

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 10, 2020

CLAIM NO. 201290001

RESCARE INC.

PETITIONER

VS.

APPEAL FROM HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE

PATRICIA MONTGOMERY (CAIN);  
HON. CHRIS DAVIS,  
ADMINISTRATIVE LAW JUDGE;  
KATHERINE BALLARD, MD/  
THE PAIN TREATMENT CENTER OF THE BLUEGRASS; AND  
KEITH HALL, MD/  
PIKEVILLE MEDICAL CENTER

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

BEFORE: ALVEY, Chairman, STIVERS and RECHTER<sup>1</sup>, Members.

**ALVEY, Chairman.** ResCare Inc. ("ResCare") appeals from the July 18, 2019 Opinion and Order, and the August 19, 2019 Order on reconsideration rendered by

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<sup>1</sup> Although Board Member Rechter's term expired on January 4, 2020, she is permitted to serve until January 22, 2020 pursuant to KRS 342.213(7)(b), and will participate in decisions rendered by this Board through that date.

Hon. Chris Davis, Administrative Law Judge (“ALJ”). The ALJ resolved the medical dispute filed by ResCare in favor of Patricia Montgomery (Cain) (“Montgomery”) in determining the proposed right knee replacement surgery is compensable.

On appeal, ResCare argues the ALJ’s interpretation of the settlement agreement conflicts with its plain language. It also argues the ALJ’s finding that the injury is related to the January 26, 2011 injury necessitates a finding the surgery is not compensable. It finally argues the ALJ failed to issue a finding of fact regarding whether the surgery is causally related. Alternatively, ResCare asks that if the Board finds the agreement is not clear, the claim should be remanded for reopening of proof time regarding the issue of interpretation of the agreement. We affirm.

The parties settled Montgomery’s claims by a Form 110 approved on April 30, 2014. The agreement recited three dates of injury, including January 26, 2011 (right knee), August 26, 2011 (back), and March 28, 2012 (right knee, right arm, low back, cervical spine, and head). The agreement included a waiver of vocational rehabilitation and a claim for psychological conditions related to the 2012 alleged injuries and dismissal of the 2011 claims. The agreement then provided as follows:

Under the terms of the settlement agreement, the claimant will retain ONLY her right to reasonable and necessary medical treatment for the right knee and back. All other rights and claims are dismissed. The defendant agrees, however, that it will raise no objection to payment of medical expenses related to the back or right knee, based on the allegation that the treatment actually relates to one of the 2011 injuries, rather than the 2012 injury.

ResCare filed a Medical Dispute regarding the compensability of Percocet, Topiramate, and an amended medical fee dispute to challenge the work-relatedness/causation of a proposed total knee replacement.

Dr. Keith Hall, Montgomery's treating physician, stated the right knee condition was caused by the March 28, 2012 work-related injury. He observed she is in pain and needs a total knee replacement. He initially recommended conservative treatment, including a steroid injection. On November 5, 2018, Dr. Hall saw Montgomery and requested pre-certification for a total knee replacement.

Dr. Steven Shockey conducted two records reviews and subsequently examined Montgomery on January 25, 2019. Dr. Shockey concluded from the examination and x-rays that the right total knee replacement is reasonable and necessary based on symptoms and degeneration of the knee. He found the knee condition is unrelated to either the 2011 or 2012 injuries, noting the arthritis was present on July 2011 films and the current condition is a progression of that process. He opined Montgomery had advanced osteoarthritis unaffected by the work trauma.

The ALJ's findings relevant to this appeal are as follows:

This is an unusual claim given the language quoted from the Settlement Agreement. It is clear that the Defendant has waived all right to contest work-relatedness/causation of future medical treatment for the right knee or low back. It is also clear that the Plaintiff has waived all treatment for any condition other than the right knee and low back.

The Defendant has argued throughout this re-opening that the date of injury for the Plaintiff's right knee is March 28, 2012. In fact, this is what is noted in the records from Dr. Hall. I do not believe that this is the correct date of injury for the right knee and I find that the date of injury for the right knee is January 26, 2011.

The records of Dr. Hall are not, and should not, be controlling in this instant [sic]. Ms. Cain had three separate dates of injuries, beginning eight years ago. For her to recall with precision which date of injury is responsible for her right knee condition is unlikely. For Dr. Hall to know, other than based on Ms. Cain's subjective history, would be miraculous.

The medical records, other than from Dr. Hall, provide a much clearer picture. These records include the records from Dr. Anbu Nadar, Dr. Don Chaffin and x-rays and MRIs. Following the January 26, 2011 date of injury, which was to the right knee only, Ms. Cain began extensive medical treatment for her right knee, with multiple physicians. Even Dr. Shockey, while stating the condition is not work-related, noted that treatment began in at least July 2011, though it actually began sooner.

Finally, the Settlement Agreement clearly shows the parties [sic] belief and intent, negotiated into reality and approved by the ALJ, that the right knee, and low back, remain forever compensable based on causation while the other claims were forever dismissed.

As to the rule that Settlement Agreements are not binding as to anything contained therein that rule does not apply to something that was so clearly set forth and bargained for as in this case. The condition of the right knee, and the need for the right total knee replacement related to the 2011 dates of injury and thus cannot be contested on causation.

There is no medical evidence that the proposed right total knee replacement is not reasonable and necessary. Dr. Shockey, the only evidence we have, states that it is reasonable and necessary.

The right total knee replacement is compensable.

ResCare filed a petition for reconsideration requesting the ALJ reconsider his interpretation of the settlement agreement, asserting he erred in his

presumption that the parties intended the right knee treatment is never to be contested. ResCare noted the parties bought out the entirety of the 2011 knee claim in the settlement agreement, but left open medicals on the 2012 claim. ResCare did not agree it would never contest treatment for the right knee or low back. Rather, ResCare agreed it would not attempt to shift responsibility for treatment to the 2011 injury in order to avoid payment, since the 2011 claim was dismissed. ResCare asserted the current knee condition relates to the natural degenerative process. ResCare argued the ALJ's finding of a January 26, 2011 date of injury for the right knee compels a decision that the right knee surgery is not compensable. ResCare contended it bought out future medical care for the right knee injury. Its position was that either the right knee date of injury is March 3, 2012, and treatment may or may not be compensable for that date, or the date of injury is January 26, 2011, and it is not compensable since that injury claim was settled with medicals for that date waived.

The ALJ issued an order denying the petition for reconsideration, explaining as follows:

This matter comes before the undersigned on the Medical Payment Obligor's Petition for Reconsideration. This is certainly an unusual claim. The language included in the original Form 110, Settlement Agreement is unusual in a workers' compensation claim. However, the ALJ is vested with wide authority to interpret the evidence. In this claim, again unusual, the language in the Form 110 constitutes evidence. I have accurately quoted it and I have provided a reasonable interpretation of it. Counsel for the MPO, nor her law firm, prepared the Form 110 or drafted the pertinent language. With respect she is only providing her own interpretation of the evidence and re-arguing the merits. This maybe[sic] confusing because the claim also, not so

unusually,[sic] has multiple dates of injury. But I have set forth my findings and they are adequate and supported by the record. The Petition is OVERRULED.

On appeal, ResCare argues the ALJ's interpretation of the settlement agreement conflicts with the plain language of the agreement. ResCare notes the parties agreed Montgomery retains her right to reasonable and necessary medical treatment for the right knee and back only for the 2012 claim. Everything else was dismissed. ResCare asserts it did not waive all right to contest future medical treatment for the 2012 claim. Next, ResCare argues the ALJ's finding that the injury is related to the January 26, 2011 injury necessitates a finding the surgery is not compensable because the 2011 claim was completely bought out. ResCare argues the ALJ failed to issue proper findings of fact regarding whether the surgery is causally related. ResCare contends Montgomery's own testimony indicates the knee condition is related to a natural degenerative process. ResCare contends there was a substantial gap in treatment between her surgery and her new complaints. ResCare also contends Montgomery's 2012 work-related knee condition reached baseline and, after the surgery, her general arthritic knee condition worsened at the time she sought medical attention in 2018. Finally, ResCare asks that if the Board finds the agreement is not clear, this claim should be remanded for reopening of proof to submit parole evidence regarding the proper interpretation of the agreement. ResCare contends the parties were not aware the intent of the agreement was an issue and had no opportunity to present proof on the issue.

We first note a settlement agreement constitutes a contract by and between the parties. The scope of the agreement must be determined primarily by

the intent of the parties as expressed within the four corners of the document. The terms of the contract should be interpreted in light of the usage and understanding of the average person. Stone v. Kentucky Farm Bureau Mutual Insurance Company, 34 S.W.3d 809 (Ky. App. 2000).

The ALJ interpreted the provisions of the agreement as expressing the agreement of the parties that future medical treatment for the knee would remain compensable. The statement “It is not the purpose of this settlement agreement to shift responsibility for medical care in this matter to Medicare. The claimant retains her right to payment of medical expenses in relation to her right knee and back” evidences that intent. Additionally, the box on the settlement agreement where Montgomery signed states, “I understand that I am waiving all medical coverage except for my back and right knee.” These two provisions do not reference limitations on medical care for the knee. The agreement expressly waived ResCare’s ability to assert the 2011 injury as a basis to challenge causation. The ALJ interpreted the agreement as the parties expressing an intent that the knee be compensable and precluding ResCare from asserting the 2011 injury is the cause of the knee condition. The ALJ was without authority to use the grounds bargained away by ResCare to find the contested surgery is not compensable. The effect of the language in the settlement agreement is that reasonable and necessary medical expenses related to either the 2011 or the 2012 injury are compensable since ResCare is foreclosed from asserting the expenses relate to the 2011 injury. The ALJ could reasonably conclude the parties intended to make a bargain including compensability of medical expenses for the work-related knee, whether from the 2011 or 2012 injury.

The ALJ's statement that the agreement "clearly shows the parties [sic] belief and intent, negotiated into reality and approved by the ALJ, that the right knee, and low back, remain forever compensable based on causation while the other claims were forever dismissed" may be somewhat overbroad, but constitutes at most harmless error. Contrary to ResCare's argument, the ALJ made a finding as to causation stating, "The condition of the right knee, and the need for the right total knee replacement related to the 2011 dates of injury and thus cannot be contested on causation." Additionally, the ALJ noted there is no medical evidence that the proposed right total knee replacement is not reasonable and necessary. He noted Dr. Shockey's opinion that it is reasonable and necessary. ResCare is not precluded from asserting some other cause, such as natural aging, progression of a pre-existing condition independent of the work injuries in 2011 or 2012, or subsequent events as it relates to future care.

ResCare's argument that the ALJ's finding of injury occurring in 2011 is essentially an attempt to assert the 2011 injury as a defense to causation, which it bargained away. Because the surgery could not be contested on the ground that it was causally related to the 2011 injury, and because the ALJ determined the surgery is reasonable and necessary, he did not err in finding the surgery compensable.

Accordingly, the July 18, 2019 Opinion and Order, and the August 19, 2019 Order rendered by Hon. Chris Davis, Administrative Law Judge, are hereby **AFFIRMED**.

Finally, ResCare requested oral argument. Having reviewed the record, we conclude oral argument is unnecessary. Consequently, **IT IS HEREBY ORDERED** the request is **DENIED**.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS IN RESULT ONLY.

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MICHAEL W. ALVEY, CHAIRMAN  
WORKERS' COMPENSATION BOARD

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**ADMINISTRATIVE LAW JUDGE:**

HON. CHRIS DAVIS  
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**LMS**