

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ORIGINALLY ENTERED: May 3, 2019

OPINION WITHDRAWN: May 9, 2019

OPINION RE-ENTERED: May 9, 2019

CLAIM NO. 199013466

DANNY M. CASTLE

PETITIONER

VS.

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

EAST KENTUCKY BEVERAGE CO., INC.,
DR. BALLARD WRIGHT
And HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. Danny Castle appeals from the December 3, 2018 Opinion and Order and the December 26, 2018 Order on Reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"). In a medical fee dispute, the ALJ

determined continued use of Percocet and Fentanyl is unreasonable and unnecessary, and ordered Castle to wean from these medications. On appeal, Castle argues the ALJ used an improper standard to determine reasonableness, and the decision is not supported by substantial evidence. We affirm.

Castle sustained a low back injury and a psychological injury on March 2, 1990 and was awarded permanent partial disability benefits based on a 60% occupational disability. Castle reopened the claim and was found permanently totally disabled in a decision rendered on June 25, 2001. East Kentucky Beverage Company filed this medical fee dispute to contest the reasonableness and necessity of prescriptions for Percocet and Fentanyl patches.

Castle testified at the hearing held October 2, 2018. He described a period when his Fentanyl dosage was tapered, and his back pain increased. As a result, he took more Percocet to control his pain. Even with the increased Percocet, however, his pain was not well controlled. Castle felt his pain would be unbearable if he is denied both Fentanyl and Percocet.

Dr. Waldtraut Jedamski performed a utilization review on November 1, 2017. He stated current treatment guidelines recommend against the chronic daily use of opioids. Before they are so utilized, there should be risk assessment for appropriateness and optimization of non-opioid analgesic treatments. Dr. Jedamski noted Castle “is at high risk, not adequately explained; there is minimal improvement in functionality, objective evidence of functional improvement not shown.” He also cited current treatment guidelines which recommend prescribed opioids not exceed more than 50-100 morphine equivalent dosage (“MED”) and Castle has been at 210

MED. Additionally, Castle's age greatly increases the chances for morbidity and mortality. Dr. Jedamski concluded continued use of Percocet and Fentanyl is not reasonable or necessary, and Castle should be weaned.

Dr. Lauren Larson of The Pain Treatment Center of the Bluegrass treats Castle for his pain. As of December 15, 2017, Dr. Larson noted she has been decreasing Castle's pain medications according to Center for Disease Control treatment guidelines, but he barely tolerated decreasing Fentanyl from 75 mcg to 50 mcg. In a treatment plan on June 14, 2018, Dr. Larson prescribed Fentanyl 25 mcg/hr. patch, Percocet 10-325 mg and Klonopin 1 mg. She indicated the benefit of the regimen is "decreased pain, increase daily function." In her last treatment note on October 18, 2018, Dr. Larson noted Castle complained of constant low back pain that has increased since his last office visit. He reported the current level of medication is not controlling his pain as it was before the medication was decreased.

Dr. Paul Harries performed an independent medical evaluation ("IME") on May 11, 2018. His examination was "very benign" with pain-free, normal lumbar range of motion and gait. Dr. Harries found no evidence of a physical disorder requiring high-dose opioids, and noted the apparent lack of functional benefit to Castle. When weighed against the established risks of long-term opioid use, Dr. Harries concluded there is no physical reason for Castle to continue. He suspected Castle's perceived need for opioids is based purely on pre-existing psychological factors. Dr. Harries concluded Castle should be weaned off all opioids, including Fentanyl, as soon as practicable. Dr. Harries further stated Percocet was not necessary for the cure or relief of symptoms related to the work injury.

Dr. Avrom Gart performed a utilization review on September 14, 2018.

Dr. Gart's views concerning medical guidelines and the use of narcotic medications in Castle's care were consistent with the views expressed by Dr. Jedamski. At the time Dr. Gart reviewed Castle's case, his Fentanyl dose had been reduced. Dr. Gart recommended one refill for continued weaning purposes and one refill of a generic to complete weaning from Percocet.

The ALJ found as follows:

In this medical dispute, the defendant employer relies on its experts to argue that plaintiff's prescriptions for Percocet and fentanyl are not reasonable and necessary and should be weaned to discontinue. Dr. Jedamski explained that opioid medications such as that prescribed to plaintiff is not intended for chronic use. Given plaintiff's age and his significant dosage, far exceeding the ODG treatment guidelines of 50-100mcg MED, there is significant risk of morbidity and mortality by continuing plaintiff on these medications. Moreover, he explained chronic use of opioids is not proven effective in treating chronic pain such as that of which plaintiff complains.

For his part, plaintiff relies on his own testimony and Dr. Larson's statements on his behalf. He argues the disputed medications are necessary for treating his chronic pain and that his pain will be unbearable without these medications.

Having reviewed the evidence of record, the Administrative Law Judge is persuaded from the totality of evidence that plaintiff's continued use of Percocet and Fentanyl are not reasonable and necessary. In reaching this conclusion, the ALJ notes that plaintiff testified he has been treating with Dr. Ballard's office for over 20 years. In all that time, the treatment has not provided significant relief of plaintiff's symptoms. Dr. Jedamski and Dr. Harries provided persuasive explanations as to how continued use of opioids can be especially risky for plaintiff. Based on their credible opinions, it is determined that this medical dispute is resolved in favor of the defendant employer and it shall not be responsible for

payment of fentanyl or Percocet after appropriate periods of weaning for each medication.

Castle filed a petition for reconsideration making the same arguments he raises on appeal, which was denied. On appeal, Castle argues the ALJ applied an improper standard in deciding the dispute. The ALJ noted Castle's testimony that Dr. Ballard's treatment had not "provided significant relief" in over twenty years. According to Castle, this statement is factually wrong, but also indicates an improper standard was applied because he is not required to establish contested treatment provides a cure or an increase in function. It is only necessary to show the treatment provides a substantial benefit. Castle emphasizes the two prior medical disputes contain evidence he received benefit from the medications, and those disputes determined the contested expenses were reasonable and necessary.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity of medical treatment falls on the employer. National Pizza Co. v. Curry, 802 S.W.2d 949, 950 (Ky. Ct. App. 1991). When the decision of the ALJ favors the party with the burden of proof, the issue on appeal is whether substantial evidence supports the ALJ's conclusion. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986). Substantial evidence has been defined as evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). Although an opposing party may note evidence that would have supported 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).

The words “cure and relief” in KRS 342.020(1) should be construed as “cure and/or relief.” Curry, 802 S.W.2d at 950. Treatment shown to be unproductive or outside the type generally accepted by the medical profession as reasonable in the injured worker's particular case is non-compensable. Square D. Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Here, the ALJ did not confine his analysis to whether the contested treatment cured Castle’s condition. Rather, he based his determination on whether the opioid medications provided a reasonable benefit, medical opinions concerning long-term use of narcotics, and the potential risks of continued use. These are proper factors for the ALJ to consider.

The opinions of Drs. Jedamski and Harries constitute substantial evidence supporting the ALJ’s determination. Their opinions were based upon accepted medical guidelines concerning the long-term use of narcotics, and are substantial evidence concerning whether the contested prescriptions are within the type of treatment generally accepted by the medical profession as reasonable. Citing medical guidelines discouraging use of narcotics for treatment of chronic pain, especially in high doses, Dr. Jedamski specifically stated the use of narcotics is not reasonable for Castle’s treatment. Likewise, Dr. Harries noted high dosages of opioids dramatically increase the risk of death or other complications. He noted Castle has taken opioids for years but has a low level of functioning and has never been able to return to work. Dr. Harries concluded these circumstances advise against the long-term use of opioids in high dosages.

Castle's reliance on prior medical fee disputes concerning the same prescriptions is unavailing. First, we note medical benefits necessarily relate to an employee's evolving physical condition, and a prior decision, even concerning the same medications, does not dictate a particular result in later medical fee disputes. More specifically related to the proof in this dispute, Dr. Harries explained the understanding of opioids has changed dramatically in recent years. Thus, what may have been accepted use in the past may no longer be considered acceptable today. The ALJ was not bound by any factual findings or conclusions contained in earlier medical fee disputes, nor was he required to accept Castle's assertion that the contested medications provide him significant relief.

While Castle has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within his 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 December 3, 2018 Opinion and Order and the December 26, 2018 Order rendered by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED**.

The original Opinion dated May 3, 2019 incorrectly listed Hon. Grant S. Coleman as the Administrative Law Judge in the style. The correct Administrative Law Judge is Hon. Grant S. Roark. No other changes were made to this Opinion.

ALL CONCUR.

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