

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: April 29, 2016

CLAIM NO. 199024557

RAYTHEON COMPANY

PETITIONER

VS.

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

KELVIN DRIVER  
HON. WILLIAM J. RUDLOFF,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
VACATING AND REMANDING

\* \* \* \* \*

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

**RECHTER, Member.** Raytheon Company ("Raytheon") appeals from the October 29, 2015 Opinion and Order rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). In this medical fee dispute, the ALJ determined certain pain management therapies, including radiofrequency ablations, are reasonable and necessary for the cure and relief of Kelvin Driver's ("Driver") low back injury.

Raytheon now appeals, arguing the ALJ's analysis is insufficient and the evidence does not support the award.

Driver injured his low back on January 9, 1990 while moving a two-hundred-pound fixture. ALJ Thomas Nanney determined Driver suffered a 15% impairment and awarded permanent partial disability benefits and medical benefits. Driver underwent a discectomy and fusion in 2002. In 2012, he was treated with steroid injections. Since his injury, he also has managed his pain with prescription medication.

He currently treats with Dr. Madhu Yelameli at the Nashville Pain Center. Dr. Yelameli performed bilateral L3-5 medial branch nerve blocks on February 19, 2015 and April 20, 2015. Driver reported improvement in his pain levels after each injection. Due to this improvement, Dr. Yelameli recommended a lumbar medial branch nerve radiofrequency ablation, and requested approval from the workers' compensation carrier.

Dr. Deborah Bergfeld performed a utilization review on July 8, 2015. Dr. Bergfeld noted Driver's low back complaints are non-specific and indicate no abnormality at the L3-L5 levels, which are the site of the proposed treatment. In addition, because Driver suffers multilevel facet arthropathy, she doubted the procedure

would produce significant benefit. Finally, Dr. Bergfeld noted the Official Disability Guidelines for radiofrequency neurotomies require that the diagnostic nerve blocks provide at least 70% relief, along with evidence of additional conservative care. Following his nerve blocks, Driver reported only a 50% and 60% improvement. He also did not undergo any additional conservative care.

The ALJ briefly summarized the opinions of Drs. Bergfeld and Yelameli, then correctly noted the applicable law. In a post award medical fee dispute, the employer bears the burden of establishing a contested medical treatment is not reasonable or necessary for the cure and relief of the claimant's work-related injury. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App. 1991). The claimant has the burden to establish the care is related to the work injury. Id. The ALJ then determined:

In this case, I make the determination that the medical evidence form the plaintiff's treating physician, Dr. Yelameli, is very persuasive, compelling and reliable. I am, therefore, going to follow Dr. Yelameli's recommendation that the plaintiff undergo the pain management treatment which he has recommended.

This analysis is insufficient. Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful

review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988). It is unclear from this very brief discussion whether the ALJ considered the substance of Dr. Bergfeld's report, and whether he exercised his discretion in determining Dr. Yelameli's proposed treatment is reasonable and necessary. Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354, 358 (Ky. 2004). For this reason, we vacate the ALJ's decision and remand this claim to the ALJ for further analysis. Because the medical evidence is conflicting and could support a ruling in either party's favor, we decline to direct a particular result, as Raytheon requests.

Accordingly, the October 29, 2015 Opinion and Order rendered by Hon. William J. Rudloff, Administrative Law Judge is hereby **VACATED**. This claim is **REMANDED** for further proceedings as expressed herein.

ALL CONCUR.

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