

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 20, 2022

CLAIM NO. 201999610

JAB CONTACTING, LLC

PETITIONER

VS.

**APPEAL FROM HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE**

WILLIAM CAUDILL,
PIKEVILLE MEDICAL CENTER,
HARLAN ARH HOME CARE STORE,
THE RADIOLOGY GROUP, LLC,
CUMERLAND RIVER BEHAVIORAL CENTER,
MOUNTAIL MEDICAL ENTERPRISES, and
HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

MILLER, Member. JAB Contracting, LLC (“JAB”) appeals from the September 29, 2021 Opinion and Order rendered by Hon. Peter J. Naake, Administrative Law

Judge (“ALJ”) finding contested medical bills compensable. JAB argues the medical bills were not submitted timely. No petition for reconsideration was filed, as JAB contends this matter is strictly a question of law involving statutory construction. On appeal, JAB argues KRS 342.020(4) mandates that medical bills must be submitted within 45 days of the day treatment was initiated and every 45 days thereafter, if appropriate, as long as medical services are rendered. JAB argues this statute applies pre-award. Following the reasoning in past decisions from this Board, the Kentucky Court of Appeals, and the Kentucky Supreme Court, we affirm.

BACKGROUND

William Caudill (“Caudill”) alleged an injury to his right foot and ankle stemming from a crush injury on January 3, 2019. He also claimed a psychological injury stemming from the work event. Caudill was operating a continuous miner machine underground when the supporting wall (rib) collapsed and rocks from a wall came down, injuring his right foot and ankle. On the day of the injury, a coworker took Caudill to Harlan Appalachian Regional Hospital (“Harlan ARH”). Surgery occurred on January 14, 2019 at Pikeville Medical Center. After multiple follow-up visits, he returned to work on July 12, 2019 without physical restrictions; however, Caudill was placed in a job above ground and now works repairing equipment in a shop.

Dr. Bruce Guberman completed a Form 107 on September 17, 2019 and assigned a 5% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment (“AMA Guides”) with physical restrictions, including no standing on uneven ground, no

kneeling or squatting, and no standing and/or walking for more than 30 minutes at a time or more than five or six hours in an eight-hour day.

JAB filed the report of Dr. David Jenkinson who examined Caudill and agreed with the 5% impairment rating for the ankle injury.

Caudill filed a Form 101 on October 14, 2019, seeking workers' compensation benefits for his right foot and ankle injury. Other issues litigated, including a claim for psychological injury and enhancement for a safety violation, will not be discussed as this appeal is strictly limited to the application of KRS 342.020. In JAB's Notice of Disclosure, filed November 19, 2019, it reserved the right to file a Form 112 to protect its right to contest medical bills. It listed causation as a contested issue.

On August 14, 2020, Caudill filed unpaid medical bills from Pikeville Medical Center for treatment provided on July 9, 2019. The bills reflect the provider submitted the bills to KEMI insurance carrier for JAB on October 21, 2019. KEMI denied the bills as untimely.

On August 19, 2020, JAB filed a Form 112 medical dispute regarding these bills and named several other medical providers, including Harlan ARH, Harlan ARH Home Care Store, and Cumberland River Behavioral Center. It attached statements from KEMI denying payment as not received within 45 days of treatment.

The ALJ joined the medical providers as parties to the claim on August 21, 2019. Caudill and JAB reached an agreement settling the claim, foreclosing all future issues, except that relating to the Form 112, which the parties

submitted to the ALJ for a decision. The ALJ approved the tendered settlement agreement.

The ALJ issued his Opinion and Order on September 29, 2020, finding the medical bills compensable, except one bill that was deemed treatment for non-work-related reasons.

The ALJ stated as follows, *verbatim*:

The Workers' Compensation Board has held on a number of occasions that the forty-five day rule for submission of statements for services in KRS 342.020(1) has no application in a pre-award situation. The Kentucky Supreme Court in R.J. Corman Railroad Construction v. Haddix, 864 S.W. 2d 915, 918 (Ky. 1993) pointed out the requirement in KRS 342.020(1) for the payment of bills within 30 days of receipt of the statement for services "applies to medical statements received by an employer after an ALJ has determined that said bills are owed by the employer." In other words, it does not apply pre-award. In Brown Pallet v. David Jones, Claim No. 2003-69633, (entered September 20, 2007) the Board held that the reasoning of the Supreme Court in R.J. Corman Construction, 864 S.W.2d 915, 918 (Ky. 1993) concerning the thirty-day provision for payment of medical benefits should also apply to the forty-five day rule for submission of medical bills. This precise issue is on appeal to the Kentucky Supreme Court in Wonderfoil, Inc. v. Richard Russell, et.al., 2020-SC-0301.

In determining the 45-day rule did not bar compensability in that claim, the ALJ further stated:

There is good reason not to impose a 45-day time limit in the case of medical billing prior to an award finding that there has been a work-related injury. At the early stages of a workers' compensation claim, when a claim is first being set up, the workers' compensation insurance adjuster is being assigned and an investigation is being performed, prompt medical treatment is more important than billing, and the worker, the medical

provider, and the employer may not yet be aware of what entity to bill and which claim number to use.

JAB appealed to the Board and moved to place the claim in abeyance pending the decision by the Kentucky Supreme Court in Wonderfoil, Inc. v. Russell, 630 S.W.3d 706 (Ky. 2021). Subsequent to the Supreme Court decision in Wonderfoil, supra, the claim was removed from abeyance and has now been briefed and submitted to this Board.

The sole issue appealed to the Board is whether the requirements of KRS 342.020(4) apply pre-award. JAB essentially argues the language in KRS 342.020 does not specifically state it applies only post-award. Secondly, it argues that, at the time of the injury in R.J. Corman Railroad Construction, 864 S.W. 2d 915, 918 (Ky. 1993), KRS 342.020(4) had not been enacted. Finally, JAB contends medical providers cannot disregard the 45-day rule for submitting medical statements until after an ALJ award.

Harlan ARH Medical Center and Harlan ARH Home Care, two of the medical providers named as parties, responded that their bills were initially received by the insurance carrier within 45 days of treatment. They further argued that Wonderfoil supports the Board opinion in Brown Pallett v. Jones, Claim No. 2003-69633 (entered September 20, 2007) with approval, noting that its holding is a “natural and logical extension of Brown Pallett and R.J. Corman Railroad Construction.” Wonderfoil held the 60-day requirement in 803 KAR 25:096 § 11(2) for claimants to submit medical bills, including travel expenses, only applies after an

interlocutory decision or final award has been entered. The same reasoning applies to the current claim.

ANALYSIS

JAB does not contest work-relatedness, reasonableness, or necessity of the treatment. It solely relies on the untimeliness when a medical provider does not submit the bills within forty-five days of the treatment. In his Opinion, the ALJ explained the difficulty that would occur in enforcing the 45-day rule, especially early in a claim when the insurance carrier may be unknown to the injured worker, or alternatively, the carrier had not set up a claim.

There are specific regulations that govern the course of the proceedings, which either party may avail themselves to if it is believed the other party is purposely withholding known medical bills. The Wonderfoil Court mentioned these regulations, which dictate requirements of submitting known unpaid medical bills during the litigation. *See* 803 KAR 25:010 § 7; 803 KAR 25:010 § 13(9)(a). The thrust of these regulations is to prevent undue surprise and the ALJ has discretion in fashioning appropriate remedies if the situation warrants.

Here, JAB had the bills, as it attached them to the Form 112 Medical Dispute. This medical dispute and motion to join medical providers was filed on August 19, 2020 during the course of the litigation. The Board notes that JAB did not list the unpaid bills which were known and in its insurance carriers' possession when it filed its Notice of Disclosure on November 20, 2019 or an amendment pursuant to 803 KAR 25:010 §§ (2)(e)7 and (2)(f).

JAB tries to distinguish KRS 342.020(1) from KRS 342.020(4) by arguing R.J. Corman Railroad Construction, supra, does not apply as KRS 342.020(4) was enacted after the claimant's injury. This argument has no merit. The pertinent language contained in KRS 342.020(1) in 1993 regarding submission of bills by a provider within 45 days of treatment and the payment of bills within 30 days of receipt is identical to current KRS 342.020(4).

In Brown Pallett, rendered in 2007, the Board held that the reasoning in R.J. Corman Railroad Construction, supra, concerning the 30-day provision for payment of medical benefits also applies to the 45-day rule for submission of medical bills. Until an award has been rendered, the employer is under no obligation to pay any compensation, and all issues, including medical benefits are justiciable.

This issue has been addressed several times. The Board has consistently held that 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, the Court of Appeals citing Wonderfoil decided that the requirements of KRS 342.020(4) do not apply until an award is entered.

The Supreme Court in Wonderfoil held that the 60-day requirement for submission of medical expenses by the claimant per 803 KAR25:096 § 11(2) applies post-award and the logic and due process considerations remain the same with regard to KRS 342.020(4). There, the Court held the sixty-day submission requirement for injured workers only applied post-award, or a determination of compensability by an ALJ, stating specifically, "Accordingly, when viewed in the context of the regulatory scheme, 803 KAR 25:096, § 11's application only post-

award best effectuates the intent of the Commissioner and prevents an absurd result.”

Wonderfoil acknowledged there are regulations, 803 KAR 25:010 §§ (2)(e)7 and (2)(f) and 803 KAR 25:010 § 13(9)(a), which provide procedural requirements for filing known unpaid bills. The regulations dictate the parties, both the injured worker and the employer, produce known unpaid medical bills as the litigation progresses. The ALJ is empowered to determine if good cause exists for failing to present the known unpaid bills and, if good cause does not exist, whether the right to have the bills paid or the right to contest the bills is thereby waived. These regulations protect either party from facing undue surprise.

Until it is determined that the employer is obligated to pay medical bills from a final or interlocutory award, the claim is still speculative in nature. To mandate the requirements of KRS 342.020(4) for medical providers prior to an award would eviscerate the administrative regulations concerning the Notice of Disclosure and other filings of known, unpaid medical bills.

We continue to find the rationale contained in R.J. Corman Railroad Construction, supra, applicable to medical providers, as well as to employers. The 45-day requirement set forth in KRS 342.020(4) is applicable only after a determination of compensability of a claim by an ALJ.

Accordingly, the September 29, 2021 Opinion and Order rendered by Hon. Peter J. Naake, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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