OPINION ENTERED: May 29, 2012

CLAIM NO. 201101442

RONALD BARTLEY PETITIONER

VS. **APPEAL FROM HON. JONATHAN WEATHERBY, JR., ADMINISTRATIVE LAW JUDGE**

SHORTY ENTERPRISE - BLACK ENERGY COAL
and HON. JONATHAN WEATHERBY, JR.,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AFFIRMING

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BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Ronald Bartley ("Bartley") seeks review of the order entered January 24, 2011, by Hon. Jonathan R. Weatherby, Jr., Administrative Law Judge ("ALJ"), dismissing his claim for benefits against Shorty Enterprise-Black Energy Coal ("Shorty"). The ALJ determined Bartley "failed to support the filing of the Form 101 with required medical

documentation identifying injury caused by work." No petition for reconsideration was filed from that order.

On appeal, Bartley argues:

> The ALJ erroneously granted Defendant's Motion to Dismiss on the grounds that Plaintiff's Form 101 was not supported by required medical documentation identifying injury caused by work. The ALJ's Order is clearly erroneous, is not in conformity with the provisions of the Act nor its regulations, exceeded his power and is clearly an unwarranted exercise of discretion.

We affirm.

Bartley filed a Form 101 Application for Resolution of Injury Claim, on November 2, 2011, alleging an injury date of November 9, 2009 for injuries to his neck, back, knees and shoulders. He attributed these injuries to "Repetitive and Cumulative trauma to the back, knees, shoulders, and neck over a long period of time in the work place."

Bartley supported his application with medical reports from Dr. Hughes Helm dated October 27, 2009 and August 30, 2011. In the October 27, 2009 report, Dr. Helm stated the following:

> 47yo WM with a hx of a rock fall injury in 1993, as well as a hx of being run over by a coal car in 1996, chronic worsening low back pain. Pt continues to work full-time plus underground as an electrician and repairing equipment. Pt

> had not been taking pain medications regularly since 2002, saw Dr. Gutti but tolerated injections poorly, has done better with the resumption of treatment with lorcet here 12/07.

In the report dated August 30, 2011, Dr. Helm stated as follows:

> 48 year old white male with chronic low back pain with multilevel degenerative disc disease of the lumbar spine by MRI. He continues to report good pain control with reduction in pain from 8:10 to 3:10 on the pain scale. Pt states he has a much better level of ADL function with the help of pain medication.

No documentation was filed concerning the neck, upper back, shoulders or knees. Dr. Helm did not state the low back condition was due to Bartley's work. No additional medical reports or records were filed.

On December 5, 2011, Shorty filed a motion to dismiss the claim because the medical documentation attached with the application did not state the conditions complained of were causally related to Bartley's work. Shorty alleged Bartley failed to "make even a prima facie showing of compensability." Bartley filed no response to the motion to dismiss.

A scheduling order was issued on December 9, 2011, setting a Benefit Review Conference on April 11, 2012, in Pikeville, Kentucky.

Bartley testified by deposition on December 15, 2012. He worked for Shorty for approximately one month. He was laid off on November 9, 2009, after which time he drew unemployment benefits. Bartley testified he has treated for low back pain since his work-related injury in 1996 at which time, Dr. Adams advised his problems were work-related. No physician ever advised his neck, upper back or knee problems were work-related. He stated Dr. Gutti advised his shoulder problems were due to a work-related injury.

Bartley testified he began treating with Dr. Helm in 2006 for his low back condition, and he has treated with him since that time. He was taking Lorcet and muscle relaxers long before he began working for Shorty.

In his order entered January 24, 2012, the ALJ stated as follows:

> This matter having come before the Administrative Law Judge upon motion made by the defendant-employer, and the Administrative Law Judge having received no response from the plaintiff, and being otherwise sufficiently advised, hereby **ORDERS** as follows:
>
> Motion made by the defendant-employer is hereby **SUSTAINED**. Plaintiff has failed to support the filing of the Form 101 with required medical documentation identifying injury caused by work. Plaintiff's claim is therefore **DISMISSED**.

803 KAR 25:010(5)(1)(d) states the following:

> (1) To apply for resolution of an injury claim, the applicant shall file a Form 101 with the following completed documents:
>
> . . .
>
> (d) One (1) medical report, which may consist of legible, hand-written notes of the treating physician, and which shall include the following:
>
> 1. A description of the injury which is the basis of the claim;
>
> 2. A medical opinion establishing a causal relationship between the work-related events or the medical condition which is the subject of the claim . . .

Bartley bore the burden of proof and the risk of non-persuasion on all elements of the claim. *See* Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). The medical reports attached to Bartley's application establish no causal link of his complaints to his work.

As trier of fact, the ALJ is the gatekeeper and arbiter of the record both procedurally and substantively. For purposes of KRS Chapter 342, it has long been accepted the ALJ has the authority to control the taking and presentation of proof in a workers' compensation proceeding in order to facilitate the speedy resolution of the claim and to determine all disputes in a summary manner. Dravo Lime Co., Inc. v. Eakins, 156 S.W.3d 283 (Ky. 2005); Yocum v. Butcher, 551 S.W.2d 841 (Ky. App. 1977); Cornett v.

Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991); Searcy v. Three Point Coal Co., 134 S.W.2d 228, 231 (Ky. 1939).

We find no error with the ALJ's dismissal of Bartley's claim for failing to support the filing of the Form 101 with documentation serving to establish a causal relationship between his complaints and his work. As a matter of law, therefore, we may not disturb the ALJ's decision on appeal. *See* KRS 342.285(2); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

We do not believe the ALJ abused his discretion in dismissing this claim, and no contrary result is compelled. Accordingly, the ALJ's order entered January 24, 2012 is hereby **AFFIRMED**.

ALL CONCUR.

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