

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 17, 2014

CLAIM NO. 199896409

SMITHKLINE BEECHAM

PETITIONER

VS.

APPEAL FROM HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE

MICHAEL SMITH,
and HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. Smithkline Beecham ("SB") appeals from an August 19, 2013 Opinion and Order rendered by Hon. Thomas G. Polites, Administrative Law Judge ("ALJ"). SB filed this post-award medical fee dispute to contest the work-relatedness and compensability of Michael Smith's ("Smith") weekly psychological counseling sessions. The ALJ

determined Smith's post-traumatic stress disorder ("PTSD") is work-related, and the counseling sessions are reasonable and necessary. On appeal, SB argues the ALJ erred in concluding Smith's PTSD was caused by his work injury. We disagree and affirm.

Smith was employed by SB as a courier when he was involved in a motor vehicle accident on June 16, 1997. He sustained significant injuries to his lumbar and cervical spine, requiring four surgeries. Smith filed a claim for workers' compensation benefits which was eventually settled, though he retained all rights regarding future medical care.

The subject of this appeal concerns Smith's psychological condition. The physicians who have treated or evaluated Smith agree he suffers from PTSD relating to physical and sexual abuse inflicted by his father during his childhood. It also appears undisputed Smith experienced no symptoms of PTSD prior to the motor vehicle accident. In Smith's opinion, he was able to repress the memories of his childhood abuse by working steadily, involvement in church, and active participation in his family's lives. At the final hearing, a central issue was whether Smith's PTSD was caused by his work-related injury. Substantial proof was submitted on this topic.

Following the accident, Smith's physical care has been managed by his family physician, Dr. Kellee Froggee. He also regularly treats with a psychiatrist, Dr. Denise Winland, and a psychologist, Dr. Brian Monsma.

Smith began treatment with Dr. Monsma in August, 2002, and his treatment records were submitted. He visits him weekly for talk therapy sessions, which Smith testified "helps him deal with the emotional pain." In a letter regarding his patient, Dr. Monsma stated he is treating Smith for major depressive disorder resulting from the work injury and chronic PTSD (delayed onset). In Dr. Monsma's opinion, the work injury resulted in chronic pain and a loss of productive life activity, essentially removing one of Smith's primary coping mechanisms. These consequences brought Smith's latent PTSD symptoms into clinical reality, which in turn aggravate his pain and depression. Further, Dr. Monsma believes Smith is now psychologically stable, though fragile, and he continues to require ongoing care to maintain this status.

Dr. Winland's treatment records were also submitted. She has been treating Smith since 2003, upon referral from Dr. Monsma. Like Dr. Monsma, Dr. Winland views Smith as currently stable, but his psychological condition is precarious. She also agrees the chronic pain

caused by Smith's work injury has triggered previously latent PTSD. She described the pain as a "re-traumatizing factor, creating a vicious cycle of pain and anxiety, and actively contributing to the current diagnosis of PTSD." Dr. Winland also believes Smith is benefitting from his weekly counseling sessions with Dr. Monsma.

Dr. Timothy Kriss, a neurosurgeon, evaluated Smith in 2009 and 2012 at SB's request. A substantial portion of Dr. Kriss' testimony concerns Smith's narcotic pain management, which he opines aggravates Smith's psychological condition and impedes any real progress. He also provided his opinion as to Smith's pain management regime as it interacts with the prescriptions for his psychiatric conditions. He did not, however, offer an opinion as to the cause of Smith's PTSD or whether it is related to his work-related injury.

Dr. Timothy Allen performed two psychiatric evaluations of Smith and testified by deposition. He strongly believed Smith is no longer benefitting from his weekly therapy sessions with Dr. Monsma, and in fact his progress may be impeded by continuation of these sessions because Smith views them as a "crutch". Dr. Allen also does not believe Smith's PTSD is due to the motor vehicle accident, but instead is a direct result of the childhood

abuse he suffered. Rather, he opined the work injury has caused major depressive disorder. In addition to discontinuation of talk therapy, he recommended Smith discontinue several prescription medications.

Lending more weight to the opinions of Smith's treating physician and psychologist, the ALJ concluded Smith's PTSD is caused by his work injury:

The ALJ is persuaded by the testimony of Dr. Monsma that [Smith] successfully repressed and suppressed his PTSD symptoms prior to his work injury by that his experience of chronic, uncontrolled pain and the loss of productive life activity due to the work injury have brought his PTSD symptoms into clinical reality.

As to the reasonableness and necessity of Smith's counseling sessions and prescription medications, the ALJ was again persuaded by his treating physicians and determined the current prescription regime is compensable. SB now appeals, arguing Smith's PTSD is not work-related and, therefore, any treatment related to it is non-compensable.

In a post-award medical fee dispute, it is the employer who bears the burden of proving that the contested medical expenses are unreasonable or unnecessary. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). The claimant retains the burden of proof on the issue of work-

relatedness. Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997). Because Smith was successful on the issue of work-relatedness, the question on appeal is whether substantial evidence supports 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 Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Here, there is little doubt the ALJ's decision is based on substantial evidence. Each expert acknowledged Smith presents an unusual and complex case involving significant physical injury as well as multiple psychological factors. His treating practitioners also repeatedly emphasized the precarious nature of Smith's current mental state, and the significant progress he has made in overcoming intense suicidal ideations and depression.

The ALJ appreciated the many facets of Smith's physical and mental health, which gave rise to differing, though equally credible, opinions from the evaluating professionals. As the ALJ acknowledged, Drs. Kriss and Allen "expressed opinions in this claim that are informed, reasonable and constructive." Ultimately, the ALJ was more persuaded by Drs. Winland and Monsma, primarily due to their status as Smith's treating clinicians for over ten years. Their opinions constitute the requisite substantial evidence upon which the ALJ concluded Smith's PTSD is work-related, and that his current talk therapy sessions and prescription medications are reasonable and necessary. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). While SB emphasizes Dr. Allen's differing opinion, the mere existence of conflicting evidence is not an adequate reason to disturb the ALJ's opinion. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

SB's argument on appeal seems to attack the notion Smith's treatment for PTSD is non-compensable because the condition does not relate directly to the work accident, but to his childhood trauma. Drs. Winland and Monsma offered their expert opinion to the contrary and explained how the pain resulting from the work injury has brought otherwise latent PTSD into clinical reality. The

ALJ acted well within his discretion to accept these expert opinions. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Furthermore, their opinions establish that Smith's psychological condition is a direct result of the physical pain brought on by his work-related injury. In that respect, this case is clearly distinguishable from Kubajak v. Lexington-Fayette County Government, 180 S.W.3d 454 (Ky. 2005)(where police officer developed PTSD as a result of repeated viewing of gruesome crime scene, condition was not the direct result of a physically traumatic event or series of events and therefore not an injury as defined by KRS Chapter 342).

For the foregoing reasons, the August 19, 2013 Opinion and Order rendered by Hon. Thomas G. Polites is hereby **AFFIRMED**.

ALL CONCUR.

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