

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 1, 2020

CLAIM NO. 201695119

CONIFER HEALTH

PETITIONER

VS. APPEAL FROM HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE

FRIEDA SINGLETON;
DR. DONNA BETZ;
DR. KEVIN HARRELD; AND
HON. CHRISTINA D. HAJJAR,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. Conifer Health (“Conifer”) appeals from the January 22, 2020 Medical Dispute Opinion and Order, and the February 20, 2020 Order rendered by Hon. Christina D. Hajjar, Administrative Law Judge (“ALJ”). The ALJ found a contested total shoulder arthroplasty compensable. On appeal, Conifer

argues the ALJ misinterpreted the testimony of Dr. Ronald Burgess in determining the shoulder surgery is causally related to the work event. We affirm.

By agreement approved July 26, 2018, Frieda Singleton (“Singleton”) settled her claim for a February 5, 2016 right shoulder injury for which she received permanent partial disability (“PPD”) benefits and retained the right to receive medical treatment pursuant to KRS 342.020.

Conifer filed a Form 112 Medical Dispute and concurrent Motion to Reopen on March 14, 2019 to contest pain management/platelet rich plasma injections recommended by Dr. Kevin Harreld as not reasonable, necessary, or related to the work injury. Conifer filed a second Form 112 on June 3, 2019 contesting treatment with Lidocaine patches and Tramadol by Dr. Donna Betz. Conifer filed a third medical dispute on June 11, 2019 contesting the reasonableness, necessity, and work-relatedness of a total shoulder replacement recommended by Dr. Harreld. At the Final Hearing, the parties agreed the only remaining issue for determination was the reasonableness and necessity of the shoulder replacement.

Singleton testified at the hearing held December 2, 2019. She stated she injured her right shoulder in a motor vehicle accident (“MVA”) while working. She underwent surgery, but her pain soon returned. She had injections, and used pain patches and pain medicine for approximately three years. A total shoulder replacement was recommended. She did not want to undergo the surgery at the age of 52 and wanted to get Dr. Harreld to delay it. He recommended platelet rich plasma injections in lieu of surgery, which Conifer never approved. Thereafter, she took more pain medicine, underwent more therapy, and her doctor again

recommended the total shoulder replacement. She improved after the surgery and is working full time without restrictions. Singleton is no longer taking any medication, nor does she need additional injections since the surgery. Singleton testified she did not have any shoulder problems until she was in the MVA. She acknowledged she had shoulder surgery 17 years ago, but had no problems afterward until the work-related MVA.

Dr. Andrew Duffee saw Singleton on June 4, 2018. He noted a history of a labral repair by Dr. Caborn 13 years prior, after which Singleton did very well and returned to work without residuals. Dr. Duffee performed a subacromial decompression and debridement with foreign body removal in 2016 following a MVA. Singleton had cortisone injections in November 2017 and March 2018. Dr. Duffee noted Singleton continues to have pain with limitations in range of motion.

Dr. Harreld saw Singleton on May 24, 2019. Dr. Harreld diagnosed osteoarthritis of the right glenohumeral joint. He noted plain film radiographs demonstrate a large osteophyte forming on the inferior aspect of the humeral head. Because conservative management had failed, he recommended proceeding with the right shoulder arthroplasty. Dr. Harreld performed the replacement surgery on June 27, 2019.

Dr. James W. Depuy conducted a utilization review on February 20, 2019. Dr. Depuy diagnosed right shoulder pain secondary to glenohumeral osteoarthritis of the shoulder. He noted medical records reveal that, on examination, range of motion was limited by pain to 125 degrees of forward flexion and to 15 on internal rotation and only 25 degrees of extension and rotation. Dr. Depuy found a

platelet rich plasma injection of the right shoulder is not medically necessary. He noted the medical literature does not support shoulder joint injections as proven treatment for osteoarthritis.

Dr. Michael Day conducted a utilization review on May 29, 2019. He concluded Lidocaine patches and Tramadol are not medically necessary.

Dr. Jeffrey S. Schiffman conducted a utilization review on June 6, 2019, and found the right shoulder replacement is not medically necessary. Dr. Schiffman stated there is not sufficient documentation of the severity of the glenohumeral osteoarthritis or the loss of joint space to meet the guidelines for replacement.

Dr. Ronald Burgess performed an independent medical examination (“IME”) on May 15, 2019. Dr. Burgess felt the primary cause of Singleton’s complaints is osteoarthritis of the right shoulder with progression since her injury on February 5, 2016. He felt the cause was pre-existing labral tear along with natural aging process exacerbated by the trauma of the MVA. Dr. Burgess diagnosed osteoarthritis of the right glenohumeral joint. Dr. Burgess felt her current treatment has been reasonable, necessary, and related to the exacerbation of her osteoarthritis by the February 5, 2016 MVA, but no further treatment is necessary. Dr. Burgess stated Singleton does have advanced osteoarthritis and it is possible she would be a candidate for a total shoulder replacement in the remote future, preferably after age 65.

In a June 13, 2019 supplemental report, Dr. Burgess indicated he had reviewed the Dr. Harreld’s May 24, 2019 report. Based on the radiographic evidence

and Dr. Harreld's notes stating the shoulder pain is not responsive to conservative care and interfering with daily activities, Dr. Burgess agreed Singleton was a candidate for a total right shoulder replacement. However, Dr. Burgess felt the surgery was related to the prior, non-work-related, previously active condition of the right shoulder. Dr. Burgess felt the work injury exacerbated the discomfort in her glenohumeral joint arthritis without increasing its severity.

Dr. Burgess testified by deposition on August 21, 2019. Dr. Burgess noted MRIs completed after the accident did not show any acute change other than evidence of the prior surgery. There were no rotator cuff tears or additional labral tears. He noted significant chondromalacia was found during the surgery. Dr. Burgess felt those changes, exacerbated by the accident, caused her pain. Dr. Burgess believed that Singleton would have required a total shoulder replacement at some point even if the accident had not occurred. The accident did not increase the severity of the glenohumeral joint arthritis.

The ALJ's findings relevant to this appeal are as follows:

In *McNutt Construction/First General Services v. Scott*, 40 SW3d 854 (Ky. 2001), the Kentucky Supreme Court held where work-related trauma causes a dormant degenerative condition to become disabling and to result in a functional impairment, the trauma is the proximate cause of the harmful change; hence, the harmful change comes within the definition of an injury.

In *Derr Constr. Co. v. Bennett*, the court addressed whether a surgery was work-related despite the fact that it was recognized as a possibility for the claimant's pre-existing arthritic knee condition before the work injury occurred. The court stated:

Regardless of whether future knee implant surgery had been recognized as an

eventuality before the incident of October, 1989, there was testimony that the incident had hastened the date on which the surgery would be required. Therefore, although it might seem harsh on the facts of this case to impose liability for future medical expenses necessitated by claimant's arthritic condition on this employer, it has been determined that work done for the employer contributed, at least to some degree, both to the condition and to claimant's resulting disability. Under such circumstances, where work has caused the disabling condition, the resulting medical expenses ought to be borne by the workers' compensation system. See Larson, Workmen's Compensation Law, § 96.70.

This theory is embodied in the language of KRS 342.020. Because KRS 342.020 does not exempt an employer from liability for any portion of a worker's medical expenses in those instances where the work-related injury constitutes a progression or worsening of a prior, active work-related condition, we hold that the employer is responsible for the medical expenses necessary for the cure and relief of the arthritic condition in claimant's knees.

Derr Const. Co. v. Bennett, 873 S.W.2d 824, 827–28 (Ky. 1994).

Although Dr. Burgess attributed the need for surgery to Singleton's pre-existing labral tear along with the natural aging process, he also stated her condition was exacerbated by the trauma of the motor vehicle accident. This ALJ was convinced by Singleton's testimony and by Dr. Burgess that she had a pre-existing condition which was dormant until the work-related motor vehicle accident in 2016 caused her condition to become active and disabling. Following her surgery in 2016, she continued to have complaints which lead to Dr. Harreld's recommendation for the total shoulder

replacement. Although the surgery may have been needed eventually due to her pre-existing dormant condition, Dr. Burgess agreed the work injury exacerbated her discomfort, and that she was a candidate for the total shoulder replacement because her shoulder pain was not responsive to conservative care and was interfering with her daily activities. Thus, this ALJ finds the need for surgery arose due to the work injury.

This ALJ was also convinced by Dr. Harreld and Dr. Burgess the surgery was reasonable and necessary. Thus, this ALJ finds the total shoulder replacement is compensable.

Conifer filed a petition for reconsideration making the same arguments it raises on appeal. The ALJ provided the following additional findings on reconsideration:

Defendant argues the *Derr Const. Co. v. Bennett*, 873 S.W.2d 824 (Ky. 1994), is distinguishable, because there was testimony that the incident had hastened the date on which the surgery would be required, and there was no such opinion in this case. However, this ALJ found it significant that the injury itself exacerbated Singleton's pre-existing and dormant condition, and the reason the shoulder surgery was recommended was due to Singleton's continuing complaints of pain following her surgery in 2016.

The point of referring to the *Derr* case was to show that employers are responsible for medical expenses if it is determined that the work injury contributed at least to some degree to the need for surgery, even if the surgery is already a possibility due to a pre-existing condition.

Singleton testified she had no pain prior to the injury. In his first report, Dr. Burgess initially stated the surgery would be needed eventually, possibly after the age of 65. However, in his second report, he agreed she was a candidate due to the radiographic evidence and Dr. Harreld's notes indicating her pain is not responsive to conservative care and was interfering with her daily

activities. Dr. Burgess noted her arthritic changes were exacerbated by the accident and were the cause of her pain.

Thus, this ALJ found the accident caused her pre-existing dormant condition to become active, and at the very least, contributed to her pain. The arthritic changes and the pain were why Dr. Burgess felt she was a candidate for the surgery, and why Dr. Harreld recommended the surgery. Thus, this ALJ finds the pain from the injury contributed to her need for surgery, and thus, the surgery is compensable.

On appeal, Conifer argues the ALJ misinterpreted the testimony of Dr. Burgess. Conifer notes Dr. Burgess acknowledged Singleton would have likely required surgery regardless of the MVA, but he offered no opinion that the accident hastened the need for surgery. Conifer argues a total shoulder arthroplasty was an eventuality for Singleton, but there is no evidence the MVA contributed to or hastened that eventuality. Conifer argues Singleton had a positive outcome from her surgery following the accident. Although she complained of right shoulder pain, there is nothing to indicate that her symptoms specifically relate to the MVA, rather than the general progression of her osteoarthritis. Moreover, on June 22, 2018, Dr. Duffee diagnosed Singleton with "glenohumeral arthritic changes with decreased articular cartilage on the glenoid and humeral head. Mild acromial clavicular joint changes." Conifer asserts Singleton failed to present any evidence, beyond her own testimony, causally relating her condition to the work incident. Therefore, because Singleton failed to meet her burden, Conifer argues the medical fee dispute must be resolved in its favor.

In a post-award medical fee dispute, the employer bears the burden of establishing the requested medical treatment is neither reasonable or necessary, nor causally related to the work injury.

As the fact-finder, the ALJ has the sole authority to determine the weight, credibility, and substance of the evidence. Square D Co. V Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ 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 party's total proof. Magic Coal Co. V Fox, 19 S.W.3d 88 (Ky. 2000). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v Beth Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

The record contains substantial evidence supporting the ALJ's determination. The ALJ was convinced by Singleton's testimony and by Dr. Burgess' opinion that she had a pre-existing condition which was dormant until the work-related 2016 MVA causing her condition to become active and disabling. Although Singleton underwent an arthroscopic labral repair in 2003, there is no evidence her shoulder condition was symptomatic, or that shoulder replacement was anticipated prior to the work-related MVA. Singleton's testimony that she was not having problems with her shoulder prior to the MVA is supported by the evidence. The arousal of a pre-existing dormant condition into disabling reality by a work

injury has been determined compensable. In Finley v. DBM Technologies, 217 S.W.3d 261, the Court of Appeals held a pre-existing condition is deemed active, and therefore not compensable, if it is symptomatic and impairment ratable pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment, immediately prior to the occurrence of the work-related injury. Moreover, as an affirmative defense, the burden to prove the existence of a pre-existing active condition falls on the employer. Id. at 265.

The crucial question in this case is not whether arthritis was present in the shoulder prior to the work injury, but whether Singleton would have required surgery at the time of the recommendation by Dr. Harreld if there had been no contribution by the work-related injury. Even in situations involving pre-existing conditions, surgery is compensable if a work injury hastens the need for the surgery. Derr Construction Co. v. Bennett, 873 S.W.3d 824 (Ky. 1994). In his May 15, 2019 IME report, Dr. Burgess stated the medical treatment up to that date was reasonable, necessary, and related to the exacerbation of her osteoarthritis by the February 5, 2016 MVA. Dr. Burgess agreed the MVA exacerbated her pain. Dr. Harreld recommended replacement surgery based upon the painful shoulder condition caused by the MVA. The ALJ could reasonably conclude the need for surgery relates to the exacerbation of shoulder pain caused by the MVA. Having determined Singleton's work-related injury contributed to her current condition requiring surgery, the law requires the employer to bear the cost of treatment.

The ALJ clearly accurately understood the opinions of Dr. Burgess as evidenced by her statement, "Although Dr. Burgess attributed the need for surgery to

Singleton’s pre-existing labral tear along with the natural aging process, he also stated her condition was exacerbated by the trauma of the motor vehicle accident.”

While Conifer has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within her discretion to determine which evidence to rely upon, and it cannot be said the ALJ’s conclusions are so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the January 22, 2019 Medical Dispute Opinion and Order, and the February 20, 2019 Order rendered by Hon. Christina D. Hajjar, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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