

**Commonwealth of Kentucky  
Workers' Compensation Board**

OPINION ENTERED: **October 26, 2018**

CLAIM NO. 200978569

INTECH CONTRACTING LLC                      PETITIONER/CROSS-RESPONDENT

VS.

**APPEAL FROM HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE**

GEOFFREY HAMPTON;                      RESPONDENT/CROSS-PETITIONER

AND

SARAH SALLES, DO;  
ST. JOSEPH EAST;  
OKLAHOMA STATE UNIVERSITY MEDICAL CENTER;  
And HON. JONATHAN R. WEATHERBY,  
ADMINISTRATIVE LAW JUDGE                      RESPONDENTS

**OPINION  
AFFIRMING IN PART  
VACATING IN PART  
AND REMANDING**

\* \* \* \* \*

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

**RECHTER, Member.** Intech Contracting, LLC appeals and Geoffrey Hampton cross-appeals from the May 7, 2018 Opinion and Order and the June 21, 2018 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge (“ALJ”). The ALJ found contested treatment at St. Joseph Hospital compensable, but found treatment at Oklahoma State University Hospital (“OSUH”) beginning on September 12, 2017 for dysphasia, swallowing and speech therapy, related travel expenses, and home health care non-compensable. On appeal, Intech argues the ALJ erred in finding the treatment at St. Joseph compensable. On cross-appeal, Hampton argues the ALJ erred in failing to order reimbursement for mileage, to award home health care benefits, and to find hospitalization at OSUH compensable. For the reasons set forth herein, we affirm in part, vacate in part, and remand.

Intech is in the business of resurfacing, maintaining and repairing bridges. Hampton is a type I diabetic and is insulin dependent. He became disoriented because of low blood sugar and fell sixty-two feet from a bridge on September 9, 2009. He sustained multiple injuries, including a leg injury resulting in amputation below the knee, a C2 fracture with spinal cord injury, C6 level ASIA-C tetraplegia, multiple spinal fractures, lower extremity deep vein thrombosis, traumatic brain injury, vocal cord injury, fractured teeth and underlying anxiety related to the injuries.

In an October 6, 2014 decision, Hon. John B. Coleman, Administrative Law Judge (“ALJ Coleman”), determined Hampton was permanently totally disabled as a result of the work injury. He found the work injury caused a temporary exacerbation of Hampton’s diabetic condition, and concluded

treatment for the diabetic condition after May 9, 2011 is not compensable. Based upon a report of Dr. Sara Salles, ALJ Coleman determined Hampton no longer needed home health services by the time of the October 6, 2014 Opinion, and the necessary modifications had been made to Hampton's residence. Hampton appealed concerning the limited period of treatment related to his diabetes. The Board affirmed by opinion rendered March 13, 2015.

Intech filed a series of medical fee disputes to contest the compensability of home health services, home modifications, and additional modifications to Hampton's boat and automobile. It also contested treatment rendered at OSUH between September 12, 2017 and October 2, 2017. This hospitalization occurred after Hampton was found unresponsive at his home. After this period of hospitalization, Hampton returned to St. Joseph on October 12, 2017. He had previously treated there following the work accident.

The records from OSUH indicate Hampton was admitted on October 12, 2017, and discharged on October 25, 2017. Hampton had been found unconscious at his home with a high glucose level and vomit in a wastebasket beside him. He had severe end organ damage and was intubated. Hampton was seen on September 20, 2017, due to concern for vocal cord paralysis. A September 28, 2017 addendum noted physical therapy found Hampton was independent with activities of daily living. Discharge diagnoses included: acute respiratory failure secondary to low GCS and tachypnea, status post tracheostomy placement for extended ventilator weaning and subsequent discontinuation of tracheostomy; acute renal failure secondary to hypoperfusion in the setting of profound volume depletion secondary to

diabetic ketoacidosis; diabetic ketoacidosis with coma; diabetes mellitus insulin dependent; high anion gap metabolic acidosis secondary to diabetic ketoacidosis and uremic failure; hypovolemia secondary to diabetic ketoacidosis; NON-ST segment elevation myocardial infarction type 2 secondary to profound hypotension; methicillin sensitive staphylococcus aureus pneumonia, status post nafcillin with an end date of 9/27/17; polysubstance abuse; thrombus secondary to PICC line placement of the right upper extremity basilic vein; tracheostomy placement with subsequent discontinuation; and percutaneous endoscopic gastrostomy placement. Hampton was directed to follow up with W. W. Hastings Indian Health Clinic.

Hampton returned to St. Joseph on October 12, 2017. Hampton's father reported the hospitalization in Oklahoma and noted Hampton had a tracheotomy. Since that time, his voice had been severely worse. Hampton had trouble swallowing which has been recurrent for eight years. He has a sensation of something being caught in the back of his throat. Dr. Robert Wilson diagnosed paralysis of vocal cords and larynx, unilateral; choking sensation uncontrolled; dysphonia; dysphagia unspecified; edema of larynx; and cerebral infarction, unspecified. On October 25, 2017, Hampton reported his condition was much improved. His swallowing was better and his voice was back to baseline. Hampton wanted a referral for evaluation for surgery to improve his voice and was referred to Dr. Archer at UK ENT for evaluation.

Hampton introduced the August 9, 2016 deposition and medical records of Dr. Salles, a rehabilitation physician with a specialty in spinal cord injuries and medical director of the spinal cord injury unit at Cardinal Hill Rehabilitation

Hospital in Lexington. Dr. Salles has treated Hampton for spinal injuries including an incomplete spinal cord injury with improvement in neurological function and strength. He also suffered a traumatic brain injury resulting in some swallowing and vocal difficulty. Hampton is classified as an incomplete tetraplegic, meaning he has movement in all body parts but has some degree of paralysis in all four limbs. Dr. Salles stated Hampton's car and boat needed modifications from a safety standpoint. She found that requested modifications were reasonable and necessary. Dr. Salles noted most homes are not accessible because the doorways are too narrow and rooms often do not have enough room to turn around in a wheelchair. Dr. Salles recommended an assessment for potential modifications regarding wheelchair access and making the home safe. She agreed a motorized wheelchair was reasonable because Hampton did not always wear his prosthesis. She noted Hampton was unable to navigate on uneven surfaces. Dr. Salles stated the X8 Extreme wheelchair is an all-terrain wheelchair and is reasonable and necessary due to his work injury. Dr. Salles stated Hampton received home health services and required assistance in his home. Dr. Salles felt Hampton would need assistance with medical needs, wound care issues, childcare, shopping, and laundry. Dr. Salles agreed that Hampton can take care of some of his wound issues, but others are not visible to him.

On cross-examination, Dr. Salles noted Hampton is unable to access parts of his mother's home, where he was living as of December 14, 2015, because of issues with the entryways, bathroom and kitchen. She agreed that in 2013 Hampton

could drive safely. She noted the speech/language pathology clinic completed their workup and recommended speech and language therapy.

Hampton testified he has had trouble speaking and swallowing since his work injury. He acknowledged testing positive for cocaine and marijuana in Oklahoma and indicated his doctors were aware of his use of marijuana for pain. He acknowledged he was intubated and had a tracheostomy due to pneumonia during the hospitalization at OSHU. He later received further treatment at St. Joseph, explaining his swallowing and speech have improved since these visits in October 2017. The new techniques at St. Joseph produced a great improvement in his condition, which is now better than before the incident in Oklahoma.

Relating to the compensability of home health care services, Hampton submitted Form 114s from Jamie Blankenship for performing duties such as cleaning, vacuuming, laundry, getting groceries, assistance in exercising and taking his children to activities. Hampton stated he has continuously needed assistance from home health services and he could not recall Dr. Salles stating the services were no longer needed. Hampton stated he goes to the gym to work with free weights and swim four or five days per week but is unable to bend and vacuum.

A number of medical records from the period after the work accident but prior to Hampton's hospitalization at OSUH were introduced, to establish his ongoing treatment needs and physical condition. Hampton sought treatment at the Cherokee Nation Hastings Hospital emergency room on September 11, 2015, for complaints of back pain, status post back surgery, and chronic neck and lower back pain. Hampton stated his speech was slurred due to chronic hoarseness after a

tracheostomy. He also requested a referral to an ENT. Hampton's discharge diagnosis was chronic back pain. Hampton refused any medications except for controlled substances. Hampton returned to the emergency room on September 15, 2015, for an exacerbation of chronic back pain. Hampton was noted to be very difficult to understand due to speech problems. Hampton stated he had not been on medication for two months. He was discharged with medications.

Hampton introduced medical records of St. Joseph, where he was seen on June 26, 2014. Hampton complained of difficulty swallowing, speaking, moving his tongue, large amounts of saliva, hoarseness and choking. He gave a history of the work accident and subsequent physical therapy for five years to improve his swallowing. Hampton had a laryngoscopy on that date. He was diagnosed with dysphagia; symptoms involving head and neck: dysphonia; diabetes mellitus NOS; and cerebrovascular accident. Hampton was seen for the same diagnoses on March 7, 2016.

Intech submitted medical records of Cardinal Hill Hospital where Hampton was evaluated on January 6, 2016. Hampton was diagnosed with muscle weakness, neck pain, and spinal cord injury. Hampton was seen on April 14, 2016, for a swallowing assessment. Hampton chokes when drinking water from a cup and/or liquids from a can. Hampton reported he had not had pneumonia in the past.

Intech relied upon the opinion of Dr. Timothy Pettingell, Hampton's treating physician in Oklahoma, who, following a May 25, 2017, visit, recommended against use of narcotic medications and marijuana, which is not legal in Oklahoma. Dr.

Pettingell recommended non-narcotic pain management. Following a June 8, 2017 office visit, he noted Hampton made repeated forceful requests for narcotics/marijuana. Intech also contested expenses related to a September hospitalization in Oklahoma following a hyperglycemic event, and treatment at St. Joseph through October 25, 2017.

The ALJ made the following findings relevant to this appeal:

After review of the evidence, it is determined that the Plaintiff's submission of a form 114 for travel expenses to Hasting Hospital in Tahlequah, Oklahoma, and treatment for diabetes mellitus on November 10, 2015, along with home, car, and boat modifications is decided as follows:

The ALJ finds that the ruling of ALJ John Coleman on October 6, 2014, that medical expenses for the treatment of diabetes mellitus after May 9, 2011, is non-compensable is dispositive and that any treatment related to diabetes mellitus after said date is non-compensable. The ALJ further finds that the mileage for the trip to Oklahoma was not medically directed by the designated physician and is likewise disallowed per KRS 342.020(5) and 803 KAR 25:096 §3.

The ALJ finds that Dr. Salles testified in favor of the requested modifications to the Plaintiff's vehicle, boat, and home, but there is convincing evidence in the record indicating that the Plaintiff is able to safely operate a vehicle without modifications and that Dr. Salles determined that the requested modifications were not needed in August of 2013. The ALJ therefore finds that the recommendation of Dr. Salles regarding an assessment for potential modifications pertaining to the home, car, and boat is reasonable and necessary as it pertains to the home and boat only.

The ALJ finds that with respect to the home health care rendered by Mr. Blankenship that in a deposition of Dr. Salles, dated August 30, 2013, she stated that the Plaintiff "is independent with activities of

daily mobility, and homemaking, if he chooses to do those things.” It was also noted in the prior referenced opinion that the Plaintiff’s independence had actually improved his hospitalization for diabetic ketoacidosis, and polysubstance abuse. The ALJ therefore likewise finds that the home health care is not reasonable or necessary and is thus non-compensable.

The ALJ finds that with respect to the treatment rendered by St. Joseph ENT, that the Plaintiff presented with difficulty swallowing that had been recurrent for eight years. The ALJ finds that the issue of dysphagia was squarely addressed by ALJ Coleman and is compensable going forward. The ALJ finds that these expenses are therefore reasonable, necessary, and causally work-related. They are therefore compensable herein. The ALJ is unpersuaded by the issue of collateral estoppel as the nature of medical fee disputes in certain circumstances renders that doctrine inapplicable due to the changing nature of medical issues. This [Plaintiff] has been experiencing issues with swallowing and speech that could only be related to the work injury and should be the responsibility of this Defendant.

The ALJ finds that the treatment rendered in Oklahoma in 2017, is not reasonable or necessary as the Plaintiff sought treatment that was not legal and or recommended by any physician qualified or designated herein. This treatment is therefore not compensable.

Both parties filed petitions for reconsideration. The ALJ denied the petitions, stating that the underlying Opinion and Order “was based upon the credible evidence as determined by the ALJ as well as the prior findings and conclusions reached by ALJ Coleman to which the current ALJ is bound.”

On appeal, Intech argues the finding of compensability of the treatment at St. Joseph from and after October 12, 2017 is not supported by substantial evidence. Intech contends the contested treatment is due to new findings and new vocal fold paralysis with worsening symptoms related to the intubation and

tracheostomy caused by the non-work-related diabetic condition and/or polysubstance abuse. Intech further asserts Hampton failed to follow medical advice by using non-prescription marijuana and cocaine, causing him to suffer diabetic consequences of hypoglycemia and ketoacidosis, resulting in the tracheostomy, vocal fold paralysis, and emergency treatment. Intech argues the treatment at St. Joseph resulted from the incident in Oklahoma rather than from the work injury, rendering the treatment at St. Joseph after October 12, 2017, non-compensable.

We find no error in the ALJ's finding that treatment at St. Joseph in 2017 is compensable. KRS 342.020 (1) provides that "the employer shall pay for the cure and relief from the effects of an injury the medical, surgical, and hospital treatment, including nursing medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability..." Intech focuses on a statement in the Cardinal Hill discharge summary indicating that Hampton's speech and language are intact. It interprets this statement to mean he required no further treatment. However, Hampton has had ongoing difficulties with swallowing and speaking since his work accident. Records from Dr. Salles establish the continuing nature of the problems. Further, Dr. Salles testified Hampton has had an ongoing need for ENT, swallowing, speech and neuro-ophthalmology treatment for the last several years and those needs are finally being addressed. The St. Joseph note on October 12, 2017 records a history of recurrent difficulty swallowing for about eight years. Hampton testified the new techniques made his speech and swallowing better than it had been at any time since the accident. Substantial

evidence supports the conclusion that the treatment at St. Joseph qualifies as treatment that provided for the cure or relief from the effects of the accident.

On cross-appeal, Hampton first argues the ALJ erred in failing to award mileage reimbursement for treatment in Oklahoma submitted to Intech in November and December 2015. Hampton testified he only sought treatment in Oklahoma because the carrier would not approve treatment, and he qualified for treatment under “Cherokee Nation.” Hampton also observes Intech failed to file a medical dispute within 30 days. He further notes the medical records establish he sought treatment for multiple pain syndromes that Dr. Salles relates to the work injury.

Intech challenged travel expenses as part of its first motion to reopen based upon the report from the November 10, 2015 visit that indicated the treatment was for diabetes. Based upon ALJ Coleman’s decision limiting the compensable period of treatment to the period of exacerbation and the treatment record indicating the treatment was for diabetes, Intech was under no obligation to file a dispute within 30 days regarding the Form 114 for the travel expense for that treatment. Intech is not liable for expenses for any visits for treatment related to diabetes.

Next, Hampton argues the ALJ erred in failing to award home healthcare benefits. Hampton asserts he never needed home healthcare services prior to the work injury. Dr. Salles testified individuals in Hampton’s position generally require ongoing care. He required the services in the past and Dr. Salles noted homemaking tasks of laundry and shopping do not go away. She noted there are

days when he cannot use the prosthesis because of a wound and would have to rely on other people.

Dr. Salles, prior to ALJ Coleman's decision, had stated Hampton was "independent in activities of daily living if he chooses to do those things." Hampton later left his mother's home and lived independently in Oklahoma for a year and a half. The ALJ simply was not persuaded that Hampton's need for home health care was any greater than at the time of ALJ Coleman's decision. The evidence does not compel a contrary finding.

Finally, Hampton argues the ALJ erred in finding the hospitalization at OSUH non-compensable. He notes the first discharge summary discussed that the chronic respiratory issues and ongoing chronic aspiration likely was related to the work injury eight years earlier.

In determining the compensability of the hospitalization, an ALJ is required to provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). While an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result, he is required to set forth adequately the basic facts upon which the conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

Here, the ALJ failed to provide sufficient findings of fact and conclusions of law to apprise the parties and this Board of his rationale in finding the hospitalization in Oklahoma non-compensable. Intech filed two disputes concerning treatment in Oklahoma. The first involved Hampton seeking the resumption of narcotic medication and referral to pain management that would include marijuana. The second involved the hospitalization in 2017. The sole basis identified by the ALJ for the denial of medical benefits in Oklahoma in 2017 was that Hampton “sought treatment that was not legal and or recommended by any physician qualified or designated herein.” This is an adequate basis to deny the resumption of narcotic medication or referral to a pain clinic with marijuana, and it is supported by Dr. Pettingell’s opinion. However, the ALJ’s finding does not adequately address the dispute regarding the hospitalization. There is no indication the treatment was not legal or that it was not recommended by a qualified physician. The ALJ made no findings regarding the reason for the hospitalization. The record contains evidence that could support differing conclusions regarding the reason for Hampton’s hospitalization. Intech argued Hampton’s condition was the result of his diabetes and/or illegal use of cocaine and marijuana against the advice of his physician, rendering the treatment non-compensable. Hampton points to the discharge note from OSUH indicating the chronic respiratory issues and his chronic ongoing aspiration likely are related to his injury and therefore compensable. On remand, the ALJ must determine whether the hospitalization resulted from conditions related to the work injury or from non-work-related conditions or factors.

Accordingly, the May 7, 2018 Opinion and Order, and the June 21, 2018 Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED IN PART, VACATED IN PART AND REMANDED.**

ALL CONCUR.

**DISTRIBUTION:**

**COUNSEL FOR PETITIONER/CROSS-RESPONDENT:** **LMS**

HON. WALTER A. WARD  
333 WEST VINE STREET, STE. 1100  
LEXINGTON, KY 40507

**COUNSEL FOR RESPONDENT/CROSS PETITIONER:** **LMS**

HON. CHARLES W. GORHAM  
3151 BEAUMONT CENTRE CIR #202  
LEXINGTON, KY 40513

**RESPONDENTS:**

ST. JOSEPH EAST **USPS**  
150 NORTH EAGLE CREEK DR.  
LEXINGTON, KY 40509

SARAH SALLES D.O. **USPS**  
CARDINAL HILL REHABILITATION HOSPITAL  
2050 VERSAILLES RD.  
LEXINGTON, KY 40504

OKLAHOMA STATE UNIVERSITY MEDICAL CLINIC **USPS**  
744 W. 9<sup>TH</sup> STREET  
TULSA, OK 74127

**ADMINISTRATIVE LAW JUDGE:** **LMS**

HON. JONATHAN R. WEATHERBY  
ADMINISTRATIVE LAW JUDGE  
PREVENTION PARK  
657 CHAMBERLIN AVENUE  
FRANKFORT, KY 40601