

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 24, 2022

CLAIM NO. 201956280

DERRICK SHEPHERD

PETITIONER

VS. APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

BOBBY HAMILTON,
FLAGET MEMORIAL HOSPITAL,
ULP RADIOLOGICAL ASSOCIATES,
ULP ACB ORTHOPEDICS,
HON. STEPHANIE L. KINNEY
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

MILLER, Member. Derrick Shepherd (“Shepherd”) appeals from the December 29, 2021 Opinion and Order and the January 27, 2022 Order on Petition for Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law judge (“ALJ”). The ALJ found contested medical expenses compensable, resolving the medical dispute in Bobby Hamilton’s (“Hamilton”) favor.

BACKGROUND

Hamilton filed a Form 101 on March 22, 2021 after sustaining injuries to multiple body parts on November 5, 2019 while employed by Shepherd. On that date, Hamilton was moving sheetrock with a coworker when the sheets fell, landing on his left leg and ankle. He experienced a sudden onset of swelling in his left knee leading down to the ankle and he was transported to Flaget Memorial Hospital emergency department. X-rays were taken, which were positive for a displaced impacted left lateral tibial plateau fracture and a displaced left bimalleolar ankle fracture. Hamilton was transferred to the University of Louisville ER and Orthopedic where follow-up x-rays were taken.

Dr. Brandi Hartley performed an open reduction and internal fixation of the lateral tibial plateau and medial malleolus on Hamilton's left ankle on November 6, 2019. Dr. Hartley performed a follow up ankle debridement procedure on August 12, 2020. Hamilton continued treatment with Dr. Hartley's office until March 4, 2021, at which time she noted Hamilton's wound had healed.

Dr. Frank Burke performed an Independent Medical Evaluation ("IME") on March 11, 2021. Dr. Burke noted decreased range of motion, swelling, decreased sensation on the lateral calf, and a chronic limp. He assigned a 19% whole person impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides").

Dr. Lisa T. DeGnore performed an IME on June 18, 2021. She diagnosed Hamilton with a healed left tibial plateau fracture, mild lateral calf numbness, healed left ankle fracture with residual medial ankle scarring, mild

decreased range of motion, and mild to moderate venous stasis. Dr. DeGnore opined Hamilton had reached maximum medical improvement on March 4, 2021 and assigned a 9% impairment rating pursuant to the AMA Guides.

The parties settled all issues except the medical dispute involving the payment of medical bills set forth below.

Shepherd contests the following medical bill: (1) a bill from Flaget Memorial Hospital for a date of service on November 5, 2019, which was received on August 17, 2021; (2) a bill from ULP Radiological Associates for a date of service on November 7, 2019, which was received on March 9, 2020; and (3) bills from ULP ACB Orthopedics for dates of service on August 12, 2020, September 3, 2020, October 15, 2020, November 12, 2020, and December 3, 2020, which were received on February 23, 2021, and a bill dated March 4, 2021 that was received on August 24, 2021.

The ALJ resolved the medical dispute in favor of Hamilton stating:

The bills Shepherd contests were submitted prior to adjudication or resolution of the claim. Thus, as case law dictates, the time limits outlined in KRS 342.020 are not applicable.

On appeal, Shepherd solely argues KRS 342.020(4) mandates that medical bills must be submitted within 45 days of the treatment date. Shepherd is aware of prior Board decisions disposing of similar matters but requests we re-examine our prior interpretation of case law with respect to the 45-day rule. Following the reasoning in past decisions from this Board, the Kentucky Court of Appeals, and the Kentucky Supreme Court, we affirm.

ANALYSIS

The Board has consistently held the requirements of KRS 342.020(4) apply post-award. Recently, in the unpublished opinion, Cambrian Holding Company, Inc v. Sexton et. al., No. 2021-CA-0451-WC, 2021 WL 5856390 (Ky. Ct. App. Dec. 10, 2021), the Court of Appeals, citing Wonderfoil, Inc. v. Russell, 630 S.W.3d 706 (Ky. 2021), decided the requirements of KRS 342.020(4) do not apply until an award is entered. While not cited as authority, we find the analysis persuasive and therefore continue to adhere to prior Board decisions.

The Board held in Brown Pallet v. David Jones, Claim No. 2003-69633 (entered September 20, 2007), the reasoning of the Supreme Court in R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915, 918 (Ky. 1993) concerning the 30-day provision for payment of medical benefits should also apply to the 45-day rule for submission of medical bills. Both time limits in KRS 342.020(4) apply after an ALJ has issued an Order.

Recently, the Board in JAB Contracting, LLC v. Caudill, Claim No. 2019-99610 (entered May 20, 2022), again held the time limits imposed by KRS 342.020(4) for both the employee and employer apply post award. See also P&P Construction, Inc. v. Farley, Claim No. 2017-83257 (entered Feb. 25, 2022).

When the statute, KRS 342.020(4), and the administrative regulations, 803 KAR 25:010 Sec. (2)(e)7 and (2)(f) and 803 KAR 25:010 Sec 13(9)(a), are read as a whole, it makes complete sense that these requirements apply post award, be it interlocutory or final. Otherwise, the regulations stating time limits to provide known unpaid bills during litigation would be rendered meaningless.

There have now been several claims before the Board arguing that KRS 342.020(4) requires a medical provider to submit medical bills within 45 days from the date of treatment, even pre-litigation. The Board declines to alter from its previous analysis and determinations and maintains the dictates of KRS 342.020(4) apply after an Order is entered by the ALJ.

Accordingly, the December 29, 2021 Opinion and Order and the January 27, 2022 Order on Petition for Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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