

OPINION ENTERED: June 21, 2013

CLAIM NO. 200980261

TWANNI BOLDEN

PETITIONER

VS.

APPEAL FROM HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE

MASONIC HOMES OF KENTUCKY, INC.
DR. GARY REASOR
DR. STEPHEN MAKK
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
* * * * *

BEFORE: ALVEY, Chairman, and STIVERS, Member.

STIVERS, Member. Twanni Bolden ("Bolden") appeals from the January 14, 2013, decision rendered by Hon. Edward D. Hays, Administrative Law Judge ("ALJ"), and from the February 8, 2013, order ruling on her petition for reconsideration. The ALJ awarded income and medical benefits for Bolden's right shoulder and upper extremity injury, but found contested

pain management non-compensable. On appeal, Bolden argues the ALJ's denial of pain management treatment is not supported by substantial evidence. Because we find the ALJ's determination regarding the compensability of the contested treatment is supported by substantial evidence, we affirm.

Bolden filed her Form 101, Application for Resolution of Injury Claim, on December 28, 2009, alleging injuries to her right upper extremity/right shoulder and left shoulder on February 11, 2009, while employed by Masonic Homes of Kentucky, Inc. ("Masonic Homes") as a result of an attack by a patient. Additionally, Bolden filed motions to amend her claim to include a psychological component and a neck condition.

During the pendency of the claim, Masonic Homes filed numerous medical fee disputes and supplements to those disputes contesting treatment by Dr. Gary Reasor, including prescription medications and physical therapy. Bolden's claim was placed in abeyance following entry of an interlocutory order on August 6, 2010, finding proposed right shoulder surgery compensable. The claim was removed from abeyance by order dated March 16, 2012.

Bolden testified by deposition on July 24, 2012, and at the hearing held November 14, 2012. Bolden was

employed by Masonic Homes as a Certified Nurse Assistant. On February 11, 2010, a patient she was bathing became agitated, grabbed her right wrist, and repeatedly struck her right upper extremity with his fist. Bolden testified she had pain in her right wrist, elbow, and shoulder immediately following the incident. Eventually, she had surgery on her right shoulder performed by Dr. Stephen Makk. Bolden testified the surgery relieved a "knot" in her shoulder but did not relieve her pain. Bolden testified she continues to experience right shoulder pain with burning and tingling sensations in her arm. She indicated Neurontin provides some relief from the burning and tingling sensations. Pain medication relieves some, but not all, of her symptoms.

Dr. Makk performed right glenohumeral arthroscopy with labral debridement, rotator cuff debridement, subacromial decompression and distal clavical excision on July 1, 2011. On November 8, 2011, Dr. Makk noted Bolden's shoulder pain made sleep difficult. Physical examination revealed hypersensitivity over the shoulder. Dr. Makk noted "I hope she is not developing reflex sympathetic dystrophy (RSD), which if she is the treatment would be physical therapy." On December 13, 2011, Dr. Makk noted Bolden was scheduled to see a pain management physician.

Dr. Reasor first saw Bolden on January 3, 2012, for complaints of right shoulder, elbow and neck pain. Physical examination revealed decreased range of motion of the right shoulder and neck, allodynia over the right trapezius and bicep, a "dusky" appearance of the right arm and slight edema. Dr. Reasor diagnosed right shoulder pain following injury, possible early complex regional pain syndrome ("CRPS") of the right upper extremity, cervical radiculitis and spondylosis.¹ On February 7, 2012, Dr. Reasor noted Neurontin initially helped, but it had lost its effectiveness. Dr. Reasor increased the dosage of Neurontin and prescribed Percocet. On June 12, 2012, he noted Roxicodone was effective in treating Bolden's symptoms, observing Roxicodone and Neurontin reduced her pain by fifty percent. On August 9, 2012, he noted the combination of medication reduced her symptoms by fifty to sixty percent. An October 24, 2012, office note indicates Bolden could no longer receive treatment since the workers' compensation carrier was denying payment.

Dr. Warren Bilkey evaluated Bolden on May 17, 2012. He diagnosed right upper extremity contusion injury

¹ CRPS and RSD are generally considered to be the same condition. As the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("Guides") reference the condition as RSD, we will refer to the condition in the remainder of the opinion as RSD.

with shoulder impingement and chronic residual pain as a result of the work injury. Dr. Bilkey indicated his physical examination did not suggest cervical radiculopathy. Dr. Bilkey recommended continued treatment with a pain management physician and evaluation by a pain psychologist due to the habit-forming nature of her medications.

Dr. Ronald Fadel evaluated Bolden on February 23, 2012. Dr. Fadel diagnosed contusion/sprain injury to the right shoulder and elbow, partial articular surface tear of the supraspinatus tendon of the right rotator cuff, pre-existing gleno-humeral degenerative joint disease, congenital OS acromiale, self-induced left shoulder motion limitation with secondary joint pain and mild cervical spondylosis. Dr. Fadel indicated Bolden sustained the contusion/sprain injury with associated partial rotator cuff tear of the supraspinatus tendon as a result of the work injury. Dr. Fadel stated Bolden exhibited an extraordinary degree of self limitations and pain complaints entirely disproportionate with the known pathology. He stated there was no reason Bolden could not return to unrestricted work duties. Regarding the necessity of future treatment, Dr. Fadel opined as follows:

This is most complex. Ms. Bolden's prospect for recovery requires a mental readjustment as relates to her condition

insight. She has embraced the notion that she has a serious underlying pathology as yet undetected which is responsible for her ongoing problems. I would opine that the greatest limiting factor at this point is non-organic and emotionally based. Treatment of any kind would be futile unless her apparent psychopathy is addressed. Pain management is always a consideration in patients with this complaint. The current paradigm in medicine places great emphasis on non-toleration of pain in any and all patients. However, in this case such management is a slippery slope. Ms. Bolden is a former drug abuser who states she has been clean for 10 years. The introduction of long-term pain management, particularly one based in opiates, hardly serves her overall long-term best interests. Before I would place her in chronic pain management I would seek psychological profiling with an MMPI (Minnesota multiphasic personality index) administered by an experienced psychologist. Based on the results of this testing chronic pain management, if any, can be decided.

Dr. Fadel believed right stellate ganglion blocks were not reasonable or necessary treatment for the work injury. He noted with the exception of Bolden's high level of subjective pain complaints, she did not have any of the necessary criteria supporting the clinical impression of RSD listed in the AMA Guides. Dr. Fadel stated the use of Neurontin was of trivial or minimal value.

In an August 15, 2012, supplemental report, Dr. Fadel indicated he reviewed additional medical documents

from Dr. Bilkey, Dr. Makk, Dr. Simon and Dr. Butler. Dr. Fadel indicated he could support the 6% impairment rating assessed as a result of the Mumford clavicular resection. He noted the psychological assessments were contradictory. Dr. Fadel again noted Bolton exhibited symptom exaggeration during his examination and her behavior precluded a reliable whole person impairment rating.

Bolden submitted the report of Steven Simon, a licensed clinical psychologist, who performed a psychological evaluation on April 10, 2012. Dr. Simon diagnosed mood disorder with major depression due to medical condition, generalized anxiety disorder, polysubstance abuse history in remission for ten years, and rule out post-traumatic stress disorder. Dr. Simon opined Bolden's current psychological conditions were directly related to the trauma and pain brought on by the attack at work.

Masonic Homes submitted the August 7, 2012, report of Dr. Walter Butler who performed a psychological evaluation on July 7, 2012. Dr. Butler diagnosed depressive disorder NOS, multifactorial origin; polysubstance abuse and dependence, now in remission per self-report; and somatization disorder/somatoform pain disorder (pain disorder associated with psychological factors). Dr. Butler also diagnosed personality disorder NOS with dependent and

histrionic traits. Dr. Butler explained individuals with a somatoform pain disorder exhibit pain symptoms often far in excess of any underlying organic condition, arising mostly from psychological factors. Dr. Butler stated Bolden's pain syndrome was a somatic manifestation of her history of psychological and physical trauma and emotional turmoil. Dr. Butler noted Bolden had described to Dr. Reasor pain and somatic complaints in a variety of body systems unrelated in any physiological way to the workplace injury. Dr. Butler noted Bolden suffered a series of profoundly traumatic events beginning when she was a toddler, which he listed. Dr. Butler stated a somatoform pain disorder produces pain for which there is no adequate physical cause and the pain is due to psychological problems.

Dr. Butler indicated there was no clear evidence of organic pathology to account for Bolden's unremitting pain. Dr. Butler opined Bolden manifested psychogenic pain symptoms arising from circumstances which long preceded the workplace incident. Dr. Butler stated there did not appear to be any psychiatric condition arising directly or proximately from the alleged workplace injury. Consequently, Bolden had no psychological impairment pursuant to the AMA Guides arising from the alleged injury.

In the January 14, 2013, opinion, award, and order, the ALJ found Bolden was entitled to temporary total disability benefits, permanent partial disability benefits and medical benefits for her right shoulder injury. The ALJ found Bolden's left shoulder and psychological conditions were not work-related.

Bolden filed a petition for reconsideration noting the ALJ awarded medical treatment for her right shoulder and upper extremity but failed to make specific findings regarding the compensability of Dr. Reasor's pain management treatment, including prescriptions for Roxicodone and Neurontin.

In the February 8, 2013, order, the ALJ stated he found Dr. Fadel's opinion most credible on the issue of pain management. Therefore, he concluded pain management treatment was not reasonable, necessary or related to Bolden's right shoulder injury of February 11, 2009.

On appeal, Bolden argues the denial of pain management treatment is not supported by substantial evidence. Bolden asserts no physician opined pain management treatment provided by Dr. Reasor is not reasonable, necessary, nor have they indicated the treatment is unrelated to the work-related right shoulder injury. Bolden notes Dr. Fadel did not opine pain management is

unreasonable or unnecessary treatment. Rather, he recommended a psychological evaluation before deciding the appropriateness of chronic pain management. Bolden notes neither Dr. Simon nor Dr. Butler addressed the appropriateness of pain management treatment. Bolton states she and Dr. Reasor confirm her pain medications provide relief of her work-related injury and symptoms. Accordingly, she requests the ALJ's decision be reversed and the matter remanded for an award of pain management treatment.

It is well-established a claimant in a workers' compensation claim bears the burden of proving each of the essential elements of her cause of action. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Moreover, the burden of proof with regard to whether medical treatment in a workers' compensation case is reasonable and necessary rests with the employee pre-award, and only shifts to the employer post-award. See R.J. Corman R.R. Const. v. Haddix, 864 S.W.2d 915 (Ky. 1993); Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993); National Pizza Co. v. Curry, 802 S.W.2d 949 (Ky. App. 1991).

Since Bolden was unsuccessful in her burden of proof with regard to the contested treatment, the question on appeal is whether the evidence is so overwhelming, upon

consideration of the record as a whole, as to compel a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). As fact-finder, the ALJ has the sole authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight to be accorded the evidence and the inferences to be drawn therefrom. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995). The fact-finder may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary parties' total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

In the case *sub judice*, the evidence falls far short of compelling a finding in Bolden's favor. Dr. Fadel opined Bolden's greatest limiting factor is non-organic and emotionally based. He indicated treatment for pain would be

futile "unless her apparent psychopathy is addressed." Additionally, he thought pain management, particularly if opiate based, would not be in her best interests, given her history of drug abuse. Clearly, Dr. Fadel was of the opinion the contested pain management treatment was neither reasonable nor necessary treatment for what he considered a psychologically based condition. Bolden is correct in noting Dr. Fadel stated she should have psychological profiling including the administration of the MMPI before "chronic pain management, if any, can be decided." However, the clear import of his report is that pain management will not be effective if Bolden's perceived pain is the result of a psychological condition rather than a physiological condition.

Significantly, relying upon the opinions of Dr. Butler, the ALJ specifically found Bolden's psychiatric conditions are non-work-related and Bolden has not appealed that determination. Dr. Butler indicated there was no organic pathology to account for Bolden's pain. He diagnosed a somatoform disorder and indicated her pain is psychogenic. Dr. Butler's opinion and the opinions of Dr. Fadel, who reviewed Dr. Butler's report, constitute substantial evidence supporting the ALJ's conclusions. There being substantial evidence to support the ALJ's

findings, the evidence does not compel a finding in Bolden's favor.

Accordingly, since substantial evidence exists within the record in support of the ALJ's determination regarding pain management treatment, the January 14, 2013, opinion, award, and order and the March 8, 2013, order resolving the issue in favor of Masonic Homes are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

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