Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 5, 2016

CLAIM NO. 200369510

TOMMY G. NOBLE PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

C & R CONSTRUCTION COMPANY, INC.
and HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Tommy G. Noble ("Noble") seeks review of the April 26, 2016, Medical Fee Opinion and Order of Hon. Jane Rice Williams, Administrative Law Judge ("ALJ") resolving a post-award medical fee dispute in favor of C & R Construction Company, Inc. ("C & R"). Based on the medical fee dispute filed by C & R, the ALJ determined the prescription medication, Paxil is non-compensable. Noble

also appeals from the May 24, 2016, Order denying his petition for reconsideration.

On appeal, Noble challenges the ALJ's opinion asserting *res judicata* and the law of the case preclude re-litigating the issue of whether Paxil is work-related.

In an Opinion dated August 26, 2005, Hon. J. Landon Overfield, Administrative Law Judge ("ALJ Overfield") found Noble totally occupationally disabled due to work-related injuries he sustained in a motor vehicle accident of October 9, 2003. It is apparent from ALJ Overfield's decision that Noble sustained a substantial cervical injury and a less severe lumbar injury. The cervical injury resulted in surgery performed by Dr. John Gilbert. ALJ Overfield was also required to determine whether Noble had a psychological or psychiatric impairment. ALJ Overfield found in favor of Noble providing the following findings and conclusions:

> Plaintiff has a psychological or psychiatric impairment that was caused by and related to the work related injury of October 9, 2003 and the residuals from that injury. In making this finding, I have relied on the testimony of the Plaintiff, Dr. Armador [sic], Michele Amburgey, Kenneth Davis and Dr. Gilbert. I find that Plaintiff had no pre-existing active psychological impairment and this finding is based on the same evidence. I am convinced from the totality of the

> record that Plaintiff did have some mild depression which pre-existed his work related injury. This depression was related to situational factors including his necessity of caring for his parents in their last illness and deaths.
>
> . . .
>
> The issues of causation/work relatedness of Plaintiff's psychological condition and pre-existing active conditions are resolved in favor of Plaintiff.

ALJ Overfield also resolved a medical fee dispute concerning psychological treatment in favor of Noble, finding as follows:

> The medical fee dispute concerning the compensability of the psychological treatment is resolved in favor of Plaintiff. I find, based on the opinions of Drs. Gilbert and Amador, Kenneth Davis and Michele Amburgey, that Plaintiff needs continued psychiatric/psychological care and treatment and the need for that treatment is caused by his work related injury and the residuals from that injury.

On March 19, 2014, ALJ Overfield approved a post-award settlement requiring a lump sum payment of $5,000.00 followed by a monthly amount of $1,602.12 for 198 payments beginning on February 12, 2014, and guaranteed through July 12, 2030. The $5,000.00 represented lump sum consideration for the waiver of Noble's right to vocational

rehabilitation benefits. Noble retained all other rights including reasonable and necessary medical treatment.

On February 2, 2016, C & R filed a medical fee dispute contesting the work-relatedness of Paxil currently being prescribed by his treating physician, Dr. Yu Cho Shih. C & R asserted Dr. Timothy Allen and Dr. Shelley Freimark had concluded the use of Paxil is not work-related. It contended Paxil was needed for a psychological condition unrelated to the injury and requested to be relieved of liability for the cost of Paxil. C & R attached ALJ Overfield's award, the post-award settlement agreement, the May 4, 2015, record of Dr. Shih, and the records of Kentucky River Community Care spanning the period from 2011 to 2015, the December 15, 2015, Independent Medical Evaluation ("IME") report of Dr. Allen, the records of Dr. Michele Amburgey, a psychologist, spanning the period from August 16, 2004, to January 27, 2007, and the March 18, 2015, report of Dr. Freimark. C & R also filed a motion to reopen, and a motion to join Dr. Shih as a party. C & R also filed a memorandum in support of its medical fee dispute to which it attached the medical records of Dr. Gilbert from 2003 through 2005, the initial evaluation of East Kentucky Physical Therapy dated November 13, 2003, the Form 107 and other records of Dr. Arthur

Amador introduced by Noble during the initial proceedings, the December 7, 2004, IME report of Dr. Russell Travis introduced during the initial proceedings, the medical records of Hazard ARH Psychiatric Hospital introduced by Noble during the initial proceedings, the reports of Dr. David Shraberg introduced during the initial proceedings, and the medical records of Knott County Family Healthcare.

In a February 26, 2016, Order, the ALJ found C & R made a *prima facie* showing for reopening and sustained its motion to reopen. The ALJ also joined Dr. Shih as a party and set a telephonic conference. The order also stated the parties were not to re-file or designate medical reports or records attached to the motion to reopen or the Form 112 as they would be considered as evidence.

The ALJ's February 26, 2016, letter to Dr. Shih advising him of the fact he had been joined as a party to the action and of the nature of the medical fee dispute is contained in the record.

On March 11, 2016, the ALJ entered an order directing Dr. Shih's March 9, 2016, letter addressed to her be filed in the record with a copy of the letter attached to ensure proper service on the parties.

A March 14, 2016, Order reflects the ALJ conducted a telephonic conference on that date and the

prescription medication Paxil was challenged on the basis of reasonableness/necessity and causation/work-relatedness.

Another March 14, 2016, Order indicated Dr. Shih's treatment was at issue and he had responded to the medical fee dispute. The contested issues were reasonableness/necessity and/or work-relatedness of Paxil. The order reflects the parties waived a hearing and the matter stood submitted as of March 20, 2016. The parties were to file briefs on or before March 28, 2016, of three pages or less.

Noble filed a position statement attaching pages 77-80 of a purported deposition of Noble without any indication of the date of the deposition. Noble did not comply with 803 KAR 25:010 Section 4(6)(a) which reads, in relevant part, as follows:

> A motion to reopen shall be accompanied by as many of the following items as may be applicable:
>
> (6) A designation of evidence from the original record specifically identifying the relevant items of proof which are to be considered as part of the record during reopening.

Noble did not designate any evidence pursuant to this mandatory provision.

In its position statement, C & R attached a portion of ALJ Overfield's August 26, 2005, Opinion, a two-

page record from Knott County Family Healthcare dated September 5, 2003, and the last page of Dr. Allen's IME report.

In the April 26, 2016, Opinion and Order, the ALJ entered the following findings of fact and conclusions of law:

> A telephonic Benefit Review Conference was held on March 14, 2016. Plaintiff and Defendant Employer participated. The formal hearing was waived and the Medical Dispute was submitted on the record for a decision as of March 28, 2016.
>
> Defendant Employer introduced the March 18, 2015 report of Shelley Friemark [sic], M.D., who conducted a records review and noted a long history of bipolar disorder and anxiety disorder. Dr. Friemark [sic] noted a history of disability due to mood issues. She found ultimately his current psychiatric treatment, including Paxil, was related to the bipolar/anxiety disorder and would not be related to the work injury of 2003.
>
> Defendant Employer introduced the report of Timothy Allen, M.D., who conducted an independent psychological evaluation on December 15, 2015 by taking a history from Plaintiff, reviewing records and conducting a psychological evaluation. Dr. Allen provided a comprehensive summary of the medical records reviewed and of his observations of Plaintiff. He detected a lower average intellectual level and reading skills and diagnosed somatic symptom disorder, cannabis disorder, personality disorder with paranoid

traits and malingering. The Plaintiff has adopted a sick, disabled roll over the years in which he focuses on health problems, real and perceived, perhaps in order to avoid coping with emotional issues.

Defendant Employer introduced treatment notes and reports from the original claim including records from Michelle Amburgy [sic], M.A., John W Gilbert, M.D., and a large stack of treatment notes from Knott Family Healthcare from 2003 through 2005.

Dr. Shih in a letter dated March 9, 2016 states he has treated Plaintiff since 2014 seeing him every 2 to 3 months for depression and anxiety, he had no opinion regarding the causation or work relatedness of his current treatment. The record also includes a stack of treatment notes from Dr. Shih for treatment from 2015.

In a post-judgment Motion to Reopen to Assert a Medical Fee Dispute, Defendant Employer has the burden of proving that the contested medical expenses and/or proposed medical procedure is unreasonable or unnecessary, while the Plaintiff maintains the burden of proving that the contested medical expenses and/or proposed medical procedure is causally related treatment for the effects of the work-related injury. *Mitee Enterprises vs. Yates*, 865 SW2d 654 (KY 1993) *Square D Company vs. Tipton*, 862 SW2d 308 (KY 1993) *Addington Resources, Inc. vs. Perkins*, 947 SW2d 42 (KY App. 1997). In addition, the legislature's use of the conjunctive "and" which appears in subsection 1 of KRS 342.020 "cure and relief" was intended to be construed as "cure and/or relief".

> *National Pizza Company vs. Curry*, 802 SW2d 949 (KY 1991).
>
> In the specific instance, Defendant Employer has moved to reopen this claim challenging the work relatedness, reasonableness and necessity of Paxil. There is no question that there was some element of psychological component associated with the work injury, the degree of which is impossible to ascertain. Looking at the totality of evidence presented herein, including the letter of the treating physician, Dr. Shih, the current use of Paxil is unsupported as treatment for a work related condition. As this is a medical question, absent medical evidence to support Plaintiff's position, Plaintiff has failed to meet his burden of proving Paxil is work related. It is, therefore, uncontroverted that the contested expense is not reasonable and necessary for the cure and/or relief of the effects of the work injury, and therefore non-compensable.

In his Petition for Reconsideration, as he does on appeal, Noble asserted the question of whether Paxil is work-related is not a justiciable issue as it was decided in favor of Noble "long ago." Noble asserted he had been prescribed Paxil soon after his work injury and the work-relatedness of the medication was contested in the original proceedings resulting in ALJ Overfield resolving the work-relatedness of the medications including Paxil. Citing Westvaco Corp. v. Fondaw, 698 S.W.2d 837, 838-839 (Ky. 1985) and National Pizza Co. v. Curry, 802 S.W.2d 949, 951

(Ky. App. 1991), Noble asserted the law required C & R to contest the work-relatedness of any medical treatment already administered or being sought at the time of the hearing in the original claim or the issue was waived. Noble argued if the issue is raised by the employer during the pendency of the claim and it loses, it is barred by *res judicata* from re-litigating the issue in a motion to reopen. Noble represented that since ALJ Overfield ruled in his favor, C & R has been paying for the Paxil and similar medications for over a decade.

Noble pointed out the burden of proof in a medical reopening remains with C & R. Thus, the ALJ's statement that he failed to meet his burden of proving Paxil was work-related, was a misstatement of the law as to which party had the burden of proof. The ALJ denied the petition for reconsideration.

On appeal, Noble reiterates the question of whether Paxil is related to the work injury has been resolved by ALJ Overfield. Consequently, the law of the case and the doctrine of *res judicata* bar any subsequent attempt to re-litigate the issue in a motion to reopen. Citing Westvaco Corp. v. Fondaw, supra, and National Pizza Co. v. Curry, supra, Noble asserts even if the matter had not already been decided, the law clearly required C & R to

contest the work-relatedness of any medical treatment already administered or being sought in the original proceedings or the issue is waived. Noble represents he was taking Paxil during the pendency of the claim, and C & R challenged the work-relatedness of the medication which was rejected by ALJ Overfield. As a result, C & R has been paying for Paxil or similar medications for over a decade.

Leaving aside the fact Dr. Allen was not provided the evidence and testimony supporting ALJ Overfield's decision, Noble argues Dr. Allen's opinion as to the work-relatedness of Paxil is not relevant to the issue. Noble posits the only opinion Dr. Allen could have rendered which would have provided a basis for the ALJ's decision would have been the medication was no longer reasonable and necessary for the cure and relief of his condition. However, C & R's proof does not support that contention. Rather, Dr. Allen advised the medication Paxil and Seroquel were reasonable and necessary, and Noble should remain on the medications. Noble seeks reversal of the ALJ's order with directions to overrule the motion to reopen.

In addition to the items Noble was required to attach to his brief, he attached pages 78 and 79 of Noble's undated deposition testimony, the last page of Dr. Allen's

report, and C & R's position statement filed before the ALJ.

In his reply brief, Noble attached pages 5, 6, 7, and 36 of what he represents is Dr. Amador's deposition testimony. Noble also attached C & R's Form 111 filed during the proceedings before ALJ Overfield. Neither of these items were designated during the proceedings pursuant to 803 KAR 25:010 Section 4 as items of proof to be considered during the reopening.

Because *res judicata* and the law of the case did not bar C & R from filing a motion to reopen contesting the compensability of Paxil and substantial evidence supports the ALJ's decision, we affirm.

Even though ALJ Overfield determined Noble had a work-related psychological condition and resolved the medical fee dispute regarding the compensability of psychological treatment in favor of Noble, he did not specifically rule upon the compensability of any type of psychiatric care or treatment Noble was receiving prior to or at the time of his decision. ALJ Overfield determined Noble had a work-related psychological condition for which he was entitled to care and treatment. There was not a specific finding regarding Paxil. Significantly, ALJ Overfield also concluded Noble had mild depression pre-

existing his work-related injury which was related to situational factors including the necessity of caring for his ill parents and their subsequent deaths. Based on the record before us, it appears no other proceedings were instituted regarding Noble's psychological treatment until C & R filed its motion to reopen and medical dispute. Noble's assertions aside, there was not a specific determination by ALJ Overfield that Paxil was reasonable and necessary treatment and is related to his work-related psychological condition.

It is well settled that the doctrine of *res judicata* applies in the context of workers' compensation awards. Keefe v. O.K. Precision Tool & Die Co., 566 S.W.2d 804, 805 (Ky. App. 1978). On the other hand, KRS 342.125 provides specific and enumerated statutory exceptions to the general rule of the finality of judgments, also known as *res judicata*. In order to qualify for reopening under the Act, there must be facts alleged sufficient to make a *prima facie* case for reopening pursuant to one of the conditions specified under KRS 342.125. Stambaugh v. Cedar Creek Mining Co., 488 S.W.2d 681 (Ky. 1972). Where the Act expressly provides for the reopening of a prior decision on specified conditions, the rule of *res judicata* has no application when the prescribed conditions are present. Id.

at 682. However, where the application by the parties fails to allege a condition specified under KRS 342.125 (i.e., a showing of change of disability, mistake, fraud, newly discovered evidence, challenges to medical fees, the institution of post-award temporary total disability benefits or conforming an award with the requirements of KRS 342.730(1)(c)2), the ALJ and this Board are without statutory authority to provide relief and the doctrine of *res judicata* controls. Slone v. R & S Mining, Inc., 74 S.W.3d 259 (Ky. 2002).

KRS 342.125(3) permits reopening for a determination of the compensability of medical expenses. Consequently, the doctrine of *res judicata* does not apply. In Westvaco v. Fondaw, supra, Fondaw received an award which contained the standard language awarding medical expenses for the duration of disability. Thereafter, Fondaw presented medical bills and travel expenses which Westvaco declined to pay. Fondaw filed suit in circuit court to enforce payment. The trial court concluded the Workers' Compensation Board was the proper tribunal to resolve the dispute. The Court of Appeals reversed holding it was incumbent upon the employer to initiate consideration of the reasonableness issue before the Workers' Compensation Board

and having failed to do, the employer was estopped from disputing the claim. The Supreme Court reversed stating:

> It is elementary that any medical bills presented to the employer during the pendency of the proceedings before the Board must be contested before the Board and thus could not be disputed later in circuit court in a proceeding to enforce an award. KRS 342.305.

Id. at 838-839.

The Supreme Court found the trial court properly determined a factual issue existed regarding the medical bills which must be resolved by the Board explaining as follows:

> Should there be an issue here that the medical bills were submitted during the pendency of the proceeding in time for the employer to contest them before the Board, the trial court shall resolve the dispute.

Id. at 839.

Significantly, the Supreme Court further stated as follows:

> It appears to us that it is inefficient and expensive to have a matter such as this filed in circuit court in the first instance and then be referred to the Board. In the future, when an employer seeks to dispute a medical or drug bill submitted by the disabled worker, the procedure to be followed is for the employer to file a motion before the Board to reopen the award for medical expenses under KRS 342.125.

Id. at 839.

Westvaco v. Fondaw, supra, is not dispositive of this issue since the record is silent as to whether there was ever a ruling upon the compensability of Paxil. Further, as in the case *sub judice*, the Supreme Court directed that when there is a dispute regarding a medical or drug bill, the employer must file a motion before the Board to reopen the award. Although the medical records filed by C & R establish Noble was taking Paxil prior to ALJ Overfield's decision, the transcript of Noble's deposition which he attached to his position statement to the ALJ reflects Noble had ceased taking Paxil. We note there was no objection filed by C & R to this attachment. Page 78 of the deposition transcript reveals the carrier for C & R had not refused to pay for Paxil at the time of his deposition, as Noble was not taking Paxil, but was taking Citalopram. Noble testified Dr. Gilbert had previously prescribed Paxil, but the insurance carrier had refused to pay for at least some of those prescriptions. Thus, it appears at the time of ALJ Overfield's decision, Noble was not taking Paxil and there was no issue as to his use of Paxil for treatment of the work-related psychological condition.

In Phillip Morris, Inc. v. Poynter, 786 S.W.2d 124 (Ky. 1990), the issue was the compensability of certain medical bills for which the employer refused to pay. The

Administrative Law Judge declined to require the employer to pay for the bills. The Board reversed and remanded for entry of an order directing the employer to pay the bills. The Court of Appeals noted the "old" Board had determined Poynter was entitled to temporary total disability benefits for several distinct periods and Poynter had filed a motion to require the employer to pay $152.40 in medical expenses for prescriptions, some portion of which had been described as for antidepressants. The bills were dated between May 18, 1988, and June 24, 1988. The bills had been submitted to the employer on July 11, 1988, and had not been paid within the thirty day period set out in KRS 342.020(1). Further, the employer had not filed a motion to reopen to challenge the bills. Moreover, the employer argued its failure to file a motion to reopen pursuant to Westvaco v. Fondaw, supra, did not cause it to waive its right to object to the bills. The Court of Appeals disagreed ruling as follows:

> We find that the key to resolving this appeal is *Westvaco.* It requires that employers who wish to challenge a medical or drug bill must file a motion to reopen. *Westvaco*, 698 S.W.2d at 839. We do not find the phrase included in the opinion in *Westvaco,* "submitted by the disabled worker", to be controlling, since it is the clear intent of the Supreme Court to require the employer to bear the burden in

> challenging a medical expense. As a result, it was incumbent upon Phillip Morris, Inc., to file a motion to reopen if it wanted to challenge the medical expenses submitted by Poynter. [footnote omitted]

Id. at 125.

Further, the Court of Appeals ruled since the employer did not file a motion to reopen challenging Poynter's bills, it is now foreclosed from challenging them.

Here, the record establishes personnel at Kentucky River Community Care had prescribed Paxil from 2011 through August 2015. However, the record is silent as to whether bills for Paxil were ever presented to C & R at any point and whether its insurance carrier had refused to pay the bills. Thus, Westvaco v. Fondaw, supra, and Phillip Morris, Inc. v. Poynter, supra, do not apply.

That said, even if at some point there had been a determination that Paxil was compensable, *res judicata* or the law of the case would not serve as a bar to the medical fee dispute filed by C & R.

In Napier v. St. Paul Travelers, et al, 2010-CA-001825-WC, rendered February 3, 2012, Designated Not To Be Published, one of the issues before the Court of Appeals was the Board's determination that Phenergan was

compensable based on law of the case since there had been a previous order finding Phenergan was a compensable medication. The Court of Appeals rejected that principle holding as follows:

> Travelers and KIGA contend that the Board's decision that Phernergan was compensable based on the law of the case doctrine was erroneous. They argue that each medication must be evaluated anew if contested, because medications may not always be a necessary treatment for a work-related injury.
>
> We first observe that the June 23, 1997 order, cited as controlling by the Board was not reviewed by the ALJ because the parties did not designate the evidence to be reviewed by the ALJ in accordance with 803 KAR 25:010 § 4(6). We further note that the law of the case doctrine applies differently in a workers' compensation action compared to a judicial action. *Whittaker v. Reeder,* 30 S.W.3d 138, 143 (Ky. 2000). Therefore, legal authority based upon judicial proceedings is not necessarily binding in a workers' compensation case. *Id.*
>
> When a change of condition occurs, a case may be reopened to decide if a previous award should be modified. *Id.* In this case, Napier's case was reopened and she requested additional treatment, and the insurance company contested the continuation of previously awarded prescription treatments. Based on the evidence, the ALJ found that Phenergan was no longer compensable.

Slip Op. at 6.

Assuming, *arguendo*, there had been a previous determination Paxil was compensable, the above-holding does not prohibit a subsequent medical fee dispute contesting the compensability of Paxil.

Although Noble did not raise it on appeal, we choose to address the ALJ's statement in her decision that absent medical evidence to support Noble's position, the plaintiff has failed to meet his burden of proving Paxil is work-related.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness of medical treatment falls on the employer. National Pizza Company vs. Curry, supra. However, the burden remains with the claimant concerning questions of work-relatedness or causation of the condition. Id; *see also* Addington Resources, Inc. vs. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

Further, we are mindful of the Kentucky Supreme Court's holding in C & T of Hazard v. Stollings, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published, that the burden is placed on the party moving to reopen, because it is that party who is attempting to overturn a final award of workers' compensation and must present facts and reasons to support the party's position.

> The party responsible for paying post-award medical expenses has the burden of contesting a particular expense by filing a timely motion to reopen and proving it to be non-compensable. *Crawford & Co. v. Wright,* 284 S.W.3d 136, 140 (Ky. 2009) (citing *Mitee Enterprises v. Yates,* 865 S.W.2d 654 (Ky. 1993) (holding that the burden of contesting a post-award medical expense in a timely manner and proving that it is non-compensable is on the employer)). As stated in *Larson's Workers' Compensation Law,* § 131.03[3][c], "the burden of proof of showing a change in condition is normally on the party, whether claimant or employer, asserting the change ...." The burden is placed on the party moving to reopen because it is that party who is attempting to overturn a final award of workers' compensation and thus must present facts and reasons to support that party's position. It is not the responsibility of the party who is defending the original award to make the case for the party attacking it. Instead, the party who is defending the original award must only present evidence to rebut the other party's arguments.
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> . . .
>
> Thus, C & T had the burden of proof to show that Stolling's treatment was unreasonable and not work-related.

Slip Op. at 4-5.

Assuming, *arguendo*, C & R, not Noble, had the burden of proof regarding causation, C & R satisfied its burden via the opinions of Drs. Allen and Freimark. In his IME report, Dr. Allen cited to Dr. Shraberg's report of

April 4, 2015, in which he indicated Noble had reported a history of chronic anxiety and depression over his lifetime, and he was taking Wellbutrin at the time of the work-related injury on October 9, 2003. Our review of the medical records reflects Dr. Allen correctly concluded Noble was taking Wellbutrin at the time of the October 9, 2003, work-related injury. Based on his examination and testing, Dr. Allen indicated Noble had a pre-history injury of depression and anxiety for which he had been actively treating at the time of the work-related injury. Noble had experienced a worsening of depression and developed physical sensations as a manifestation of his emotional distress resulting in a somatic symptom disorder. As noted by Noble in his brief, Dr. Allen believed the current medication regimen of Paxil CR and Seroquel had reduced his symptoms and were reasonable for both diagnoses and Noble should continue to take the medications. Noble needed no further treatment other than his current medications. However, Noble fails to note that Dr. Allen believed the Paxil he currently takes is equivalent to the Wellbutrin he took prior to the work accident. Consequently, Dr. Allen believed it was reasonable to expect Noble would have been on Paxil or a similar medication regardless of the October 9, 2003, work injury. Therefore, Dr. Allen believed the

use of Paxil is not related to the work injury. Dr. Allen noted Seroquel treated symptoms which had arisen since the accident and should be considered as work-related.

Similarly, in a letter dated March 18, 2014, Dr. Freimark stated the first question is whether or not the current psychiatric treatment is related to the work injury. Dr. Freimark indicated the records reviewed did not describe the injury occurring on October 9, 2003. Rather, the records simply indicated Noble has a bipolar disorder for ten years or more and anxiety disorder. The records established he had been on disability since 2003 mainly due to mood issues. Dr. Freimark stated the adjuster indicated the major depressive disorder is a condition related to the workers' compensation claim. However, Dr. Freimark concluded the treatment provided seems related more to bipolar disorder and anxiety disorder. Dr. Freimark observed Noble has been provided Paxil and Seroquel for quite some time. Based solely on the records Dr. Freimark reviewed, Dr. Freimark opined it would appear the current psychiatric treatment is more related to bipolar disorder and anxiety. Therefore, Dr. Freimark could not relate the current psychiatric treatment to the work injury which occurred on October 9, 2003, resulting in depression.

Those opinions were not challenged by Noble. In fact, in a March 9, 2016, letter to the ALJ, Dr. Shih stated he had treated Noble since late 2014, seeing him approximately every two to three months for depression and anxiety. The main modality of treatment is supported therapy and medication management. Although Dr. Shih stated he was aware Noble became disabled in 2003, he has no medical notes in the electronic medical records from the previous providers. Therefore, he could not offer an opinion at this point in regard to the dispute over the compensability of the contested medical treatment.

The medical evidence introduced by C & R is unrebutted. Even though the ALJ may have incorrectly imposed the burden of proof upon Noble to establish Paxil was work-related, C & R met its burden of proof, and the ALJ's finding in favor of C & R is supported by substantial evidence in the record.

Accordingly, the April 26, 2016, Medical Fee Opinion and Order and the May 24, 2016, Order denying the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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