

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 7, 2019

CLAIM NO. 201801152

GARDA WORLD

PETITIONER

VS. APPEAL FROM HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

MARK SNEED;
NORTON AUDUBON HOSPITAL;
DR. DAVID BERCCOVICI/
NORTON COMMUNITY MEDICAL ASSOCIATES;
DR. SEAN GRIFFIN/
NORTON ORTHOPEDIC INSTITUTE; AND
HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Garda World (“Garda”) appeals from the Opinion, Award and Order rendered February 1, 2019 by Hon. John B. Coleman, Administrative Law Judge (“ALJ”), and from the February 28, 2019 order denying its Petition for Reconsideration. The ALJ determined Mark Sneed (“Sneed”) sustained a work-

related right knee injury on May 30, 2018 while working for Garda. The ALJ awarded temporary total disability (“TTD”) benefits, permanent partial disability (“PPD”) benefits, and medical benefits. The ALJ specifically found compensable the request for reimbursement and payment submitted by Sneed at the hearing.

The sole issue raised by Garda on appeal is whether the ALJ abused his discretion by allowing Sneed to file unpaid medical bills into the record at the hearing, which was precluded by the holding in Roach v. Owensboro Health Regional Hospital, 518 S.W.3d 786 (Ky. App. 2017). We disagree and affirm.

Sneed filed a Form 101 on August 3, 2018 alleging he injured his right knee on May 30, 2018 as he stepped out of an armored car while working for Garda. He testified he provided notice of the incident to his supervisor, Lu Lopez (“Mr. Lopez”) on the day of the injury. Sneed did not seek treatment for his right knee until he saw Dr. David Berccovici on June 25, 2018. Dr. Berccovici referred Sneed to Dr. Sean Griffin, an orthopedic surgeon, who performed right knee surgery at Audubon Hospital on August 3, 2018. Sneed returned to full duty work on September 18, 2018.

Sneed testified by deposition on October 25, 2018, and at the hearing held December 18, 2018. Sneed is a resident of Louisville, Kentucky. He was born on August 10, 1955. Sneed began working as an armored car driver/messenger for Garda in June 2004. Sneed is a high school graduate, and served for six years as a military policeman. His prior work experience included installing heating and air conditioning systems, working as an animal control officer, and as the chief of the Jefferson County Hall of Justice Police.

On May 30, 2018, Sneed was stepping out of the armored car to make a delivery. When he stepped backward to close the door of the armored car, he pivoted on his right foot and experienced excruciating pain in his right knee. He stated he reported the incident to Mr. Lopez on May 30, 2018. He testified he again notified Mr. Lopez of his condition after he was advised he needed right knee surgery. He continued to work for Garda after the incident, and took a week of vacation. He first sought medical treatment with Dr. Berccovici on June 25, 2018 and was referred to Dr. Griffin. He returned to regular duty work on September 18, 2018, and continues to work for Garda. Garda denied Sneed's claim, and paid no medical or TTD benefits. Sneed submitted several unpaid medical bills, and out-of-pocket reimbursement requests at the hearing.

John Stamm ("Mr. Stamm") testified by deposition on January 7, 2019. He was working with Sneed at the time of the accident. He testified regarding the job duties, and that the two employees on the armored car alternate between driving, pickups, and deliveries. He testified he was handing a money bag to Sneed at the time of the May 30, 2018 accident. Mr. Stamm testified Mr. Lopez approached him four days after May 30, 2018 to discuss the incident.

Mr. Lopez testified at the December 18, 2018 hearing, and by deposition on January 7, 2019. Mr. Lopez testified Sneed did not report a work injury on the date of the accident. Sneed later requested to file a workers' compensation report, but Mr. Lopez refused to allow it, because he testified he would not "file a false report". Mr. Lopez admitted he was not on the truck with Sneed or Mr. Stamm at the time of the accident. Mr. Lopez testified that he did not

discuss the incident with Mr. Stamm. He also testified that both Sneed and Mr. Stamm are still working for Garda.

Since the medical evidence is not pertinent to the issue raised on appeal, it will not be discussed further.

A Benefit Review Conference (“BRC”) was held on December 6, 2018. At that time, the issues preserved for determination by the ALJ consisted of benefits per KRS 342.730, work-relatedness/causation, notice, liability for medical expenses, injury as defined by the Act, credit for short-term disability benefits, TTD, and duration of benefits.

On January 2, 2019, Garda filed a medical dispute challenging the medical bills and requests for reimbursement that Sneed filed at the hearing held December 18, 2018. Garda also filed a motion to join Drs. Berccovici, Griffin, Norton Audubon Hospital, Norton Community Medical Associates, and Norton Orthopedic Institute. Between the date of the hearing and the issuance of the ALJ’s decision, records from Norton Healthcare Physical Therapy and a supplemental report from Dr. Rick Lyon were filed as evidence. Additionally, Mr. Stamm and Mr. Lopez testified during that period.

On February 1, 2019, the ALJ issued an Opinion and Award. He determined Sneed sustained a work-related right knee injury on May 30, 2018. The ALJ determined Sneed timely reported his work injury to Mr. Lopez. The ALJ awarded TTD benefits from June 25, 2018 through September 17, 2018. He awarded PPD benefits based upon the 1% impairment rating assessed by Dr. Lyon. He also awarded medical benefits. The ALJ determined Sneed was not precluded

from having past medical bills and reimbursement for out-of-pocket expenses paid. The ALJ determined the holding in Roach v. Owensboro Health Regional Hospital, supra, was not dispositive in this case because the issue was preserved at the BRC. He also noted that in this case, Garda “denied the compensability of the claim in its entirety”. The ALJ specifically stated, “[g]iven the fact, the claim was denied in its entirety, good cause exists since submission of the bills to the defendant at an earlier date on the denied claim would have been an exercise in futility.”

Garda filed a petition for reconsideration requesting the ALJ to reconsider his determination that Sneed sustained a compensable, work-related injury. It also argued the ALJ erred in finding past medical expenses compensable. Garda argued, “[w]hile it is true that the parties knew that medical treatment liability was an issue, both parties knew that, and this knowledge by Plaintiff does not excuse him from his independent and distinct duty under 803 KAR 25:010 to submit the unpaid bill by the BRC”. The petition was denied by order dated February 28, 2019. The ALJ determined Sneed’s right knee injury occurred in the course and scope of his employment with Garda. The ALJ also reiterated Sneed’s out-of-pocket medical expenses are compensable.

On appeal, Garda argues the ALJ erred in finding compensable the medical bills and requests for reimbursement submitted at the hearing. It argues responsibility for payment of those bills and requests is precluded by the holding in Roach v. Owensboro Health Regional Hospital, supra.

We agree with the ALJ that this claim differs procedurally from Roach v. Owensboro Health Regional Hospital, supra. Sneed provided copies of the

medical bills and requests for reimbursement at the hearing. Garda acknowledged this in the medical dispute it filed on January 2, 2019. In Roach, the issue of compensability of medical bills was not, unlike this case, listed in the BRC order. At Roach's hearing, the ALJ listed the contested issues, which did not include contested medical bills. Roach agreed with the issues. Roach did not address unpaid medical bills or reimbursement during either direct or cross-examination. The issue was not raised until the contested bills were submitted on re-direct examination at the hearing.

In the Roach decision, the Court of Appeals noted that 803 KAR 25:010 §13(9) requires an injured worker to bring copies of known unpaid medical bills not previously provided and copies of out-of-pocket expenses to the BRC. Roach did not bring the copies of the bills or out-of-pocket expenses, nor did he list or mention any bills at the BRC. The Court of Appeals held Roach thwarted the purpose of the BRC "by utterly failing to comply with the regulation's mandates". The Court of Appeals additionally noted that only contested issues shall be the subject of further proceedings, and noted compensability of unpaid bills was not preserved as an issue. The Court of Appeals further noted, "[t]o compound the problem, Roach made no mention of the bills during her direct examination". The Court of Appeals additionally stated as follows:

Roach's actions in this matter are akin to a litigant showing up at trial without having complied with the trial court's pre-trial discovery order, without having exchanged all discovery, and without having notified the other side of all the issues for trial, and then raising the issue and corresponding exhibits for the first time on re-direct examination. No trial judge would tolerate such blatant abuse of the civil rules and its order. Neither

should the Board. The Board should be no less empowered to force compliance with the procedural regulations governing workers' compensation claims. Id. at 791

Unlike Roach, in this case, the issue of compensability of medical bills was preserved in the BRC order. Additionally, Sneed addressed the unpaid and out-of-pocket expenses during direct examination. We also note additional evidence was introduced after the hearing. Garda filed a medical dispute, additional depositions were taken, and additional medical evidence was filed. We also note that in Roach, the defendant agreed a work-related injury had been sustained, but there was an issue as to whether she was entitled to permanent income benefits. As noted by the ALJ in this case, Garda completely denied and challenged all aspects of Sneed's claim.

We determine the ALJ did not err in finding compensable unpaid medical expenses and out-of-pocket reimbursements. Unlike the situation in Roach, supra, Garda was not surprised by the submission of bills and reimbursement requests at the hearing. It was fully aware that Sneed underwent surgery, and missed time from work. Additionally, the issue of the compensability of medical expenses was preserved as an issue at the hearing. Garda filed a medical dispute subsequent to the hearing, and we discern no prejudice. Because we determine the ALJ did not err in finding unpaid medical bills and out-of-pocket medical expenses compensable, we affirm.

For the forgoing reasons, the Opinion, Award, and Order issued by Hon. John B. Coleman, Administrative Law Judge on February 1, 2019, and the February 28, 2019 order are **AFFIRMED**.

ALL CONCUR.

DISTRIBUTION:

COUNSEL FOR PETITIONER:

LMS

HON STANLEY S DAWSON
1315 HERR LANE, STE 210
LOUISVILLE, KY 40222

COUNSEL FOR RESPONDENT:

LMS

HON PHILIP H CADE
501 BAXTER AVENUE
LOUISVILLE, KY 40204

RESPONDENTS:

NORTON AUDUBON HOSPITAL
ONE AUDUBON PLAZA DRIVE
LOUISVILLE, KY 40217

USPS

DR DAVID BERCCOVICI
NORTON COMMUNITY MEDICAL ASSOC.
AUDUBON EAST LL2
3 AUDUBON PLAZA DRIVE
LOUISVILLE, KY 40217

USPS

DR SHAWN GRIFFIN
NORTON ORTHOPEDIC INSTITUTE
3 AUDUBON PLAZA DRIVE, STE 430
LOUISVILLE, KY 40217

USPS

ADMINISTRATIVE LAW JUDGE:

LMS

HON JOHN B COLEMAN
657 CHAMBERLIN AVE
FRANKFORT, KY 40601