Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 5, 2021

CLAIM NO. 200782415

ARAMARK/EASTERN KY CORRECTIONAL COMPLEX PETITIONER

VS. **APPEAL FROM HON. W. GREG HARVEY, ADMINISTRATIVE LAW JUDGE**

MICHELLE LAROSE WALTERS
DR. IRA POTTER
and HON. W. GREG HARVEY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

STIVERS, Member. Aramark/Eastern KY Correctional Complex ("Aramark") seeks review of the October 16, 2020, Opinion and Order of Hon. W. Greg Harvey, Administrative Law Judge ("ALJ") resolving a medical fee dispute it filed in favor of its former employee, Michelle Larose Walters ("Walters"). The ALJ determined "Tramadol and Duloxetine are medically reasonable and necessary to treat the work

injury." Aramark also appeals from the November 4, 2020, Order overruling its Petition for Reconsideration.

On appeal, Aramark challenges the ALJ's decision asserting the ALJ erroneously relied upon Dr. Ira Potter's report because his opinions were based upon substantially inaccurate information. In a companion argument, Aramark asserts that the ALJ's decision is not based upon substantial evidence.

BACKGROUND

On March 9, 2009, Walters filed a Form 101 alleging a July 5, 2007, injury while in the employ of Aramark when she was "assaulted by a male inmate weighing approximately 150 to 160 pounds." As a result of the injury, Walters alleged a back injury with pain radiating down her left leg. On July 23, 2010, Hon. Douglas W. Gott, now Chief Administrative Law Judge, approved a settlement agreement resolving Walters' claim. The settlement agreement reflects Walters underwent a discectomy performed by Dr. Phillip Tibbs at the University of Kentucky. In addition to temporary total disability ("TTD") benefits, Walters received a lump sum payment. Although she waived her right to vocational rehabilitation, she did not waive her right to reopen or her entitlement to future medical benefits.

In 2011, Walters filed a Motion to Reopen asserting a change of condition. Thereafter, the parties entered into a settlement agreement approved by Hon. Jonathan R. Weatherby, Administrative Law Judge on September 5, 2012. The settlement agreement reflects that after the first settlement, Walters underwent fusion surgery performed by Dr. Tibbs. Walters received TTD benefits from February 16,

2011, through June 28, 2011, and a lump sum of $55,000.00. The impairment ratings assessed by three physicians ranged from 25% to 30%. As part of the settlement agreement, Walters waived her future right to reopen seeking additional income benefits. Dr. Potter was listed on the Form 113/Designation of Physician attached to the settlement agreement.

On April 7, 2020, Aramark filed a Motion to Reopen disputing the work-relatedness, reasonableness, and necessity of Tramadol and Duloxetine.[1] Attached to the motion is Dr. Kevin Tomsic's March 9, 2020, Utilization Review report, Dr. David Jenkinson's September 17, 2019, Independent Medical Evaluation ("IME") report, and the medical records of Pikeville Medical Center spanning the period from June 20, 2019, through November 21, 2019. Walters introduced a questionnaire completed by Dr. Potter on July 27, 2020.

Walters testified at the August 21, 2020, hearing that she has not worked since her July 5, 2007, lower back injury. She provided the following testimony concerning the nature of the injury:

> Q: Okay. And you had mentioned a couple of areas just a moment ago where you're experiencing some symptoms. What exactly did you injure on July 5th of 2007?
>
> A: My lower back area, there was injury to discs, herniated discs, which I have had two surgeries since then, one being a fusion. I continue to experience low back pain, burning radiating down my legs, even into my feet and my toes, constant cramping and such.

Walters recounted her current work-related symptoms:

> Q: All right. And what are your current work-related symptoms? You had mentioned a couple of them a

[1] Duloxetine is the generic name for Cymbalta.

moment ago, if you wouldn't mind going over those just one more time.

A: Constant lower back pain, throbbing that never goes away. It can radiate down into both legs and into my feet. My left leg has always been worse than my right with cramping and spasms in my thigh and calf. But my right leg has gotten progressively worse over time.

Since 2007, Dr. Potter has provided ongoing medical care for the work injury. He sees Walters every three months at which time they discuss her symptoms. Walters described Dr. Potter's treatment as follows:

Q: And have you reported these symptoms to Dr. Potter at each and every evaluation?

A: Yes, sir.

Q: Very good. What types of treatment has Dr. Potter recommended for you both now and in the past to treat your work-related symptoms?

A: I remember in the beginning when it first occurred, I did a stretch of physical therapy that proved not to be helpful. And that's when he did a MRI and I was then sent to UK to a neurosurgeon, Dr. Kemp. We have tried different prescription regimens, different muscle relaxers and such, including narcotics which I won't take. I prefer not to, if at all possible. If I can manage without it, I don't want it.

Q: Okay.

A: I did physical therapy after the second surgery back in 2011 for, I believe it was a few months.

Q: Okay. And what current medications does Dr. Potter recommend for treatment of your work-related symptoms?

A: I currently take Cymbalta or it's the Duloxetine, Tramadol, and Robaxin.

…

Walters explained why she currently refuses to take narcotics:

Q: And why aren't you taking narcotics now?

A: I prefer not to take anything that is proven to be highly addicting, if not at all necessary. If there comes a time I will reconsider in the future but if I can manage my pain without it, I prefer not to.

Q: But is it fair then that Dr. Potter has felt that narcotics would be better suited at some time to treat your pain?

A: He has on a couple different occasions prescribed narcotics. The second time being last year after the incident in June and I did take a couple of pills over a three month period. And I brought him the rest and told him I didn't want them, I preferred not to. I had children to take care of and such and I don't want to be unable to care for them in any way.

Walters recounted the event of June 2019 and her subsequent treatment:

Q: That's a poorly worded question. Why don't you tell us what happened last summer that caused you to need narcotics?

A: I was just doing everyday things and I guess I was taking clothes out of the dryer with my son and my children help me do – do housework. And I moved just right of something and I felt a stabbing, burning pain move across my lower back across my hips, which I did go to the ER for. And a CAT scan was done or a CT scan and it showed that I have another herniated disc or a bulging disc above the fusion, which they said could very well be related where that area of my back takes the brunt of everything now.

Q: Has this prescription regimen that Dr. Potter has had you on changed over time? Have you tried other medications?

A: I have. We've tried different muscle relaxers, he has tried something in place of the Cymbalta called Gabapentin. Number one, it did not help my symptoms; number two, I had extreme side effects mentally. I didn't know if I was coming or going. It just made me very

> woozy in my brain. It just made me very anxious and unnerving.
>
> Q: All right.
>
> A: And I requested to be taken off it. I didn't want that anymore.

Walters estimated she has been taking the medications at issue for approximately five years. She discussed the benefits she receives from the medications:

> Q: All right. And do they seem to control your symptoms or at least allow you to enjoy life a bit more?
>
> A: It does help alleviate a lot of the symptoms. It does not take care of them completely but makes things more bearable, more tolerable.
>
> Q: All right. And do you experience any side effects when taking these two medications that are being challenged today?
>
> A: I have one minor side effect, I believe, from the Cymbalta and it's a common, just dry mouth.
>
> Q: Okay. Have you ever abused or disposed of your medications in an unlawful manner?
>
> A: No, sir.
>
> Q: All right. We talked about the fact that Tramadol is being challenged today. How does Tramadol specifically make you feel? How does it affect you, at least to the level that you can describe for us today?
>
> A: Well, it does help alleviate some of the pain. Without it, my pain scale would be seven, eight, nine, around there depending on the day. It does vary. And with the Tramadol, it's down to four, five, maybe a six. It does make the pain more tolerable so that I can at least function somewhat on a normal level.
>
> Q: Okay. And now the same question with respect to Cymbalta. How does that help with your symptoms?

> A: That helps alleviate a lot of the cramping in my legs, some of the nerve pain. I don't experience as much burning, pain shooting down my legs. I'm not waking up in the middle of the night with charley horses in my thigh or calf like I was without it. So it does help with that.

Walters surmised what would happen if she were not permitted to take the medications:

> Q: All right. In your opinion, if the judge ruled in favor of the defendant and suspended your use of Tramadol or Duloxetine, Cymbalta, and you could no longer take those medications, how do you think that would affect your life?
>
> A: I couldn't begin to imagine what it would be like without it. For example, grocery shopping, I have to hang onto a cart grocery shopping. I bring my son or my husband and they go with me to lift heavier things, bend down, whatever help I may need. But even with the medication, I'm still having to hang on to a cart. I can't make it through the store without it.
>
> And I couldn't imagine not having that and trying to do those types of things. It just would not be possible for me. Even to cook, stand at the stove and cook dinner for my family would be extremely difficult.

She believed Dr. Potter is in the best position to treat her work-related complaints.

Interestingly, Aramark did not cross-examine Walters.

In resolving the medical fee dispute in favor of Walters, the ALJ provided the following findings and conclusions of law which are set forth *verbatim* in relevant part:

> The undersigned has the obligation to determine the compensability of medical treatment based upon the evidence presented. Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in

> the minds of reasonable people. *See* Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367, 369 (Ky. 1971); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). The general rule is the fact-finder cannot "disregard" un-contradicted medical evidence. The fact-finder, however, can decline to follow un-contradicted evidence, including medical evidence, as long as he provides sufficient reasons, and reasonably explains his basis.
>
> Walters has had two back surgeries. The most recent was in 2011 when she underwent a one-level lumbar fusion at L5-S1. That is the level of her original injury. She has been under Dr. Ira Potter's care since the injury in 2007 and various medications have been tried. Walters does not take and does not want narcotic pain medication. She is currently taking Tramadol, Duloxetine and Robaxin. The Defendant disputes the medical reasonableness and necessity of the analgesic Tramadol and Duloxetine (Cymbalta). Duloxetine is used to treat depression and nerve pain.
>
> Walters testified the medication she receives improves her overall quality of life and function. Dr. Potter's questionnaire confirms his belief that the Tramadol and Duloxetine are needed to treat her back and leg pain. The ALJ finds Dr. Potter's experience treating Walters persuasive. She is not taking narcotic medications and has complied with Dr. Potter's treatment. The ALJ finds the Tramadol and Duloxetine medically reasonable and necessary to treat the effects of the original work injury.

Aramark's Petition for Reconsideration asserted that its main argument on reopening was that the June 2019 event caused Walters' problems. It charged the ALJ made no finding regarding the significance of this event, even though Dr. Jenkinson and the Pikeville Medical Center records corroborate the event. Aramark asserted that because of the ALJ's failure to enter findings of facts concerning this intervening injury, reconsideration of that portion of the ALJ's decision with additional findings of fact was needed. It also asserted that Dr. Potter

did not address the intervening event and to what extent this subsequent event caused the need for treatment. Aramark argued that since Dr. Potter possessed an incomplete history, there is no evidence supporting causation.

In his November 4, 2020, Order, the ALJ overruled the Petition for Reconsideration, addressing the issues raised by Aramark as follows:

> …
>
> The Defendant argues the ALJ failed to make findings of fact regarding an alleged intervening event in June 19, 2019 when she allegedly experienced back pain while doing laundry—specifically taking laundry out of the dryer." It cites records from Pikeville Medical Center that included Dr. Mayer's decision to prescribe the contested medications.
>
> The Defendant alleges error on the part of the ALJ in failing to make findings regarding the alleged event involving taking laundry from the dryer and the worsening of pain. It seeks findings of fact on that issue.
>
> The Defendant also alleges the ALJ erred by not making a finding of fact that the Plaintiff sustained her burden of proof. Furthermore, it alleges Dr. Potter had an incomplete history and that the only competent medical evidence on the issue of causation was what it submitted and therefore requests the opinion be amended.
>
> The Plaintiff has responded to the Petition. The undersigned's opinion specifically acknowledges Dr. Jenkinson's opinion. It also notes his concession that Walters may have had an exacerbation of her chronic complaints.
>
> The ALJ found Dr. Potter's opinion on causation and reasonableness and necessity persuasive. That opinion is not entirely inconsistent with Dr. Jenkinson's opinion that Walters bending down to get clothes from the dryer was an exacerbation of her chronic condition. That chronic condition refers to the work-related back injury for which Walters has undergone 2 back surgeries and has avoided taking narcotic pain medication except for

> immediately following the exacerbation the Defendant alleges was the cause of Walters' increased pain.
>
> The ALJ did not find Walters' getting clothes out of the dryer to cause a new and distinct injury. She testified the medications being challenged have been prescribed to her for about five years. The ALJ declines to alter the original decision and OVERRULES the Defendant's petition. To the extent this Order includes new or additional factual findings the Opinion is so AMENDED.

In arguing Dr. Potter's answers to the questionnaire were based on inaccurate information, Aramark complains he made no reference to Walters' 2019 treatment history. It emphasizes Dr. Potter did not discuss the June 2019 CT scan nor the August 22, 2019, treatment note revealing Walters reported worsening back pain, severe right leg pain, and numbness radiating down her right leg and calf and at times to the top of her foot. Similarly, there is no reference to her November 21, 2019, treatment for low back pain at Pikeville Medical Center. In Aramark's view, since Dr. Potter did not reference this medical treatment he was not aware of it. Alternatively, if he was aware of the event and treatment, Walters has not established that fact. Aramark asserts Walters underwent significant treatment in June 2019 for worsening symptoms probably due to the event. It argues Dr. Potter's report should have discussed this incident and its impact on her current treatment.

In light of the above, Aramark argues Dr. Potter's answers to the questionnaire cannot constitute substantial evidence. It maintains Dr. Jenkinson believed Walters' problems were related to the June 2019 event. However, the ALJ cited Dr. Jenkinson's opinion in support of his finding the use of Tramadol and

Duloxetine relate to the 2007 work injury. Thus, it is unclear what evidence the ALJ relied upon in reaching a decision.

Aramark maintains that by relying upon Dr. Jenkinson in finding Tramadol and Duloxetine work-related, the ALJ appears to "work around needing a 'sufficient explanation' for ignoring Dr. Jenkinson's report." We disagree and affirm.

ANALYSIS

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 v. Curry, 802 S.W.2d 949 (Ky. App. 1991). Similarly, the employer has the burden of proving any allegation that the treatment in question is not work-related. This was verified by the Kentucky Supreme Court in C & T of Hazard v. Stollings, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published. 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 that party's position. The Supreme Court explained:

> 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.
>
> The Board in finding that Stollings had the burden to prove that the medical expenses were work-related cited to *Addington Resources, Inc. v. Perkins,* 947 S.W.2d 421 (Ky. App. 1997). However, the only reference to the burden of proof in *Perkins* was the following sentence: "Since the fact-finder found in favor of Perkins who had the burden of proof, the standard of review on appeal is whether there was substantial evidence to support such a finding. *Wolf Creek Collieries v. Crum,* 673 S.W.2d 735, 736 (Ky. App. 1984)." We believe that this sentence did not indicate the claimant had the burden to prove that his treatment is work-related on a motion to reopen but instead was a recitation of the well-established standard of review as set forth in *Wolf Creek Collieries.* C & T also presents several unpublished opinions which indicate that the burden of proof is upon the claimant to show the medical expenses were work-related. However, we decline to consider those cases as persuasive. CR 76.28(4)(c). Thus, C & T had the burden of proof to show that Stolling's treatment was unreasonable and not work-related.

Slip Op. at 2.

Thus, Aramark had the burden of proof on all contested issues. Since Aramark was unsuccessful before the ALJ, the sole issue in this appeal is whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

> The claimant bears the burden of proof and risk of persuasion before the board. If he succeeds in his burden and an adverse party appeals to the circuit court, the question before the court is whether the decision of the board is supported by substantial evidence. On the other hand, if the claimant is unsuccessful before the board,

> and he himself appeals to the circuit court, the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor.

Id. at 735.

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). In other words, an unsuccessful party on appeal must prove that the ALJ's findings are unreasonable and, thus, clearly erroneous in light of the evidence in the record. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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).

As an initial matter, we note that in his October 16, 2020, decision, the ALJ did not resolve the issue of the work-relatedness of the medications in question. However, in his November 4, 2020, Order, the ALJ addressed work-relatedness or

causation by stating he found Dr. Potter's opinion on causation, reasonableness, and necessity persuasive. He concluded Dr. Potter's opinion is not entirely inconsistent with Dr. Jenkinson's opinion that Walters bending down to get clothes from the dryer was an exacerbation of a chronic condition. The ALJ defined Walters' chronic condition.

> On July 27, 2020, Dr. Potter responded to the following questions:
>
> 1. Are you offering medical treatment to Michelle Larose Walters for injuries sustained in a work-related incident which occurred on July 5, 2007? Yes.
>
> 2. Did you prescribe both Tramadol HCL 50 mg and Duloxetine HCL 60 mg for the treatment of the work-related incident which occurred on July 5, 2007? Yes
>
> 3. In your medical opinion, are both Tramadol HCL 50 mg and Duloxetine HCL 60 mg reasonable, necessary, and work-related medications prescribed for any medical consequence of the July 5, 2007 work-related incident? Yes.
>
> …
>
> 5. In your medical opinion, has Mrs. Walters demonstrated improvement in her activities of daily living and/or her work-related symptoms by taking the above medications as prescribed? Yes.
>
> 6. Do you believe Mrs. Walters would suffer unnecessary physical hardship and/or suffering should the above medications be discontinued by Order of the Administrative Law Judge? Yes.

Dr. Potter's opinions set forth in the July 27, 2020, questionnaire constitute substantial evidence supporting the ALJ's decision. His answers reflect he has treated Walters since July 2007. They also establish Dr. Potter prescribed Tramadol and Duloxetine for the treatment of her low back work injury and those medications are reasonable, necessary, and work-related. In his medical opinion, the

medications improved Walters' activities of daily living and alleviated her work-related symptoms. Finally, he concluded Walters would suffer unnecessarily if the medications were discontinued.

We find nothing in the record indicating at the time he completed the questionnaire, Dr. Potter was not aware of the June 2019 event and resulting treatment Walters underwent at Pikeville Medical Center. Dr. Potter answered the questions at least one year after Walters was treated at Pikeville Medical Center. Moreover, based on Walters' testimony that she shared her symptoms with Dr. Potter upon her visits, the ALJ could reasonably infer that Dr. Potter was aware of the June 2019 incident.

Walters' uncontroverted testimony also constitutes substantial evidence supporting the ALJ's decision. Walters' testimony reveals the medication she has taken for five years alleviates most of her symptoms renders her pain tolerable, and allows her to function on a somewhat normal level. According to Walters, she does not experience as much cramping, burning, or shooting pain in her legs, and she believes she could not function in the current manner without the medications. Walters' unchallenged testimony establishes the medications provide substantial relief from the effects of her work-related injuries. In our view, Walters' testimony, either standing alone or in concert with Dr. Potter's opinions, constitutes substantial evidence supporting the ALJ's determination that the use of Tramadol and Duloxetine is related to the work injury as well as medically reasonable and necessary treatment of the effects of the original work injury.

In Conley v. Super Services, LLC, 557 S.W.3d 917, 921-922 (Ky. 2018), the Kentucky Court of Appeals held:

> The ALJ determined that the proposed caudal epidural injection was not reasonable and necessary based upon Dr. Lewis's opinion that there was no evidence of improved functioning and no documentation that the injections resulted in any decrease in pain medication for any period. However, KRS 342.020(1) requires neither of these conclusions. "It is clear that KRS 342.020(1) places responsibility on the employer for payment of medical and nursing services that promote **cure and relief** from the effects of a work-related injury.... All that is required is that the services be for **cure and relief** of the effects of injury." *See Bevins Coal Co. v. Ramey*, 947 S.W.2d 55, 56 (Ky. 1997)(Emphasis added in original).
>
> Dr. Lewis's UR report indicates that he reviewed Dr. Gutti's April 7, 2017, progress note, which "highlights [that Conley] received greater than 50% relief of pain from the caudal epidural steroid injection in March. [He] reported good relief with the radicular component of pain and the residual pains were tolerable on medications." Prior to the injection, Conley had suffered intractable back pain despite his many medications according to Dr. Gutti's office notes, which Conley filed as evidence. We cannot consider or imagine any evidence more compelling that a procedure is reasonable and necessary for the "cure and relief from the effects of an injury" than one which actually affords relief from the devastating misery of intractable pain. We agree with Conley that the ALJ did not use the proper standard in denying the epidural injection, and to that extent, we vacate the Board's opinion.

The above language applies in the case *sub judice*, as Dr. Potter's questionnaire and Walters' testimony demonstrate that the medications are reasonable and necessary for the cure and relief from the effects of the injury as they afford substantial relief from multiple symptoms. Similarly, the ALJ could reasonably conclude from Dr. Potter's answers to the questionnaire and Walters'

testimony that without the medications Walters would be unable to function on a daily basis in a reasonably normal manner. As explained in National Pizza Co. v. Curry, supra, "the words in KRS 342.020(1) 'cure and relief' should be construed as 'cure and/or relief.'" Dr. Potter's opinions and Walters' testimony establish the medications in question provide substantial relief from the symptoms caused by the work injury.

The fact the questionnaire answered by Dr. Potter did not address the June 2019 incident and the resulting treatment merely went to the weight and credibility to be afforded Dr. Potter's opinions which is a matter to be decided exclusively within the ALJ's province as fact-finder. Paramount Foods v. Burkhart, 695 S.W.2d 418 (Ky. 1985). Hence, we find no error in the ALJ's reliance upon Dr. Potter's opinions.

Finally, we are unconvinced by Aramark's argument that Dr. Jenkinson related Tramadol and Duloxetine as treatment of the June 2019 event. Dr. Jenkinson's September 17, 2019, IME report, reveals he reviewed the June 20, 2019, record from Highlands Medical Center Emergency Department. He noted Walters presented with back pain and had provided a history that she believed she had blown out a disc in her low back while getting clothes out of the dryer. Further, Walters reported this had happened before, with burning in the low back into her hip and down her legs. He observed that the records revealed no neurologic abnormality and Walters was discharged with a diagnosis of degenerative disc disease/chronic back pain. Walters had informed Dr. Jenkinson that she had been under the care of her primary care physician, Dr. Potter, who had prescribed Cymbalta, Robaxin, and

Tramadol since 2011. He noted a review of Dr. Potter's records from May 24, 2011, through November 6, 2014, indicated he was Walters' primary care physician and prescribed medication for several diagnoses including chronic low back pain. According to Dr. Jenkinson, those records revealed Walters used "Tramadol for break-through pain and medication for depression." The Summary and Opinion section of his report contains the following:

> Ms. Walters reported an acute exacerbation which occurred when she was 'pulling laundry out of the dryer' in June 2019. She was seen in the emergency room where there was no neurologic abnormality but a CT scan reported a disc herniation/ extrusion at L4-5.
>
> …
>
> There was no objective neurologic deficit but the physical examination was characterized by non physiological signs including superficial tenderness and discrepancy in straight leg raise between the sitting and the supine position.

He answered specific questions particularly with regard to the event of June 2019. Dr. Jenkinson opined as follows:

> 1. What is your diagnosis of the patient's current condition?
>
> … It is conceivable that Ms. Walters may have had a **transient** exacerbation of her chronic complaints relative to the incident that is alleged to have occurred in June 2019. (Emphasis added).
>
> 2. Is any further treatment required to cure the injuries/conditions caused by the work-related injury? If so, please provide a recommended treatment outline.
>
> It is my opinion that Ms. Walters requires no further treatment relative to the injury that is alleged to have occurred on 07/05/2007.

> She has a stable one level lumbosacral fusion and there is no reason why her current complaints should be attributed to the L5-S1 disc herniation that is alleged to have occurred in 2007.
>
> 3. Has the employee reached MMI from this injury? If so, what, if any, permanent partial impairment would you assess?
>
> It is my opinion that Ms. Walters had already reached maximum medical improvement when she was released from the care of the neurosurgeon in 2011.

Dr. Jenkinson found there was no valid reason why a recent lumbar sprain or strain should be attributed to the injury of 2007. The above answers demonstrate Dr. Jenkinson believed the June 2019 event was at best a transient strain. Transient is defined by Webster's II New College Dictionary, 3rd Edition at Page 1198, as follows: "Lasting only a short time." Despite Aramark's position to the contrary, Dr. Jenkinson did not specifically address the reasonableness and necessity of Tramadol and Duloxetine. It was his position Walters required no further treatment for the July 5, 2007, injury. More importantly, he offered no opinion that Tramadol and Duloxetine were prescribed for the treatment of the June 2019 event. Rather, Dr. Jenkinson believed Walters may have had a transient exacerbation of her chronic complaints due to the incident alleged to have occurred in June 2019. Dr. Jenkinson's opinions do not relate the use of Tramadol and Duloxetine to the possible exacerbation arising from a recent lumbar strain or sprain.

That being the case, we find no error in the ALJ's conclusion Dr. Potter's opinion is not entirely inconsistent with Dr. Jenkinson's opinion indicating Walters bending down to get clothes from the dryer was an exacerbation of her

chronic condition which the ALJ defined as the work-related back injury necessitating two back surgeries.

Accordingly, since the ALJ's decision is supported by substantial evidence in the form of Dr. Potter's opinions and Walters' hearing testimony and the evidence does not compel a different conclusion, the October 16, 2020, Opinion and Order and the November 4, 2020, Order overruling the Petition for Reconsideration are **AFFIRMED**.

ALL CONCUR.

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