

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 25, 2022

CLAIM NO. 201783257

P&P CONSTRUCTION, INC.

PETITIONER

VS.

APPEAL FROM HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

DANIEL FARLEY;
DR. BRAD FINE,
LEXINGTON FOOT & ANKLE CENTER, INC.;
ARH DANIEL BOONE CLINIC HARLAN;
HARLAN ARH;
AIR EVAC LIFETEAM;
GRAM RESOURCES, INC.; and
HON. PETER J. NAAKE,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. P&P Construction, Inc. ("P&P") appeals from the Opinion and Order rendered November 13, 2020, by Hon. Peter J. Naake, Administrative Law Judge ("ALJ"). The ALJ found compensable medical bills and additional

treatment recommended for Daniel Farley (“Farley”) for injuries he sustained in a work accident on May 8, 2017, when a water pump he was moving exploded. A Form 110-I settlement agreement was approved on September 1, 2020. The parties settled the claim for a lump sum of \$125,000.00 for resolution indemnity benefits, and a waiver of the right to reopen the claim. The agreement additionally reflects future medical benefits remain open pursuant to KRS 342.020, until approval of a CMS Medicare Set-Aside Account. The agreement also contained a waiver of any claim for vocational rehabilitation benefits. The parties further agreed to submit for determination by the ALJ contested medical bills including those from the Air Evac Lifeteam, treatment administered and recommended by Dr. Brad Fine, and any other contested medical bills.

On appeal, P&P argues the time limits established by KRS 342.020(4) are equally applicable to all claims, both prior to and after ALJ awards. P&P additionally argues the holding in R.J. Corman R.R. Constr. v. Haddix, 864 S.W.2d 915 (Ky. 1993), has no application because KRS 342.020(4) was not signed into law until July 14, 1992. P&P also argues the recent holding by the Kentucky Supreme Court in Wonderfoil, Inc., v. Russell, 630 S.W.3d 706 (Ky. 2021) is not applicable. Finally, P&P argues medical providers are not entitled to disregard the forty-five-day rule for submission of completed statements of services until after an award. On appeal, P&P specifically argues billings from the Gram Resources for the date of service of May 8, 2017 (submitted to KEMI, its workers’ compensation insurer, on September 6, 2018), and from the Harlan ARH Daniel Boone Clinic for dates of service January 3, 2018 (submitted to KEMI on December 12, 2018), March 1, 2018

(submitted to KEMI on December 13, 2018), May 1, 2018 (submitted to KEMI on December 13, 2018), July 10, 2018 (submitted to KEMI on December 12, 2018), and October 10, 2018 (submitted to KEMI on December 12, 2018), were not timely submitted and are therefore not compensable. We note those bills were submitted to KEMI prior to the filing of Farley's first Form 101 and were not contested until September 4, 2020. For the foregoing reasons, we affirm.

Farley filed a Form 101 on February 26, 2019, alleging injuries to his left leg, left hip, and low back on May 8, 2017, when a pump he was moving in the course of his work for P&P exploded. On February 27, 2019, Farley filed a second Form 101 for the same injury date alleging he sustained post-traumatic stress disorder resulting from his May 8, 2017 injuries. On October 28, 2019, Farley filed a third Form 101 alleging psychological overlay stemming from his May 8, 2017 injuries.

We will not discuss the evidence since the only issue on appeal concerns whether the specific medical bills listed in P&P's medical dispute were timely submitted.

In the Opinion and Order rendered November 13, 2020, the ALJ noted the parties had settled Farley's claim for indemnity benefits and future medical benefits, and the only issues preserved for resolution included the air ambulance bill, the reasonableness and necessity of Dr. Fine's proposed foot and ankle surgery, and the medical bills P&P argued were not timely submitted and are barred by KRS 342.020(4). The ALJ stated, "It is undisputed that Mr. Farley suffered a severe work-related injury while moving a pump underground, which exploded and caused

multiple fractures of the left leg.” The ALJ determined, based upon Dr. Mohammed Rahman’s opinion, the air ambulance transport was reasonable and necessary. The ALJ also found Dr. Fine’s proposed surgery is reasonable and necessary. The ALJ additionally determined that based upon the holding in Haddix, supra, the forty-five-day rule contained in KRS 342.020(4) does not apply pre-award. No petition for reconsideration was filed.

As noted above, P&P appealed regarding the compensability of the listed medical bills received by KEMI in 2018 for treatment Farley received at Harlan ARH Daniel Boone Clinic, as acknowledged in its September 14, 2020 medical dispute, and in the chart provided on page 6 of its Brief to this Board. P&P did not appeal from the ALJ’s determinations regarding the compensability of the air ambulance transport or Dr. Fine’s proposed surgery. Therefore, the only issue for this Board to review is whether the specific medical bills listed in the brief were timely submitted. P&P argues the medical providers were required to submit their bills for services within forty-five days of the date treatment was rendered, prior to any determination of compensability by an ALJ, and before Farley filed a Form 101. We note KEMI, P&P’s insurer, admittedly received the contested billings prior to Farley having filed any of the three Form 101s.

We find no merit to the argument the ALJ erred by finding P&P liable for medical bills submitted more than forty-five days after service was rendered pursuant to KRS 342.020(4). This Board has held on numerous occasions the forty-five-day rule for submission of statements for services in KRS 342.020 has no pre-award application. The Kentucky Supreme Court in R.J. Corman Railroad

Construction v. Haddix, *supra*, pointed out the requirement in KRS 342.020 for the payment of bills within thirty days of receipt of the statement for services “applies to medical statements received by an employer after an ALJ has determined that said bills are owed by the employer.” In other words, it does not apply pre-award.

We held in Brown Pallet v. David Jones, Claim No. 2003-69633, (entered September 20, 2007) the reasoning of the Supreme Court in R.J. Corman Railroad Construction, *supra*, concerning the thirty-day provision for payment of medical benefits should also apply to the forty-five-day rule for submission of medical bills. The Court in R.J. Corman stated, “until an award has been rendered, the employer is under no obligation to pay any compensation, and all issues, including medical benefits, are justiciable.”

We additionally note that pursuant to Garno v. Selectron USA, 329 S.W.3d 3001 (Ky. 2010), the sixty-day rule found at 803 KAR 25:096 §11 applies only after an interlocutory decision or final award has been entered. There was no request for an interlocutory decision in this claim, and no such order was entered. No determination was made regarding compensability of Farley’s condition until the ALJ’s November 13, 2020 decision, or at the earliest, the September 1, 2020 approval of the Form 110-I settlement agreement, in either instance, long after the bills were submitted to P&P’s insurer.

We find the ALJ properly declined to enforce the forty-five-day rule regarding the contested medical expenses pre-award, and we affirm on this issue. Despite its argument regarding noncompliance by Farley’s medical providers, we find it significant that P&P did not file a medical dispute regarding those bills for

nearly two years after their receipt by its insurer. Farley's medical expenses were incurred prior to the ALJ's decision and were submitted to the insurer during the pendency of the claim. We find the ALJ correctly found P&P responsible for Farley's medical expenses contested on appeal, and we affirm.

Contrary to P&P's arguments, we find the rationale contained in R.J. Corman Railroad Construction, supra, is applicable. We additionally find instructional the recent holding by the Kentucky Supreme Court in Wonderfoil, supra. There the Court held the sixty-day submission requirement for injured workers only applied post-award, or a determination of compensability by an ALJ, stating specifically, "Accordingly, when viewed in the context of the regulatory scheme, 803 KAR 25:096, § 11's application only post-award best effectuates the intent of the Commissioner and prevents an absurd result." By extension, we find the forty-five-day requirement set forth in KRS 342.020(4) likewise is applicable only after a determination of compensability of a claim by an ALJ. We further note 803 KAR 25:010 § 13 contains sufficient provisions to dissuade purposeful delay.

Accordingly, the November 13, 2020 Opinion and Order rendered by Hon. Peter J. Naake, Administrative Law Judge, is hereby **AFFIRMED**.

ALL CONCUR.

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