Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 20, 2015

CLAIM NO. 201100120

UNITED PARCEL SERVICE, INC. PETITIONER

VS. **APPEAL FROM HON. CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE**

HEATH RAYMER
DR. GARY REASOR,
SONAL COCHRAN, PA-C,
HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. United Parcel Service, Inc. ("UPS") appeals from the November 13, 2014 opinion rendered by Hon. Chris Davis, Administrative Law Judge ("ALJ"), finding compensable the requested referral for a psychological evaluation and treatment for Heath Raymer ("Raymer"). UPS

also appeals from the December 8, 2014 order denying its petition for reconsideration.

On appeal, UPS argues the ALJ's decision regarding the psychological evaluation and treatment is not supported by the medical evidence. Because we find no error, the ALJ's decision is supported by substantial evidence, and no contrary result is compelled, we affirm.

A brief outline of the history of the claim is necessary. Raymer filed a Form 101 on January 26, 2011 alleging he sustained back and neck injuries when he hit a drainage ditch while driving a Tug. A Form 110 settlement agreement was approved by Hon. John B. Coleman, Administrative Law Judge, on December 2, 2011 based upon a 5% impairment rating assessed by Drs. Ellen Ballard and Warren Bilkey to be paid at the rate of $12.54 per week for 425 weeks, along with temporary total disability ("TTD") benefits from September 1, 2010 through September 7, 2010. There was no waiver or buyout of future medical benefits.

UPS later filed a medical dispute challenging medial branch blocks for the thoracic spine. In a decision rendered April 26, 2013, Hon. William J. Rudloff, Administrative Law Judge, found the contested blocks compensable, but denied Raymer's request for additional TTD benefits.

On October 13, 2013, UPS filed a medical dispute challenging Epidural Steroid Injections ("ESIs") from T7-T10 recommended by Dr. Gary Reasor at Metro Pain Associates. UPS also challenged radiofrequency lesioning procedures. In support of the challenge, UPS filed the utilization review ("UR") report of Dr. Sankar Pemmaraju, D.O., a physical medicine and rehabilitation physician, who did not recommend the procedures. UPS also filed a motion to reopen the claim, and a motion to join Dr. Reasor and Metro Pain Associates as parties. UPS later withdrew the challenge of the radiofrequency lesioning procedures based upon a UR report of Dr. Naresh Sharma, an anesthesiologist, but continued its contest of the ESIs.

The claim was assigned to the ALJ. On January 14, 2014, Raymer filed the September 7, 2013 office note of Sonal Cochran, PA-C with Metro Pain Associates. She noted Raymer had been set up for thoracic ESIs and radiofrequency lesioning should be considered. She noted a KASPER report had been reviewed, and Raymer's prescription for Norco had been increased. A benefit review conference ("BRC") was held on February 13, 2014. The BRC order and memorandum reflects the only disputed issue was the compensability of the ESIs requested by Dr. Reasor. In a decision issued on April 11, 2014, the ALJ found the ESIs work-related,

reasonable and necessary. No petition for reconsideration was filed, and the decision was not appealed.

On June 5, 2014, UPS filed a motion to join Ms. Cochran as a party, a motion to reopen, and a Form 112, challenging her request for a psychological examination. UPS filed a report from Dr. Ballard dated July 17, 2014. She had previously seen Raymer on February 2, 2011 and July 27, 2011. Dr. Ballard noted Raymer had undergone some ESIs, and the last set did not help. She noted the history of chronic thoracic pain. Dr. Ballard recommended a functional capacity evaluation, after which time restrictions would be considered. She noted Raymer had reached MMI as of July 27, 2011.

Raymer filed the April 24, 2014 and June 25, 2014 office notes of Ms. Cochran, along with a report of the May 21, 2014 MRI. In April 2014, Ms. Cochran noted Raymer had undergone radiofrequency lesioning at T7-T9 on March 13, 2014, which had provided no relief. An MRI was ordered, and his prescription for Neurontin was increased. She noted Raymer feels he may have anxiety and depression stemming from his chronic pain. She provided him with a brochure from Healthpoint Associates, who specialize in behavioral/ psychological issues stemming from chronic pain. On May 19,

2014, Ms. Cochran wrote a prescription for a psychological evaluation through Healthpoint Associates.

The thoracic MRI dated May 21, 2014 revealed disc displacement at T7-T10, most prominent at T7-T8 with a shallow right paracentral disc displacement.

In her June 25, 2014 note, Ms. Cochran noted an ESI was administered on June 14, 2014, which was the third in a series. She noted Raymer takes Norco, Baclofen, Soma and Neurontin which reduce his pain. She diagnosed thoracic degenerative disc disease, pain and spondylosis. She noted Raymer requested a surgical consultation.

A BRC was held on September 24, 2014. The only contested issue listed was the need for a psychological evaluation and treatment. In his decision issued November 13, 2014, the ALJ found as follows:

> As fact finder, the ALJ has the 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 and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky. App. 1995). In weighing the evidence the ALJ must consider the totality of the evidence. *Paramount Foods Inc., v. Burkhardt*, 695 S.W. 2d 418 (Ky., 1985).
>
> The Movant has continued this medical fee dispute solely to contest the work-

> relatedness of the psychological referral. They base this contest on the fact that the Respondent-Raymer and[sic] never had a psychological component to his claim, in the past. Secondarily it can be logically inferred that they rely on Dr. Ballard's statement that no further treatment is necessary.
>
> While it is true that the Respondent has never, in the past, alleged a psychological complaint it is well settled that a psychological claim can develop as a result of chronic pain and/or limitations which brings about a depression and/or anxiety. If the heretofore new depression and/or anxiety is a direct and proximal cause of the physical pain and/or limitations and the pain and/or limitations are work-related then the depression and/or anxiety is also work-related.
>
> I believe and so find that the Respondent-Raymer has a work-related depression and/or anxiety. That being said the referral to the Health Point Associates is reasonable and necessary. Therefore it is compensable.

UPS filed a petition for reconsideration arguing it was patent error for the ALJ to find in Raymer's favor. UPS specifically argued as follows:

> While UPS agrees generally that pain and limitations from a work injury can cause a psychological overlay, such as depression and anxiety, a medical opinion is needed to establish it. This burden lies with the Respondent/ plaintiff. And no medical opinion in the record of evidence establishes this as to him.

The ALJ denied the petition for reconsideration by order dated December 8, 2014.

UPS argues the ALJ abused his discretion in finding in Raymer's favor. It argues there is no medical evidence supporting the ALJ's conclusion of the alleged psychological overlay. Based upon the facts, we believe the ALJ could reasonably conclude the requested psychological evaluation was reasonable and necessary for treatment of the work-related injury, and therefore compensable. Here, Ms. Cochran, a medical provider, specifically noted Raymer's concerns. She then proceeded to write a prescription for the psychological evaluation. We note the continuous treatment provided by Ms. Cochran for the ongoing thoracic complaints. Even Dr. Ballard, whose report constitutes the sum total of UPS' evidence, notes the ongoing thoracic problems and requested an FCE. Clearly, as noted by the ALJ and acknowledged by UPS, it is not unusual for chronic pain to result in some psychological overlay, and therefore the request by Ms. Cochran and approval by the ALJ is not unique. We note no utilization review was performed for the request, and there is absolutely no evidence in the record contradicting the referral. The ALJ's decision is therefore affirmed.

Here, a differing result is not compelled. Compelling evidence is defined as evidence which is so overwhelming no reasonable person could reach the same conclusion as the ALJ. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984); REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). Hence, we find no error.

Notwithstanding C & T Hazard v. Chantella Stallings, et al., 2012-SC-000834-WC, 2013 WL 5777077 (Ky. 2013), an unpublished case from the Kentucky Supreme Court, a long line of reported decisions establish in a post-award medical fee dispute, the employer bears both the burden of going forward and the burden of proving entitlement to the relief sought, except that the claimant bears the burden of proving work-relatedness. National Pizza Company vs. Curry, supra; Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

It was not unreasonable for the ALJ to conclude, based upon the totality of the evidence, the requested referral was reasonable and necessary. Ms. Cochran continued to treat Raymer for his thoracic condition. Even

Dr. Ballard identified the need for referral for a functional capacity evaluation, and left the door open for the assessment of restrictions. Albeit short, the ALJ then outlined the basis for his decision. We conclude the ALJ's decision regarding the psychological referral is well reasoned, and is supported by the evidence.

The ALJ, as fact-finder, is the sole judge of the weight and inferences to be drawn from the evidence and determines the quality, character, and substance of the evidence. *See* Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence. *See* Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Where the evidence is conflicting, the ALJ may choose whom or what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). Although an opposing party may note evidence supporting a conclusion contrary to the ALJ's decision, such evidence is not an adequate basis for reversal on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Here, there was no conflicting evidence, only an argument, which is insufficient to support a reversal of the ALJ's determination.

Accordingly, the decision rendered by Hon. Chris Davis, Administrative Law Judge, on November 13, 2014, and

the order on reconsideration issued December 8, 2014 are hereby **AFFIRMED.**

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON CHRISTOPHER NEWELL
10503 TIMBERWOOD CIRCLE, STE 112
LOUISVILLE, KY 40223

COUNSEL FOR RESPONDENT:

HON CHED JENNINGS
455 SOUTH 4TH ST, STE 1450
LOUISVILLE, KY 40202

OTHER RESPONDENTS:

DR GARY REASOR
METRO PAIN ASSOCIATES
400 EXECUTIVE PARK
LOUISVILLE, KY 40207

SONAL COCHRAN, PA-C
METRO PAIN ASSOCIATES
400 EXECUTIVE PARK
LOUISVILLE, KY 40207

ADMINISTRATIVE LAW JUDGE:

HON CHRIS DAVIS
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601