

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: February 1, 2019

CLAIM NO. 200888797

CENTIMARK

PETITIONER

VS.

**APPEAL FROM HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE**

CHRISTOPHER MIRANDA,  
MR. JOHN LESNIAK, CARETAKER/VENDOR  
And HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING**

\* \* \* \* \*

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

**RECHTER, Member.** Centimark/Cincinnati Flooring ("Centimark") appeals from the September 17, 2018 Opinion, Award and Order and the October 10, 2018 Order rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"). In this medical fee dispute, the ALJ found in Centimark's favor, and concluded Christopher

Miranda's caregiver is not entitled to vacation pay. Nonetheless, Centimark appeals to request that the claim be remanded to correct what it characterized as a misrepresentation of the original litigation of this claim. Because we find no error related to the actual issue before the ALJ, we affirm.

Miranda sustained a broken neck in a single car accident. He was rendered a quadriplegic, and currently resides in Lancaster, Kentucky. John Lesniak, Miranda's stepfather, has cared for him since the accident. The parties agreed on nearly all issues concerning this claim, except for the compensability of Lesniak's caregiver services.

In an October 11, 2013 Opinion, Hon. Edward Hays, Administrative Law Judge ("ALJ Hays") determined Lesniak's services are compensable. To determine the value of the services in which Lesniak had provided from the date of the accident until the date of the Opinion, ALJ Hays used the following formula: "\$17.50 per hour times a 40-hour work week is \$700 per week, multiplied by 52 weeks per year equals \$36,400 per year, multiplied by 5 years equals \$182,000." He determined \$17.50 per hour was the prevailing wage for home caregiver services in the area. Because a precise record of the hours worked was not available, ALJ Hays relied on testimony indicating Lesniak provided services for "at least" forty hours per week. The award was affirmed on appeal.

Centimark filed a motion to reopen after Lesniak requested "vacation pay." The ALJ determined Lesniak is not entitled to vacation pay, as he is not an employee of Centimark and there is no contract for services between Centimark and Lesniak. The ALJ then provided the following discussion:

Despite the defendant employer's suggestion to the contrary, ALJ Hays did not conclude simply that [Lesniak] would be entitled to \$1100 per week for the in-home care he provides, regardless of the number of hours worked. A review of his opinion reveals that ALJ Hays concluded the documentation submitted at the time he rendered his decision established Lesniak provided approximately 40 hours per week of care for Miranda which, based on prevailing wage for similar services of \$17.50 per hour, resulted in \$1100 per week as owing to Lesniak for the services he had already provided. ALJ Hays' opinion is not interpreted here as limiting Lesniak's ability to be paid for services provided to only 40 hours per week. Rather, it is interpreted to mean that Lesniak is entitled to \$17.50 per hour of services provided. Lesniak is free to submit a request for payment for services in excess of 40 hours per week and nothing in the 2013 Opinion would preclude such a claim.

The ALJ acknowledged the compensability of hours beyond forty per week was not an issue before him. Nonetheless, Centimark filed a petition for reconsideration requesting that the ALJ remove the above-quoted discussion from the Opinion, to avoid confusion in future litigation. By Order dated October 10, 2018, the ALJ denied Centimark's petition for reconsideration as a re-argument of the merits of the case.

On appeal, Centimark now requests this Board to direct the ALJ to remove the discussion from the Opinion. It notes ALJ Hays did not determine the compensability of future services provided by Lesniak, and asserts it has been "voluntarily" providing compensation for services since the date of the Opinion. During the litigation of this medical fee dispute, Centimark submitted evidence indicating the parties agreed to continue Lesniak's services and that he would be considered a vendor/independent contractor paid a weekly rate of \$1,100.00.

According to Centimark, this agreement did not take into consideration any specific number of hours to be worked weekly, and for the ALJ to state otherwise in the Opinion creates confusion in the event of future litigation.

The sole issue before the ALJ was Lesniak's entitlement to vacation pay. His conclusions in this regard have not been appealed. The ALJ's statements regarding the rate of payment for Lesniak's services, and his interpretation of ALJ Hays' Opinion, are irrelevant to the issue of vacation pay. As such, the statements were simply *dicta*. Even if we accept the ALJ's characterization of ALJ Hays' decision is erroneous, such is, at most, harmless error because there was no dispute before the ALJ regarding the amount of the payments for services rendered by Lesniak.

To the extent Centimark is requesting this Board to interpret ALJ Hays' Opinion or to determine the correct hourly rate at which Lesniak must be compensated, we decline. Any discussion by this Board would amount to an advisory opinion on a matter that does not currently constitute an actual controversy. There being no misstatement concerning the actual issue before the ALJ concerning vacation pay, the decision will not be disturbed.

Accordingly, the September 17, 2018 Opinion, Award and Order and the October 10, 2018 Order rendered by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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