

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 9, 2021

CLAIM NO. 201501453

JASMINKA SUCUR

PETITIONER

VS. APPEAL FROM HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

JCIM and
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

BORDERS, Member. Jasminka Sucur ("Sucur") appeals from the February 23, 2021 Remand Opinion rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (ALJ). The ALJ found Sucur's continuing medical treatment by a hand specialty orthopedic surgeon is not medically reasonable or necessary.

This claim is before the Workers Compensation Board for a second time. On December 29, 2020, this Board issued an Opinion affirming in part,

vacating in part, and remanding the ALJ's August 25, 2020 Opinion, Award, and Order. The ALJ determined Jasminka Sucur ("Sucur") suffered from work-related right carpal tunnel syndrome ("CTS") and awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits. The ALJ dismissed Sucur's claim for benefits due to alleged work-related injuries to her shoulders, elbows, forearms, and left wrist.

This Board affirmed the dismissal of the claim and award of benefits for the right carpal tunnel syndrome, but vacated the Opinion, Award, and Order and remanded this matter to the ALJ to address a medical fee dispute submitted by JCIM challenging the need for Sucur's continued treatment by a hand specialist.

Sucur testified by deposition on April 10, 2017 and at the hearing held June 29, 2020. Sucur began working as an operator for JCIM, a manufacturer of interior car parts, in May 2011. Her job activities required lifting and repetitive use of both upper extremities. Sucur began experiencing progressively worsening symptoms in both hands in early 2014. She first sought treatment with her family physician, Dr. Reem Hamad, who referred her to Kleinert & Kutz. Sucur continued to experience symptoms in her right fingers, hand, wrist, and elbow. Sucur continued to work full time as an operator for JCIM until her May 2017 surgery. She was released to return to work without restrictions on September 18, 2017. Sucur returned to her regular job at that time and continued to work until JCIM terminated her on July 9, 2018. Sucur has not returned to any work since. Sucur continues to experience pain and numbness in both hands, drops objects, and is unable to do "anything with my hands."

Dr. Thomas Gabriel prepared a report dated January 22, 2016. A nerve conduction study revealed both the left and right wrists median nerves were within normal limits. Dr. Gabriel diagnosed chronic musculoskeletal pain and a history of fibromyalgia; history of right CTS; normalization of median nerve conduction studies following a previous carpal tunnel cortisone injection; and chronic right elbow lateral epicondylitis. He opined Sucur's right and left upper extremity pain are due to non-work-related fibromyalgia. He opined Sucur requires no further treatment for her right CTS.

Dr. Gregory Gleis performed a university evaluation on May 3, 2016 and prepared a Form 107-I on June 6, 2016. Dr. Gleis diagnosed right lateral epicondylar pain; right thumb, index, and long digits, as well as right palm pain extending into the wrist and forearm symptoms; and right antecubital fossa deep pain lateral to the biceps tendon extending to the medial epicondyle and olecranon. Dr. Gleis opined Sucur's right lateral epicondylitis is not work-related, but rather is a pre-existing actively symptomatic condition based upon the previous workers' compensation claim. Dr. Gleis opined that Sucur's right carpal tunnel symptoms, objective findings, and diagnostic studies were consistent with CTS. Dr. Gleis, in his December 18, 2017 report following a November 29, 2017 evaluation, opined a referral to a hand surgeon was not related to the compensable right carpal tunnel condition. Dr. Gleis again stated Sucur's right elbow complaints and treatment are unrelated to the alleged work-related injury, including the surgical treatment of the right lateral epicondylitis.

Dr. Tuna Ozyurekoglu performed a right carpal tunnel release, a right elbow tenotomy, corticotomy, and debridement and reinsertion of common extensor origin on May 9, 2017. Dr. Ozyurekoglu saw Sucur on February 5, 2018, and noted her symptoms returned two months prior. She was placed on restrictions because of the type of activity causing recurrence. Her symptoms improved after she was placed on restrictions. Sucur reported pain in her right hand. Dr. Ozyurekoglu noted an injection to the left carpal tunnel improved symptoms. Dr. Ozyurekoglu diagnosed “Resolved R CTS s/p release. L CTS improved with injection. R Lat Epicondylitis s/p debridement.” Dr. Ozyurekoglu noted Sucur’s diagnoses on January 9, 2018 were, “Exacerbation of RI CT scar, RT CUB TS: Lt CTS.” He found Sucur had reached maximum medical improvement, and he permanently restricted her from using vibratory tools and from overhead work. A May 16, 2018 work slip noted the diagnoses of “Recurrent RT CTS. L CTS, R Lat Epicondylitis s/p debridement, R biceps tendinitis.” Sucur was also restricted from repetitive pushing, pulling, pinching, and gripping of both hands.

JCIM tendered reports from Dr. Michael C. Nicoson supporting the medical dispute. In a September 13, 2017 report, Dr. Nicoson stated the current treatment and physical therapy visits are not medically necessary or appropriate treatments of the recent right carpal tunnel syndrome conditions. Dr. Nicoson observed the therapy notes focus mainly on the lateral epicondylitis, which is not an approved procedure. In a January 25, 2018 report, Dr. Nicoson stated a right-hand anti-impact glove was necessary and appropriate treatment of the right carpal tunnel syndrome. In a January 26, 2018 report, Dr. Nicoson stated the record does not

establish her carpal tunnel pathology requires continued treatment. He stated that unless subsequent issues arise relating directly to her carpal tunnel release regarding numbness and tingling, change in her static two-point discrimination, or weakening of her thumb musculature, she will not need further evaluation by an orthopedic hand surgeon. Dr. Nicoson stated that, based on the documented medical records, there are no active issues regarding Sucur's current carpal tunnel pathology. Dr. Nicoson opined continued treatment by an orthopedic hand surgeon is not medically necessary or appropriate for Sucur's right carpal tunnel release.

Sucur submitted the April 4, 2019 report of Dr. Jules Barefoot. Dr. Barefoot diagnosed right carpal tunnel syndrome/median nerve neuropathy and right elbow tear of the common extensor origin; May 9, 2017 right carpal tunnel release and right elbow tenotomy, debridement, and reinsertion of the common extensor tendon; recurrent right median nerve neuropathy with ongoing, persistent, right elbow epicondylitis; and left carpal tunnel syndrome/median nerve neuropathy. Dr. Barefoot noted Sucur remained markedly symptomatic. Sucur complained of bilateral hand pain, right elbow pain, diminished grip strength in both hands, and numbness and tingling in both hands involving the index, middle, and ring fingers. Dr. Barefoot recommended a referral to a hand surgeon for consideration of further treatment.

In her February 23, 2021 Remand Opinion, the ALJ made the following Findings of Facts and Conclusions of Law, relevant to the issues on appeal, which are set forth *verbatim*:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The evidence in this claim has been summarized at length by this ALJ, Chief ALJ Douglas Gott, and the WCB. Thus, a further recitation of the evidence is not warranted. However, this ALJ will address the evidence relative to the medical dispute.

On May 7, 2018, JCIM filed a medical dispute contesting continued treatment by a hand specialty orthopedic surgeon, continued right upper extremity treatment, including, but not limited to, physical therapy. JCIM tendered reports from Dr. Michael C. Nicoson in support of its medical dispute. Dr. Nicoson opined continued treatment by a hand specialty orthopedic surgeon was not medically necessary or appropriate for Sucur's right carpal tunnel release. However, he concluded a right-hand impact glove was appropriate treatment.

Sucur underwent a right carpal tunnel release on May 9, 2017, which is the only condition this ALJ found was compensable. Dr. Gleis, in his report following the November 29, 2017 evaluation, opined a referral to a hand surgeon was not related to the compensable right carpal tunnel condition. Conversely, Dr. Jules Barefoot, in his April 4, 2019 report, recommended a referral to a hand surgeon for consideration of further treatment. However, Dr. Barefoot's opinions addressed Sucur's right carpal tunnel syndrome, right elbow epicondylitis, and left carpal tunnel syndrome. Thus, it is not entirely clear whether Dr. Barefoot felt further evaluation with a hand surgeon was warranted solely for Sucur's compensable right carpal tunnel condition.

Based upon the evidence, this ALJ is unable to conclude the previous referral to a hand surgeon was reasonable, necessary and workrelated for Sucur's compensable injury. Rather, it appears the referral was necessitated to treat conditions that were adjudicated as non-workrelated. Regardless, Sucur remains entitled to reasonable and necessary treatment for the cure and effects of her work-related right carpal tunnel syndrome under KRS 342.020.

Neither party filed a Petition for Reconsideration. Sucur now appeals arguing the ALJ erred in deciding the underlying medical fee dispute in favor of JCIM as the evidence compels a contrary result. We disagree and affirm.

As the claimant in a workers' compensation proceeding, Sucur had the burden of proving each of the essential elements of her claim, including work-relatedness/causation of medical treatment received and the need for future medical treatment. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Sucur was unsuccessful in her burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming, no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). 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. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky.

2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. As long as the ALJ's ruling regarding an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Sucur did not file a petition for reconsideration from the February 23, 2021 Remand Opinion resolving the medical fee dispute in favor of JCIM. In the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether substantial evidence in the record supports the ALJ's conclusion. Stated otherwise, where no petition for reconsideration was filed, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record supporting the ALJ's ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Thus, on appeal, we must determine whether substantial evidence supports the ALJ's decision.

The ALJ was instructed, on remand, to address a pending medical fee dispute filed by JCIM. The ALJ was confronted with conflicting medical evidence regarding the reasonableness and necessity of Sucur's continuing medical treatment by a hand specialist. On remand, the ALJ did exactly as instructed and reviewed the conflicting medical proof. Drs. Nicoson and Gleis opined the treatment is not necessary or appropriate, while Dr. Barefoot opined the treatment is reasonable and necessary. The ALJ sets forth, with specificity, her reasoning and logic for her determination as to why the proposed treatment is not reasonable and necessary. The determination is supported by substantial evidence and therefore will not be disturbed on appeal.

Accordingly, the February 23, 2021 Remand Opinion rendered by the Hon. Stephanie L. Kinney, Administrative Law Judge, is **AFFIRMED**.

ALL CONCUR.

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