

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 25, 2019

CLAIM NO. 199442764

KY DEPARTMENT OF TRANSPORTATION

PETITIONER

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

TODD ANDERSON WARD;
AND HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

RECHTER, Member. The Kentucky Department of Transportation (“KYDOT”) appeals from the March 5, 2019 Opinion and Order, and the April 1, 2019 Order on Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”). In this medical fee dispute, the ALJ determined certain prescriptions and treatment are reasonable and necessary for the treatment of Todd Ward’s 1994 work-

related injury. KYDOT argues the medical evidence compels a finding that the contested medications and treatment are not compensable. For the reasons set forth herein, we affirm.

Ward was injured on October 10, 1994, while operating an endloader. His equipment hit a steel beam on a railroad crossing, which jarred him violently. After filing a claim for benefits, it was determined Ward suffered compensable injuries to his cervical and lumbar spine, and a psychological injury. He was awarded permanent partial disability benefits based upon a 55% impairment rating. Following Ward's 2000 motion to reopen for worsening of condition, it was determined he is now permanently totally disabled.

KYDOT moved to reopen the claim in 2017 to contest the compensability of Methocarbomal and medial branch blocks for the cervical spine. Later, KYDOT amended the motion to also contest the compensability of Percocet, Lyrica, and Oxycontin. It additionally requested a weaning program from these medications.

Two hearings were conducted in this claim, for reasons which are unrelated to the issues on appeal. Ward testified he had been on pain medication since his 1994 injury. He began treating with Dr. Timothy Mims on August 31, 2017 for neck, back, leg and knee pain. Dr. Mims continued Ward on prescription pain medications which he had been taking since the time of the accident. Ward testified the medications are necessary to maintain a tolerable level of pain.

At Ward's initial visit on August 31, 2017, Dr. Mims reviewed a June 12, 2017 cervical MRI which revealed a central disc protrusion, mild cord

compression, spinal canal stenosis, and mild bilateral stenosis at C4-5. A lumbar MRI taken the same day revealed mild bilateral stenosis at L4-5. The MRI also revealed significant findings at L5-S1, including moderately severe disc space narrowing, disc extrusion, and displacement of the nerve root at S1. Dr. Mims' physical examination indicated moderate pain and limited lumbar range of motion. He opined the primary cause of Ward's pain is his cervical pathology, with his lumbar spine as the secondary pain generator. Dr. Mims prescribed Lyrica, Oxycontin, Morphine, and Parafon Forte. He also stated his opinion that Ward's work injury is the cause of his current pain.

At a September 26, 2017 visit, Ward continued to complain of neck and back pain. Dr. Mims recommended bilateral cervical medial branch blocks. At an October 25, 2017 visit, Dr. Mims noted Ward had one prior compliant urinary drug screen, and one non-compliant. His diagnosis remained the same, and Dr. Mims again recommended bilateral cervical medial branch blocks.

KYDOT presented the opinions of three physicians, Dr. Daniel Wolens, Dr. Guy Lerner, and Dr. Chris Stephens. All three concluded the contested prescriptions and medial branch blocks are not reasonable or necessary for the treatment of Ward's work injury. Around the time Ward began treating with Dr. Mims, there was concern he had malignant lesions on his lungs. The diagnosis of lung cancer was not ruled out until 2018. For this reason, there are references to possible cancerous lesions in Dr. Mims' treatment records, as well as the reports of Drs. Wolens, Lerner, and Stephens. Because malignancy was ultimately ruled out,

we will not discuss those portions of the physicians' reports which concern the possible cancer diagnosis.

Dr. Wolens conducted a utilization review on November 13, 2017. In reviewing Dr. Mims' treatment records, Dr. Wolens expressed his concern that Ward was prescribed a high dosage of Oxycontin despite evidence of prior non-compliant drug screens. Further, Dr. Wolens noted Ward had not been taking opioids for a period of about one year before entering Dr. Mims' care. Dr. Wolens concluded Oxycodone is not reasonable because Dr. Mims' records do not document significant pain relief despite the high dosage. Regarding Lyrica, Dr. Wolens stated the medical record does not support the combined use of Lyrica and opioid pain medication. Though unclear if Methocarbamol is still being prescribed, Dr. Wolens nonetheless concluded this muscle relaxer is not indicated for the treatment of long-term low back pain.

Dr. Lerner reviewed Ward's treatment records and issued a report dated November 30, 2017. Dr. Lerner concluded bilateral medial branch blocks would be "highly inappropriate" for Ward because he had a history of opioid use for more than ten years. According to the records provided to Dr. Lerner, Ward had self-discharged from two physicians after non-compliant drug screens. Further, Ward's dosage of opioids is extremely high and indicated opioid use disorder, in Dr. Lerner's opinion. For this reason, Dr. Lerner also recommended immediate weaning from opioid medications.

Dr. Stephens conducted a medical records review on May 8, 2018. Dr. Stephens reviewed the 2017 cervical and lumbar MRI records. He noted mild

degenerative disc disease and spondylosis at C3-4, C4-5 and C5-6. Dr. Stephens noted late stage degenerative disc disease at L5-S1 with 80% loss of height. Dr. Stephens found no indication for bilateral medial branch blocks in the cervical spine, because the pathology indicated on the MRI is relatively mild. He characterized Ward's medication regimen as "completely inappropriate". He found nothing in the records showing Ward suffered radicular pain, which would otherwise warrant Lyrica. Dr. Stephens concluded the opioid pain medications are unwarranted for such an old injury.

In concluding the contested medications and treatment are reasonable and necessary, the ALJ first noted the 2017 lumbar and cervical MRIs provided an objective basis for Ward's continued cervical and lumbar pain. She also noted that, prior to commencing treatment with Dr. Mims, Ward attempted to manage his pain without the aid of narcotics, to no avail. The ALJ then explained:

After reviewing the evidence, this ALJ finds [Methocarbamol], Lyrica, Oxycontin, and Percocet are reasonable and necessary treatment for Plaintiff's work injury. This ALJ notes Plaintiff has sought pain management treatment, in some shape or form, consistently following the work injury, with the exception of a seven month period. As set forth above, this ALJ finds Plaintiff has an objective basis for his continued complaints of pain (i.e. MRI evidence of a disc protrusion, cord compression, and significant loss of disc height). This ALJ feels the objective diagnostic evidence in this claim supports Dr. Mims' opinion that Plaintiff requires pain medication to manage his pain. As such, this ALJ finds Oxycontin, and Percocet are reasonable and necessary treatment for Plaintiff's work injury.

Drs. Stephens and Lerner felt Lyrica was not indicated. However, Plaintiff has complained of cervical symptoms which radiate into his upper extremities. Additionally,

Plaintiff[s] cervical MRI showed cord compression, which would explain Plaintiff's radicular complaints. Based upon Plaintiff's cervical MRI, Plaintiff's testimony, and Dr. Mims' treatment records, this ALJ finds Lyrica is reasonable and necessary treatment.

Dr. Mims also prescribed Methocarbamol, a muscle relaxer. Also, Dr. Mims consistently noted the presence of cervical muscle spasms upon physical examination, but the absence of lumbar muscle spasms. This ALJ finds [Methocarbamol] is reasonable and necessary treatment for Plaintiff's ongoing muscle spasms, caused by the effects of the work injury. In making this finding, the ALJ relies on Dr. Mims' treatment records.

On September 26, 2017 and October 23, 2017, Dr. Mims recommended bilateral medial branch blocks at C2 through 5. This ALJ notes Plaintiff's cervical MRI contained significant findings at C3-5. Dr. Mims planned to perform these diagnostic blocks in order to determine if radiofrequency ablations of the medial branch nerves of the facet joints would be fruitful treatment. Considering Plaintiff's ongoing complaints and bilateral paresthesia, this ALJ finds cervical medial branch blocks are reasonable and necessary treatment, relying on Dr. Mims' treatment records.

KYDOT petitioned for reconsideration, arguing Dr. Mims' treatment records do not establish the contested treatment is reasonable and necessary. It also argued Mims was prescribed Oxycontin when it was suspected he had lung cancer, and not for the work injury. The ALJ denied the petition, again citing Dr. Mims' records, the 2017 MRIs, and Ward's testimony. The ALJ also emphasized Dr. Mims continued to prescribe oxycontin even after cancer was ruled out.

On appeal, KYDOT continues to challenge the sufficiency of the evidence. It asserts the medical opinions of Drs. Lerner, Wolens and Stephens are uncontradicted. Therefore, it argues the ALJ is without authority to reject these opinions.

In a post-award medical fee dispute, it is the employer who bears the burden of proving that the contested medical expenses are unreasonable or unnecessary. National Pizza Company v. Curry, 802 S.W.2d 949 (Ky. App. 1991). Plaintiff retains the burden of proof on the issue of work-relatedness. Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997). Because KYDOT was unsuccessful in that 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).

We disagree with KYDOT’s claim that the opinions of Drs. Lerner, Wolens and Stephens were uncontradicted. Dr. Mims’ treatment records not only contained his diagnosis and treatment plans, but also express statements about the work-relatedness of Ward’s current complaints and the justification for medial branch blocks. For this reason, we disagree this claim is analogous to Kingery v. Sumitomo Electric Wiring, 481 S.W.3d 492 (Ky. 2015). Therefore, the question on appeal is whether the evidence compels a different result.

KYDOT presented compelling evidence that Ward should be weaned off his medications and treated more conservatively. However, it is not the function of this Board to re-weigh the proof and reach a different conclusion. Dr. Mims

stated his belief that Ward's current pain complaints are related to his work injury. He reviewed the 2017 MRIs, documented Ward's symptoms and pain complaints, and identified a medication regimen. Dr. Mims also explained why he believed medial branch blocks are indicated, citing the fact Ward reported severe neck pain for longer than six weeks despite medication and physical therapy.

Dr. Mims' treatment records, in which he states his medical opinions and sets forth a medication regimen, constitute substantial evidence upon which the ALJ could base the award. Though KYDOT presented persuasive evidence challenging Dr. Mims' proposed treatments, the ALJ is solely vested with the discretion to determine which medical opinion upon which to rely. When conflicting evidence is presented, it cannot be said the proof compels a particular conclusion and it is not the function of this Board to revisit the ALJ's conclusions.

For the foregoing reasons, the March 5, 2019 Opinion and Order, and the April 1, 2019 Order on Reconsideration rendered by Hon. Stephanie L. Kinney are hereby **AFFIRMED**.

ALL CONCUR.

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