Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 7, 2022

CLAIM NO. 200365045

CONNIE WALLING (PRO SE) PETITIONER

VS. **APPEAL FROM HON. JOHN H. MCCRACKEN, ADMINISTRATIVE LAW JUDGE**

SENIOR CARE and
HON. JOHN H. MCCRACKEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. Connie Walling, *pro se* ("Walling") appeals from the January 28, 2022[1] Medical Dispute Opinion and Order rendered by Hon. John H. McCracken, Administrative Law Judge ("ALJ") resolving a medical dispute filed by Senior Care, LLC ("Senior Care"). The ALJ found Walling's referral for treatment

[1] Although the ALJ's decision is dated January 28, 2021, we note the Department of Workers' Claims Litigation Management System reflects it was actually issued on January 28, 2022.

with Dr. Steven Bailey, including surgery related to ossification of the posterior longitudinal ligaments ("PLL"), is not compensable. Walling did not file a Petition for Reconsideration. If a Petition for Reconsideration is not filed, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if substantial evidence supports the ALJ's conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, on appeal, we must determine whether substantial evidence supports the ALJ's decision.

On appeal, Walling argues the ALJ erred in finding her referral to Dr. Bailey, as well as the 2021 surgery, is not compensable. Walling argues the surgery was related to her 2003 work injury, and her condition has continued to worsen since that event. She argues Dr. Timothy Kriss never saw her, and his findings are inaccurate. She likewise argues Dr. Daniel Wolens never saw her, and his opinions should not be considered. Because we determine the ALJ provided an appropriate analysis, his determination is supported by substantial evidence, and he appropriately exercised his discretion, we affirm.

No Form 101 was ever filed. A Form 110-I settling Walling's claim was approved by Hon. Grant S. Roark, Administrative Law Judge, on August 18, 2006. The settlement agreement reflects Walling is a resident of Erlanger, Kentucky. She sustained a cervical injury while working for Senior Care on June 18, 2003. She underwent cervical fusion surgery and diskectomies at C5-C6 and C6-C7. At the time the claim was settled, $40,296.16 had been paid in medical benefits. Walling's income benefits were settled for a lump sum payment of $86,087.15.

Walling filed a Motion to Reopen her claim on October 15, 2007, ostensibly based upon newly discovered evidence, for treatment, including an arteriogram. Hon. Joseph Justice, Administrative Law Judge, entered an Opinion Dismissing finding in Senior Care's favor.

Senior Care filed a Motion to Reopen on November 13, 2010, challenging requests for treatment for dysphonia, a soft cervical collar, and a hospital bed. Hon. J. Landon Overfield, Chief Administrative Law Judge, found the challenged treatment non-compensable in an Order issued February 14, 2011.

On June 21, 2013, Senior Care filed a Motion to Reopen to challenge treatment with compound cream prescribed by Dr. John Kelly. On October 23, 2013, Hon. Douglas W. Gott, Administrative Law Judge, entered an Opinion and Order finding the recommended treatment with compound cream was not reasonable or necessary, and he therefore determined such treatment was non-compensable.

On July 20, 2020, Senior Care filed a Motion to Reopen to challenge treatment for PLL ossification. In support of the medical dispute, Senior Care filed Dr. Wolens' June 25, 2020 medical consultation report. Dr. Wolens indicated PLL ossification is generally idiopathic. He additionally stated genetic factors predominate the development of this condition.

The claim was assigned to the ALJ for resolution. On August 24, 2020, the ALJ determined Senior Care had established a *prima facie* case for reopening, and a telephonic conference was held on September 8, 2020.

Walling testified at the hearing held December 1, 2021. The hearing pertained to the referral for surgery, the diagnosis and compensability of the PLL condition, and the compensability of expenses related to the April 2021 surgery. Walling underwent surgery on April 30, 2021, and she wore a neck brace afterward until July 2021. She had physical therapy at the Mayfield Clinic until she was released to do the exercises at home. She uses a heating pad and ice packs alternating every twenty minutes. She also continues to take medication. She no longer treats with Dr. Bailey. She returned to treat with Dr. Ken Hansen's office, and she also treats with interventional pain specialists.

In addition to Dr. Wolen's report, Dr. Kriss performed a records review, and generated a report at Senior Care's request dated October 31, 2021. Dr. Kriss reviewed multiple records from physicians and facilities. He noted the June 18, 2003 history of Walling working as a CNA and attempting to catch a falling patient who grabbed and pulled her. Walling did not respond well to conservative treatment, and she underwent discectomy/fusion surgery at C5-C6 and C6-C7 in December 2003. Walling never returned to work after the accident. Dr. Kriss diagnosed Walling with a persistent cervical muscle strain from the June 2003 work accident. He also diagnosed degenerative disc disease, spondylosis, osteoarthritis, and profound deconditioning. He also noted her conditions are related to genetics, smoking, and chronic muscle tension from severe chronic anxiety, depression, panic disorder, and post-traumatic stress disorder unrelated to the 2003 work injury. He noted a history of the long-term wearing of a cervical collar which promotes deconditioning. He noted her current problems are due to issues at C3-C5 and C7-

T1, not to C5-C6 and C6-C7 since any ligament affecting those areas was removed in 2003. Dr. Kriss determined the April 30, 2021 surgery is completely unrelated to the June, 18, 2003 work accident and the December 2003 surgery. He found the April 2021 surgery was reasonable and necessary, but it is unrelated to Walling's work injury. He also noted Walling is taking a significant amount of Fentanyl, Oxycodone, and Valium. He recommended she engage in long-term home exercise, stretching, and traction. He also recommended smoking cessation, only taking non-steroidal anti-inflammatory medication along with intermittently progressive anti-depressants, and physical therapy. He also recommended she cease using a neck brace.

Senior Care also filed a record from Dr. Bailey dated March 22, 2021, indicating it is unclear regarding how much of Walling's gait is due to her cervical stenosis and myelopathy. He noted her complaints/condition are complicated by anxiety and her psychiatric diagnoses. He noted there is no connection between her pathology and the 2003 work injury.

Walling filed an October 7, 2020 letter from Lisa Stroud, APRN, and Dr. Hansen indicating she continues to suffer from chronic neck pain radiating down her left arm to her hand due to the June 18, 2003 work injury. The letter indicates Walling has continuing weakness, numbness, severe left arm tremor, and problems with fine motor function. The letter also indicates an MRI demonstrated a worsening of her condition. A consult with Dr. Bailey, her surgeon, was recommended to address the worsening of her condition, her headaches, and the possibility of surgery.

On January 3, 2022, Walling filed 37 pages of medical documents, including a letter from Roy Mendell, R.N., her uncle, dated December 4, 2021. She also included a letter from Dr. Bruce Snider, her psychiatrist, and records from Dr. Charles Roberts. She had previously filed 172 pages of medical records from various providers beginning in 2003.

A Benefit Review Conference was held on November 16, 2021. The issue preserved for determination included referral by Dr. Roberts for a surgical consult, and the related diagnosis of PLL ossification within the cervical spine, and whether it is related to the 2003 work injury.

In the January 28, 2022 Medical Dispute Opinion and Order, the ALJ, relying upon the opinions of Drs. Bailey, Wolens, and Kriss, found the referral for treatment related to the ossification of the PLLs and the April 30, 2021 surgery are not related to Walling's 2003 work injury and are therefore not compensable as work-related medical expenses. The ALJ specifically notes as follows:

> The ALJ reviewed the proof filed by the parties to the motion to reopen and considered it in the context of that in a post-award medical fee dispute, the employer has the burden of proving that contested medical treatment is not reasonable or necessary for the cure and relief of a work injury. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App. 1991). However, the burden of proving work relatedness and causation remains with the claimant. R.J. Corman R.R. Construction Company v. Haddix, 864 S.W. 2d 915 (Ky. 1993).

Walling now appeals from the ALJ's January 22, 2022 Medical Dispute Opinion and Order. She argues the ALJ erred in determining the medical treatment is non-compensable. She argues Dr. Kriss' report, along with any opinion

expressed by Dr. Wolens is unreliable, and essentially cannot constitute substantial evidence supporting the ALJ's determinations.

Walling seeks this Board to substitute its judgment for that of the ALJ, which we cannot do. She argues the medical reports relied upon by the ALJ do not arise to the level of substantial evidence. In this reopening for a medical dispute, Senior Care bore the burden of proof and was successful before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). In order to prevail on her appeal, Walling must demonstrate the evidence compels a different result. For evidence to be compelling, it must be so overwhelming that no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. 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). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977).

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). Further, as stated in Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986):

> If the fact finder finds against the person with the burden of proof, his burden on appeal is infinitely greater. It is of no avail in such a case to show that there was some evidence of substance which would have justified a finding in his favor. He must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled "clearly erroneous" if it reasonably could have been made.

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whitaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). As long as the ALJ's ruling regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

In this instance, the ALJ was presented with conflicting medical opinions as to the cause of Walling's symptoms, the referral to Dr. Bailey, and the need for additional surgery. When the question of causation, reasonableness, and necessity involves a medical relationship not apparent to a layperson, the issue is properly within the province of medical experts. Mengel v. Hawaiian-Tropic

Northwest and Central Distributors, Inc., 618 S.W.2d 184, 186-187 (Ky. App. 1981). Medical causation must be proven by medical opinion within "reasonable medical probability." Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work-related causation is insufficient. Pierce v. Kentucky Galvanizing Co., Inc., 606 S.W.2d 165 (Ky. App. 1980). The ALJ is entitled to pick and choose among conflicting medical opinions. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977).

We find substantial evidence supports the ALJ's determination that Walling's need for the 2021 surgery and the PLL condition are not work-related. The evidence supports the ALJ's determination that the treatment referral and contested procedures are therefore not compensable. A contrary result is not compelled. The ALJ reviewed the entirety of the medical evidence filed in the record. He was confronted with the conflicting opinions and chose to rely upon those expressed by Drs. Bailey, Wolens, and Kriss. Accordingly, based on the entirety of the evidence reviewed, the ALJ determined Walling's current condition and the need for the 2021 surgery is not due to the 2003 work injury, and is therefore not compensable. The medical opinions relied upon by the ALJ constitute substantial evidence supporting his determination.

We note authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence to apprise the parties of the basis for a decision, and he or she is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of her reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634

S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). In this instance, the ALJ sufficiently outlined the evidence upon which he relied in reaching his determination.

The ALJ adequately considered the evidence of record and explained his reasons for relying upon the opinions expressed by Drs. Bailey, Wolens, and Kriss. These are findings of fact upon which this Board cannot superimpose its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Miller v. Go Hire Emp. Dev., Inc., 473 S.W.3d 621, 629 (Ky. App. 2015). When the medical evidence is conflicting, the question of which evidence to believe is the exclusive province of the ALJ. Square D Co. v. Tipton, supra, at 309. We find the ALJ adequately considered the evidence, provided a sufficient analysis, and a contrary result is not compelled.

Accordingly, the January 22, 2022 Medical Dispute Opinion and Order rendered by Hon. John H. McCracken, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

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