

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 8, 2014

CLAIM NO. 201296126

SLEEP INN

PETITIONER

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

KRISTI LAIN HELTON
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
REVERSING IN PART
AND REMANDING**

* * * * *

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

RECHTER, Member. Sleep Inn appeals from a July 30, 2013 Opinion and Order and a September 5, 2013 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ awarded Kristi Lain Helton permanent total disability ("PTD") benefits and medical

benefits for an injury sustained during her employment as a housekeeper for Sleep Inn. On appeal, Sleep Inn argues the evidence fails to support a finding Helton is permanently totally disabled, and the ALJ failed to make sufficient findings of fact to support the award of PTD benefits. Additionally, Sleep Inn claims the evidence does not support Helton's continued need for narcotic pain medication. Though adequate evidence exists to support the award of medical benefits, we agree with Sleep Inn, the proof in this case is insufficient to sustain the award of PTD benefits. Consequently, a detailed discussion of the evidence is necessary.

Helton began working for Sleep Inn in 2010 as a housekeeper, and was later promoted to housekeeper/ supervisor in 2011. Her primary duties included supervising five housekeepers and inspecting cleaned rooms, although sometimes she assisted in the cleaning. On February 2, 2012, she slipped and fell in a shower, injuring her lower back. She visited the Appalachian Regional Healthcare Middlesboro emergency room the same day. The hospital's records indicate a clinical impression of low back strain/sprain. An x-ray with three views of the lumbar spine was taken, which was normal. Helton was given a muscle relaxer and released.

Two days later, Helton visited Tri-State Medical Clinic complaining of low back pain, and was evaluated by Dr.

Cheung Shin. The impression at that time was low back pain and secondary lumbar strain. She was given a Toradol injection and a prescription for Lortab, and was taken off work. Helton visited the clinic again on February 15, 22, and 29, 2012. On each of these visits, she continued to complain of back pain. She also remained off work and was referred to physical therapy. The diagnosis of lumbar sprain remained the same.

On March 21, 2012, a lumbar MRI scan was performed.

The reading radiologist stated:

The conus appears normal. There is degenerative disc disease at T11-T12 with small Schmorl's nodes indenting the endplates. There is a 2mm diffuse disc bulge, which is against the anterior surface of the conus, but is not compressing the conus.

There is a mildly exaggerated lordosis. There are no focal disc herniations. At L4-L5, there is a diffuse bulging disc and ligamentum flavum hypertrophy and facet hypertrophy producing mild spinal stenosis.

Helton returned to Tri-State Medical Clinic on March 28, 2012 following the MRI, and the diagnosis of lumbar strain remained the same. She was seen again on April 11, 2012 and given a refill prescription for Lortab and Tramadol.

On April 23, 2012, Helton was evaluated by Dr. James Bean, a neurosurgeon. He reviewed the lumbar MRI and found no spinal stenosis "at all", no disk rupture, and no nerve root compression. Dr. Bean opined "[t]he findings are normal and

consistent with a lumbar sprain without disruption of the disk or nerve root compression." His diagnosis was lumbar sprain, and he recommended continued physical therapy. Dr. Bean also believed long-term permanent restrictions were not necessary, and declined to assign a long-term permanent impairment rating.

Helton continued treatment at the Tri-State Medical Clinic, where her prescriptions for Lortab were refilled on April 26, 2012; May 7, 2012; May 21, 2012; June 4, 2012; July 3, 2012; July 19, 2012; and August 2, 2012. She also received a prescription for Tramadol on six of these office visits.

She returned to Dr. Bean on August 27, 2012. He again noted her MRI revealed no evidence of lumbar disc herniation or nerve root compression. Helton reported no symptoms of radiculopathy. Dr. Bean recommended a functional capacity evaluation ("FCE"), which was performed on September 21, 2012. The FCE report indicated Helton met the qualifications of sedentary and light-work criteria.

Dr. Bean evaluated Helton for the last time on October 1, 2012. Following this visit, he opined Helton was at maximum medical improvement. He did not believe any additional physical therapy was necessary, but agreed with the FCE report that Helton should engage in sedentary or light work. With respect to a permanent impairment, Dr. Bean stated Helton "would rate a 5% impairment rating by the AMA Guidelines despite the normal

MRI scan and based on subjective pain criteria." In a follow-up report, Dr. Bean opined the continued use of narcotic pain medication is not necessary, due to the "absence of any abnormal finding on MRI scan."

At Helton's request, Dr. Robert Hoskins performed an independent medical evaluation ("IME"). He diagnosed lumbosacral sprain and strain, and an L4-5 disc bulge and central stenosis. He based this diagnosis on the March 21, 2012 MRI report, though he did not review the images personally, and opined Helton's work injury caused the spinal impairment. Referencing the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. Hoskins assigned a 6% whole person impairment rating. He recommended restrictions on lifting, pushing, pulling and carrying, as well as no continuous sitting for more than two hours.

Dr. Daniel Primm, an orthopedic surgeon, performed an IME on July 10, 2013 at Sleep Inn's request. Dr. Primm found no objective medical evidence Helton sustained a permanent injury. He based this conclusion on the "basically normal" MRI report, normal x-ray reports, the lack of radicular symptoms, and his physical examination. Like Dr. Bean, Dr. Primm "strongly recommended" the discontinuation of narcotic pain medication. However, he declined to assign any permanent impairment rating

and specifically disagreed with Dr. Bean's assignment of a 5% impairment rating based solely on subjective complaints of pain.

Helton testified at her deposition and at the final hearing, and stated her lower back pain is persistent and prevents her from returning to work, as well as performing some household duties. She also stated she is a 33-year-old high school graduate with 120 hours of training as a certified nurse's aide, though she does not currently hold a license. Prior to her employment at Sleep Inn, Helton worked at a telemarketing call center selling credit cards. She held this position for six years and opined it is a job she could currently perform, because she could sit and stand as needed.

Ultimately, the ALJ determined Helton is permanently totally disabled, stating:

In the present case, I considered the severity of [Helton's] work injuries, her age, her work history, her education and the specific medical evidence from both Dr. Hoskins and Dr. Bean regarding her permanent impairment and occupational disability. Based on all those factors, I make the factual determination that the plaintiff cannot find work consistently under regular work circumstances and work dependably. I therefore make the factual determination that she is permanently and totally disabled.

In the subsequent Order ruling on Sleep Inn's petition for reconsideration, the ALJ noted his reliance on the FCE report as additional evidence Helton is permanently and totally

disabled. The ALJ also reaffirmed his finding Helton's pain medications are necessary, relying on records from Tri-State Medical Clinic from January 2013 to May 2013.

Sleep Inn challenges the ALJ's award of PTD benefits. "Permanent total disability means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of injury." In determining whether an injured employee is permanently totally disabled, the ALJ must consider what impact the employee's post-injury physical, emotional, and intellectual state has on the employee's ability to find work consistently under normal employment conditions and to work dependably. Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48, 51 (Ky. 2000).

While the ALJ enjoys broad discretion in determining whether an injured employee is permanently totally disabled, that discretion is not without bounds. Substantial evidence must 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). The function of the Board in reviewing an ALJ's decision is limited to determining whether the findings made are so unreasonable

under the evidence they must be reversed as a matter of law.
Ira A. Watson at 52.

We have conducted a comprehensive review of the evidence presented in this case, and conclude there is insufficient evidence to support an award of PTD benefits. In his exceedingly brief analysis in support of the award of PTD benefits, the ALJ cited the severity of Helton's work injuries, her age, her work history, her education, and the medical reports of Drs. Hoskins and Bean. In the subsequent Order on Reconsideration, he additionally acknowledged reliance on the FCE report. Our review reveals no evidence to support the conclusion Helton suffers a complete and permanent inability to perform any type of work.

The cited medical evidence does not support the conclusion Helton's injury is severe. Dr. Bean diagnosed nothing more than a lumbar strain and opined Helton could work in a sedentary or light-duty job. Dr. Hoskins identified a more severe injury, diagnosing a disc bulge and central stenosis, in addition to the lumbar strain. He assigned a 6% impairment rating and several restrictions as to lifting, pushing, pulling, and prolonged standing. Though he opined Helton could not return to her work as a housekeeper, he offered no opinion as to whether she could perform light-duty or sedentary work. In fact, his restrictions include no continuous sitting, standing

or walking for more than two hours. The FCE report indicated Helton could perform sedentary work. All of these reports support the conclusion Helton is able to perform sedentary or light-duty work.

We have likewise reviewed Helton's testimony, which the ALJ found persuasive. Indeed, Helton testified she is in constant pain and would not be able to perform her duties as a housekeeper at Sleep Inn, and such evidence is competent proof of her physical condition. See Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979). However, she also indicated her willingness to look for a job within her restrictions and physical ability. She likewise acknowledged her prior work as a telemarketer was sedentary and allowed her to stand and stretch at will.

The remaining factors do not weigh in favor of a finding Helton is permanently totally disabled. She is 33 years old. She successfully worked for six years in a sedentary job as a telemarketer. She completed a 120-hour program to become a certified nurse's assistant. Though she did not obtain a license, her completion of the program certainly indicates her academic aptitude. In short, her age, work history, and education do not support the ALJ's award of PTD benefits. Instead, the uncontroverted evidence establishes Helton as a relatively young woman with a demonstrated ability to complete

an academic program, and experience and training in a sedentary position.

While this Board may not substitute its judgment for that of the ALJ, it is charged with the duty to determine whether the findings are "so unreasonable under the evidence that it must be viewed as erroneous as a matter of law." Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986). Upon thorough review of the entire record, we are compelled to conclude there is simply no evidence to support a finding of permanent total disability and the award of PTD benefits must be reversed. On remand, the ALJ may reconsider the evidence and, at his discretion, award other benefits to which Helton may be entitled.¹

Sleep Inn also challenges the ALJ's finding Helton's continued use of narcotic pain medication is reasonable and necessary. Specifically, the ALJ determined Helton is "entitled to recover for her work-related medical bills and expenses, both past and future, including the prescription medications ordered for the plaintiff at Tri-State Medical Clinic." The ALJ based this award "upon the credible and convincing testimony of [Helton] and the medical evidence in the file." In the subsequent Order on Reconsideration, the ALJ more specifically

¹ To the extent Sleep Inn argues there is insufficient evidence Helton suffered an injury within the meaning of KRS 342.0011(1), we disagree. Dr. Hoskins report constitutes the requisite proof to support the conclusion Helton suffered a work-related injury as defined by the Act.

identified his reliance on the records of Tri-State Medical Clinic. On appeal, Sleep Inn argues Helton's continued use of prescription medications is non-compensable.

Pursuant to KRS 342.020, medical expenses reasonably necessary for the cure and relief of a work-related injury are compensable. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Again, as stated above, the ALJ's award will be affirmed if supported by substantial evidence. Wolf Creek at 736. Furthermore, 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); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Cmty. Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). We also find instructive the holding of the Kentucky Supreme Court in New Directions Hous. Auth. v. Walker, 149 S.W.3d 354, 358 (Ky. 2004), where the Kentucky Supreme Court remanded the claim to the ALJ "for further consideration, for an

exercise of discretion, and for an explanation that will permit a meaningful review."

We have reviewed the medical reports relating to Helton's prescription medications. Drs. Primm and Bean opined narcotic pain medication was not reasonable or necessary for Helton. Sleep Inn also filed a Utilization Review performed by Dr. Ring Tsai. Dr. Tsai recommended Helton be weaned from Lortab and Tramadol, as they are not medically reasonable or necessary for her work injury. Dr. Tsai likewise recommended discontinuation of Mobic. Dr. Hoskins' report does not address the need for narcotic or prescription medications.

Helton testified Lortab and Tramadol offer her significant relief. She did not specifically address the prescription for Mobic. The records of Tri-State Medical Clinic include the office visit reports of Dr. Shin. While each record lists the prescriptions ordered at that visit, there is no specific statement by Dr. Shin that the medications are reasonably necessary for the cure and relief of Helton's condition.

The ALJ's determination Helton's prescription medications are compensable lack sufficient specificity. The written prescription notes issued by Dr. Shin, absent an express statement that the medications are reasonably necessary for the relief of Helton's injury, are insufficient to establish

compensability. Stated otherwise, the simple fact a physician prescribes a medication does not conclusively establish it is medically reasonable within the meaning of KRS 342.020. As such, the medical evidence is uncontroverted that the prescription medications are not reasonably necessary. Certainly, an ALJ may reject even uncontradicted medical evidence *if* his decision to do so is supported by a reasonable explanation. Commonwealth v. Workers' Comp. Bd. of Kentucky, 697 S.W.2d 540 (Ky. App. 1985). In this case, the ALJ has failed to offer a reasonable explanation for his rejection of the seemingly unanimous opinion of every physician who squarely addressed the question.

Accordingly, the July 30, 2013 Opinion and Order and September 5, 2013 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff are hereby **REVERSE** in part and **REMANDED** for further findings consistent with the opinions expressed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON GUILLERMO A CARLOS
444 W SECOND ST
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

HON RONALD C COX
207 E CENTRAL ST
HARLAN, KY 40831

ADMINISTRATIVE LAW JUDGE:

HON WILLIAM J. RUDLOFF
400 EAST MAIN STREET, SUITE 300
BOWLING GREEN, KY 42101