

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 16, 2022

CLAIM NO. 201367044

MONTICELLO FLOORING AND
LUMBER COMPANY, INC.

PETITIONER

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

JEFFREY STINSON;
DR. BALLARD WRIGHT,
THE PAIN TREATMENT CENTER OF THE BLUEGRASS; AND
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
VACATING IN PART & REMANDING**

* * * * *

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

MILLER, Member. Monticello Flooring and Lumber Co. (“Monticello”) appeals from the May 19, 2022 Opinion and Order and June 10, 2022 Order on Petition for Reconsideration, rendered by Honorable Stephanie L. Kinney, Administrative Law Judge (“ALJ”). This matter concerns a post-settlement medical dispute wherein the

ALJ found bimonthly pain management office visits and a prescription for Hydrocodone compensable; however, in the Order on Petition for Reconsideration the ALJ dismissed the claim for medical benefits. Significantly, in that Order there is a clear reference to an injury date that is not applicable to the instant case. In the appeal to this Board, Monticello argued the merits of the claim to preserve all its rights but also noted the incongruity of the Order on Petition for Reconsideration. For the foregoing reasons, we vacate the ALJ's June 10, 2022 Order on Reconsideration and remand for entry of a new Order addressing Monticello's Petition for Reconsideration.

Jeffrey Stinson ("Stinson") sustained a low back injury on September 19, 2013 when he pulled on a cart laden with lumber. The parties reached a settlement to resolve this claim. The Form 110 Settlement Agreement was approved by Hon. Jonathan Weatherby, Administrative Law Judge ("ALJ Weatherby") on January 7, 2015, and per its terms, Stinson retained his right to medical treatment pursuant to KRS Chapter 342.

On April 30, 2021, Monticello filed a Motion to Reopen contesting the reasonableness, necessity, and compensability of pain management treatment with Dr. Ballard Wright, including office visits every 60 days and a prescription for Hydrocodone. Consequently, the ALJ joined Dr. Wright as a party to the pending medical dispute. After the parties completed proof, a Benefit Review Conference was held on March 28, 2022. The parties waived a hearing and submitted the matter for a decision on the record.

The ALJ rendered an Opinion and Order on May 19, 2022. She found bimonthly pain management office visits and Hydrocodone are reasonable and necessary medical treatments for Stinson's work-related injury. Monticello filed a Petition for Reconsideration on May 25, 2022, arguing the evidence was not sufficient to justify overriding the Official Disability Guidelines ("ODG") by MCG, which have been adopted in Kentucky by administrative regulation. It requested a specific finding that the treatment was not recommended by the ODG. Stinson did not file a response to Monticello's Petition for Reconsideration.

On June 10, 2022, the ALJ issued an Order on Petition for Reconsideration, stating:

Defendant's petition for reconsideration is sustained. Any reference to an alleged June 22, 2022, injury is amended to reflect an alleged June 22, 2020, date of injury. Furthermore, Plaintiff's claim for medical benefits for an alleged injury on June 22, 2020, is dismissed with prejudice. Thus, Defendant is not responsible for medical benefits under KRS 342.020.

Monticello appealed, arguing 1) the ALJ's May 19, 2022 Opinion and Order does not conform with the Workers' Compensation Act and is not supported by substantial evidence and, 2) the Board should reverse because the June 10, 2022 Order on Petition for Reconsideration does not appear to relate to the claim.

We agree with Monticello's contention that the June 10, 2022 Order on Reconsideration does not appear to be germane to the instant claim. The ALJ amended any reference to an alleged June 22, 2022 injury to reflect an alleged June 22, 2020, date of injury. Neither the June 2022 nor the June 2020 date referenced in the Order on Petition for Reconsideration seem to have any relationship to the

present claim, which involves an injury occurring on September 19, 2013. Further, the ALJ dismissed Stinson's claim for medical benefits in contradiction with the May 19, 2022 Opinion and Order without explanation. While the Order may be premised on a clerical error, the ALJ's Order on Reconsideration is not supported by the evidence.

KRS 342.281 provides the ALJ "shall be limited in the review to the correction of errors patently appearing upon the face of the award, order, or decision and shall overrule the petition for reconsideration or make any correction within ten (10) days after submission." The petition may not be granted if it appears that the ALJ "has reconsidered the case on its merits and/or changed its factual findings." Wells v. Beth-Elkhorn Coal Corp., 708 S.W.2d 104, 106 (Ky. App. 1985) (citing Beth-Elkhorn Corp. v. Nash, 470 S.W.2d 329 (Ky. 1971)). Here, the ALJ amended her factual findings regarding the injury date and changed the ruling on the merits by dismissing the claim for medical benefits without supporting her ruling with substantial evidence. The ALJ's June 10, 2022 Order on Petition for Reconsideration is erroneous.

Accordingly, the June 10, 2022 Order on Petition for Reconsideration rendered by Hon. Stephanie L. Kinney, Administrative Law Judge is **VACATED**. This claim is **REMANDED** for the ALJ to issue a new Order pursuant to KRS 342.281.

ALL CONCUR.

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