OPINION ENTERED: July 5, 2013

CLAIM NO. 199420610

MARILYN KISTNER FELTNER COLLINS PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE**

HAZARD ARH
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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BEFORE: ALVEY, Chairman, and STIVERS, Member.

ALVEY, Chairman. Marilyn Kistner Feltner Collins[1] ("Collins") seeks review of an opinion rendered March 1, 2013, by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"), finding in favor of Hazard ARH regarding disputed prescriptions and treatment rendered by Dr. George Chaney.

[1] At the time of the injury and settlement, Petitioner's name was Marilyn Kistner.

Collins also appeals from the May 18, 2013 order denying her petition for reconsideration.

On appeal, Collins argues the ALJ's determination the contested prescriptions and medical treatment rendered by Dr. Chaney were non-compensable was not supported by substantial evidence. We affirm.

Collins filed a Form 101 on August 18, 1994, alleging she injured her low back on December 9, 1993 while assisting a patient from a chair to a bed. The claim was settled by Form 110 settlement agreement and approved by Hon. Donna H. Terry, Administrative Law Judge, on February 13, 1995. The terms of the agreement included settlement of income benefits based upon a 17% permanent partial occupational disability. Collins agreed to waive entitlement to future treatment for an alleged psychological condition, and designated Dr. Chaney as her treating physician.

On March 16, 2012, Hazard ARH filed a motion to reopen the claim, a Form 112 medical dispute, and a motion to join Dr. Chaney as a party. In support of the motions, Hazard ARH filed the February 12, 2012 utilization review report prepared by Dr. Bart Olash. Dr. Olash opined the treatment rendered by Dr. Chaney, inclusive of Capsaicin/Trixaicin, Tramadol, and Arthrotec was not

medically necessary. He noted Collins' complaints are disproportionate to her physical findings. Dr. Olash further opined Collins needs a strong home exercise program, weight reduction, and occasional use of non-narcotic, over-the-counter analgesic medication.

In response to the motion to reopen, Collins filed Dr. Chaney's somewhat illegible affidavit dated April 7, 2012. Dr. Chaney indicated the medications he prescribed and treatment he rendered were for Collins' low back pain.

On April 18, 2012, Hon. J. Landon Overfield, Chief Administrative law Judge, entered an order reopening the claim. On May 16, 2012, the Kentucky Department of Workers' Claims issued an order assigning the claim to the ALJ, and scheduling a Benefit Review Conference ("BRC") for September 5, 2012.

Collins testified by deposition on June 21, 2012, and at the hearing held February 5, 2013. Collins is a resident of Hyden, Kentucky. She was born on July 24, 1955. She stated she worked as a Certified Nurse's Assistant at Hazard ARH, which required heavy turning and tugging of patients, serving meals, taking vital signs, changing patients, and assisting patients to the bathroom.

Although the Form 101 reflects Collins was injured while assisting a patient from a chair to a bed, she testified at her deposition she was pushing a lunch cart when she developed low back, which has continued to the present. She developed left leg pain approximately one week after the accident. She stated she has fallen on numerous occasions due to left leg weakness. She began treating with Dr. Chaney in 1995, and has subsequently treated with him every three months. Dr. Chaney prescribes Tramadol, Arthrotec, and Capsaicin, without which she stated she would be unable to function. She also stated driving long distances aggravates her leg pain, and Lexington, Kentucky is the furthest she can drive. Despite earning a certification in medical office technology subsequent to the accident, Collins sated she has been unable to work since December 1993.

In addition to Dr. Chaney's affidavit, Collins filed the report of a DXA scan performed January 25, 2013 at the Mary Breckenridge Hospital. The report reflects she has normal bone density.

Hazard ARH filed the report prepared Dr. Timothy Kriss on October 1, 2012, subsequent to his examination of Collins. Dr. Kriss noted the original injury was March 3, 1993 while assisting with a patient transfer. He noted the

December 9, 1993 event was a re-injury which occurred while Collins was pushing a cart, after which she did not return to work. Dr. Kriss noted Collins had a normal gait, reflexes, and range of motion, but complained of low back pain, and diffuse pain throughout the entirety of both lower extremities. Dr. Kriss noted the findings on the May 12, 1994 MRI were normal. Dr. Kriss stated, "The original work-related March/December 1993 work-related [sic] musculoskeletal strain resolved long ago, and requires no further treatment."

A BRC was held on September 5, 2012. The BRC order and memorandum reflects, "Parties have 30 days to work out arrangements for an IME. Status reports due in 45 days." A hearing was held on January 22, 2013, pursuant to an order issued by the ALJ on December 20, 2012. At the hearing, the ALJ stated the following, regarding the contested issues:

> All right. This is a reopening for a medical fee dispute. And, it doesn't look like we have had a formal benefit review conference. But, we discussed the matter before we went on the record. And, it's my understanding the only contested issue to be determined in this medical fee dispute is the compensability of all treatment with Doctor Chaney, and that's both causation and work relatedness and the reasonableness and necessity of such treatment.

In the opinion and order rendered March 1, 2013, the ALJ found as follows:

> In this medical fee dispute, the defendant employer challenges the compensability of all treatment provided plaintiff by Dr. Chaney. In support of its position, the defendant employer relies upon the opinions of its expert, Dr. Kriss. He examined plaintiff and reviewed her medical history and concluded the symptoms for which she seeks treatment with Dr. Chaney are not related to the lumbar strains she suffered in 1993. In reaching this conclusion, Dr. Kriss pointed out that plaintiff's diffuse symptoms do not correspond with the lumbar strain evidenced by plaintiff's treatment records in 1993 and 1994. In particular, he noted plaintiff's 1994 lumbar MRI was entirely normal. Dr. Kriss also pointed out plaintiff still has no objective evidence of a permanent anatomic lumbar injury, especially not one that would cause the symptoms of which she complains.
>
> Having reviewed the evidence of record, the Administrative Law Judge is ultimately persuaded by the opinions of Dr. Kriss. Dr. Kriss provided a very thorough explanation as to why plaintiff's lumbar complaints are not causally related to any injuries she suffered in 1993 and do not otherwise warrant the medication regimen prescribed by Dr. Chaney. Conversely, Dr. Chaney only provided a brief affidavit indicating his belief that the treatment he provides is reasonable and necessary. However, Dr. Chaney's affidavit does not address the issues of work relatedness expressed by Dr. Kriss.

> Quite simply, a review of the entire evidentiary record available persuades the Administrative Law Judge that Dr. Kriss' opinions are most persuasive. Therefore, based on the opinions of Dr. Kriss, it is determined that plaintiff's treatment with Dr. Chaney is not causally related to her 1993 work injuries and is not compensable. This medical fee dispute is therefore resolved in favor of the defendant employer.
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> **AUTHORITIES**
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> KRS 342.020
>
> **ORDER**
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> **IT IS HEREBY ORDERED AND ADJUDGED** that this medical fee dispute is resolved in favor of the defendant employer and it shall not be responsible for the disputed medical expenses from Dr. Chaney's office or for such expenses in the future. Counsel shall move for approval of attorney fees within 30 days.

Collins filed a petition for reconsideration on March 18, 2013 alleging the ALJ erred in stating Dr. Chaney did not address work-relatedness in his affidavit. She asked the ALJ reconsider his decision, and find Dr. Chaney's treatment and prescriptions compensable.

In the order on reconsideration rendered May 18, 2013, the ALJ found the following:

> This matter comes before the Administrative Law Judge upon the

> plaintiff's Petition for Reconsideration of the Opinion & Order rendered in this matter on March 1, 2013 resolving the medical fee dispute in favor of the defendant employer. In her Petition, plaintiff argues it was error to resolve the medical fee dispute in favor of the employer, particularly based on the erroneous statement that Dr. Chaney did not address whether the disputed treatment he provides was causally related to plaintiff's work injury.
>
> Having reviewed plaintiff's Petition, the Administrative Law Judge agrees it was error to indicate Dr. Chaney did not address the issue of causation. Dr. Chaney's affidavit does touch upon that issue, although without much explanation. The Administrative Law Judge therefore remains persuaded by the better reasoned explanation provided by Dr. Kriss, who explained why plaintiff's lumbar complaints are not causally related to plaintiff's 1993 injuries and do not otherwise warrant the treatment prescribed by Dr. Chaney. For these reasons, this medical fee dispute remains resolved in favor of the defendant employer and the plaintiff's Petition for Reconsideration to the contrary is **denied**.

In a post-award medical fee dispute, the employer bears both the burden of going forward and the burden of proving the contested treatment or expenses are unreasonable or unnecessary. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc.

v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). The claimant, however, bears the burden of proving work-relatedness. *See* Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

Because Collins was unsuccessful in demonstrating ongoing treatment rendered by Dr. Chaney, including the prescriptions, was caused by the work-related injury, the question on appeal is whether the evidence is so overwhelming, upon consideration of the whole record, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence 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).

As fact-finder, the ALJ has the sole authority to determine the quality, character, and substance of the evidence. Square D Company v. Tipton, supra; Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Where evidence is conflicting, the ALJ may choose whom or what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). The ALJ has the discretion and sole authority to reject any testimony and believe or disbelieve 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 (Ky. 1977). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. 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). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). In this instance, we do not believe the evidence compels a finding contrary to that rendered by the ALJ.

An injured worker's right to medical care for a work-related injury is not unfettered. The ALJ has the right and obligation to determine the compensability of medical treatment based upon the evidence presented. In this case, Hazard ARH presented medical evidence from Dr. Kriss establishing treatment with Dr. Chaney was not causally related to her 1993 lumbar strain. Likewise, Dr. Olash's report stated ongoing treatment with medications prescribed by Dr. Chaney is not medically necessary.

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings are so unreasonable they must be reversed as a

matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, supra. 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, 708 S.W.2d 641 (Ky. 1986).

Accordingly, the decision rendered March 1, 2013, and the order ruling on the petition for reconsideration rendered May 18, 2013, by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

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