

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 9, 2019

CLAIM NO. 201760412

KEN ISAACS INTERIORS, INC.

PETITIONER

VS.

APPEAL FROM HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

DELBERT RADER,
And HON. MONICA RICE-SMITH,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

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

RECHTER, Member. Ken Isaacs Interiors, Inc. appeals from the March 25, 2019 Opinion, Award and Order and the April 16, 2019 Order on Reconsideration rendered by Hon. Monica Rice-Smith, Administrative Law Judge ("ALJ"). The ALJ

determined Delbert Rader (“Rader”) suffered a work-related low back injury. On appeal, Ken Isaacs challenges the award of future medical benefits. We affirm.

Rader worked for Ken Isaacs as a construction foreman. He alleged an injury to his low back on October 17, 2017 while mounting a table top to a wall. Rader initially treated with Dr. Sandra Dionisio. He underwent various methods of treatment over the following months, including physical therapy and Medrol injections.

Rader eventually came under the care of Dr. James Bean on February 6, 2018. Dr. Bean diagnosed a lumbar injury with persistent left sciatica pain. He ruled out a herniated disc at L5-S1, though a lumbar myelogram confirmed degenerative facet changes at that level. Rader last treated with Dr. Bean on July 31, 2018, at which time he placed Rader at maximum medical improvement and assigned a 7% impairment rating pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition (“AMA Guides”), entirely attributable to the work injury. Dr. Bean stated he had “no other treatment to recommend at this time.”

At a November 1, 2018 deposition, Dr. Bean explained he treated Rader for six months. Ultimately, he diagnosed chronic lumbar strain based on subjective complaints of pain without objective findings. He stated Rader is not a surgical candidate, and recommended he take Tylenol for future pain as needed. In a subsequent note dated November 19, 2018, Dr. Bean stated he had reviewed the results of a functional capacity evaluation and recommended Rader’s restrictions be

lifted after eight weeks of returning to work. He further noted Rader may need a work hardening program if the return to work was unsuccessful.

Patrick Campbell, D.C., conducted an independent medical evaluation (“IME”) on September 12, 2018. Dr. Campbell diagnosed work-related segment and somatic dysfunction of the lumbar region with lumbago and sciatica on the left side. He assigned a 13% impairment rating pursuant to the AMA Guides. Dr. Campbell assigned some permanent restrictions against heavy lifting and bending, but made no direct statement about the need for future medical care.

Dr. James Madden conducted an IME on December 5, 2018. Dr. Madden diagnosed work-related chronic low back pain with left lower extremity radiculopathy and degenerative disc disease. He assigned a 12% impairment rating pursuant to the AMA Guides, and concluded Rader can only return to light duty work. Dr. Madden did not expressly recommend any specific future medical treatment, though he noted it is “quite possible that even with continued treatment and restrictions in activity, this patient will continue to progressively worsen.”

Dr. Thomas Menke conducted an IME on November 13, 2018. Dr. Menke diagnosed a work-related lumbar strain which has evolved into chronic low back pain. He assigned a 0% impairment rating and stated Rader needs no permanent restrictions from work or activity. He further stated Rader needs no future medical treatment for the work injury.

The ALJ relied on Dr. Bean’s medical opinion to conclude Rader suffered a work-related low back injury which resulted in a 7% permanent impairment rating. She awarded permanent partial disability benefits and medical benefits, noting

Dr. Bean recommended a possible work hardening program. Ken Isaacs petitioned for reconsideration, arguing there is no evidence to support the need for future medical benefits. In the Order on Reconsideration, the ALJ explained Rader is entitled to future medical benefits because he has been assigned a permanent impairment rating.

On appeal, Ken Isaacs does not challenge the finding Rader suffered a work-related low back injury resulting in a 7% permanent impairment rating. The sole issue raised on appeal is Rader's entitlement to future medical benefits. According to Ken Isaacs, no physician expressly stated Rader needs any future medical treatment. Therefore, it reasons Rader failed in his burden of establishing entitlement to future medical treatment.

Ken Isaacs is correct that Rader, as the claimant in a workers' compensation proceeding, bore the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). The version of KRS 342.020 which applies to this 2017 injury, states that the employer shall pay for the cure and relief from the effects of a work injury "as may be reasonably required at the time of the injury and thereafter during disability." Unlike KRS 342.730, KRS 342.020 does not equate the existence of a permanent impairment rating with disability. For this reason, the Kentucky Supreme Court, in FEI Installation, Inc. v. Williams, held that a claimant may be entitled to future medical benefits even if no permanent impairment rating has been assigned and no income benefits have been awarded. 214 S.W.3d 313 (Ky. 2007). The Court held that the requirement contained in KRS 342.020 that a claimant is entitled to medical benefits

“during disability” means “for so long as a work-related injury causes impairment.”
Id. at 318.

Ken Isaacs emphasizes the following statement made by the Court in Williams: “Williams testified that he continued to receive physical therapy when he was deposed, and no medical evidence indicated that future medical treatment would be unreasonable or unnecessary. Therefore, he was entitled to an award of future medical benefits.” Ken Isaacs interprets this statement to mean Williams was entitled to an award of future medical benefits *because* no medical evidence indicated that future medical treatment would be unreasonable or unnecessary. It reasons there was no such evidence in Rader’s claim, and therefore he is not entitled to medical benefits.

This analysis is based on an oversimplification of the Court’s analysis in Williams. The primary inquiry in Williams was the claimant’s entitlement to future medical benefits absent an award of permanent income benefits or a permanent impairment rating. To some extent, this statement is *dicta*, as the Court was simply noting the absence of what could potentially be relevant medical evidence in another claim. The Court was not asked to examine a claimant’s entitlement to future medical benefits in the absence of medical evidence indicating future treatment is unreasonable or unnecessary.

Further, Williams is distinguishable from Rader’s claim in two important respects. Unlike Williams, Rader has been assigned a permanent impairment rating which has not been challenged on appeal. Therefore, the inquiry undertaken in Williams – that is, whether disability can continue absent a permanent impairment rating – is not necessary in this claim. The question of Rader’s ongoing

disability has been answered by the fact he was assigned a permanent impairment rating.

Second, Ken Isaacs incorrectly argues that the unanimous evidence in this claim indicates that no medical treatment is reasonable or necessary. Indeed, Dr. Menke stated there is no need for future medical treatment. However, Dr. Campbell made no statement about the need for future medical treatment. Dr. Madden did not identify any particular future medical treatment which would be needed, but alluded to the possibility of future treatment by stating Rader's condition might deteriorate despite adherence to restrictions and "continued treatment." Finally, Dr. Bean stated Rader is not a surgical candidate and recommended Tylenol for pain management, but made no definitive statement that no future treatment is recommended. Therefore, it is clear the medical testimony was less than unanimous regarding the need for future medical treatment.

Regardless, the Kentucky Supreme Court has made clear that a claimant's entitlement to future medical benefits does not depend solely on whether a specific treatment is recommended at the time the claim is heard. Kroger v. Ligon, 338 S.W.3d 269, 275 (Ky. 2011). Rader's entitlement to future medical benefits is a function of the fact he now suffers a permanent impairment. If any future medical treatment is ultimately recommended, Ken Isaacs may challenge the compensability of that treatment pursuant to KRS 342.125.

For the foregoing reasons, the March 25, 2019 Opinion, Award and Order and the April 16, 2019 Order on Reconsideration rendered by Hon. Monica Rice-Smith is hereby **AFFIRMED**.

ALL CONCUR.

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