

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 8, 2018

CLAIM NO. 200896678

JAMES LOGSDON

PETITIONER

VS.

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

WASHINGTON COUNTY SCHOOL DISTRICT
AND HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
REVERSING AND REMANDING

* * * * *

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

RECHTER, Member. James Logsdon ("Logsdon") appeals from the August 14, 2017 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"). The ALJ resolved a medical dispute in favor of Washington County School District ("Washington"), ruling a proposed left knee

arthroscopy non-compensable. On appeal, Logsdon argues the ALJ erred by considering evidence of a pre-existing, active disability in a compensable claim and by considering issues not properly preserved by the Benefit Review Conference ("BRC") Order. For the reasons set forth herein, we reverse.

Logsdon resolved his claim for a November 5, 2007 left knee injury by settlement agreement approved June 6, 2008. The agreement notes the injury to the left knee required arthroscopic repair. Logsdon retained his rights to future benefits for the knee injury. Because the claim was resolved without litigation, the record contains no medical evidence for the period prior to the reopening.

Washington filed a Form 112 and a motion to reopen on June 23, 2015 to contest the reasonableness and necessity of a left knee arthroplasty recommended by Dr. Daniel Hunt. On June 21, 2016, Washington filed a motion to amend the medical fee dispute and join Dr. Mark Duber. Washington noted Logsdon agreed to withdraw his request for arthroplasty by Dr. Hunt during a September 16, 2015 teleconference. Following the teleconference, Logsdon began treating with Dr. Duber, who recommended the same surgery as had Dr. Hunt.

Dr. Peter Kirsch performed a utilization review on May 26, 2015. Dr. Kirsch found the request for a left knee

arthroplasty is not reasonable and necessary. He stated the 2007 work injury resulted in a torn lateral meniscus that was corrected on January 18, 2008. Advanced existing degenerative changes were noted in the left knee at the time of the injury. On or about June 9, 2010, Logsdon reinjured the knee. Following the re-injury, he was diagnosed with a torn medial meniscus. Imaging studies again revealed advancing degenerative changes and end stage arthritis. Dr. Kirsch indicated the active effects of the injury had ceased by March 10, 2008 and the tissues were healed with no objective residual. Therefore, the request for a left knee arthroplasty is not reasonable and necessary for the cure of the work injury.

Logsdon submitted the medical records of Dr. Mark Duber who diagnosed severe arthritis of the left knee, exacerbated by a work injury. On May 19, 2016, Dr. Duber recommended knee replacement. He stated the arthritis in the knee was not caused by the work injury but it was exacerbated by the injury. Logsdon's condition was not improving. Dr. Duber indicated the purpose of the surgery would be to resolve the pain that started after the injury. On September 19, 2016, Dr. Duber indicated a left total knee arthroplasty was

necessary to alleviate pain based on the severity of the arthritis and the fact it was exacerbated by the work injury.

Dr. J. Rick Lyon performed an independent medical evaluation ("IME") on October 27, 2016. Dr. Lyon recorded a history of a 1980 football injury that resulted in a meniscectomy. In 2007, Logsdon twisted his knee at work, causing a lateral meniscus tear. He underwent arthroscopy on January 18, 2008. In 2010, Logsdon was at home when he stepped up on an object and experienced a painful pop in the knee. He was diagnosed with a bucket-handle tear of the medial meniscus, but had no additional treatment. Logsdon reported progressive left knee pain for which Drs. Hunt and Duber recommended knee arthroplasty.

Dr. Lyon diagnosed arthritis of the left knee, obesity, and diabetic neuropathy. He opined Logsdon's arthritis is the expected result of a meniscectomy performed in 1980. When Logsdon underwent the second meniscectomy in 2008, the biomechanics of the knee were altered which increased the risk of arthritis. Similarly, the 2010 meniscus tear again altered the knee mechanics. Dr. Lyon also noted Logsdon's obesity is a significant factor for the development of knee arthritis. He agreed the proposed knee replacement is appropriate, but attributed the treatment to the 1980

surgery and obesity. He acknowledged the work-related meniscectomy might have had a minimal effect on the progression of the arthritis. He indicated he would apportion 10% of the current arthritis and recommended treatment to the 2007 work event, and 90% to obesity and other injuries.

The ALJ's entered the following findings:

The Defendant Employer has moved to reopen this claim to challenge the reasonableness and necessity of a left knee arthroplasty. After review of the evidence, it is determined that the opinion of Dr. Lyon is persuasive in that the medical records confirmed that the Plaintiff had arthritis at the time of the work injury in 2007 and that arthritis was the expected result of the meniscectomy performed in 1980. Dr. Lyon agreed that the Plaintiff needed a knee replacement but found that it was due to arthritis resulting from the 1980 meniscectomy along with obesity and that while the work-related injury may have affected the progression of the arthritis, the contribution was minimal. This opinion has convinced the ALJ. Therefore, the contested surgery is hereby found not reasonable and necessary for the cure and/or relief of the work injury and, therefore, non-compensable.

Logsdon appeals directly to the Board, arguing the ALJ erred in relying on arguments regarding a pre-existing condition. Logsdon notes the claim was accepted as compensable and resolved without litigation. The settlement agreement preserved his right to future medical treatment.

Logsdon contends that by settling the claim with open medical benefits, the employer "bought" his left knee, pre-existing conditions and all, and relinquished the pre-existing condition defense.

Logsdon notes the sole contested issue listed in the BRC order is reasonableness and necessity of a left knee arthroplasty. He argues the ALJ impermissibly decided the claim on causation and work-relatedness. According to Logsdon, the ALJ correctly noted Dr. Lyon found Logsdon needed the knee replacement, therefore conceding the procedure is reasonable and necessary. However, the ALJ cited other causes, including a prior meniscectomy, pre-existing arthritic condition, and obesity that convinced him to deny the treatment.

We agree with Logsdon that neither pre-existing active condition nor causation/work-relatedness were properly preserved for consideration by the ALJ. This medical fee dispute was first assigned to Hon. R. Scott Borders, Administrative Law Judge ("Judge Borders"). In scheduling orders dated August 16, 2015 and September 16, 2015, the parties identified "causation/work-relatedness" as a contested issue. The dissent opinion is incorrect that no subsequent BRC orders are on file.

On August 4, 2016, the claim was reassigned to the ALJ. In an Order dated September 6, 2016 following a telephonic status conference, the basis of the dispute is listed as "reasonableness and necessity." In an Order dated December 12, 2016, following a telephonic BRC, the sole contested issue is identified as "reasonableness and necessity." In a June 15, 2017 Order following a second telephonic BRC, the sole contested issue is identified as "reasonableness and necessity of a left knee arthroplasty." In the September 6, 2012 Order, the ALJ indicates a telephonic status conference was conducted. In both the December 12, 2016 and June 15, 2017 Orders, the ALJ expressly states that "a telephonic Benefit Review Conference was held."

803 KAR 25:010 § 13(12) provides only those issues preserved at the BRC for determination by the ALJ "shall be the subject of further proceedings." At three telephonic BRCs, Washington failed to identify causation and work-relatedness as a contested issue. It was incumbent upon Washington to clearly set forth all contested issues in any subsequent BRC order, particularly in a situation where the claim has been reassigned to a different judge. For this reason, we believe it has waived the issue for consideration by the ALJ.

Nonetheless, even if causation and work-relatedness had been properly preserved for consideration, Logsdon's treatment is compensable. The ALJ determined Dr. Lyon provided the most persuasive opinion, and unequivocally relied thereon. Although Dr. Lyon believed the earlier injury and Logsdon's obesity were responsible for 90% of the arthritis, he indicated the work injury altered the mechanics of the knee and increased the likelihood of the development of arthritis. Dr. Lyon apportioned 10% of the current arthritis and resulting need for surgery to the 2007 injury.

The error in this claim involves the ALJ's application of the law to the determined facts. No physician directly stated Logsdon would have required knee replacement surgery at the time of the recommendation without the contribution of the work injury. There is no indication Logsdon was a candidate for the knee replacement surgery prior to the work-related injury. The crucial question is not whether arthritis was present in the knee prior to the work injury, but whether Logsdon would have required surgery at the time of the recommendation by Drs. Hunt and Duber if there had been no contribution by the work-related injury. Even in situations involving pre-existing conditions, surgery is compensable if a work injury hastens the need for the surgery.

Derr Construction Co. v. Bennett, 873 S.W.3d 824, 827 (Ky. 1994).

The ALJ made the required findings of fact necessary to resolve this medical fee dispute. It bears emphasizing that the ALJ stated his reliance upon the entirety of Dr. Lyon's opinion, including his acceptance that the work-related injury contributed to the need for surgery. Although it is within his discretion, the ALJ did not choose to believe only portions of Dr. Lyon's opinion. In fact, the ALJ acknowledged and expressly accepted Dr. Lyon's belief that the work injury affected the progression of the arthritis, albeit minimally. For this reason, a remand for further findings of fact is not necessary.

In such instances, it is the duty of this Board to correct the error. Having determined Logsdon's work-related injury contributed to his current condition requiring surgery, the law requires the employer to bear the cost of treatment. Id.

Accordingly, the August 14, 2017 Opinion and Order rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is hereby **REVERSED**. This claim is **remanded** for entry of an order in conformity with this opinion.

STIVERS, MEMBER, CONCURS.

ALVEY, CHAIRMAN, DISSENTS AND FILES A SEPARATE
OPINION.

ALVEY, Chairman. I respectfully dissent from the majority in this case. The majority has indicated the only issue preserved for the Administrative Law Judge to review was reasonableness and necessity of proposed surgery. However, that is not correct. In orders entered by the Hon. R. Scott Borders, Administrative Law Judge, on August 16, 2015 and September 16, 2015, it was indicated the basis of the challenge for the bills or treatment is reasonableness and necessity, as well as causation/work-relatedness. In fact, the Benefit Review Conference Order in a Medical Dispute dated September 16, 2015 clearly indicates that these are the **two** issues to be decided in the case. No subsequent Benefit Review Conference orders are in the file, although the record reflects orders following subsequent telephonic conferences.

Although the Administrative Law Judge in his Order submitting the case for decision indicated the issue was reasonableness and necessity and did not list causation/work-relatedness of the left knee arthroplasty, this is at worst, harmless error. Since this was an issue which was raised and further since Dr. Lyon's report addresses this issue, I would affirm the decision of the Administrative

Law Judge. It is further noted that although Dr. Lyon's decision is equivocal, it was within the Administrative Law Judge's purview to make a factual determination regarding resolving this issue.

As noted in Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000), the ALJ may 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. In this instance, I believe the ALJ properly exercised the discretion afforded to him.

Wherefore, for the foregoing reasons, I respectfully dissent from the majority's decision and would affirm the Administrative Law Judge's opinion.

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