Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 23, 2015

CLAIM NO. 201282062

MASCO BUILDER CABINET GROUP PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

JANICE RICHMOND and
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * * *

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

ALVEY, Chairman. Masco Builder Cabinet Group ("Masco") seeks review of the Opinion and Order rendered July 7, 2015 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), resolving a medical fee dispute in Janice Richmond's ("Richmond") favor. The ALJ determined the challenged total left knee arthroplasty recommended by Dr.

Anup Chattha is compensable. Masco also appeals from the July 31, 2015 order denying its petition for reconsideration.

On appeal, Masco argues Richmond submitted no medical evidence addressing whether the recommended total knee arthroplasty is related to the November 4, 2011 work injury. Masco asserts the only opinion on this issue is that of Dr. J. Rick Lyon, who found the surgery unrelated. Therefore, Masco asserts the ALJ erred in disregarding the only medical evidence addressing the causation of the recommended knee surgery. We vacate and remand the claim to the ALJ for a specific finding of whether the recommended surgery is causally related to the November 4, 2011 work injury.

A brief review of this claim's history is necessary. Richmond filed a Form 101 on July 2, 2012 alleging she injured her left knee on November 4, 2011 when she turned left while pushing a cart filled with end panels for cabinets. At the time of her injury, Richmond was working for Masco as a flat stock associate. Dr. Jason Hunt performed a left knee arthroscopy with chondroplasty of the medial femoral condyle and debridement of the ACL stump on January 19, 2012. The surgical report noted a post-operative diagnosis of partial thickness 20% ACL tear and

osteoarthritis with grade three chondromalacia of the medial femoral condyle. Dr. Hunt performed a second procedure consisting of a partial lateral meniscectomy and decompression of a ganglion cyst in the left knee on August 9, 2012.

Richmond testified at the hearing held April 25, 2013. She began working for Masco in October 2009. Her job consisted of pulling end panels or cabinet backs, and placing them on a roller cart. On November 4, 2011, as she was pushing a full cart, she turned left and felt a pinch and pain in her left knee. She reported the injury to her team leader, and subsequently sought medical attention. Dr. Hunt performed two surgeries to her left knee on January 18, 2012 and August 9, 2012. Richmond last treated with Dr. Hunt in January 2013. Richmond continued to experience pain, popping, swelling, and muscle spasms in her left knee, and utilized a cane. She felt she needed additional medical treatment for her left knee condition.

Richmond filed two reports by Dr. James Owen. In the first report dated September 7, 2012, Dr. Owen noted the November 4, 2011 work injury to the left knee and the January 18, 2012 surgery. Dr. Owen diagnosed persistent knee pain and ambulatory difficulty status-post chondroplasty of the medial femoral condyle and debridement

of ACL stump with partial thickness 20% ACL tear anterior, osteoarthritis with grade three chondromalacia of the medial femoral condyle. He noted Richmond was scheduled for a second surgery for a partial lateral meniscectomy and decompression of a ganglion cyst in left knee. Dr. Owen opined Richmond's injury caused her complaints. He found Richmond had not yet attained maximum medical improvement ("MMI") and declined to assess a permanent impairment rating.

Dr. Owen re-examined Richmond on March 13, 2013, following her second procedure by Dr. Hunt on August 9, 2012. Dr. Owen noted Richmond was eventually discharged from Dr. Hunt's care and was given permanent restrictions. Dr. Owen diagnosed Richmond as having undergone two knee surgeries with persistent, severe knee pain associated with antalgic limp and needed a cane for weight-bearing and stabilization. He opined Richmond's injuries caused her complaints. Dr. Owen concluded any pre-existing condition was dormant and non-disabling. He assessed an 8% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), and opined Richmond had reached MMI by the time of his examination. Dr. Owen opined Richmond did not retain the physical capacity to return to her position with Masco and

assigned permanent restrictions. He did not address Richmond's need for further or additional medical treatment for the left knee. Richmond had not started treatment with Dr. Chattha at the time of either examination with Dr. Owen.

Masco filed several reports by Dr. Lyon. In a November 15, 2012 report, Dr. Lyon noted the November 2011 work injury, and the two surgeries performed by Dr. Hunt. Dr. Lyon diagnosed pre-existing chondromalacia patella, pre-existing chondromalacia medial femoral condyle, partial thickness ACL tear, and posterior horn lateral meniscus tear with parameniscal cyst status post partial lateral meniscectomy. Dr. Lyon opined the lateral meniscus tear and cyst are not related to the work injury. He opined as a result of the work injury Richmond sustained an exacerbation of chondromalacia in the medial femoral condyle which has resolved. He also noted Richmond now has pain from her pre-existing chondromalacia patella and pes bursitis as a result of the operative procedure, and attributed 50% of this to the work injury. He found Richmond had not attained MMI, and recommended a steroid injection into the pes bursa, the continuation of physical therapy for six weeks, followed by a home exercise program.

In a January 31, 2013 report, Dr. Lyon noted Richmond had completed physical therapy in December 2012 and

was last seen by Dr. Hunt on January 7, 2013. At that visit, Dr. Hunt assigned permanent restrictions and did not schedule a return visit. Dr. Lyon opined Richmond reached MMI on January 7, 2013. He assessed a 5% impairment rating pursuant to the AMA Guides. Dr. Lyon opined Richmond needs no additional medical care or diagnostic studies, and assigned permanent restrictions. It appears Richmond had yet to begin treatment with Dr. Chattha at the time of either examination with Dr. Lyon.

In an opinion rendered April 30, 2013, the ALJ found Dr. Owen's opinions most persuasive. The ALJ awarded temporary total disability benefits, permanent total disability benefits based upon the 8% impairment rating assessed by Dr. Owen, and medical benefits. Masco appealed, and this Board vacated and remanded to the ALJ in an opinion rendered September 6, 2013. The Board's opinion was affirmed by the Kentucky Court of Appeals.

Subsequently, the ALJ set a new proof schedule, and scheduled a benefit review conference ("BRC") in an order dated February 4, 2015. Approximately one month later on March 10, 2015, Masco filed a medical fee dispute challenging the total knee arthroplasty recommended by Dr. Chattha which is the subject of this appeal. In the dispute, Masco stated Richmond received three injections

following the second knee procedure in March and April 2014. Subsequently, Dr. Chattha recommended a total knee arthroplasty using a Press Fit knee. Masco challenged the recommended procedure "as being not work related and unreasonable and unnecessary."

In support of its position, Masco filed the February 19, 2015 Physician Advisory Report by Dr. Robert Simpson and the February 20, 2015 Notice of Denial by Patricia Guy, R.N. In the report, Dr. Simpson provided a summary of the medical treatment received by Richmond for her left knee condition. He reviewed the January 31, 2013 report of Dr. Lyon. He noted the two surgeries in January and August 2012, and she received orthovisc injections on March 18, 2014, March 25, 2014 and April 2, 2014. He noted a February 13, 2014 MRI, a September 2, 2014 medical record in which a left total knee arthroplasty using a Press Fit knee was recommended, and a January 6, 2015 examination. After reviewing the criteria set forth in the ODG, Dr. Simpson concluded the clinical records were insufficient to support the need for the recommended procedure and recommended non-approval. In the notice of denial, Ms. Guy stated the requested treatment did not meet medical necessity guidelines primarily because Dr. Chattha did not

submit adequate medical documentation supporting the appropriateness of the procedure.

Masco also filed an April 9, 2015 report by Dr. Lyon, who re-examined Richmond at its request. He noted the treatment history for Richmond's left knee, including the recommended partial or total knee replacement by Dr. Chattha. He diagnosed pre-existing chondromalacia of the patella, pre-existing chondromalacia of the medial femoral condyle, partial thickness ACL tear, and posterior horn lateral meniscus tear, status post partial lateral meniscectomy. Dr. Lyon reiterated the lateral meniscus tear was not a result of the work event, and is the expected result of the concurrent arthritis. He stated Richmond had pre-existing arthritis to the left knee. Dr. Lyon concluded Richmond's arthritis is degenerative, existed prior to and has not been made worse by the work event. He noted there are no objective findings of any knee injury following the work event with exception of the partial ACL tear, from which she is asymptomatic. Dr. Lyon opined Richmond's current symptoms are a result of the pre-existing and progressive arthritis. Although Richmond is a candidate for knee replacement due to the failure of conservative treatment, the procedure will likely fail due to her size and young age. Dr. Lyon assessed a 10% impairment rating

for Richmond's current left knee condition, and estimated it would at a minimum increase to 15% with the knee replacement.

Richmond also testified by deposition on March 9, 2015. Since her second surgery in August 2012, her left knee condition has not improved, and is worse than it was prior to her first surgery. Richmond stated she last treated with Dr. Hunt in 2012 or 2013. He has since relocated to Florida. Subsequently, Dr. Chattha began treating her left knee. Following her second surgery, Richmond underwent a course of physical therapy which provided no benefit. She also had a cortisone injection and three gel injections, none of which improved her knee condition. She has been prescribed two knee braces by Dr. Chattha who has now recommended another left knee surgery. Richmond currently experiences left knee pain, swelling, tightness and muscle spasms. She also complained of limited mobility and a tumor on the front of her knee. When she is not wearing a knee brace, she uses a cane.

A telephonic BRC was held on April 10, 2014. The BRC order and memorandum indicates the parties identified the following contested issues: benefits per KRS 342.730, TTD, medical benefits, and permanent total disability.

Subsequently the parties reached a settlement, approved by the ALJ on May 20, 2015, with exception of the medical fee dispute challenging Dr. Chattha's proposed total knee arthroplasty. The parties settled for a lump sum of $100,000.00, with Richmond retaining her right to medical benefits for her left knee injury. The settlement agreement noted Dr. Chattha has recommended a total knee replacement, which is currently challenged by Masco. After noting Richmond retains her right to medical benefits pursuant to the settlement agreement, the agreement states "the current Medical Fee Dispute filed by the Defendant on March 5, 2014, challenging Dr. Anup Chattha's proposed TKA is unaffected by this settlement."

By order entered June 26, 2015, the parties agreed to cancel the final hearing, and have the matter submitted to the ALJ.

After summarizing Dr. Owen's September 7, 2012 report, Dr. Lyon's April 9, 2015 report, and the notice of denial, the ALJ made the following analysis in the July 7, 2015 Opinion and Order:

> **A. The issue to be determined is whether the left total knee arthroplasty using Press Fit knee recommended by the plaintiff's treating orthopedic surgeon, Dr. Anup Chattha, is reasonable, medically necessary and compensable?**

KRS 342.020 requires the employer to pay for the cure and relief from the effects of an injury or occupational disease, the medical, surgical and hospital treatment, including nursing, medical and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease.

I saw and heard the plaintiff Mrs. Richmond testify in person at the Hearing. I sat a few feet from her and carefully observed her facial expressions, carefully listened to her voice tones and carefully observed her body language during her testimony. I am the only decision maker who has actually seen and heard Mrs. Richmond testify in person. She was an open and candid witness. I make the determination that she was credible and convincing lay witness and that her testimony rang true.

. . . .

I make the determination that the medical evidence from the plaintiff's treating orthopedic surgeon, Dr. Chattha, is very persuasive, compelling and reliable. Dr. Chattha is a reputable orthopedic surgeon. He has stated in writing that he recommends that he perform upon Mrs. Richmond a left total knee arthroplasty using Press Fit knee. He based his medical opinion upon plaintiff's prior medical records and diagnostic test results and his physical examination of her.

Based upon the plaintiff's credible and convincing lay testimony and the persuasive, compelling and reliable

> medical evidence from Dr. Chattha, I make the determination that under the decision of the Kentucky Supreme Court in *FEI Installation, Inc. v. Williams*, 214 S.W.3d 313 (Ky.2007), the plaintiff is entitled to an award of both past and future medical benefits for her left knee injuries and I so rule. I find that in *Mullins v. Mike Catron Construction/Catron Interior Systems, Inc*., 237 S.W.3d 561 (Ky.App.2007), the Kentucky Court of Appeals noted that the Judge is entitled to exercise his or her discretion in making a determination regarding future medical benefits. I also rely upon the decision of the Kentucky Supreme Court in *Scottsville Manor v. Binion*, 2014 WL 5410192 (Ky.2014).

Masco filed a petition for reconsideration, noting it does not dispute the determination that a total knee arthroplasty is reasonable and necessary. "That is not what is being challenged. The Defendant challenges the TKA as not to be work-related." Masco pointed out Richmond submitted no medical evidence on the issue of causation/ work-relatedness of the challenged procedure.

Masco also asserted since a final hearing never occurred regarding the medical fee dispute, the ALJ's finding "I saw and heard the plaintiff Mrs. Richmond testify in person at the Hearing. I sat a few feet from her and carefully observed her facial expressions . . . ." is a patent error. Even if a hearing did occur, Masco asserted

the ALJ's impressions of Richmond are immaterial since causation must be demonstrated by medical evidence. Masco requested a "finding regarding causation. In the alternative, the Defendant requests specific findings of fact that 1.) the Plaintiff did not testify via final hearing and 2.) provide *specific* findings where Dr. Anup Chattha relates the necessity of the total knee arthroplasty to her work injury." (Emphasis original).

The ALJ denied Masco's petition in an order dated July 31, 2015. With regard to Masco's argument that no hearing was held, the ALJ stated as follows:

> The defendant argues in its most recent Petition for Reconsideration that a patent error was committed because the Opinion dated July 7, 2015 states that the plaintiff testified at the Hearing. On the contrary, the record reflects that the plaintiff testified at the Hearing on April 25, 2012, at which time Mrs. Richmond testified that while working for the defendant on November 4, 2011, she sustained an injury to her left knee, that she had her first knee surgery on January 18, 2012 and that she had her second knee surgery on August 9, 2012. She further testified about her continuing painful left knee symptoms and emphasized that she is not physically able to return to her former job.

After providing the same summary of Dr. Owen's report as he did in the July 7, 2015 opinion, the ALJ

stated as follows regarding the compensability of left knee surgery:

> I make the determination that the medical evidence from the plaintiff's treating orthopedic surgeon, Dr. Chattha, is very persuasive, compelling and reliable. Dr. Chattha is a reputable orthopedic surgeon. He has stated in writing that he recommends that he perform upon Mrs. Richmond a left total knee arthroplasty using Press Fit knee. He based his medical opinion upon plaintiff's prior medical records and diagnostic test results and his physical examination of her.
>
> Based upon the plaintiff's credible and convincing lay testimony and the persuasive, compelling and reliable medical evidence from Dr. Chattha and Dr. Owen, I make the determination that under the decision of the Kentucky Supreme Court in *FEI Installation, Inc. v. Williams*, 214 S.W.3d 313 (Ky. 2007), the plaintiff is entitled to an award of both past and future medical benefits for her left knee injuries and I so rule. I find that in *Mullins v. Mike Catron Construction/Catron Interior Systems, Inc.*, 237 S.W.3d 561 (Ky. App. 2007), the Kentucky Court of Appeals noted that the Judge is entitled to exercise his or her discretion in making a determination regarding future medical benefits. I also rely upon the decision of the Kentucky Supreme Court in *Scottsville Manor v. Binion*, 2014 WL 5410192 (Ky. 2014). . . .

On appeal, Masco argues Richmond failed in her burden of proving the contested surgery is related to the

November 4, 2011 work injury, since she filed no medical evidence. The only evidence in the record addressing this issue is that of Dr. Lyon who opined the surgery is unrelated. Masco asserts Dr. Chattha simply recommended the total knee arthroplasty, without providing an opinion to its causation. It also points out that the work injury occurred nearly four years ago. Masco states medical causation must be proved with expert medical testimony, citing to Brown-Forman Corp. v. Upchurch, 127 S.W.3d 615 (Ky. 2004), and Richmond failed to meet this threshold. In a related argument, Masco argues the ALJ erroneously rejected the unrebutted evidence of Dr. Lyon, the only medical evidence addressing the issue of causation. Masco requests the ALJ's decision be reversed, and the surgery be found not work-related.

Masco also argues the ALJ's personal observations of Richmond at the April 25, 2013 hearing have no bearing on medical causation, particularly considering it occurred three years prior to the opinion and long before Dr. Chattha's recommended surgery. Regardless, in cases were causation is not apparent such as this claim, an employee's own testimony is insufficient for a finding of work-relatedness.

As the claimant in a workers' compensation proceeding, Richmond had the burden of proving each of the essential elements of her cause of action, including causation/work-relatedness. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Notwithstanding C & T Hazard v. Chantella Stollings, et al., 2012-SC-000834-WC, 2013 WL 5777077 (Ky. 2013), an unpublished case from the Kentucky Supreme Court, a long line of reported decisions establish in a post-award medical fee dispute, the employer bears both the burden of going forward and the burden of proving entitlement to the relief sought, except that the claimant bears the burden of proving work-relatedness. 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).

Since Richmond was successful in her burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the

minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

It is clear Masco challenged whether the recommended surgery is casually related to the November 4, 2011 work injury since filing its medical fee dispute on March 10, 2015. In the medical fee dispute, Masco challenged the recommended procedure "as being not work related and unreasonable and unnecessary." In support of the dispute, Masco filed the February 19, 2015 Physician Advisory Report by Dr. Simpson, the February 20, 2015 Notice of Denial by Mrs. Guy and the April 9, 2015 report by Dr. Lyon. In its position statement to the ALJ, Masco's sole argument was Richmond failed to prove the total knee arthroplasty is work-related since she filed no evidence on this issue, and the only evidence addressing the issue of causation is that of Dr. Lyon.

However, in the July 7, 2015 Opinion and Order, the sub-heading states the question to be addressed was whether the proposed surgery "is reasonable, medically necessary and compensable?" The ALJ then quoted KRS 342.020. The ALJ found Richmond entitled to an award of both past and future medical benefits for her left knee injuries based upon Richmond's "credible and convincing lay testimony and the persuasive, compelling and reliable

medical evidence from Dr. Chattha." Although the ALJ clearly found the surgery necessary, he made no findings as to whether it is causally related to the work injury.

Masco filed a petition for reconsideration, arguing as it now does on appeal, specifically requesting a "finding regarding causation. In the alternative, the Defendant requests specific findings of fact that 1.) the Plaintiff did not testify via final hearing and 2.) provide *specific* findings where Dr. Anup Chattha relates the necessity of the total knee arthroplasty to her work injury." Other than saying he also generally relied upon the opinion of Dr. Owen, the ALJ did not make any specific findings regarding causation in the July 31, 2015 order denying Masco's petition.

In light of the above, we vacate and remand to the ALJ for specific and additional findings addressing whether the recommended surgery is related to the November 4, 2011 work injury, particularly in light of the fact Masco requested such a finding in its petition for reconsideration. Causation is a factual issue to be determined within the sound discretion of the ALJ as fact-finder. Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969). When the question of causation involves a medical relationship

not apparent to a lay person, the issue is properly within the province of medical experts and an ALJ is not justified in disregarding the medical evidence. Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184 (Ky. App. 1981). Medical causation must be proven by medical opinion within "reasonable medical probability." Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980).

In addressing this issue, the ALJ shall specifically cite to the evidence he relied upon supporting his determination of causation. General statements that the ALJ relied upon the credible opinion of a physician alone will not suffice. In making his determination, we point out neither party filed the treating records of Dr. Chattha. Regarding the ALJ's reliance upon Dr. Owen in the most recent report dated March 13, 2013, it appears Richmond had yet to begin treatment with Dr. Chattha, and there had been no recommendation of a total knee arthroplasty. In fact, Dr. Owen did not render an opinion as to additional treatment for the left knee injury, and found Richmond had reached MMI. It does not appear Richmond was re-examined by Dr. Owen afterward.

Therefore, on remand the ALJ is directed to make a specific finding of whether the recommended surgery by Dr. Chattha is causally related to the November 4, 2011 injury, and specifically cite to the evidence supporting his decision. If the ALJ is unable to cite to substantial evidence, he must find the challenged surgery not casually related, and therefore not compensable.

Accordingly, the July 7, 2015 Opinion and Order and the July 31, 2015 order on petition for reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge, is hereby **VACATED AND REMANDED** for entry of an amended decision in conformity with the views expressed herein.

ALL CONCUR.

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