

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: April 30, 2021

CLAIM NO. 201886442

PERRY COUNTY BOARD OF EDUCATION

PETITIONER

VS.

APPEAL FROM HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

MARK CAMPBELL  
HAZARD ARH  
DR. MUKUT SHARMA  
and HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**STIVERS, Member.** Perry County Board of Education (“Perry County”) appeals from the August 17, 2020, Interlocutory Opinion and Order resolving Perry County’s Medical Fee Dispute contesting the December 4, 2019, right total knee replacement surgery performed by Dr. Mukut Sharma. Perry County also appeals from the September 16, 2020, Order affirming in part and denying in part its Petition for

Reconsideration, and the January 12, 2021, Order of Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). In the August 17, 2020, Interlocutory Opinion and Order, the ALJ determined the December 4, 2019, right total knee replacement surgery is compensable. The ALJ also reinstated temporary total disability (“TTD”) benefits effective from the date of surgery through the date Mark Campbell (“Campbell”) reached maximum medical improvement (“MMI”) or returned to work. Perry County filed a Petition for Reconsideration which was sustained in part and overruled in part. In the January 12, 2021, Order, the ALJ approved the Form 110 Settlement Agreement entered into by the parties. The ALJ also finalized his ruling on Perry County’s Medical Fee Dispute.

On appeal, Perry County asserts the right total knee replacement is not causally related to the alleged work accident of April 11, 2018. Further, Perry County asserts the surgery was neither reasonable nor necessary.

### **BACKGROUND**

The Form 101 filed on November 25, 2019, alleges Campbell sustained work-related injuries to “multiple body parts” on April 11, 2018, in the following manner: “Plaintiff was working in an area with low duct work in the gym when he ran into a sharp corner of the duct work injuring his head & landed on his right knee. He also injured his right shoulder by trying to break his fall.”

On November 26, 2019, Campbell filed a Motion to Bifurcate requesting a resolution of the issues of causation, work-relatedness, notice, and the reasonableness and necessity of future medical benefits. Campbell also requested

TTD benefits be paid since he was not at MMI. The Motion to Bifurcate reads, in part, as follows:

1. That the Plaintiff was seen for treatment to the right knee by Dr. Mukut Sharma.
2. Dr. Sharma has stated that injections are not effective or improving symptoms and a total knee replacement is needed.
3. A total knee replacement has been scheduled for December 4<sup>th</sup>, 2019, by Dr. Sharma. The defendant/ employer has denied payment for said treatment.

On February 4, 2020, Campbell filed a Renewed Motion to Bifurcate as the original Motion had not yet been ruled upon.

On February 12, 2020, Perry County filed a Form 112 Medical Fee Dispute contesting the reasonableness, necessity, and work-relatedness of the December 4, 2019, right total knee replacement surgery performed by Dr. Sharma.

The nature of the dispute is described as follows:

Plaintiff filed this claim against the Defendant/ Employer to recover benefits as a result of an April 11, 2018 work accident. Defendant/Employer has been billed by Plaintiff and Dr. Mukut Sharma, 200 Medical Center Drive #2-I, for a right total knee replacement. This medical billing is not for and is not reasonable and necessary for the cure and/or relief of the April 11, 2018 right knee injury. Attached is a medical report of Dr. David Muffly, a board-certified orthopedic surgeon. Dr. Muffly noted that the surgery was not reasonable and necessary because October 8, 2019 x-rays of the right knee revealed only early arthritis not warranting a total knee replacement. In addition, attached is a utilization review report of Dr. Peter Kirsch, a board-certified orthopedic surgeon, Index No. 41202. Dr. Kirsch agreed that Plaintiff has pre-existing osteoarthritis that is not casually related to the April 11, 2018 work accident. He also found that the right total knee replacement was not medically reasonable and necessary.

Relief from liability from this this [sic] an [sic] any other unrelated and unreasonable and unnecessary medical billing is respectfully requested.

Attached to the Form 112 are several medical records and reports. Relevant to this appeal is Dr. David Muffly's October 8, 2019, report. After performing a physical examination and a medical records review, Dr. Muffly set forth the following assessment:

Right shoulder rotator cuff tear. Right knee medial meniscus tear. These are related to the 4-11-2018 work injury. Early right knee osteoarthritis with chronic complaints of right knee pain. Chronic right shoulder pain with mild limitation of motion. Surgery performed on the right knee and on the right shoulder.

Dr. Muffly opined Campbell had reached MMI and assessed a 3% impairment rating related to the April 11, 2018, work injury. Regarding the need for right knee replacement, he opined as follows: "I do not recommend right knee replacement. Current recommendations are self-directed exercise and non-prescription medications."

Also attached to the Medical Fee Dispute is Dr. Muffly's November 4, 2019, letter which reads as follows:

Mark Campbell does not need a right knee replacement because x-rays made on 10-8-2019 show early arthritis that can be adequately treated without knee replacement. It is not reasonable or necessary that knee replacement be done for the work injury on 4-11-2018. Treatment for the right knee would include self-directed exercise, non-prescription medications and weight loss.

The November 15, 2019, Utilization Review Notice of Denial by Dr. Peter Kirsch is also attached to the Medical Fee Dispute. In the Notice, the reason for denial is articulated as follows:

This patient suffered a torn medical meniscus in the right knee on 04/11/18. He was evaluated and treated with surgical correction on 11/06/18. He had degenerative changes in the right knee noted at surgery which were in my opinion existing and not due to the 04/11/18 events based on the information in the chart. I do not support the request as necessary for the 04/11/18 event and I agree with Dr. Muffly's comment of 11/04/19. Therefore, the requested right total knee arthroplasty is not medically reasonable or necessary for the cure and/or relief of the work injury of 04/11/2018.

Campbell testified by deposition on February 10, 2020, and at the June 18, 2020, hearing. His testimony is not relevant to the issues on appeal.

On June 18, 2020, Campbell filed Dr. Jared Madden's, D.O., June 3, 2020, Form 107-I Medical Report. After performing a physical evaluation of Campbell and a medical records review, Dr. Madden furnished the following diagnoses:

Right Knee Meniscal Tears/Osteoarthritis, S/P Surgical Repair with Right TKA

Chronic Right Knee Pain

Right Shoulder Rotator Cuff Complete Tear, S/P Surgical Repair

Chronic Right Shoulder Pain

Degenerative Joint Disease

Regarding causation, Dr. Madden checked "yes" by the following question: "Within reasonable medical probability, was plaintiff's injury the cause of

his/her complaints?” Under “Explanation of Causal Relationship,” Dr. Madden opined as follows:

Mr. Campbell suffered an injury to the right shoulder and knee during the course of a normal workday. His injuries required surgical repair. Though successful, scar tissue is never as strong as original tissue and as such the patient will always be at an increased risk for future re-injury (likely with less trauma required to create such re-injury). His permanent restrictions will always limit his ability to perform heavy lifting, repetitive motion, and bending/twisting type motions. As such, his future ability to gain employment as well as all other aspects of daily living and recreational activities will be permanently limited. Though Mr. Campbell has received treatment from an orthopedic specialist, his right knee injuries have not completely resolved and continue to progressively worsen. He continues to suffer from pain, swelling, and instability of the right knee. His problems interfere with many activities of daily living due to gait abnormalities caused by the pain and restricted range of motion. Although Mr. Campbell's symptoms wax and wane, he reports an ongoing chronic pain, restricted range of motion, instability, and swelling. Mr. Campbell's symptoms worsen with increased activity, extended periods standing, or exertion. He has problems with ambulation and the instability is early onset, degenerative joint disease in the left knee following the changes on the right. Failure to provide additional treatment as recommended could expose the patient to unnecessary degenerative changes within the joints of the lower extremity and the exacerbation or worsening of other problems. In other words, without appropriate management, the problem will significantly and rapidly worsen resulting in advanced degenerative changes and increasing pain.

Dr. Madden assessed a 20% whole person impairment rating pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment apportioned as follows:

Impairment for Total Right Knee Replacement 37% LEI (converted to 15% WPI), Table 17-33, page 547.

Right Shoulder Decompression Rotator Cuff Repair UEI = 10% (converted to 6% WPI), Table 16027, page 506. (This would be further supported by a similar impairment rating for Symptomatic Shoulder Instability 6-26, page 505).

Combined Values Chart page 604: 15% WPI + 6% WPI = 20%

Dr. Madden opined that Campbell reached MMI on June 3, 2020.

The April 14, 2020, Benefit Review Conference Order and Memorandum lists the following contested issues: work-relatedness/causation, unpaid or contested medical expenses, and TTD. Under “other” is the following: “Compensability of knee surgery – MFD; D’s motion to dismiss MFD.”

In the August 17, 2020, Interlocutory Opinion and Order, the ALJ determined Perry County is responsible for payment of the right knee replacement surgery performed by Dr. Sharma. The ALJ reinstated TTD benefits from the date of the surgery through the date of MMI. He set forth the following Findings of Fact and Conclusions of Law:

As indicated above, this matter has been bifurcated to first determine whether the right total knee replacement surgery Dr. Sharma performed in December, 2019 is causally related to the April 11, 2018 accepted work injury and whether it was reasonable and necessary. The defendant employer maintains Dr. Johnson is an especially qualified surgeon who performed appropriate right knee arthroplasty surgery in November, 2018 and released plaintiff to return to work with no restrictions and no requirement for additional treatment in December, 2018. It further points out there was no discussion of any necessity for right total knee replacement surgery during plaintiff’s treatment with Dr. Johnson. It therefore relies on Dr. Jenkinson, Dr.

Kirsch, and Dr. Muffly, each of whom concluded Dr. Sharma's December, 2019 right total knee replacement surgery was not necessitated by the April 11, 2018 incident. They pointed out that any such total knee replacement surgery would be necessitated due to osteoarthritis which was not caused or made worse by the April 11, 2018 incident. For his part, plaintiff relies on his expert, Dr. Madden, who examined plaintiff and reviewed his medical records and concluded the right total knee replacement surgery would be causally related to the April 11, 2018 incident and that plaintiff continued to have right knee pain even after Dr. Johnson's meniscectomy and that he had right knee osteoarthritis which was not remedied by Dr. Johnson's surgery.

Having reviewed the evidence of record, the ALJ notes this is not the kind of case where a claimant with a knee injury undergoes a successful meniscal repair surgery and several years later, after virtually complete recovery, requires a total knee replacement surgery for osteoarthritis which he then tries to relate back to the original meniscal repair surgery. In the present case, the ALJ is persuaded from the fact that plaintiff's April 11, 2018 work injury caused the meniscal damage which Dr. Johnson repaired, but that it also made plaintiff's underlying right knee osteoarthritis symptomatic, in this condition was never remedied by Dr. Johnson's surgery. Support for this conclusion comes from the fact that plaintiff credibly testified he continued to have right knee pain even after Dr. Johnson's surgery and the fact that he was referred to Dr. Sharma for treatment within just a few months of being released by Dr. Johnson. These facts lead the ALJ to conclude plaintiff's underlying osteoarthritis was symptomatic at the time of Dr. Johnson's surgery, but was not addressed by that meniscal repair and, instead, it continued to linger and worsen, necessitating Dr. Sharma's treatment. It should also be pointed out that the defendant's expert, Dr. Muffly, acknowledged that plaintiff had right knee osteoarthritis even though he believed plaintiff should not undergo right total knee replacement and instead, should attempt more conservative measures including injections.



Based on these foregoing factors, the ALJ is persuaded by Dr. Madden's opinion that the right total knee replacement surgery was reasonable and necessary and causally related to the April 11, 2018 work injury. As such, the defendant employer shall be responsible for payment of that surgery.

### **TTD Benefits**

Having concluded plaintiff's December, 2019 right total knee replacement surgery is compensable, it follows that his period of temporary, total disability from the date of surgery until he reaches maximum medical improvement or returns to work is compensable as well.

Perry County filed a Petition for Reconsideration making the same arguments it now makes on appeal.

In the September 16, 2020, Order, the ALJ provided the following additional findings:

This matter comes before the Administrative Law Judge upon the defendant's petition for reconsideration of the Interlocutory Opinion, Order & Award rendered in this matter on August 17, 2020. In its petition, the defendant maintains it was error to conclude plaintiff carried his burden of proving his disputed right total knee replacement surgery was work-related. In particular, the defendant argues it was error to rely on Dr. Madden's opinions as support for the causation conclusion because Dr. Madden never specifically indicated that plaintiff's right knee osteoarthritis, or need for total knee replacement surgery, were caused or aggravated by the work injury or initial meniscal injury or gave any explanation that would support a causal relationship. It also argues the award of continuing TTD after June 3, 2020 when plaintiff was placed at MMI by Dr. Madden, was in error.

Having reviewed the defendant's petition, the ALJ is not persuaded it points out any errors, or that any additional findings are necessary, in regard to the finding of causation. While he did not explicitly say plaintiff's osteoarthritis or need for total knee

replacement surgery were causally related to plaintiff's April 11, 2018 work injury, in Section G of his Form 107, Dr. Madden diagnosed "Right knee meniscal tears/osteoarthritis, S/P surgical repair with right TKA" and "Chronic Right Knee Pain." He then went on to complete Section H to indicate his diagnosed conditions were work-related. Thus, Dr. Madden completed the Form 107 in a manner to allow the reasonable inference that plaintiff's right knee osteoarthritis and TKR were work related.

Furthermore, In Section I, Dr. Madden further explained the causal relationship, albeit in less than clear terms. From his explanation, however, the ALJ again infers Dr. Madden believes plaintiff's current right knee problems are a continuation of the pain from the original April 11, 2018 injury, as he pointed out that plaintiff's right knee problems persisted despite initial conservative treatment, then right knee meniscal repair and, ultimately, total knee replacement surgery.

Moreover, although causation in this instance is not readily apparent to a layman, such as the ALJ, the temporal relationship between plaintiff's injury, his first surgery, and then his diagnosed right knee osteoarthritis and TKR cannot be ignored. As pointed out in the Opinion, plaintiff's right knee symptoms continued in one continuous stream, even after the November 6, 2018 right knee surgery. As of March, 2019, plaintiff's treating physician was diagnosing symptomatic right knee osteoarthritis. Prior to the work injury, there is no evidence of symptomatic right knee osteoarthritis. The initial diagnostic tests after the work injury do not document symptomatic right knee osteoarthritis. Yet, within 3 months of his first right knee surgery, plaintiff has significantly symptomatic osteoarthritis for which TKR was ultimately performed. This temporal relationship cannot be ignored and supports Dr. Madden's causation opinion and the inference that the right knee osteoarthritis and need for TKR are due to the effects of the April, 2018 work injury and November, 2018 surgery. Accordingly, the defendant's petition for reconsideration on this point is overruled.

With respect to the defendant's petition as to continuing TTD, the ALJ agrees such was in error. Dr. Madden clearly indicated plaintiff reached MMI as of

June 3, 2020. As such, TTD benefits are payable only up to June 3, 2020 and the defendant's petition on this point is sustained.

The Form 110 Settlement Agreement executed by the parties indicates the parties settled for a lump sum payment of \$125,000.00 to Campbell. Further, the Form 110 specifically states that the Form 112 Medical Fee Dispute is preserved and not waived.

In the January 12, 2021, Order, the ALJ approved the January 7, 2021, Settlement Agreement and decreed his ruling on the compensability of the right knee replacement surgery is final and appealable.

#### **ANALYSIS**

Perry County first asserts the right knee replacement surgery is not causally related to the April 11, 2018, work accident. It maintains Dr. Madden's report does not address the work-relatedness of the knee replacement surgery. On this issue, we affirm.

As Perry County filed a Medical Fee Dispute contesting the reasonableness, necessity, and work-relatedness of the December 4, 2019, right total knee replacement surgery, it had the burden of proof on all issues. *See C & T of Hazard v. Stollings*, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published. ("The burden is placed on the party moving to reopen because it is that party who is attempting to overturn a final award of workers' compensation and thus must present facts and reasons to support that party's position. It is not the responsibility of the party who is defending the original award to make the case for the party attacking it. Instead, the party who is defending the original award must

only present evidence to rebut the other party's arguments.” Slip Op. at 2.). Since Perry County was unsuccessful in meeting its 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).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Important to the case at hand is the fact that the ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party’s total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney’s Discount Stores, 560 S.W.2d 15 (Ky. 1977).

The Board’s role 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). The Board may not usurp the ALJ’s role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence *or by noting other reasonable inferences which otherwise could have been drawn from the record.* Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). As long as the ALJ’s ruling regarding an issue is supported by substantial

evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

In the September 16, 2020, Order ruling on Perry County's Petition for Reconsideration, the ALJ set forth his rationale behind his reliance upon Dr. Madden in determining the right knee replacement surgery is work-related. Persuasive to the ALJ was Dr. Madden's "Explanation of Causal Relationship" in the June 3, 2020, Form 107-I Medical Report. Specifically, the ALJ stated that he inferred from the language used by Dr. Madden in this section that he believed Campbell's current knee problems are a continuation of the pain from the April 11, 2018, injury, "as he [Dr. Madden] pointed out that plaintiff's right knee problems persisted despite initial conservative treatment, then right knee meniscal repair and, ultimately, total knee replacement surgery." Fully supportive of the ALJ's inference of work-relatedness are the first two lines in this section of Dr. Madden's report which read as follows: "Mr. Campbell suffered an injury to the right shoulder and knee during the course of a normal workday. His injuries required surgical repair." Here, Dr. Madden refers to Campbell's shoulder and knee injuring as occurring "during the course of a normal workday" and subsequently opined that the work injuries required surgical repair. While we agree with the ALJ's statement in the September 16, 2020, Order that Dr. Madden "did not explicitly say plaintiff's osteoarthritis or need for total knee replacement surgery were causally related to plaintiff's April 11, 2018 work injury," the ALJ has the discretion to draw reasonable inferences. As long as those inferences are supported by substantial evidence, this Board cannot substitute its discretion for that of the ALJ's.

The ALJ's inference of work-relatedness is reasonable, as Dr. Madden stated the knee injury occurred at work and also required surgical repair. Consequently, the ALJ could reasonably infer Dr. Madden believed the right knee replacement surgery is work-related. Further persuasive is the fact that no portion of Dr. Madden's 20% combined impairment rating, of which 15% is attributable to the right knee replacement, relates to a pre-existing active condition in Campbell's right knee. As Dr. Madden's opinions constitute substantial evidence supporting the ALJ's determination, we may not disturb it.

Perry County next asserts the right total knee replacement was not reasonable and necessary. On this issue, we affirm.

In the August 17, 2020, Interlocutory Opinion and Order, finalized in the January 12, 2021, Order, the ALJ stated that he also relied upon Dr. Madden's opinion to reach the conclusion that the right total knee replacement surgery was reasonable and necessary. In Dr. Madden's June 3, 2020, Form 107-I Medical Report, he opines Campbell's right shoulder and knee injuries "**required surgical repair.**" (Emphasis added.) From Dr. Madden's use of the word "*required*," the ALJ was free to infer that Dr. Madden believed the surgeries were reasonable and necessary. Further supporting this inference is the simple fact that Dr. Sharma clearly *deemed* the surgery reasonable and necessary as he *performed* the surgery on December 4, 2019. As substantial evidence supports the ALJ's determination the right total knee replacement surgery is reasonable and necessary, we must affirm.

We acknowledge the medical evidence contradicting Dr. Madden's opinions on the issues of reasonableness, necessity, and work-relatedness. However,

when “the physicians in a case genuinely express medically sound, but differing opinions as to the severity of a claimant's injury, the ALJ has the discretion to choose which physician's opinion to believe.” Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006). Although a party may point to evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal as long as substantial evidence supports the ALJ's ultimate determination. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown the record lacks evidence of substantial probative value supporting the decision. Special Fund v. Francis, supra. Substantial evidence supports the ALJ's ultimate determination that the right total knee replacement surgery is compensable; consequently, a different result is not compelled.

Accordingly, on all issues raised on appeal, the August 17, 2020, Interlocutory Opinion and Order, the September 16, 2020, Order, and the January 12, 2021, Order are **AFFIRMED**.

ALL CONCUR.

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