasonably required at the time of the injury and thereafter during disability." ALJ Nanney did not specifically determine Dyson's entitlement to medical benefits beyond the period of TTD benefits awarded.

The record indicates no further proceedings were instituted until Dyson, *pro se*, filed a motion to reopen and Form 112 medical fee dispute on November 23, 2011. Dyson's motion to reopen asserts the grounds for the motion are "newly discovered evidence" and "medical dispute." She noted utilization review was performed on October 4, 2011. In the Form 112 regarding the nature of the dispute, Dyson wrote as follows:

> I injoyed [sic] my job at Lourids [sic]. I was also a very good worker. I had very good notes sent down about my work and the care to make sure all patients [sic] food was hot are [sic] cold and. [sic] My Job ment [sic] a lot of running. When I fell I fell in a door way on a wet floor. [sic] Trying to answer the phone. I have not been able to work since I'm in constant pain. And I need help. Pain management is not working.

Although not designated as an exhibit to her motion to reopen, it appears Dyson filed voluminous records from various medical providers as well as correspondence between the attorneys involved in her claim, all of which span a period of approximately eighteen years. The medical records are from the following medical providers: Pain Management Center of Paducah, Dr. Klauburg, Western Baptist Hospital, Dr. Joseph Harpole, Dr. William Pittman, Dr. Riley Love, Pain Management Center of Lourdes Hospital, Dr.

Davies, Dr. Brenden Strenge, Bonati Spine Institute, Concentra Managed Care Services, Physician Review report, Dr. Gary Reasor, Dr. Peter Kirsch, Dr. Patricia Blackwell, and Dr. John Rademaker. In addition, there were statements for services from various medical providers. The correspondence between the attorneys was generated after ALJ Nanney's decision.

Hon. Chris Davis, Administrative Law Judge ("ALJ Davis") entered an order on January 10, 2012, noting Dyson's motion to reopen for resolution of the medical fee dispute was accompanied by a Form 112 and a utilization review report of Dr. Rademaker and copies of contested bills. ALJ Davis sustained Dyson's motion to the extent the matter would be referred to an ALJ for final adjudication. Dr. Laxmaiah Manchikanti was joined as a party. Thereafter, the claim was assigned to Hon. Caroline Pitt Clark, Administrative Law Judge.[1]

Lourdes filed a Form 111 denying Dyson's claim stating the physician peer review report indicates a referral to Bonati Spine Institute was not medically necessary or appropriate for the 1993 work injury to Dyson's tailbone. It represented all known medical

[1] Because ALJ Clark's term as an Administrative Law Judge ended, by Order dated May 16, 2012, the claim was reassigned to the CALJ.

expenses have been paid as a result of the injury. However, it stated the medical bills associated with her current treatment have not been paid. On that same date, Lourdes also filed the report of Dr. Peter Kirsh.

On April 24, 2012, Dyson filed nine separate Notices of Filing of Medical Report representing the separate filings were the medical reports of Dr. Klauburg, Dr. Venu Vemuri, Dr. Donna Prett with Bonati Spine Institute, Dr. Jacquelyn Carter, Dr. Burns LSI, Dr. Love, Dr. Davies, Dr. Manchikanti, and Dr. Strenge.

On June 22, 2013, Dyson filed a motion to submit the medical records of Dr. Rex Arendall. Dyson also filed the records of Dr. Joseph Christiano with the University of Louisville Hospital.[2]

Lourdes introduced the March 3, 2010, radiology report concerning an MRI of the lumbar spine performed without contrast at the request of Dr. Strenge, as well as two diagnostic studies performed at Western Baptist Hospital on December 7, 2009, and March 3, 2010. It also introduced the medical report of Dr. Blackwell and the December 13, 2013, report of Dr. John L. Stanton generated

[2] The gap of time between the filing of the medical records was due to extensions of time to file medical evidence, the withdrawal of Dyson's attorney, and the change in Lourdes' attorney.

as a result of a physical examination and medical records review.

The Benefit Review Conference & Memorandum Order ("BRC") listed as contested issues: "unpaid or contested medical expenses and entitlement to payment of medical expense benefits for medical treatment which is subject of dispute [handwritten]."

Dyson testified she desired an award in order to get her back "fixed." As part of that treatment, she hoped surgery would be approved so that her current condition would improve. She explained she spends more time in bed than she does out and is unable to get out of her house. Her legs, lower back, upper back, and neck are painful. She is on pain medication and muscle relaxers. She has a TENS unit and a device that helps straighten her shoulders. Dyson has undergone extensive pain management which she believes was paid for by the workers' compensation insurance carrier and possibly by her medical card.

Dyson testified she was previously involved in a car wreck which primarily injured her neck. However, after the car wreck she was able to work at Lourdes. Dyson acknowledged Dr. Davies diagnosed neck and low back sprains following her work injury. He did not recommend surgery but sent her to pain management and physical therapy.

Hampton Physical Therapy performed the physical therapy and ordered a TENS unit. She indicated Dr. Davies initially prescribed Lorcet and Zanaflex and the physicians who subsequently treated her continued those prescriptions. She takes both medications. She was unsure of the entity that currently pays for these prescriptions. She believes either the Veterans Administration ("VA"), Medicare or Medicaid pays for her treatment. Dyson believed the medical bills for the subsequent MRIs and CAT scans ordered by her treating physicians over the years have been paid. The only medical bill which may remain unpaid is for a bone scan.

After submission of briefs, the CALJ entered the June 23, 2014, Opinion and Order. After summarizing the medical records and Dyson's testimony, the CALJ provided the following discussion and analysis:

> Ms. Dyson is a very compelling witness who evokes sympathy. She has formed the conclusion in her mind all of her current cervical and lumbar spine maladies relate to the slip and fall at work on July 22, 1993. Unfortunately for her current litigation, the CALJ is convinced by the great weight of the credible medical evidence in the record her current condition is not causally related to the subject work-related injury.

The discussion must begin with the opinion rendered by the original trier of fact, the ALJ to whom the claim was originally assigned. In the March 7, 1996 opinion, the ALJ made an implicit finding Ms. Dyson's July 22, 1993 slip and fall while in the course and scope of her employment with Defendant Employer DID NOT RESULT IN A PERMANENT INJURY. The award rendered by the ALJ awarded Ms. Dyson only TTD benefits through May 31, 1994, and specifically dismissed her claim for workers compensation benefits for a permanent injury. The award of medical expense benefits was limited to the period of Ms. Dyson's disability which, according to the finding and award of the ALJ, ended May 31, 1994.

In addition, the CALJ finds no CREDIBLE medical evidence Ms. Dyson is currently suffering from a treatable condition resulting from the subject work-related injury. All diagnostic procedures performed on her cervical and lumbar spines between 1994 and 2010 showed no acute injury, no herniated discs, and no surgically treatable lesion. She was examined and evaluated by two board-certified neurosurgeons, Dr. Davies and Dr. Strenge, who as late as 2010 determined she had no surgically treatable condition in her cervical or lumbar spines.

The CALJ finds the most credible and convincing evidence in the record concerning Ms. Dyson's current condition as related to her injury at work to be the unequivocal opinions of Dr. Stanton. Based on Dr. Stanton's opinions, the CALJ finds Ms. Dyson does not have a permanent injury resulting from the July 22, 1993 work-related incident and has no physical/medical

> condition requiring medical or surgical treatment as a result of that incident.

Accordingly, the CALJ entered the following findings and conclusions:

> 1. The facts found in the March 7, 1996 opinion rendered by the ALJ to whom the claim was originally assigned and as discussed above.
>
> 2. The CALJ finds based on the opinions of Dr. Stanton and the absence of any credible medical evidence to the contrary, the July 22, 1993 work-related incident did not cause a permanent injury as defined by the Kentucky Worker's Compensation Act to Ms. Dyson.
>
> 3. The CALJ concludes based on the findings set forth in numerical paragraphs 1 and 2 above, Ms. Dyson is not entitled to continued medical expense benefits pursuant KRS 342.020.
>
> 4. Ms. Dyson's motion to reopen must be overruled, the medical dispute resolved in favor of Defendant Employer, and Ms. Dyson's claim for continued medical expense benefits dismissed.

No petition for reconsideration was filed. Dyson subsequently filed a notice of appeal.

In her initial brief, Dyson recounts the events which occurred on July 22, 1993. She states she was initially diagnosed with a hairline fracture of the coccyx. Dyson was taken off work in 1994 by Dr. Davies and given muscle relaxers. She was returned to light duty work in

1994 and was to undergo therapy. She notes Dr. Love was her doctor for six to seven years, and he administered injections to help manage her pain. Dyson asserts that regardless of the CALJ's decision, due to the chronic pain she has developed major depression. Dyson notes ALJ Nanney awarded medical benefits for the cure and relief from the effects of the injury as may be reasonably required at the time of the injury and during her disability. Dyson represents that the effects of her injury and her disability have continued throughout the years up to the present. She maintains her back and neck should have been fixed years ago.

Dyson represents that after she sent her MRI results to the Laser Spine Institute, she was called and advised she was a candidate for surgery which the carrier rejected contending her condition had nothing to do with the slip and fall at work.[3] She asserts the doctors at the Laser Spine Institute have given her some hope. Dyson also references the records of Dr. Arendell and his findings and opinions after reviewing her MRI. She represents she has been in pain management and on muscle relaxers for over

[3] The records of the Laser Spine Institute attached to Dyson's brief indicate it is located at 3001 North Rocky Point Drive, Tampa, Florida.

eighteen years. She also takes medication to help her sleep because of the pain and spasms she experiences.

Dyson represents she cannot walk a block or stand for any length of time without her lower back and legs hurting. She states that before her work injury she was a good worker. Dyson argues she sustained more than a sprain or strain of her low back and neck due to the work injury. She maintains she fractured her tailbone and damaged her spine extending to her neck. She asserts the workers' compensation carrier wants her to take money but does not want to pay a doctor to help her fix her back problems.

In her reply brief, Dyson again argues ALJ Nanney left her medicals open as long as she was suffering from the slip and fall. She states she has never stopped going to the doctor for the pain in her upper and lower back. She contends her condition has gotten worse because she was allowed to go to pain management for all these years. Dyson asserts she had no problem with the workers' compensation carrier until she attempted to find doctors when her condition worsened. She asserts that in 2006, Lourdes began attempting to buy her medical benefits which she indicates were not for sale. Dyson asserts as long as she stayed in pain management her medical bills were paid by the workers' compensation carrier and her medical card.

However, when she attempted to find a doctor who would help her, Lourdes argued her car wreck was the reason for her pain, not her work injury. Dyson concludes by arguing she should not lose her medical benefits since her back problem has not resolved.

The case *sub judice* presents an odd factual situation. Dyson asserts pain management is not working and she needs additional treatment. The BRC order of June 11, 2012, signed by Dyson and Lourdes' counsel identifies the issue as Dyson's right to continued medical treatment to be paid for by Lourdes. ALJ Nanney determined Dyson's injuries were temporary and she had no impairment, but he did not determine whether Dyson was entitled to medical benefits beyond the period she was temporarily totally disabled. Significantly, Dyson does not allege she has unpaid medical bills and we find no evidence of unpaid medical bills. Further, it appears from Dyson's testimony that her medical bills have been paid by either the VA, Medicare, or Medicaid. The extent to which the medical bills have been paid by Lourdes or its carrier is not reflected in the record.

That said, apparently Lourdes paid Dyson's medical expenses generated after the termination of her TTD benefits, as Lourdes does not dispute it paid for pain

management for an extended period of time beyond its payment of TTD benefits. In addition, the correspondence between the attorneys reveals Lourdes made a concerted effort to buy out her future medical benefits. Given these facts, we believe the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity of the medical treatment falls on Lourdes. In addition, the burden regarding the question of work-relatedness or causation of the condition for which Dyson seeks treatment also remains with Lourdes. *See* C & T of Hazard v. Chantella Stollings, et al, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published.

On appeal, it is apparent Dyson believes the ALJ erred in not determining she was entitled to future medical benefits to be paid for by Lourdes. It is obvious from Dyson's *pro se* brief she feels she has been dealt with unfairly over a long period of time. However, as a matter of law, the decision in this case must be affirmed. Because Dyson is representing herself, we will attempt to explain the fundamental legal principles that control how this Board must decide her appeal.

Under Kentucky's workers' compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as

the "fact-finder." As fact-finder the ALJ reviews the evidence submitted by the parties and decides which testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as judge, then applies the law to the facts as he determines them to be true. As a matter of law, the facts as decided by ALJ cannot be disturbed on appeal by this Board so long as there is some substantial evidence of record to support the ALJ's decision. *See* KRS 342.285(1); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Furthermore, in the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Stated otherwise, inadequate, and incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is identifiable evidence in the record that supports the 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).

Although we understand Dyson is frustrated at the outcome of her workers' compensation claim, we also

recognize the ALJ's job as fact-finder is difficult. As a rule, in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning those matters at issue. It is for this very reason that in cases where the evidence is conflicting regarding an issue, the facts concerning that issue as determined by the ALJ, are afforded vast deference as a matter of law on appellate review.

In his December 13, 2013, report, Dr. Stanton stated that with the exception of some mild tenderness in the lumbar spine, Dyson's examination was basically normal. It appeared Dyson sustained a contusion to the coccyx resulting in a previous healed fracture and the strain of her lumbar and cervical spine. He believed the strain should have resolved within two or three months and Dyson could return to work two or three months after her injury. He concluded the diagnostic studies and physical examinations did not indicate Dyson had trauma to her cervical or lumbar spine which would have caused any type of permanent change. Dr. Stanton noted Dyson had no complaints of radiculopathy for several years after the accident. He also noted the physical examinations throughout have been normal with the exception of limited motion initially and more recently positive straight leg

raise testing. However, Dyson did not have positive straight leg raise testing during his examination. The only abnormality Dr. Stanton saw in the recent diagnostic studies were degenerative in nature and no fracture, herniated disc, or evidence of significant foraminal stenosis were present. He concluded the initial diagnostic studies were reasonable and necessary but subsequent diagnostic studies were excessive since Dyson had at least three MRIs of the lumbar and cervical spine as well as multiple CT scans and myelograms all of which were normal. Dr. Stanton believed there was no indication Dyson would benefit from any further physical therapy, facet injections, epidural steroid injections, or trigger point injections since she did not benefit from those procedures in the past. Similarly, there was no indication Dyson would benefit from chiropractic care or surgery. He concluded Dyson "appears to be at the end result" three months after her injury and her continued complaints have been influenced either by a psychiatric change initially or by arthritic changes more recently. Dr. Stanton concluded there were "no objective findings on physical examination to warrant the need for further disability," as she had an essentially normal examination.

In addition, the February 22, 2010, report of Dr. Strenge, upon which the CALJ partially relied, states x-rays of the lumbosacral spine performed on that date revealed good lordosis. There was decreased intervertebral disk height noted at L5-S1. Flexion and extension views reveal stiffness in the spine but no particular instability. Dr. Strenge diagnosed chronic lower back pain with bilateral leg lumbar radiculopathy in the S1 distribution, right worse than left; degenerative disk disease and spondylosis L5-S1; and chronic coccydynia. He stated he discussed these findings in detail with Dyson as well as the imaging studies. Dr. Strenge suggested she purchase a donut pad to sit on to help take the weight off the injured area. He indicated a lumbosacral spine MRI would be obtained as soon as possible, and Dyson would return to the clinic in four weeks for a more definitive evaluation.

The subsequent report of Dr. Strenge dated March 22, 2010, reflects the MRI revealed her spine was in excellent condition. He did not see any surgical problems on her MRI. Dyson continued to have back pain, coccydynia, and bilateral leg radiculopathy. Dr. Strenge was unsure of the etiology of these symptoms. He indicated Dyson had tried numerous non-operative treatment modalities and has

not improved. Dr. Strenge did not think he had anything else to offer Dyson and did not have any new recommendations.

After first concluding ALJ Nanney's award of medical benefits did not extend beyond May 31, 1994, the end date of the award of TTD benefits, the CALJ concluded there was no credible medical evidence establishing Dyson suffered from a treatable condition caused by the work injury. The opinions of Dr. Stanton, upon whom the CALJ relied, constitute substantial evidence in support of his determination Dyson was not entitled to future medical benefits due to the work injury of July 22, 1993. As noted by the CALJ, Dr. Stanton's opinions are unequivocal. Further, Dr. Strenge's medical report of March 22, 2010, indicates the MRI of March 3, 2010, revealed Dyson's entire spine was in excellent condition and as a result he could not recommend any further treatment. Dr. Strenge's report also constitutes substantial evidence in support of the CALJ's decision.

Finally, although not mentioned by the CALJ, Dr. Kirsch's September 23, 2011, report also constitutes substantial evidence supporting the CALJ's decision. Dr. Kirsch stated Dyson suffered a soft tissue sprain/strain type injury. She had no significant objective findings and

was considered to have a lumbar sprain/strain type complex. Dr. Kirsch believed Dyson had been “well worked up” and apparently treated intermittently for years by pain management without any significant objective findings. Dyson developed some mild early degenerative change in the lower lumbar spine throughout the years. He noted Dr. Strenge evaluated Dyson on March 22, 2010, which revealed no significant findings which would correlate to her work injury of July 22, 1993. Thus, Dr. Kirsh believed the requested referral to the Bonati Institute would not have any medical relationship to the 1993 work injury.

As previously noted, in the absence of a petition for reconsideration our only task on appeal is to determine whether substantial evidence supports the CALJ’s decision. Here, there is substantial evidence in support of the CALJ’s decision. The opinions expressed by Drs. Stanton, Strenge, and Kirsch constitute substantial evidence in support of the CALJ’s determination Dyson is not entitled to future medical benefits due to the work-related injury of July 22, 1993. Since the ALJ has the authority to pick and choose, he is free to rely primarily upon the opinions of Dr. Stanton as more credible, and this Board is without authority to disturb that choice on appeal. Special Fund v. Francis, supra.

Accordingly, the June 23, 2014, Opinion and Order of Hon. J. Landon Overfield, Chief Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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