

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 18, 2020

CLAIM NO. 201261305

DORIAN OWEN,
DR. MICHAEL GRASS, AND
VALLEY STATION CHIROPRACTIC

PETITIONERS

VS.

**APPEAL FROM HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE**

TARC AND
HON. BRENT E. DYE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Dorian Owen (“Owen”) appeals from the December 13, 2019 Opinion and Order rendered by Hon. Tonya Pullin, Administrative Law Judge (“ALJ”) resolving a medical dispute challenging the chiropractic treatment by Dr. Michael Grass in favor of TARC. Owen also appeals from the January 22, 2020

Order denying his Petition for Reconsideration rendered by Hon. Brent E. Dye, Administrative Law Judge (“ALJ Dye”).

On appeal, Owen argues the ALJ erroneously placed the burden of proof on him regarding whether the contested medical treatment was reasonable and necessary. Owen also argues the ALJ failed to sufficiently explain the basis for her findings. We determine the ALJ committed no error in placing the burden of proof on Owen since this was not a determination of a post-award medical fee dispute. We also determine the ALJ adequately explained the basis for her decision. Because the ALJ’s determination is supported by substantial evidence and a contrary result is not compelled, we affirm.

Owen filed a Form 101 on January 29, 2015 alleging he sustained injuries on two separate dates while working as a janitor for TARC. Owen alleged he first injured his low back, left hip, and left leg on October 2, 2012 while lifting a garbage can. Owen alleged he again injured his low back, left hip, and left leg on November 16, 2012 by pushing a wheeled bin while he was performing light duty. Owen subsequently filed another Form 101 alleging he injured his left upper extremity on January 29, 2016, when a cover panel fell onto his left arm. Since Dr. Grass relates all of his treatment to the October 2, 2012 or November 16, 2012 work injuries, we will not discuss the evidence involving the January 2015 left upper extremity injury.

While the underlying claim was pending, on August 30, 2018, TARC filed a medical fee dispute challenging ongoing chiropractic treatment provided by Dr. Grass. TARC noted it received the treatment records in April 2018 and

submitted them to utilization review. The records indicate Dr. Grass treated Owen for six years from 2012 to 2018. Dr. Grass was subsequently joined as a party.

The parties subsequently entered into settlement agreements for each of the three alleged dates of injury, all of which were approved by the ALJ on September 19, 2018. Each claim was settled for a lump sum amount, with Owen waiving his right to future medical benefits, vocational rehabilitation, and right to reopen. The settlement agreements state: **“past medical treatment of chiropractor remains disputed and will remain open for ALJ determination.”** (Emphasis added). The settlement agreements also noted, “Chiropractor Michael Grass, joined by TARC motion on 8/31/2018” as “Other responsible parties against whom further proceedings are reserved.”

Owen testified by deposition on July 27, 2016. He served in the Marine Corps for two and a half years in the 1980s. Owen began working for TARC in 1997, and worked as a janitor at all relevant times. At the time of the deposition, Owen still worked for TARC and continued to treat with Dr. Grass three times per week. Owen described the October 2012 and November 2012 work accidents and his symptoms of low back pain radiating into his left hip and leg. Owen stated the chiropractic treatment is helpful and he is “maintaining.” He credited Dr. Grass’ treatment as the reason he was able to return to work after his work injuries. Owen testified he missed some work following the October 2012 and November 2012 injuries, and missed approximately two weeks of work due to the January 2016 injury. He then returned to his regular job duties as a janitor without restrictions.

Owen testified he was able to perform his job, noting it was “very easy.” He complained of ongoing low back and left hip pain, and took Aleve twice a day.

Dr. Grass testified by deposition on January 29, 2019. His chiropractic practice is located in Louisville, Kentucky. He treated Owen for the October 2012 injury from November 2012 to September 2018. Dr. Grass indicated Owen did not follow the normal course of treatment, which typically consists of twenty-four visits. Dr. Grass stated he attempted to improve Owen’s condition so he could return to work. However, Owen continued to relapse and required additional ongoing treatment. His treatment consisted of chiropractic adjustments, spinal manipulation, exercise, and stretching. Dr. Grass indicated he continued to treat Owen for so long in order to “keep him working.” Dr. Grass could not recall if he referred Owen for a second opinion or to a back specialist. He opined Owen will require lumbar surgery at some point in the future.

Jill Grass (“Jill”), Dr. Grass’ wife, testified by deposition on August 20, 2019. Jill has worked for Valley Station Chiropractic since the summer of 2014 in billing and office management. Jill was responsible for preparing HCFA forms and bills. She then mailed the HCFAs with corresponding treatment notes and bills to the workers’ compensation insurer approximately every two to three weeks. Jill estimated Owen treated with Dr. Grass approximately 800 times between 2012 and September 2018. Jill acknowledged TARC paid for some of the treatment rendered by Dr. Grass, and the last payment was made in November 2013.

A chart titled “Balance Owed to Dr. Michael Grass for Services Rendered Per Fee Schedule” was entered as an exhibit. That document provided

summaries of the procedures and balances owed to Dr. Grass for services rendered from November 2012 to September 2018 pursuant to the fee schedule. The document reflects Dr. Grass is owed a balance of \$184,493.90 based on the fee schedule.

Toni Mazzoli (“Mazzoli”), the senior claims adjuster for Underwriters Safety and Claims, a third party administrator, testified by deposition on September 13, 2019. Mazzoli testified Dr. Grass was paid for treatment rendered to Owen until September 2013 based upon the fee schedule. Mazzoli testified she did not receive any bills from Dr. Grass after May 2014.

A hearing was held on October 24, 2019. Eric Lamb (“Lamb”), Owen’s attorney, testified at the hearing as “the custodian of records.” He submitted emails containing attachments of bills, records and HCFAs which were entered as exhibits. Those emails were sent to counsel for TARC on March 2, 2018 and March 8, 2019. Lamb agreed March 2019 is more than forty-five days after either September or October 2018.

Jill also testified at the hearing. She testified the types of records used at the practice are HCFAs, office notes, and bills. A chart entitled “Balance Owed to Dr. Michael Grass for Services Rendered Per Fee Schedule” was entered as an exhibit at the hearing, and was previously introduced into evidence at her deposition. The chart depicts the amount owed to Dr. Grass based on the fee schedule for his services rendered from November 27, 2012 to September 10, 2018. She testified TARC owes Dr. Grass \$184,493.90 for his services. The chart denotes TARC paid Dr. Grass for treatment administered in 2012 and 2013, in the amount of \$20,030.70.

Jill testified that according to her calculations, TARC's payments to Dr. Grass were lower than what the fee schedule mandated. Similar charts were also introduced as exhibits utilizing differing dates of service. Jill testified she stopped sending bills to TARC's workers' compensation insurer when it ceased paying for Owen's bills.

Dr. Grass also testified at the hearing. He administered treatment to Owen from 2012 to 2018, consisting of chiropractic adjustments, electrical stimulation, exercise, therapy, and stretches. According to his Form 107, Dr. Grass treated Owen approximately 940 times between 2012 and 2018. Dr. Grass testified Owen's job as a janitor with TARC was physically demanding. He testified the standard of chiropractic care typically comes from the Journal of Manipulative and Physiological Therapeutics ("JMPT"). The article he attached to his Form 107 was published by the JMPT and addresses chronic conditions. Dr. Grass opined Owen's lumbar condition is permanent and chronic.

Dr. Grass believes Owen attained maximum medical improvement ("MMI") from the October 2012 injury by December 31, 2013. Dr. Grass continued to treat Owen beyond the MMI date to "keep him in his job so he could reach retirement age." Dr. Grass stated the treatment he administered helped strengthen Owen's back, and he avoided costs associated with surgery, medication, and pain management. Dr. Grass opined the chiropractic services he rendered to Owen were reasonable and necessary for his lumbar condition. Dr. Grass also stated he should be paid based upon the fee schedule.

On cross-examination, Dr. Grass agreed TARC paid him approximately \$20,000.00. Dr. Grass was questioned extensively regarding the

article attached to his Form 107, entitled Chiropractic Care for Low Back Pain, and whether his treatment notes establish the standard of care outlined for chronic conditions as outlined in that document.

Owen filed the treatment records from Occupational Physician Services (“OPS”) reflecting Owens was treated on five occasions in October and November 2012 for the October 2, 2012 work injury. Owen was diagnosed with a lumbar sprain/strain and treated conservatively. OPS referred Owen to physical therapy and to Dr. Ellen Ballard. Owen went to the emergency room at Jewish Hospital on November 21, 2012 complaining of back, left hip, and left leg pain stemming from the November 16, 2012 work injury. Owen was diagnosed with lumbar pain and prescribed medication. A December 3, 2012 lumbar MRI demonstrated disc bulges at L3-4, L4-5, and L5-S1, degenerative endplate changes, and disc space narrowing at L4-5.

Owen filed voluminous chiropractic records by Dr. Grass indicating he treated there from November 27, 2012 through September 10, 2018 for complaints of low back pain radiating into the left hip leg, as well as numbness and tingling. At the last visit on September 10, 2018, Dr. Grass diagnosed Owen with other intervertebral disc displacement, lumbar region; intervertebral disc disorders with myelopathy, lumbar region; contracture of muscle, right thigh; low back pain; and segmental and somatic dysfunction of the lumbar and pelvic region. Dr. Grass indicated Owen was soon moving to Thailand and was therefore released from his care.

Dr. Grass completed a questionnaire on January 30, 2015, noting Owen injured his back at work on October 2, 2012, and aggravated his condition on

November 16, 2012. Dr. Grass agreed Owen had a permanent injury. Dr. Grass completed a questionnaire on April 20, 2015, and agreed his treatment was effective in helping Owen return to work. He assessed an 8% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”). Dr. Grass completed a questionnaire on November 20, 2017 opining Owen does not retain the physical capacity to work as many hours at his job as he did prior to his work injuries.

Owen filed Valley Station Chiropractic Patient Ledgers for treatment received from November 27, 2012 through February 13, 2015 indicating a patient account total of \$60,115.00. Owen filed Valley Station Chiropractic ledgers and bills dated September 4, 2015 on several occasions. It listed dates of service from January 13, 2014 through August 31, 2015 with an account balance of \$80,995.00. Owen also filed a bill for dates of services from October 5, 2015 through September 10, 2018 indicating the amount owed was \$84,000. Owen filed another bill dated February 13, 2018 for dates of services from October 2, 2015 through February 13, 2018 listing an account balance of \$72,545.00. Owen filed a bill dated February 25, 2019 for dates of services from February 12, 2015 through February 25, 2019 listing an account balance of \$84,000.00.

TARC filed a ledger identifying amounts paid to Dr. Grass for dates of services from November 2012 through September 2013 totaling \$20,221.05. TARC also filed Dr. Michael Best’s January 30, 2013 report from the evaluation he performed on January 23, 2013. Dr. Best diagnosed a “soft tissue lumbar sprain/strain-resolved” due to the October 2, 2012 work event resulting in no permanent

harmful sequelae. Dr. Best noted his examination failed to demonstrate radiculopathy or myelopathy and the December 2012 MRI showed no evidence of disc herniation or nerve root impingement. Dr. Best assessed a 0% impairment rating, and he opined Owen is able to return to his usual and customary work without restrictions. Dr. Best determined Owen had reached MMI. He also stated Owen does not require surgical intervention, additional diagnostic testing, pain management, or prescription medication for treatment of the effects of the October 2, 2012 work event. When asked if Owen needed any treatment or any further physical therapy, Dr. Best stated, “The patient requires absolutely no additional forms of care or treatment.”

Owen filed Dr. Warren Bilkey’s April 14, 2015 report. Dr. Bilkey found he had sustained October 2, 2012 and November 16, 2012 work-related lumbar strains. Dr. Bilkey opined all evaluations and treatment administered were reasonable, medically necessary, and work-related. He found Owen had reached MMI and assessed an 8% impairment rating pursuant to the AMA Guides. Dr. Bilkey recommended Owen “have chiropractic care for pain flare-ups” and engage in a home exercise program.

Dr. Bilkey completed a questionnaire on May 23, 2013. He found the November 2012 accident temporarily aggravated the effects of the October 2012 work injury. He noted Owen was off work through May 1, 2013 for both work injuries. Dr. Bilkey completed a questionnaire on November 19, 2017 stating Owen does not retain the physical capacity to perform the job he did prior to the work accident for as many hours he was working prior to October 2012.

In support of the medical dispute, TARC attached Dr. Steven B. Smith's June 1, 2018 physician review report. Dr. Smith, a chiropractor, opined the contested chiropractic treatment is unrelated to the February 2015 work injury. Dr. Smith reviewed the November 27, 2012 and February 12, 2018 treatment notes. Dr. Smith noted the documentation addresses an unresolved ongoing October 2012 work-related lumbar injury. Dr. Smith also noted the record provides no indication that Owen had improved function or decreased activity intolerance due to the October 2012 work-related event.

In his September 10, 2018 report prepared after his second evaluation, Dr. Best noted Owen was off work for a period of time following the November 16, 2012 and January 2016 work injuries. He then returned to his normal job as a janitor for TARC without restrictions until he retired in September 2018. Dr. Best noted Owen primarily treated with Dr. Grass. He noted Owen was neither seen by a specialty surgeon, nor undergone additional diagnostic studies since December 2012. Dr. Best diagnosed soft tissue lumbosacral sprain/strains due to the October 2, 2012 and November 16, 2012 work injuries, both of which have completely resolved, resulting in no harmful change to the human organism. He again assessed a 0% impairment rating and opined Owen is capable of returning to his full duties at TARC without restrictions.

Dr. Best found no objective evidence of a worsening of Owen's condition since his last evaluation on January 23, 2013. He emphasized Owen had not undergone any medical care or treatment by a neurosurgeon, orthopedic surgeon, or spine surgeon for his lumbar complaints. Dr. Best stated, "Simply, he

has had very questionable care provided only by a chiropractor without any objective worsening of his condition.” Dr. Best provided the following answers addressing Owen’s treatment:

Q26. Based on your examination of Mr. Owen and your review of Dr. Grass’ billing records, do you believe that Mr. Owen’s treatment with Dr. Grass was reasonable and necessary?

A26. This is perhaps the most unreasonable and unnecessary care and treatment I have witnessed in my greater than 30 years as an orthopaedic surgeon. Seventy-two five-hundred and forty-five dollars has been billed by this chiropractor without any objective medical reasoning or necessity. There is no indication that this patient required chiropractic for his most recent complaint of February 6, 2015.

Q27: Based on your examination of Mr. Owen and your diagnoses of him following this examination, what, if any, chiropractic treatment was reasonable and necessary for Mr. Owen following his alleged workplace injuries?

A27: Following the work event of February 6, 2015, the patient may have benefited by up to 6 chiropractic visits; however, the official disability guidelines and even chiropractic guidelines indicate that after 6 visits if there is little or no improvement chiropractics should be discontinued and the patient should be referred for a specialty evaluation to a neurosurgeon, orthopaedic surgeon or spine surgeon. Therefore, a total of 6 chiropractic visits would be reasonable and necessary; thereafter, there is no basis for these visits.

Dr. Best cited to several studies addressing the necessity of chiropractic care. He noted the studies indicate the short-term benefit at four to six weeks is nearly identical to those benefits reported by physical therapy. However, the studies demonstrate there is no statistically significant data to indicate the continued long-

term necessity of chiropractic care. Therefore, Dr. Best stated there is no medical necessity for chiropractic care after the first four to six weeks from an injury.

TARC filed the June 17, 2019 Utilization Review report, and the August 16, 2019 Physician Review by Dr. Tiffany Daniels. Dr. Daniels concluded the chiropractic care was neither medically necessary nor reasonable for the January 2016 work injury. In the August 16, 2019 report, Dr. Daniels indicated she reviewed chiropractic treatment records from November 2012 to September 2018, totaling 941 visits over a six-year period. Dr. Daniels stated as follows:

1. How much, if any, of Dr. Grass' chiropractic treatment was reasonable and necessary for Mr. Owen's alleged work injuries to his back, hips, and legs?

The range of chiropractic treatment that was reasonable and necessary in this case was from DOS 11/27/2012-01/07/2013. This was an extended trial of care that included 20 Dates of Service.

A. During the initial 20 dates of service, Dr. Grass failed to perform a re-evaluation to warrant the medical necessity of chiropractic care beyond 01/07/2013. (Care beyond the trial of care is considered reasonable if the care is shown to be beneficial to the patient and productive. This is typically accompanied by re-evaluating the patient after a trial of care).

B. The treating DC failed to document quantifiable gains, benefits, or evidence of progress, during the trial of care with OATS. (Outcome Assessment Tests (OATS) are used to measure functional improvements and help the treating DC make informed decisions concerning future care.)

C. Dr. Grass appeared to be copying and pasting his notes and repeated the exact same findings (Range of Motion, Orthopedic Tests, Spasm and Tenderness levels) throughout the initial 20 dates of service. Based on the documentation, the claimant did not achieve clinically meaningful improvement after 20 Chiropractic

visits and therefore needed to be released and/or referred to a different provider to further assist his medical needs.

Dr. Daniels opined Owen's complaints required only twelve to fourteen weeks of chiropractic treatment. Dr. Daniels opined Dr. Grass failed to document any clinically meaningful improvement after the initial 20 chiropractic visits as stated in the journal and therefore did not support the medical necessity of ongoing care beyond January 7, 2013. In her opinion, the treatment provided by Dr. Grass beyond the twenty visits was excessive since he repeated duplicate therapy over an extended period and failed to document adequate clinical results or functional benefit.

Owen filed Dr. Grass' July 18, 2019 Form 107. He stated Owen sustained a lumbar injury on October 2, 2012, which was temporarily exacerbated by the November 16, 2012 work injury. He noted he began to treat Owen on November 27, 2012. According to Dr. Grass, Owen was treated 16 times in 2012, 160 times in 2013, 165 times in 2014, 171 times in 2015, 152 times in 2016, 163 times in 2017, and 114 times in 2018. Owen retired from TARC in September 2018. Dr. Grass reviewed his findings on examination during an office visit on February 12, 2018. Dr. Grass reported that without chiropractic treatment, Owen would have to be on pain management and would be unable to perform his job as a janitor. Owen continued to report relief due to the treatment he received. Dr. Grass noted Owen's muscle spasms and tightness were palpably improved with treatment. Dr. Grass diagnosed "severe injury to the lumbar spine." Dr. Grass assessed an 8%

impairment rating pursuant to the AMA Guides for Owen's lumbar condition and opined he does not retain the physical capacity to return to his job with TARC.

Dr. Grass attached a peer-reviewed article titled, Clinical Practice Guideline: Chiropractic Care for Low Back Pain, from the JMPT. Pursuant to the article, Dr. Grass opined Owen fell within the chronic pain classification. Dr. Grass stated additional chiropractic care was indicated due to a measurable decline in Owen's functional work status, which he would have suffered without the chiropractic care. Dr. Grass opined the care he provided was necessary to obtain chronic pain goals of minimizing lost time on the job; supporting Owen's level of function/ADL; pain control to tolerance; minimize exacerbation; frequency and severity; maximizing his satisfaction; and reducing his reliance on medication. Dr. Grass determined his techniques used in examining, diagnosing, and treating Owen were proper.

A benefit review conference ("BRC") was held on October 4, 2018. The BRC Order reflects reasonableness, necessity, and work-relatedness of chiropractic treatment by Dr. Grass as the contested issue. The parties stipulated Owen's original claim was settled on September 19, 2018 and the third work injury was unrelated to the medical dispute.

On September 24, 2019, counsel for Owen filed over 5,000 pages of records consisting of a March 2, 2018 email, a March 8, 2019 email, Dr. Grass' treatment records, HCFAs, ledgers, and bills spanning November 2012 through September 2018.

The BRC Order was later amended to include the following issues: the timeliness of the filing and serving of contested medical bills, HCFAs, and records; and whether Owen timely served and filed necessary bills, HCFAs and records per his correspondence filed in LMS on September 24 and 25, 2019. At the hearing, the parties added whether TARC timely preserved their defense/affirmative defense as a contested issue.

In the December 13, 2019 Opinion and Order, the ALJ stated *verbatim* in resolving the medical dispute in favor of TARC:

Liability for past chiropractic medical expenses

The only issue remaining in contest following the partial settlement in this claim is that of the compensability of the medical expenses for chiropractic treatment by Dr. Grass.

The claimant in a Workers' Compensation case bears the burden of proof and risk of non-persuasion for every element of his or her claim. Durham v. Peabody Coal Co., 272 S.W. 3d 192, 195 (Ky. 2008); Snawder v. Stice, 556 S.W. 2d 276 (Ky. App. 1979). Essential elements include the work-relatedness/causation of any injury. Burton v. Foster Wheeler Corp., 72 S.W. 3d 925 (Ky. 2002); Hudson v. Owens, 439 S.W. 2d 565 (Ky. 1969). The burden of proof with regard to whether medical treatment in a Worker's Compensation case is reasonable and necessary rests with the employee pre-award. See R. J. Corman R.R. v. Haddix, 864 S.W. 2d 915 (Ky. 1993).

After careful review of the lay and medical testimony, the ALJ finds most persuasive the medical testimony of Dr. Best. The ALJ has considered all medical opinions as evidenced by the preceding summaries. Dr. Best is most persuasive because he conducted and reported the most thorough physical examination and he reviewed extensive medical records and diagnostic studies. The treatment records of Jewish Hospital emergency room buttress the opinion of Dr. Best. Additionally, while Dr.

Bilkey, Plaintiff's IME doctor, said treatment including chiropractic up to April 2015 was reasonable and necessary, he recommended ongoing chiropractic care "for pain flareups" rather than continuous maintenance.

On January 13, 2013, Dr. Best opined that Plaintiff required "absolutely no additional forms of care or treatment." Defendant Employer paid Dr. Grass for chiropractic treatment of Plaintiff beyond this date.

Therefore, relying upon the medical opinion of Dr. Best, the ALJ finds the Plaintiff is not borne his burden of proving the reasonableness and necessity of treatment by Dr. Grass beyond the treatment already paid for by Defendant Employer.

Because the ALJ has found the treatment by Dr. Grass beyond that already paid has not been proven reasonable and necessary by Plaintiff, the other reserved issues in this claim are moot.

Neither Defendant Employer nor its insurer shall be liable for additional past medical expenses for the chiropractic treatment rendered by Dr. Grass beyond that which it has already paid.

The remaining issues in this claim are moot as having been compromised by settlement agreement of the parties autonomous of the contents of this Opinion and Order.

The ALJ relieved TARC of liability for payment of any additional chiropractic treatment due to Owen's alleged work-related injuries beyond the amount it already has paid.

Owen filed a Petition for Reconsideration arguing the ALJ should have found his arguments more persuasive. Owen argued the ALJ should have relied upon Dr. Grass' opinion rather than that expressed by Dr. Best. He also asserted the payments made by TARC were not in accordance with the fee schedule when it paid for medical expenses through November 2013. He requested the ALJ

amend his decision to reference that Dr. Grass should be paid based on the fee schedule. Owen also argued this was not a pre-award case in light of the settlement agreements, and TARC failed in its burden of proving the contested treatment is neither reasonable nor necessary. ALJ Dye denied the petition on January 22, 2020.

On appeal, Owen argues the ALJ erroneously stated that he bore the burden of proof. Owen argues the employer, TARC, bore the burden of proving the disputed treatment was not reasonable and necessary citing to National Pizza Co. v. Curry, 802 S.W.2d 949, 950 (Ky. App. 1991). Owen asserts that after the parties settled the underlying claims, the burden of proof shifted to TARC to demonstrate the contested treatment is unreasonableness or unnecessary.

Owen also argues the ALJ provided insufficient findings to explain her opinion. He alleges as follows:

The ALJ did not calculate the amount owed based on the Fee Schedule through the Draconian termination date of Dr. Best. The ALJ did not indicate clearly based on the Fee Schedule through which of those dates of services should be paid. In the alternative, when the ALJ should have made sufficient findings as to why services rendered should not have been paid thereafter based on the Fee Schedule, at least through the date when TARC ceased paying Dr. Grass on 04/29/13 and thereafter. . .

The opinion of Dr. Best, although dated at the time of his IME on 01/23/13, was either not received by TARC until sometime thereafter or for some other reason TARC delayed terminating payment of medical reimbursement to Dr. Grass. There should have been separate findings by the ALJ, even if she was right about the burden of proof, as to why she would not pay Dr. Grass based on the Fee Schedule through at least the date TARC continued to make payments through 04/29/13. Until that time, Dr. Grass had reason to believe that he would be paid according to the fee

schedule, rather than have his treatment terminated. Although he was being given credit for continuing thereafter to render services on credit and good faith, certainly he should have been paid through 04/29/13. The parties had the information to calculate what is owed to Dr. Grass through 04/29/13 based upon the fee schedule. Further, there should have been separate findings as to why the ALJ would not apply the approach taken by ALJ Roark in the Grider case.¹

We determine the ALJ properly found Owen had the burden of proving whether the contested past chiropractic treatment was reasonable and necessary since this proceeding was not a post-award medical fee dispute. As the claimant in a workers' compensation proceeding, Owen had the burden of proving each of the essential elements of his claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Owen was unsuccessful in proving entitlement to past chiropractic expenses beyond what TARC had already paid, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985) (superseded by statute on other grounds as stated in Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387 (Ky. 2001)).

TARC did not bear the burden of proving the contested chiropractic treatment with Dr. Grass was either reasonable or necessary. The proceeding before the ALJ was not a post-award medical fee dispute, as Owen argues, in which the burden of proof regarding the reasonableness and necessity of the contested medical

¹ Grider v. Public Protection & Regulation Cabinet, Claim No. 2000-71296, (September 17, 2018).

treatment falls on the employer. Here, the ALJ had yet to resolve all pending issues on the merits and issue a final opinion. The parties reached a partial settlement, which specifically stated, “**past medical treatment of chiropractor remains disputed and will remain open for ALJ determination.**” (Emphasis added). TARC was not required to file a motion to reopen to contest past medical expenses since the underlying claims were still pending before the ALJ. The issue of compensability of past medical expenses associated with Dr. Grass was submitted to the ALJ for a decision on the merits. Therefore, the burden of proof concerning the reasonableness, necessity, and work-relatedness of the specific contested medical expenses and entitlement to past medical treatment remained with Owen.

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). 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). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings are so unreasonable under the evidence that reversal is required 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 weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Dr. Best's opinion constitutes substantial evidence supporting the ALJ's determination and a contrary result is not compelled. In the January 30, 2013 report, Dr. Best noted the October and November 2012 work accidents. He reviewed the treatment records from OPS, Jewish Hospital, Dr. Ballard, and Dr. Grass, as well as the December 2012 MRI. He performed an examination and diagnosed a soft tissue lumbar sprain/strain, resolved, resulting in no permanent harmful sequelae. Dr. Best opined Owen had attained MMI. Dr. Best opined Owen does not require surgical intervention, additional diagnostic testing, pain management, or prescription medication for the effects of the October 2, 2012 work event. When asked if Owen needed any treatment or any further physical therapy, Dr. Best stated, "The patient requires absolutely no additional forms of care or treatment."

Dr. Best re-examined Owen on September 10, 2018, and noted no objective evidence of a worsening of Owen's condition since his last evaluation on January 23, 2013. He emphasized Owen had not undergone any medical care or

treatment since January 2013 by a neurosurgeon, orthopedic surgeon, or spine surgeon for his lumbar complaints and had no additional diagnostic studies. Dr. Best stated, "Simply, he has had very questionable care provided only by a chiropractor without any objective worsening of his condition." Dr. Best provided the following answers addressing Owen's treatment:

Q26. Based on your examination of Mr. Owen and your review of Dr. Grass' billing records, do you believe that Mr. Owen's treatment with Dr. Grass was reasonable and necessary?

A26. This is perhaps the most unreasonable and unnecessary care and treatment I have witnessed in my greater than 30 years as an orthopaedic surgeon. Seventy-two five-hundred and forty-five dollars has been billed by this chiropractor without any objective medical reasoning or necessity. There is no indication that this patient required chiropractic for his most recent complaint of February 6, 2015.

The ALJ explained why she found Dr. Best's opinion most persuasive. Owen does not argue Dr. Best's opinion is unsubstantial. Dr. Best opined that no additional treatment was necessary at the time of his January 23, 2013 examination. TARC submitted its payment ledger indicating it paid for medical expenses associated with Dr. Grass' treatment well beyond January 2013.

In the August 16, 2019 report, Dr. Daniels opined the range of chiropractic treatment that was reasonable and necessary included the first twenty dates of service - November 27, 2012 through January 7, 2013. Dr. Daniels opined Dr. Grass failed to document any clinically meaningful improvement after the initial twenty chiropractic visits and therefore did not support the medical necessity of

ongoing care beyond January 7, 2013. She found the treatment provided by Dr. Grass beyond the twenty visits was excessive.

The above-cited evidence constitutes substantial evidence supporting the ALJ's determination Owen failed to prove the reasonableness and necessity of treatment by Dr. Grass beyond the treatment already paid for by TARC, and a contrary result is not compelled. Even if the burden of proof had shifted to TARC, we determine substantial evidence supports the ALJ's determination.

Owen argues the ALJ failed to provide sufficient findings for her determination. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for her decision, 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). The ALJ clearly reviewed the evidence of record and provided a sufficient explanation in finding Dr. Best's opinions most persuasive, and her determination, along with that of ALJ Dye in his Order on Petition for Reconsideration, will not be disturbed.

Accordingly, the December 13, 2019 Opinion and Order rendered by Hon. Tonya Pullin, Administrative Law Judge, and the January 22, 2020 Order on Petition for Reconsideration by Hon. Brent E. Dye, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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ADMINISTRATIVE LAW JUDGE:

LMS

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