OPINION ENTERED: APRIL 5, 2012

CLAIM NO. 200801002

RUSSELL NOLL PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

FORD MOTOR COMPANY
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AFFIRMING

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

SMITH, Member. Russell Noll ("Noll") appeals from the October 31, 2011 Order rendered by Hon. John B. Coleman, Administrative Law Judge ("ALJ"). The ALJ determined Ford Motor Company ("Ford") satisfied its obligation to pay expenses in a medical dispute, and found certain unpaid medical expenses related to Noll's low back condition were not compensable. On appeal, Noll argues the ALJ erred as a

matter of law and fact in ruling the remaining bills were not compensable.

Noll filed five separate Form 101s alleging injuries to numerous body parts. Claim No. 1995–16062 concerned a low back and hip injury occurring on December 5, 1994. Claim No. 1997-01856 concerned injuries to Noll's shoulder, hands and neck. Claim No. 1997-01855 alleged a left forearm injury. Claim No. 2005–00954 concerned injuries to Noll's back and leg on May 15, 2003. Claim No. 2008-01002 alleged a left shoulder injury. The claims were consolidated and litigation resulted in an Opinion, Award and Order rendered January 15, 2010 by ALJ Coleman. Claim Nos. 1997-01856, 1997-01855 and 2008-01002 are not at issue in this appeal. The ALJ awarded income and medical benefits for a September 24, 2007 left shoulder injury and resulting psychiatric condition in Claim No. 2008–01002.

With regard to Claim No. 1995–16062, the ALJ noted physicians who saw Noll following the work-related incident, but prior to a motor vehicle accident, concluded he would have no impairment. Therefore, the ALJ found Noll failed to prove the event of December 5, 1994 amounted to an injury of appreciable proportions. In Claim No. 2005–00954, the ALJ stated he was not convinced Noll's job duties caused a permanent injury to his back or leg in regard to the May 15,

2003 allegation. The ALJ determined the claim for medical and income benefits for that alleged injury must also be dismissed. The ALJ ordered:

> Plaintiff's claim for income and medical benefits for claim nos. 95–16062, 97–01856, 97–01855 and 05–00954 are dismissed in their entirety for failure to prove injury of appreciable proportions causally related to the plaintiff's work with the defendant–employer.

Ford filed a petition for reconsideration concerning the psychiatric condition in Claim No. 2008-01002. By order dated February 12, 2010, the ALJ denied Ford’s petition for reconsideration. Noll filed no petition for reconsideration and neither party appealed the ALJ's decision. By order dated May 14, 2010, the ALJ approved an attorney fee for Noll's attorney.

Noll filed a motion to reopen on September 21, 2010, seeking reimbursement for medical bills and expenses furnished pursuant to the Form 114s. In addition, Noll noted his attorney’s fee had not been paid. By order dated October 6, 2010, the ALJ directed Ford to show cause why the matter should not be reopened and referred to the Commissioner for unfair claims investigation proceedings. Ford filed a response on October 25, 2010, stating the attorney fee had been paid and a check was being issued to

Noll for reimbursement of mileage and out-of-pocket medical expenses. Noll filed a reply on October 29, 2010, acknowledging the attorney fee had been paid, but stating he was not sure the matter was resolved regarding reimbursement. On November 3, 2010, Ford filed a second response to the show cause order stating it had calculated $703.20 as the amount to be paid to Noll for reimbursement. Noll filed a reply to the second response on November 15, 2010, stating the unpaid expenses were significantly more than $703.20.

The ALJ conducted a telephonic status conference with the parties on January 5, 2011. Noll was allowed 30 days to provide an itemized list of unpaid expenses. Noll filed a notice of explanation of contested items on May 2, 2011, indicating a total of $3,754.65 remained unpaid.

Another telephonic status conference was conducted on September 12, 2011. In his order of September 13, 2011, the ALJ noted Ford had issued a reimbursement check to Noll for $2,959.45. The ALJ noted an additional $795.20 had been denied as related to a non-compensable back injury pursuant to the January 15, 2010 Opinion, Award and Order. The ALJ granted Noll 30 days to show cause why the payment of $2,959.45 was not a complete satisfaction of the current medical fee contest.

Noll filed a response to the show cause order on October 18, 2011 acknowledging the payment of $2,959.45. However, Noll argued Ford remained liable for the remaining $795.20 for medical treatment of the back condition. Noll noted the ALJ found no injury of appreciable proportions as it relates to occupational disability. However, Noll contended "it was found that plaintiff suffered a work-related low back injury." Noll argued Ford had not presented proof to show why the low back condition was not a compensable injury.

The ALJ issued an order on October 31, 2011, reaffirming that the January 15, 2010 Opinion, Award and Order dismissed Noll's claims for income and medical benefits in Claim Nos. 1995–10602 and 2005–00954 related to the low back condition. The ALJ further noted Noll's left shoulder and psychological condition were the only compensable injuries. The ALJ found Ford had satisfied its obligation in the medical fee dispute and "the matter is closed."

Noll's argument on appeal is as follows:

> The Claimant's position is quite simple, the ALJ did not find that the Claimant did not suffer a work-related injury. The ALJ found no "occupational disability" as it related to these two injuries. More specifically, he found, using pre-1996 language that the

> Claimant had not suffered an injury of "appreciable proportions". That is not the same as finding that the Claimant has not suffered a work–related injury. It is the Claimant's position that if in fact the current medical expenses for the low back are an outgrowth of either of those injuries or both then they are compensable. The ALJ erred in refusing to allow proof as to whether they are related to those injuries and erred in summarily dismissing those bills.

Noll concludes the ALJ erred in dismissing the medical fee dispute in its entirety instead of requiring the employer to show the treatment was not reasonable and necessary and the claimant to show why the expenses were related to the work injuries. Thus, Noll requests the claim be reversed and remanded with instructions.

The doctrine of *res judicata* (also known as the doctrine of the finality of judgments) is basic to our legal system and stands for the principle that once the rights of the parties have been finally determined, litigation should end. Slone v. R & S Mining, Inc., 74 S.W.3d 259, 261 (Ky. 2002). Thus, where there is an identity of parties and causes of action, the doctrine precludes further litigation of issues decided on the merits in a final judgment. Id. Finality attaches to a decision made after a hearing on the merits. Happy Coal Co. v. Hartbarger, 251 Ky. 779, 65 S.W.2d 977 (Ky. 1933).

Moreover, the doctrine of *res judicata* applies to the rulings of ALJs just as it does to decisions of courts. Hysteam Coal Corp. v. Ingram, 283 KY. 411, 141 S.W.2d 570 (Ky. 1940). The application of these principles to final workers' compensation decisions is grounded in the fact that, because there is an extensive procedure for taking appeals, a final decision should not be disturbed absent fraud, mistake, or other very persuasive reason warranting reopening. Id.

KRS 342.125 provides some relief from the doctrine of finality by permitting a party to reopen a workers' compensation claim on grounds of fraud, mistake, newly-discovered evidence, or change of disability. While successive motions to reopen may be filed, that does not permit relitigation in a successive reopening of an ultimate fact "actually litigated and determined in the first reopening proceeding when such determination was essential to the decision of whether relief should be granted." Charles F. Trivette Coal Co. v. Hampton, 509 S.W.2d 280 (Ky. 1974).

ALJ Coleman's opinion rendered January 15, 2010, constituted a decision on the merits as to the compensability of Noll's low back condition. The ALJ specifically and unequivocally held the claims for income

and medical benefits relating to the low back condition were dismissed in their entirety. The decision became final thirty days following the entry of the order ruling on Ford's petition for reconsideration. Noll is not permitted to raise compensability of the expenses through reopening to seek reimbursement. The question of compensability was before the ALJ and was addressed in the opinion, award and order. Noll's motion to reopen established none of the permissible grounds for reopening regarding the ALJ's findings in the opinion, award and order. The motion could only be effective regarding the expenses related to the left shoulder and psychiatric condition for which benefits were awarded in Claim No. 2008-01002. The ALJ correctly determined Ford satisfied its obligation to pay expenses related to the Opinion, Award and Order.

Accordingly, the October 31, 2011 Order rendered by Hon. John B. Coleman, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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