Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 18, 2014

CLAIM NO. 200697373

TIMOTHY A. MOSS PETITIONER

VS. **APPEAL FROM HON. DOUGLAS W. GOTT, ADMINISTRATIVE LAW JUDGE**

UNIFIRST CORPORATION
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
DISMISSING

* * * * * *

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

ALVEY, Chairman. Timothy A. Moss ("Moss") seeks review of an Opinion and Order rendered February 3, 2014 by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ") finding in favor of Unifirst Corporation ("Unifirst") in a medical dispute it filed on September 10, 2013. No petition for reconsideration was filed.

Unifirst filed a Form 112 medical dispute, and motion to reopen on September 10, 2013, challenging treatment with Fexmid/Tizandidine (a muscle relaxer), Terocin lotion and Theramine (anti-inflammatory medication). Unifirst also challenged monthly physician office visits and proposed physical therapy. An order was entered on October 11, 2013, scheduling a telephonic conference for October 24, 2013. A telephonic conference was held on October 24, 2013, which Moss failed to attend. A hearing was scheduled for December 11, 2013. Neither Moss nor the medical provider, Dr. Kamal Kabakibou, attended the hearing, and the claim was submitted for a decision on the record. The ALJ rendered his decision on February 3, 2014 finding treatment with Fexmid, Terocin and Theramine is not reasonable or necessary.

In the opinion rendered February 3, 2014, the ALJ specifically found as follows:

> The Defendant also filed a questionnaire completed by the physician whose treatment is being disputed, Dr. Kabakibou, that essentially retracted the very treatment placed at issue in this dispute. He said further physical therapy was not reasonable or necessary for Moss; that narcotic medications are now only appropriate on an as-needed basis; and that quarterly office visits are appropriate. He anticipated future

> treatment included Botox injections and RFTC.
>
> Pursuant to KRS 342.020, the Defendant/ Employer is to pay for the cure and relief of the effects of a work related injury. In a post-award medical dispute, it has the burden of proving the contested treatment is not reasonable or necessary for those purposes. *National Pizza Company v. Curry*, 802 S.W.2d 949 (Ky. App. 1991). Unrebutted evidence compels a finding for that party unless the fact finder has a proper basis for rejecting it. *Franklin Ins. Agency v. Simpson*, 2008 WL 5051613. (Ky. 2008)(DWC Claim Number 2001-95574). The ALJ has been given no basis for rejecting the unrebutted evidence in this case.
>
> The ALJ relies on Dr. Ensalada and Dr. Freimark to find that Fexmid, Terocin, and Theramine are not reasonable or necessary. The ALJ relies on Dr. Ensalada, Dr. Freimark and Dr. Kabakibou to find that monthly office visits and a physical therapy referral are not reasonable or necessary. The Defendant is liable for quarterly office visits. The Defendant remains liable for medical benefits as originally awarded in 2009, and as more specifically awarded in 2012.

On March 10, 2014, counsel for Unifirst filed a motion for approval of attorney fee. This was approved by order entered by Hon. J. Landon Overfield, Chief Administrative Law Judge, on March 25, 2014. No other pleadings or orders were filed or entered after the ALJ's opinion rendered February 3, 2014.

803 KAR 25:010 Sec. 21 (2)(a) provides as follows:

> Within thirty (30) days of the date of final award, order or decision rendered by Administrative Law Judge pursuant to KRS 342.275(2) is filed, any party aggrieved by that award, order or decision may file a notice of appeal to the Workers' Compensation Board.

Clearly, the ALJ's decision rendered February 3, 2014 was the final order as contemplated by KRS 342.275(2) and 803 KAR 25:010 Sec. 21 (2)(a) which triggers the running of the thirty day period. Moss', *pro se*, notice of appeal was filed on April 8, 2014. Although Moss stated as follows in his notice of appeal:

> Notice is given that the Petitioner, Timothy A. Moss does hereby appeal the Workers' Compensation Board from the 7th Day of April entered by Administrative Law Judge Douglas W. Gott.ALJ.

There simply is no order from which to appeal dated April 7, 2014. It is noted Moss actually signed the Notice of Appeal on April 7, 2014. Because the final order of the ALJ was rendered on February 3, 2014, from which no petition for reconsideration was filed, it is clear Moss had thirty days thereafter to file an appeal, which he did not do. Since the notice of appeal was not timely filed, the appeal must be dismissed.

Accordingly, the appeal seeking review of the opinion rendered February 3, 2014, by Hon. Douglas W. Gott, Administrative Law Judge, is hereby **DISMISSED**.

ALL CONCUR.

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MICHAEL W. ALVEY, CHAIRMAN
WORKERS' COMPENSATION BOARD

PETITIONER:

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