

**Commonwealth of Kentucky
Workers' Compensation Board**

OPINION ENTERED: December 20, 2019

CLAIM NO. 201286723

LEWIS BOYD

PETITIONER

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

SWINFORD TRUCKING, LLC;
J. KYLE TURNBO, MD, RACHEL CROWLEY, PA-C;
ORTHOPAEDIC INSTITUTE OF WESTERN KENTUCKY; AND
HON. STEPHANIE L. KINNEY
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Lewis Boyd (“Boyd”) appeals from the June 19, 2019 Opinion and Order rendered by Hon. Stephanie L. Kinney, Administrative Law Judge (“ALJ”) resolving medical disputes filed by Swinford Trucking, LLC (“Swinford Trucking”). The ALJ found Boyd’s treatment with radiofrequency ablations at L3-S1, Flector patches, LESI/nerve blocks, Lortab, and Flexeril non-

compensable. The ALJ found Boyd's referral to a neurosurgeon is compensable. The ALJ also dismissed Boyd's claim for a worsening of his condition. Boyd also appeals from the ALJ's order regarding his petition for reconsideration, issued July 19, 2019. The ALJ provided additional findings, and found the contested treatment was for Boyd's lumbar complaints. The ALJ also found ongoing treatment with medications should be continued until weaning or tapering is completed.

On appeal, Boyd argues the evidence does not support the ALJ's "inferential finding" that his current medications should be terminated. Boyd argues the ALJ erred in focusing solely upon his low back, and ignoring the other injuries he sustained in the 2012 motor vehicle accident ("MVA"). Because we determine the ALJ provided an appropriate analysis, and her determination is supported by substantial evidence, with a contrary result not compelled, we affirm.

Boyd filed a Form 101 on October 17, 2013 alleging multiple injuries when the truck he was driving hit a bridge on May 1, 2012. Specifically, Boyd alleged injuries including facial fractures, broken ribs, a right hip injury, a pelvis injury, femoral artery damage, lower leg injuries, dental injuries, and a low back injury. At the time of the accident, Boyd worked for Swinford Trucking as an over-the-road truck driver. He worked there from January 2005 through May 1, 2012.

On June 12, 2014, Hon. Thomas G. Polites, Administrative Law Judge ("ALJ Polites"), found Boyd sustained multiple injuries in the May 1, 2012 MVA. ALJ Polites awarded temporary total disability benefits from May 2, 2012 to May 17, 2013 for Boyd's low back injury, psychological condition, right knee injury, right hamstring injury, and right acetabular injury. ALJ Polites also awarded

permanent partial disability benefits based upon a 16% impairment rating. ALJ Polites additionally determined Boyd lacks the physical capacity to return to the type of work performed at the time of the injury, and enhanced the award by the three multiplier contained in KRS 342.730(1)(c)1. ALJ Polites also awarded medical benefits, including psychiatric treatment for a depressive disorder.

On May 24, 2017, Swinford Trucking filed a medical dispute challenging Boyd's referral to a neurosurgeon. On November 27, 2017, it filed a medical dispute challenging the reasonableness and necessity of recommended left-sided bilateral radiofrequency ablation at L3-L4, L4-L5, and L5-S1. On February 5, 2018, Swinford Trucking filed a medical dispute challenging the use of Flector patches to treat Boyd's chronic low back pain. On May 7, 2018, Boyd filed a motion to reopen alleging he had sustained a worsening of his condition.

Boyd testified by deposition on October 24, 2016, and at the hearing held on April 22, 2018. Boyd is a resident of Paducah, Kentucky. Boyd testified he had not worked since the June 2014 decision rendered by ALJ Polites. He was awarded Social Security disability benefits, and has qualified for Medicare benefits. Since the June 2014 decision, Boyd has occasionally volunteered to work with a local school basketball program. Boyd indicated in the affidavit filed in support of his motion to reopen he had not been in any MVAs or other accidents since June 2014. However, Boyd was in fact injured in two MVAs after the June 2014 decision.

On November 20, 2014, someone pulled out in front of Boyd causing a collision. He injured his right leg and hip. He was taken to Western Baptist Hospital and complained of increased low back pain. He settled a claim regarding that

accident for more than ten thousand dollars. On March 19, 2016, Boyd injured his head and right shoulder in another MVA. He also injured his left knee in that accident, which had previously been injured in the 2012 accident. Boyd underwent right shoulder and left knee surgeries due to the 2016 accident. A lawsuit has been filed regarding that accident, and was still pending at the time of the hearing.

Boyd testified at his deposition that he had undergone five radio-frequency ablations to both knees and his back. He stated those treatments were no longer effective. He also testified he wished to have epidural steroid injections.

At the hearing, Boyd testified he continued to experience pain in his low back, buttock, and knee. He additionally stated his right leg gives out. He also stated his jaw pops when he chews. He estimated he could walk two blocks at a slow pace, sit twenty to twenty-five minutes at a time, and stand for ten to fifteen minutes. He stated he occasionally uses a cane. Boyd also testified he no longer wants the epidural steroid injections, but wants to undergo additional radiofrequency ablations. Boyd stated Lortab, Flexeril, and Flector patches decrease his pain, and increase his functioning.

Multiple medical records and reports were filed by both Swinford Trucking and Boyd. Swinford Trucking filed multiple reports from Dr. Robert Jacob who performed record reviews on May 14, 2017; November 13, 2017; and January 23, 2018.

In the May 14, 2017 report, Dr. Jacob indicated there were no findings of nerve root impingement or deficit, no significant degenerative disk disease, no evidence of foraminal stenosis, and no significant facet arthropathy. Dr. Jacob stated

there was no medical necessity for a neurosurgical referral. In his November 13, 2017 report, Dr. Jacob indicated he had reviewed additional medical records. He opined Boyd does not need additional diagnostic or therapeutic blocks or radio-frequency ablations. He found neither treatment was medically necessary or warranted. Dr. Jacob additionally stated Boyd has minimal pathological findings unrelated to his work injury. In his January 23, 2018 report, Dr. Jacob noted Flector patches are a topical application of Diclofenac. He noted Boyd was additionally taking oral doses of Diclofenac, and the treatment with both is contra-indicated. Dr. Jacob opined treatment with Flector patches is neither necessary nor warranted.

Dr. Thomas O'Brien evaluated Boyd on August 17, 2017. He noted the May 1, 2012 MVA, and the fact Boyd exhibited no limp during his examination. Dr. O'Brien additionally noted inconsistent range of motion testing, negative straight leg raising, and no muscle spasm. He found Boyd needs no additional diagnostic evaluations or treatment, and opined Boyd is not a surgical candidate. He specifically determined neither an orthopedic or neurosurgical evaluation is required. Dr. O'Brien stated Boyd should avoid pain clinics, and injections are useless. He indicated Boyd should engage in exercise.

Swinford Trucking filed Dr. Thomas Gruber's October 4, 2017 report. Dr. Gruber noted Boyd had longstanding low back pain and right lower extremity pain. He attributed eighty percent of Boyd's pain to his back, and the remainder to the right knee. Dr. Gruber compared a 2017 lumbar MRI with one performed in 2013. He also found no objective basis for Boyd's complaints. He found neither demonstrated a surgically treatable condition. On October 15, 2013, Dr. Gruber had

stated surgery was not required. At that time, he determined there was no structural basis for Boyd's complaints of numbness and tingling. In 2013, Dr. Gruber recommended possible lumbar epidural steroid injections, and interventional pain management.

Swinford Trucking also filed Dr. Kyle Turnbo's March 19, 2018 note indicating he attempted to prescribe Oxycodone despite Boyd still being under Dr. Spencer Romine's care.

Dr. Gregory Gleis examined Boyd on December 4, 2018. Dr. Gleis found no radiculopathy, and disagreed with the 13% impairment rating assessed by Dr. James Farrage. He stated Boyd had the same 8% rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") that ALJ Polites relied upon in awarding benefits in June 2014. He opined Boyd is no more disabled now than he was when he was previously evaluated on August 13, 2013. Dr. Gleis stated that neither epidural steroid injections nor nerve blocks are indicated. He also stated treatment with Flexeril and Lortab are not indicated.

Swinford Trucking filed the February 28, 2015 discharge summary from Core Physical Therapy. The record reflects Boyd was diagnosed with lumbago/lumbar pain. He began physical therapy on December 22, 2014, and attended nine appointments before he quit attending. He was discharged from the program for failing to attend his sessions.

Boyd filed Dr. Turnbo's records from August 20, 2013; March 7, 2017; and April 27, 2017. Dr. Turnbo diagnosed mild disc degeneration at L4-L5 and L5-

S1, with small herniations in August 2013. In March 2017, he noted a moderate broad-based central disc herniation at L5-S1 with an annular disc tear with a moderate central and right disc herniation. In April 2017, he referred Boyd to Dr. Gruber, a neurosurgeon.

Boyd also filed progress notes from Dr. Turnbo for multiple office visits between May 13, 2013 and May 15, 2018. Although a few of the notes indicate complaints of neck pain, left knee pain, and dizziness, Dr. Turnbo primarily treated Boyd for hypertension and low back pain.

Boyd also filed Dr. Farrage's April 26, 2018 report. He noted Boyd had interval progression of multilevel degenerative disc disease and facet arthropathy resulting in acute S1 radiculopathy. He opined Boyd had a 13% impairment rating pursuant to the AMA Guides. Dr. Farrage recommended epidural steroid injections.

Boyd additionally filed multiple treatment records from Dr. John Ruxer. Dr. Ruxer's records reflect multiple medial branch procedures were performed. On April 15, 2015, he noted Boyd needed knee injections. On July 24, 2018, Dr. Ruxer indicated various treatment modalities had been utilized, primarily treatment for low back pain with injections.

Boyd submitted Dr. Jerry Morris' February 4, 2014 report. Dr. Morris noted Boyd used a cane. Boyd exhibited a right-sided limp secondary to pain, and restriction in the right hamstring. He diagnosed Boyd with a grade three concussion with significant persistent neurocognitive defects. He also diagnosed unrecognized neurohyseal pituitary axis trauma with overt hormonal insufficiency.

In support of his motion to reopen for a worsening of condition, Boyd filed Dr. Clint Hill's May 2, 2018 note. Dr. Hill stated Boyd had radicular pain. He opined radiofrequency ablations are the most cost effective way to treat the pain in the absence of the need for surgery. He also stated topical Flector patches are necessary for treatment of Boyd's pain.

A Benefit Review Conference was held on February 15, 2019. The parties agreed the issues consisted of the reasonableness and necessity of referral to a neurosurgeon, left bilateral radiofrequency ablations at L3-S1, Flector patches, lumbar epidural steroid injections/nerve blocks, Lortab, and Flexeril. Also preserved as an issue was whether Boyd had sustained an increase of impairment or disability. Finally, the effect of the intervening motor vehicle accidents was listed.

The ALJ issued her decision on June 19, 2019. She determined Boyd's condition had not worsened since the decision rendered by ALJ Polites in June 2014. She also determined that neither the lumbar epidural steroid injections nor the radiofrequency ablations are reasonable or necessary. She additionally found Flector patches and Lortab are non-compensable as either contra-indicated or not reasonable or necessary. The ALJ found referral to a neurosurgeon for a determination of the treatment of Boyd's lumbar complaints is reasonable and necessary, and therefore compensable.

Boyd filed a petition for reconsideration noting he was receiving pain medication not just for his lumbar spine. He noted he sustained numerous injuries in the May 2012 accident. He acknowledged substantial evidence existed supporting the ALJ's termination of prescriptions for treatment of his lumbar spine. However,

there is no evidence supporting the ALJ's termination of treatment for his other conditions. He requested additional findings of fact providing the basis of her determination. On July 19, 2019, the ALJ issued a four page order outlining the basis for her decision. The ALJ chronicled Boyd's treatment based upon her review of the evidentiary record. She noted that based upon the evidence, all of the contested treatment was for Boyd's low back. The ALJ however stated the termination of the medications she found non-compensable should be subject to a proper weaning period. She specifically stated as follows:

This ALJ is gravely concerned regarding the potential detrimental effects of an abrupt cessation of Plaintiff's Lortab, Flector patches, and Flexeril. This ALJ determines these medications are compensable during an appropriate weaning period. Currently, it is impossible to determine how long it should reasonably take to wean Plaintiff from these medications. However, these medications should be continued until weaning/tapering is completed. If a dispute arises regarding the appropriate weaning period or protocol, the parties are free to file a medical dispute to that that issue squarely and thoroughly addressed after presenting proof.

On appeal, Boyd argues that the evidence does not support the termination of his treatment with medications. Boyd argues the ALJ erred in focusing solely upon his low back, ignoring the other injuries he sustained in his 2012 accident.

We initially note that in a post-award medical fee dispute, the burden of proof to determine if the medical treatment is unreasonable or unnecessary is with the employer, while the burden remains with the claimant concerning questions pertaining to work-relatedness or causation of the condition. *See* KRS 342.020;

Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915, 918 (Ky. 1993); and National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991).

Here, the ALJ determined the contested treatment was not reasonable and necessary for the injuries Boyd sustained in the May 1, 2012 accident, and therefore are not compensable. The ALJ has the right and obligation to determine the compensability of treatment based upon the evidence presented. Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. *See Smyzer v. B.F. Goodrich Chemical Co.*, 474 S.W.2d 367, 369 (Ky. 1971); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). In this instance, the ALJ's determinations are supported by substantial evidence of record and will not be disturbed.

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); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. 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). Where the evidence is conflicting, the ALJ may choose whom or what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). The ALJ has the discretion and sole authority to reject any testimony and believe or disbelieve parts of

the evidence, regardless of whether it comes from the same witness or the same party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977); Magic Coal v. Fox, 19 S.W.3d 88 (Ky. 2000); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

In reaching a determination, the ALJ must provide findings sufficient to inform the parties of the basis for the decision to allow for meaningful review, and as noted above the determination must be based upon substantial evidence. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

Here, the ALJ properly considered the evidence of record and applied the correct analysis in reaching her determination. We additionally find the ALJ set forth sufficient findings supporting her determination, and clearly addressed Boyd's concerns in her order on reconsideration. While authority generally establishes that 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 or she 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. In reaching a determination, the ALJ must only provide findings sufficient to inform the parties of the basis for the decision to allow for meaningful review.

As long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra. Boyd essentially requests this Board to re-weigh the evidence, and substitute its opinion for that of the ALJ, which we cannot do. Whittaker v. Rowland, supra. Boyd merely points to conflicting evidence supporting a more favorable outcome, which is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Although Boyd argues on appeal the medications were for conditions other than his low back, the evidence of record does not support that assertion.

Since substantial evidence supports the ALJ's determination, and the ALJ provided a sufficient explanation for her decision, we must affirm. While Boyd may be able to point to documentation contrary to this determination, a different decision is not compelled. This merely constitutes evidence upon which the ALJ could have relied, but did not.

Accordingly, the June 19, 2019 Opinion and Order, and the July 19, 2019 Order on petition for reconsideration issued by Hon. Stephanie L. Kinney, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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