

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: November 15, 2019

CLAIM NO. 198709368

KEN LICK TIP TOP COAL

PETITIONER

VS.

APPEAL FROM HON. RICHARD E. NEAL,  
ADMINISTRATIVE LAW JUDGE

JACKIE MINIX;  
AND HON. RICHARD E. NEAL,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**RECHTER, Member.** Ken Lick Tip Top Coal (“Tip Top”) appeals from the June 17, 2019 Opinion and Order and the July 19, 2019 Order rendered by Hon. Richard E. Neal, Administrative Law Judge (“ALJ”). In this medical fee dispute, the ALJ determined Hydrocodone was causally related to the work injury, and is reasonable

and necessary, a finding which Tip Top challenges on appeal. For the reasons set forth herein, we affirm.

Jackie Minix injured his lumbar spine on September 23, 1986 when he slipped and fell while climbing on a loader. In a May 22, 1989 Opinion and Award, Hon. Richard Campbell, Administrative Law Judge (“ALJ Campbell”) found Minix suffered a 30% occupational disability, apportioning 10% to the work injury, 10% to pre-existing disability, and the remaining 10% to arousal of a dormant, non-disabling disease or condition brought into disabling reality by the work injury. On October 19, 2018, Tip Top filed a Form 112, Medical Fee Dispute and a motion to reopen challenging the reasonableness, necessity, and work-relatedness of prescriptions for Norco/Hydrocodone and Skelaxin, as well as monthly office visits with Dr. Jack Kendrick.

Dr. Kendrick treated Minix for chronic low back pain which radiates into his legs. At a May 17, 2018 office visit, he noted, “Patient, 69 year 1 month, old is here for routine follow-up for workers comp. visit.” Minix reported his back pain was relieved by heat/ice, medication, muscle relaxers, anti-inflammatory medications, and physical therapy. Dr. Kendrick diagnosed intervertebral disc disease with radiculopathy and low back pain. On July 19, 2018, Dr. Kendrick noted, “The etiology of the chronic pain is lumbar DDD diffuse osteoarthritis.” In a December 20, 2018 letter, Dr. Kendrick stated he has been Minix’s physician for approximately 20 years. He noted Minix was injured on the job over thirty years ago, and has been treated with Hydrocodone and Skelaxin for many years. He also reported that Minix has a history of bladder and prostate cancer, which required an

ileu conduit. Because of the risk of bleeding and nephrotoxicity due to these conditions, Dr. Kendrick did not believe Hydrocodone and Skelaxin could be discontinued as Minix is unable to tolerate other medications such as non-steroidal anti-inflammatory medications.

Dr. Rafid Fadul performed a Utilization Review on September 11, 2018. Dr. Fadul diagnosed a lumbar strain as a result of the work injury. Dr. Fadul opined that the use of Hydrocodone and Skelaxin is not related to the 1986 work injury because the work accident caused a lumbar strain but no acute trauma to the lumbar spine. According to Dr. Fadul, the current records indicate the low back pain is due to osteoarthritis and degenerative disc disease, and the Hydrocodone and Skelaxin treat these conditions.

On October 4, 2018, Dr. Fadul stated he reviewed additional records including the employer's First Report of Injury, the original Opinion and Award, and medical records from 2001 through present. Dr. Fadul recommended weaning from the medications over the next two months. Following the weaning, Minix would no longer require any office visits with Dr. Kendrick, as the purpose of the monthly visits was simply to monitor medications. Dr. Fadul reiterated his belief the prescribed medications are not reasonable or necessary. He stated the efficacy of Norco is unclear, because recent clinical reports fail to note clear functional improvements. Dr. Fadul stated no substantial pain relief was evident. He concluded the risk of the medication outweighs the potential benefit.

Dr. Daniel Primm performed an independent medical evaluation on April 10, 2019. Dr. Primm diagnosed a probable lumbar strain secondary to the

work-related injury with no evidence of lumbar radiculopathy or myelopathy. He later diagnosed mechanical low back pain with no evidence of radiculopathy or myelopathy. Dr. Primm characterized Minix's back examination and symptoms as usual for his age, regardless of his history of low back injury, and do not warrant narcotic use. Instead, he recommended an over-the-counter, non-steroidal anti-inflammatory medication and low impact aerobic activity. Dr. Primm found no indication for monthly office visits. Finally, he opined the current back symptoms are not a direct result of the 1986 back injury, noting the records did not show any medical treatment between 2003 and 2006. Rather, Dr. Primm concluded the current symptoms are a result of the natural aging process with degenerative disk disease.

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

On September 23, 1986, the Plaintiff sustained a work-related injury to his lumbar spine. He currently treats with Dr. Kendrick for low back pain, and is prescribed Hydrocodone and Skelaxin. Concerning causation, the evaluating physicians in this claim, Dr. Fadul and Dr. Primm, characterize the Plaintiff's work injury as a simple lumbar sprain (muscle and ligament injury), and base their finds on causation of the Plaintiff's current treatment on this diagnosis. The evaluating physicians then attribute the Plaintiff's current need for treatment to his degenerative disc disease and diffuse osteoarthritis. However, the Opinion from ALJ Campbell finds that the Plaintiff sustained more than a simple lumbar strain. The physicians who evaluated the Plaintiff at the time of the original award appeared to agree that the Plaintiff had pre-existing degenerative changes of the lumbar spine followed by work injuries. Dr. Goodman apportioned 1/2 of the Plaintiff's impairment at the time to the work injuries, and 1/2 to the arousal of his degenerative condition. Dr. Rapier apportioned 1/3 of the Plaintiff's impairment at the time to the arousal of a pre-existing dormant condition, 1/3 to the active pre-

existing disability, and 1/3 to the work injury itself. ALJ Campbell ultimately found that the Plaintiff had a 30% occupational disability, 10% of which was attributable to the work-injury itself, 10% attributable to the arousal of a dormant, non-disabling disease or condition brought into disabling reality, and 10% of which existed immediately prior to the subject injury. In sum, the injury was more than a simple lumbar sprain and strain, and involved, in part, the arousal of the Plaintiff's dormant pre-existing degenerative changes in the lumbar spine. The medical treatment for the arousal of these degenerative changes in the Plaintiff's lumbar spine would therefore be compensable. It is in this context that the ALJ finds the opinions of Dr. Primm and Dr. Fadul to be unpersuasive, and the physicians did not appear to have a true understanding of the nature of the Plaintiff's compensable injury. Dr. Kendrick, noting the Plaintiff's work injury of over 30 years ago, has treated the Plaintiff with Hydrocodone and Skelaxin. The ALJ finds that this treatment is causally related to the work injury.

Concerning reasonableness and necessity of the Hydrocodone (Norco), the treatment records make it very clear that Plaintiff has continued low back pain that effects his activities of daily living. The records also repeatedly note that the Hydrocodone relieves the Plaintiff's pain. The Plaintiff's dose of Norco does not appear to be excessive (20mg per day) and there is no indication in the records that the Plaintiff is abusing or diverting his medication. Further, it is noteworthy that the Plaintiff can no longer tolerate anti-inflammatory medications because of the risk of bleeding and nephrotoxicity due to other conditions. As such, the ALJ finds that the Defendant has failed to meet his burden of proof that the Hydrocodone is not reasonable and necessary treatment.

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Concerning the reasonableness and necessity [of] continued office visits, the ALJ finds them to be reasonable and necessary given the above finding that the medication Hydrocodone is reasonable and necessary.

Tip Top filed a petition for reconsideration making essentially the same arguments it raises on appeal. The ALJ provided the following additional findings in his order on reconsideration:

The Defendant first argues that there was insufficient evidence for the ALJ to find causation in this claim, specifically noting that Dr. Kendrick's letter was insufficient. The ALJ finds that there was sufficient evidence for the Plaintiff to meet his burden of proof on causation. The physicians who evaluated the Plaintiff at the time of the original award appeared to agree that the Plaintiff had pre-existing degenerative changes of the lumbar spine followed by work injuries. ALJ Campbell ultimately attributed the Plaintiff's occupational impairment to the work-injury itself, the arousal of a dormant non-disabling disease or condition brought into disabling reality, and impairment that existed immediately prior to the subject injury. In sum, the injury involved, in part, both the acute consequences directly attributable to the injury, as well as the arousal of the Plaintiff's dormant pre-existing degenerative changes in the Plaintiff's lumbar spine. As such, the medical treatment for the injury and arousal of these degenerative changes in the Plaintiff's lumbar spine would be compensable. Further, the medical records reviewed by Dr. Primm show that the Plaintiff continued to have low back pain after the work injury. The records reviewed by Dr. Primm are clearly incomplete, and he only summarized records up through 2003. The Plaintiff at that time was treating with Dr. Kendrick, his current treatment provider, who prescribed Celebrex and Skelaxin. However, the payment ledger clearly indicates that the Plaintiff received medical treatment that was paid for by the carrier in 1986, 1988, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2006, 2007, 2008, 2009, 2010, 2011, 2012, 2013, 2014, 2015, 2016, and 2017. None of the medical records from 2003 through 2017 are summarized by Dr. Primm or otherwise filed. However, the filed records from Dr. Kendrick dated March 15, 2018, April 16, 2018, May 17, 2018, June 15, 2018, and July 19, 2018, clearly show that he was treating for continued low back pain. Further, there is no indication of any intervening injury

in any of the records filed or summarized. It is within this context that Dr. Kendrick's letter is reviewed. Dr. Kendrick, in a letter sent to this ALJ in response of the medical dispute, stated,

I have been Jackie Minix's physician for almost 20 years, he was injured on the job over 30 years ago. He has been treated with Hydrocodone and Skelaxin for many years. He also has a history of bladder and prostate cancer with required an ileu conduit. Because of the risk of bleeding and nephrotoxicity, I do not feel his Hydrocodone and Skelaxin can be discontinued as he would be unable to tolerate other medications such as NSAIDS.

While the above statement certainly could have been more artfully worded, the ALJ interprets and infers from the statement that Dr. Kendrick is treating the Plaintiff with Hydrocodone and Skelaxin for the work injury that occurred 30 years ago, especially since the letter was sent to the ALJ in response to the medical dispute challenging the reasonableness, necessity, and work relatedness of the medications. Furthermore, this interpretation would be consistent with the limited medical records filed, as well as the payment ledger. The ALJ finds that the Plaintiff has met his burden of proof on causation based on the totality of the above circumstances.

The Defendant argues that the ALJ erred in relying on the underlying ALJ decision as an apparent basis for finding that the Plaintiff had established that this treatment was causally related to the work injury. The ALJ finds that underlying opinion from the ALJ was only one piece of the totality of circumstances considered on causation.

The Defendant asks for additional findings of fact as to whether the Plaintiff's medications for the lumbar spine are causally related to the pre-existing active condition as opposed to the work injury. The ALJ sees no persuasive evidence that the Plaintiff's medications are related to any prior condition.

The Defendant asks the ALJ for additional findings regarding how much weight, if any, he gave to the payment ledger. The ALJ notes that the prior findings are more than sufficient to apprise the parties of the basis for his decision. While authority generally establishes an ALJ must effectively set forth adequate findings of fact from the evidence in order to apprise the parties of the basis for his decision, he is not required to recount the record with line-by-line specificity nor engage in a detailed explanation of the minutia of his reasoning in reaching a particular result. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). The ALJ would note that the payment ledger is material in that it allows an inference that the Plaintiff received medical treatment for the years specified above.

The Defendant argues that it was patent error for the ALJ to rely on statements made by the Plaintiff in the medical records that the medications relieve his pain. The ALJ understands that these statements are made by the Plaintiff to the provider, but finds that there are relevant to the Plaintiff's then existing medical condition, as well as providing a basis for Dr. Kendrick's opinion as to why he is prescribing the medications.

The Defendant argues that the ALJ did not consider the pain levels the Plaintiff reported in making his ultimate determination on whether the pain medication provides the Plaintiff relief. The ALJ did consider such evidence within the context of the record as a whole, but ultimately found that the balance of the evidence showed that the medications provided pain relief, as also noted in the medical records.

On appeal, Tip Top argues there is no substantial evidence to support the conclusion Hydrocodone is compensable. Tip Top contends Dr. Kendrick's July 19, 2018 letter does not constitute a medical opinion on causation. Citing Kingery v. Sumitomo Electric, 481 S.W.3d 492 (Ky. 2015), Tip Top argues Minix was required to file a medical opinion on causation, as Dr. Kendrick merely stated that Minix is

unable to tolerate other medications such as non-steroidal anti-inflammatory drugs. Tip Top also contends the conclusions in Dr. Kendrick's notes concerning relief provided by the medication are merely Minix' statements, not medical opinions.

In a post-award medical fee dispute, the employer bears the burden of establishing the requested treatment is not reasonable or necessary. The claimant maintains the burden to prove the contested treatment is causally related to the work injury. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. 1991). Because Tip Top was unsuccessful in its burden regarding the reasonableness and necessity of prescriptions for Hydrocodone, it must show the evidence compels a finding in its favor. "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).

We begin by noting ALJ Campbell found the work injury involved both the acute consequences directly attributable to the injury, as well as the arousal of dormant pre-existing degenerative changes in the lumbar spine. Thus, Tip Top remains liable for reasonable and necessary medical treatment of the aroused degenerative condition. McNutt Construction/First General Services v. Clifford F. Scott, et al., 40 S.W.3d 854 (Ky. 2001). The ALJ could reject the opinion of Dr. Fadul, who only considered the strain itself as the work-related condition.

Kingery is easily distinguished from the case *sub judice*. In Kingery, the medical evidence established her need for psychological medication was related to her inability to work. However, the original opinion and award determined the work-related injury did not prevent her from returning to her employment with Sumitomo or any other employment. Additionally, the original opinion included an express finding that any alleged psychological concerns were not work-related. Substantial, objective medical evidence demonstrated Kingery later developed a multitude of worsening problems including morbid obesity, insulin-dependent diabetes, high blood pressure, congestive heart failure, chronic obstructive pulmonary disease (COPD) and asthma, manic depression and anxiety with history of suicide attempts, and gastroesophageal reflux disease, requiring extensive pharmacological treatment. Additionally, Kingery testified her ongoing progressively worsening issues resulted from deconditioning due to her claimed inability to work, which she attributed to her work injury. Such inactivity and deconditioning did not relate to her work injury because the original opinion determined the injury resulted in only minimal occupational restriction and did not prevent her from working.

The payment ledger clearly indicates Minix received medical treatment paid for by the carrier from 1986 to 2017 with the exception of 1987, 1989, 2004 and 2005. There is sufficient evidence to establish Minix remained symptomatic following the original decision. Although there is scant evidence concerning causation, Dr. Kendrick stated on May 17, 2018, that Minix “is here for routine follow-up for Workers comp. visit.” There is no dispute that the narcotic medication is prescribed to treat the degenerative spinal condition.

The evidence does not compel a finding that the narcotic medication is unreasonable or unnecessary. Dr. Kendrick stated Minix cannot take NSAIDs because of the risk of bleeding and nephrotoxicity. The ALJ enjoys the discretion to reject Dr. Primm's opinion that the use of narcotic medication was not reasonable because Minix could use NSAIDs. Dr. Fadul did not suggest an alternative to use of narcotics or NSAIDs.

While Tip Top has identified evidence supporting a different conclusion, there was substantial evidence presented to the contrary. As such, the ALJ acted within his discretion to determine which evidence to rely upon, and 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 June 17, 2019 Opinion, Award and Order and the July 19, 2019 Order rendered by Hon. Richard E. Neal, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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