Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: **June 21, 2019**

CLAIM NO. 201267588

JAMIE P. GROCE PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

VANMETER CONTRACTING, INC.,
DR. RODNEY MILLER;
DR. LAWRENCE PETERS;
INJURED WORKERS' PHARMACY;
And HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Jamie P. Groce, *pro se*, appeals from the March 11, 2019 Opinion and Order rendered by Hon. Grant S. Roark, Administrative Law Judge ("ALJ"). In a medical fee dispute, the ALJ found that after any appropriate period of

weaning required, VanMeter Contracting, Inc. ("VanMeter") would not be responsible for payment for prescriptions for Gabapentin, Hydrocodone, Meloxicam, Fentanyl, Methadone, and Keppra. On appeal, Groce argues the ALJ misunderstood the evidence, resulting in a clearly erroneous and unreasonable decision. Groce argues the ALJ abused his discretion and exceeded the scope of his authority in finding Dr. Lawrence Peters discharged her from care for failed urine drug screens showing the presence of methamphetamine. Additionally, Groce argues the reopening is defective for failing to join Dr. Eric Vessels, Dr. Kristen Andrews, and Dr. Christian Unick of Interventional Pain Specialists. Finally, Groce challenges the qualifications of Dr. Cynthia Willingham. For the reasons set forth herein, we affirm.

Groce sustained multiple injuries on October 8, 2012 when a retaining wall collapsed, crushing her and causing multiple fractures to her shoulder, pelvis, and right lower extremity. In a November 30, 2015 Opinion and Award, Hon. Douglas W. Gott, ALJ, found Groce permanently totally disabled and awarded income and medical benefits. Among the work-related injuries is the diagnosis of complex regional pain syndrome ("CRPS").

Groce first treated with Dr. Vivek Jain for pain management for five years until he moved out of the state. She then sought treatment with Interventional Pain Specialists, seeing Drs. Vessels, Andres, Unick and Dr. Rodney Miller. Groce was treated on a monthly basis from September through December 2017 for CRPS of the lower extremities, pain disorder associated with psychological factors and medical condition, and long term use of opiate analgesic. Kristen Andrews, PsyD determined

Groce was at low risk for opioid abuse and had no psychologically based issues that would interfere with interventional pain treatments or medication management.

Groce last treated with Dr. Lawrence Peters for pain management. At the hearing, Groce stated Gabapentin, Hydrocodone, Meloxicam, and Fentanyl relieve the burning sensation she experiences in her lower extremities. However, she had ceased treatment with Dr. Peters and had not tried to find another pain management clinic. Groce acknowledged she saw Dr. Reddy for carpal tunnel and was prescribed Hydrocodone pills following surgery on December 27, 2018.

VanMeter filed a motion to reopen and medical fee dispute on February 1, 2018 to contest monthly office visits with Dr. Miller and the frequency of urine drug tests. VanMeter filed a second medical dispute on July 27, 2018 to contest prescriptions for Gabapentin, Hydrocodone, Meloxicam, Fentanyl, Levetracetam (Keppra) and Methadone, prescribed by Dr. Peters and filled by Injured Workers Pharmacy. VanMeter filed a third dispute on October 9, 2018 to contest prescriptions for Keppra.

Dr. John Rademaker performed a physician review on January 9, 2018 concerning the reasonableness and necessity of monthly office visits for pain management. Dr. Rademaker noted that on the four occasions Groce treated with Interventional Pain Specialists, there was no change in the assessment, exam, or medications prescribed. He noted Groce had two appropriate urine drug screens and a behavioral health evaluation, indicating she is at low risk for opioid management. Accordingly, Dr. Rademaker recommended monthly office visits with 90-day

intervals for medicine refills. He also recommended random urine drug screens once or twice a year.

Dr. Peters examined Groce on April 30, 2018 and provided pain management treatment. Groce complained of burning pain from her knee to her toes on the right side, and less severe pain on the left from mid-calf to her foot. She also complained of sleep disruption. Dr. Peters noted injuries from the work incident included a dislocated shoulder, pneumothorax, severe knee and femur fracture, and a pelvis fracture. He also diagnosed CRPS and posttraumatic arthritis of the right lower extremity. He planned to discontinue Neurontin and Mobic, which did not appear to help, and continue Norco with a trial of Duragesic 25 mcg patch. He opined some other anticonvulsant type medications may help with neuropathic pain.

In a November 21, 2018 note, Dr. Peters indicated Groce had tested positive for methamphetamine. In a December 5, 2018 letter to Groce, Dr. Peters discharged her as a patient, citing the violation of the drug agreement and treatment plan, a failed urine drug screen, and illicit drug use.

Dr. Cynthia Willingham performed a physician review on July 5, 2018. She noted Gabapentin is an anti-epileptic medication that has been found to be useful for certain patients with a neuropathic component to their pain. Because Groce reported no improvement with Gabapentin, Dr. Willingham concluded it is not medically necessary or appropriate for treatment of the work injury. Dr. Willingham next explained Hydrocodone is an opiate medication that can be used for chronic pain management, with which Groce reported only "mild improvements" in her pain. Given the high risk of potential adverse effects of long-term opiate use and Groce's

own report of minimal benefit, Dr. Willingham concluded ongoing use of Hydrocodone is not medically necessary or appropriate for treatment of the work injury. Meloxicam is an anti-inflammatory agent that can be used to control pain. However, Groce stated it does not help her pain. Therefore, Dr. Willingham concluded Meloxicam is not medically necessary or appropriate. Fentanyl is a potent opiate medication that can be used in chronic pain management. Groce reported only "mild improvement" in her pain with the pain medications. Given the high risk of potential adverse effects of long-term opiate use and her own report of minimal benefit, Fentanyl is not medically necessary or appropriate for the treatment of the work injury. Methadone is an opioid that can be considered as a second line agent for chronic pain if the benefits of use outweigh the risks. In Groce's case, Dr. Willingham noted there is no discussion in the records of instituting Methadone as part of the current treatment plan, no documentation of patient education, and no documentation of a pre-cardiac risk assessment. Under these circumstances, Dr. Willingham opined Gabapentin, Hydrocodone, Meloxicam, Fentanyl, and Methadone are not medically necessary and appropriate for treatment of the work injury, and weaning would be required.

In the July 19, 2018 and October 1, 2018 reports, Dr. Willingham recommended denial of Keppra. She noted a paucity of data supporting efficacy of Keppra for neuropathic pain, but well-documented adverse effects. Further, Keppra should only be used when other anti-epileptics cannot be used. Dr. Willingham noted Gabapentin was previously utilized and was effective at some level for Groce's neuropathic pain, and Norco and Duragesic were helpful for "all components" of her

pain. In light of this reported improvement, Dr. Willingham concluded Keppra is not medically necessary or appropriate, and recommended weaning.

The ALJ's findings relevant to this appeal are as follows:

> Having reviewed the evidence of record, the Administrative Law Judge is ultimately most persuaded by Dr. Willingham's opinions. Dr. Willingham went through each medication and explained why each was not appropriate for continued use in plaintiff's situation. Her explanations were reasonable and persuasive. Moreover, Dr. Peters discharged plaintiff from his care after she failed [two] urine drug screens, which show the presence of methamphetamine. The question of the appropriateness of Dr. Peters' treatment may, therefore, be rather moot. However, regardless of plaintiff's discharge from Dr. Peters, Dr. Willingham's opinions are considered reasonable and persuasive. For these reasons, this medical dispute is resolved in favor of the defendant employer, and, after any appropriate period of weaning required, the defendant employer shall not be responsible for payment of gabapentin, hydrocodone, meloxicam, fentanyl, methadone, and Keppra. As plaintiff is not currently treating with any medical provider, and given that she has been discharged from pain management due to illicit drug use, the facts which supported Dr. Rademaker's opinion against the necessity of monthly office visits and monthly urine drug screens have radically changed, and it would not be appropriate to determine these issues unless, and until, she begins treatment with another physician. Having failed two urine drug screens, a subsequent physician may have much more justification for monthly office visits and monthly urine drug screens than when the issue was first presented to Dr. Rademaker.

The ALJ ordered that after any appropriate period of weaning required, VanMeter shall not be responsible for payment of Gabapentin, Hydrocodone, Meloxicam, Fentanyl, Methadone, and Keppra.

Groce did not file a petition for reconsideration. On appeal, she argues VanMeter's reopening is procedurally deficient because it failed to join Drs. Vessels, Andrews and Unick. Groce also challenges the reliability of Dr. Willingham's opinion. She observes Dr. Peters stated in his July 20, 2018 note that Norco and Duragesic "helps all" but Dr. Willingham stated his note indicates Norco and Duragesic helps all components of pain. Groce further argues Dr. Willingham incorrectly recorded that Groce had only mild improvement in her pain with her medications. On the contrary, Groce notes that on April 30, 2018, Dr. Peters stated she had been on a 100 mcg patch but is currently on a 25 mcg patch, evidencing more than mild improvement. Additionally, Groce questions Dr. Willingham's qualifications, noting she is a physiatrist in physical medicine and rehabilitation, does not hold a subspecialty certification in pain management, and is not licensed in Kentucky. Finally, Groce argues the ALJ erred in finding she was discharged by Dr. Peters for illicit drug use. She notes the letter from Dr. Peters does not specifically state she was discharged because of the presence of methamphetamine.

In a post award medical fee dispute, the burden is on the employer to prove the contested medical expenses are unreasonable or unnecessary. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991). Pursuant to KRS 342.275 and KRS 342.285, the ALJ, as the fact-finder, determines the quality, character, and substance of all the evidence and is the sole judge of the weight and inferences to be drawn from the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997). The ALJ may reject

any testimony and believe or disbelieve various parts of the evidence, regardless of whether it was presented by the same witness or the same party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000).

Because VanMeter successfully bore its burden, the question on appeal is whether the ALJ's findings are supported by substantial evidence. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Substantial evidence is defined as evidence of relevant consequence, having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). As fact-finder, the ALJ has the sole authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight to be accorded the evidence and the inferences to be drawn therefrom. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky. App. 1995). The fact-finder 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 parties' total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). In order to reverse the decision of the ALJ it must be shown that there was no evidence of substantial or probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

At the outset, we emphasize that nothing in the ALJ's decision deprives Groce of her right to ongoing reasonable and necessary care for her work-related

injuries, including the CRPS diagnosis. As noted by the ALJ, the question concerning the frequency of future office visits with Dr. Peters was rendered moot by his termination of treatment following the positive drug test. The medical evidence on this question was developed prior to the failed drug test, and the appropriate number of office visits and drug screening may be affected by that test. The appropriate frequency of treatment and drug screening may become an issue if Groce again seeks pain management treatment, and VanMeter will retain the burden to prove the recommended treatment at that time is not reasonable or necessary.

Regarding the alleged procedural deficiency relating to joinder of providers, neither Groce nor her counsel raised an issue in the proceedings before the ALJ as to the sufficiency of the pleadings, nor did the ALJ note any deficiency in the dispute pleadings. VanMeter joined Insured Workers Pharmacy and Dr. Peters, Groce's treating physician, who prescribed the disputed medications. These were the providers of the contested prescriptions and were the only necessary parties to be joined. Payment for services provided by Drs. Vessels, Andrews, and Unick were not at issue in the dispute. Therefore, VanMeter properly joined all necessary parties to this medical fee dispute.

Regarding Dr. Willingham's qualifications, we note no petition for reconsideration was filed after the ALJ rendered his decision and no objection to the admissibility of her reports was raised prior to the appeal to the Board. Thus, issues concerning Dr. Willingham's qualifications were not preserved.

Even if the issue of her qualifications were properly before the Board, 803 KAR 25:190 Section 6(1) provides that utilization review personnel "shall have

education, training, and experience necessary for evaluating the clinical issues and services under review". Section 6(2) states that utilization review physicians "shall hold the license required by the jurisdiction in which they are employed." There is no requirement that the reviewing physician be licensed in the state of Kentucky.

The only issue properly before us is whether, at the time VanMeter filed the medical fee dispute, the medications were reasonable and necessary treatment of Groce's work-related condition. In the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Stated otherwise, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is identifiable evidence in the record that supports the ALJ's conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, id. Because Groce filed no petition for reconsideration, our only task is to determine if substantial evidence in the record supports the ALJ's decision.

Dr. Willingham's opinions constitute substantial evidence supporting the ALJ's decision. Dr. Willingham reviewed the pertinent medical records and concluded the medications were not reasonable and necessary. Her statement that Dr. Peters noted Norco and Duragesic helps all components of pain is a reasonable understanding of his notation that Norco and Duragesic "helps all." Norco and Duragesic are pain medications, and Dr. Peters' note lists Groce's complaints as pain in the lower extremities. Because the admissibility of the evidence from Dr. Willingham is not at issue, Groce's arguments may only be considered as they relate

to the weight to be given the evidence. However, such determinations are solely within the purview of the ALJ who determines the appropriate weight to be given the evidence. We are without authority to re-weigh the evidence to reach a conclusion contrary to that reached by the ALJ.

Although Groce argues she was not discharged from Dr. Peters' care due to illicit drug use, Dr. Peters' November 21, 2018 note indicates Groce tested positive for methamphetamine. The termination letter lists violation of the drug agreement, a failed urine drug screen, failure to comply with the plan of treatment, and illicit drug use/taking medications not prescribed as reasons for the termination. The ALJ's conclusions regarding the reason Groce left Dr. Peters' care is reasonable and supported by the evidence.

We are convinced the ALJ properly understood and weighed the evidence and acted within his discretion to determine which evidence to rely upon. Therefore, it cannot be said the ALJ's conclusions are so unreasonable as to compel a different result. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Accordingly, the March 11, 2019 Opinion and Order rendered by Hon. Grant S. Roark, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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