

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: January 14, 2022

CLAIM NO. 201701314

REVELATION ENERGY, LLC

PETITIONER

VS.                   **APPEAL FROM HON. MONICA RICE-SMITH,  
ADMINISTRATIVE LAW JUDGE**

JENNINGS RUSSELL FIELDS;  
DR. JOHN GILBERT; and  
HON. MONICA RICE-SMITH,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION  
AFFIRMING AND REMANDING**

\* \* \* \* \*

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

**ALVEY, Chairman.** Revelation Energy, LLC (“Revelation”) appeals from the Medical Dispute Opinion and Order rendered July 22, 2021 by Hon. Monica Rice-Smith, Administrative Law Judge (“ALJ”) resolving a post award medical dispute in favor of Jennings Russell Fields (“Fields”). Revelation also seeks review of the August 24, 2021 Order overruling its Petition for Reconsideration.

On appeal, Revelation argues the ALJ erred in finding the disputed lumbar fusion compensable, or in the alternative, in failing to weigh the entirety of the evidence. Because substantial evidence supports the ALJ's determination and a contrary result is not compelled, we affirm.

Fields filed a Form 101 on July 31, 2017 alleging he injured his lumbar spine on May 15, 2017 when the mantrip he was riding in was involved in an accident and he used a jack to clear the wreckage. Fields worked for Revelation in underground coal mining as a supervisor and equipment operator. Hon. Chris Davis, Administrative Law Judge ("ALJ Davis"), rendered an Opinion, Award and Order on May 18, 2018, finding Fields' condition, both physical and psychological, was caused by the May 15, 2017 work incident. ALJ Davis determined Fields' lumbar condition warranted an 8% impairment rating and his psychological condition warranted a 9% impairment rating, which combined to a 17% impairment rating pursuant to the 2<sup>nd</sup> and 5<sup>th</sup> Editions of the American Medical Association, Guides to the Evaluation of Permanent Impairment. ALJ Davis awarded temporary total disability benefits, permanent partial disability benefits increased by the three-multiplier contained in KRS 342.730(1)(c)1, and medical benefits. Neither party appealed from the May 18, 2018 Opinion.

Revelation filed a motion to reopen asserting a medical dispute on July 8, 2019 challenging various prescription medications and regular office visits with Betty Sizemore, APRN, ("Nurse Sizemore") and Dr. James Rice. Hon Brent Dye, Administrative Law Judge, rendered an Opinion, Award and Order on January 22, 2020 resolving the medical dispute in Fields' favor determining the challenged

medications, except for Clonidine, and monthly office visits were reasonable and necessary, and thus compensable. Neither party appealed from the January 22, 2020 Opinion.

Revelation filed a second motion to reopen asserting a medical dispute on May 27, 2020, which is subject to this appeal. Revelation disputed the posterior decompression surgery at L4-5 and L5-S1 recommended by Dr. John Gilbert as neither reasonable nor necessary for Fields' work injury. Revelation filed Dr. Darryl Thomas' May 19, 2020 utilization report. Dr. Thomas opined the recommended surgery is not reasonable or necessary. The ALJ sustained Revelation's motion to reopen finding it made a *prima facie* case for reopening and joined Dr. Gilbert as a party. Thereafter, on July 21, 2020, Fields filed a motion to reopen to allege he had sustained increased occupational disability and he is now permanently totally disabled. In support of the motion, Fields attached his affidavit, as well as an affidavit by Dr. Chad Morgan, D.C. Fields also attached Dr. Morgan's June 19, 2020 medical record.

Both parties filed treatment records from Dr. Rice spanning April 2018 through August 2020 for treatment of his low back condition. He prescribed medication and administered multiple bilateral medial branch block injections and radio frequency ablations. On August 4, 2020, Dr. Rice noted Fields reportedly received a mild benefit from his most recent medial branch block injections, but his low back pain was developing more symptoms. His examination revealed decreased lumbar extension/flexion secondary to pain and straight leg raise tests were positive.

He diagnosed Fields with lumbar spondylosis without radiculopathy and he recommended repeat medial branch block injections from L3-5.

Fields filed Dr. Gilbert's October 29, 2019 and January 14, 2020 treatment notes. On October 29, 2019, Dr. Gilbert's exam demonstrated spasm, tenderness, decreased range of motion, and a positive straight leg raise test more on the left but also on the right. Dr. Gilbert also reviewed the 2017 lumbar MRI. Dr. Gilbert diagnosed L4-S1 protrusions, foraminal stenosis, osteophytes, and degenerative disc disease. Dr. Gilbert opined Fields is a candidate for posterior fusion from L4-S1. Dr. Gilbert ordered a CT scan, which was performed on December 3, 2019, and he prescribed a back brace. On January 14, 2020, Dr. Gilbert reviewed the CT scan and performed an exam. He diagnosed Fields with L4-S1 protrusions and neuroforaminal stenosis with progressive neurogenic symptoms, lumbar osteophytes, mild scoliosis, and clinical instability due to pain with rest and flexion. He again recommended posterior decompression arthrodesis at L4-S1.

Dr. Gilbert also testified by deposition on November 11, 2020. He is board certified in neurosurgery, neuroimaging, pain medicine, and addiction medicine. He first treated Fields on October 29, 2019 for back pain and bilateral leg pain with numbness, weakness, and muscle spasm at Nurse Sizemore's request. Dr. Gilbert noted Fields underwent extensive conservative treatment following his May 2017 work injury. His examination demonstrated back spasm and positive straight leg raising in both legs. He noted an MRI demonstrated problems from L4 to S1, correlating with his history and physical examination. Based upon his examination and review of the records, Dr. Gilbert opined Fields is a candidate for a fusion. Dr.

Gilbert found no evidence of malingering or symptom magnification. Dr. Gilbert opined the recommended surgery is related to Fields' work injury, and his condition has worsened since May 18, 2018. He opined the recommended surgery would improve Fields' quality of life and reduce his pain. He opined fusion surgery is a reasonable option considering his ongoing symptoms and temporary relief provided by conservative treatment.

Revelation filed Dr. John Vaughan's July 22, 2020 report and September 1, 2020 supplemental report. He had previously examined Fields on November 6, 2017. Dr. Vaughan performed an examination, ordered x-rays, and reviewed the 2017 MRI. He diagnosed symptoms predominately of axial/mechanical back pain and occasional low-grade radicular right leg pain. Dr. Vaughan opined the recommended fusion surgery is not medically necessary and would not improve Fields' symptoms. In the September 1, 2020 supplement, Dr. Vaughan opined that any purported lumbar changes occurring between 2017 and 2020 are due to the natural aging process. He opined Fields' impairment has not changed and remains at 5%. He similarly opined Fields' work restrictions of no lifting greater than 40 pounds remain unchanged. Dr. Vaughan opined Fields' lumbar condition has not substantially worsened since he was first evaluated in 2017, and the recommended fusion surgery is not medically necessary.

Dr. Vaughan also testified by deposition on October 2, 2020. Dr. Vaughan testified he evaluated Fields on November 6, 2017 and July 22, 2020. Dr. Vaughan's testimony is consistent with his report. Dr. Vaughan reiterated he did not believe Fields is a surgical candidate because he was neurologically intact on

physical examination, his x-rays and MRI demonstrated no significant pathology, individuals taking narcotic medication tend to be poor surgical candidates, and there is a significant degree of symptom magnification. To his knowledge, Dr. Rice had not recommended surgery.

Revelation also filed Fields' deposition testimony from June 9, 2017 and hearing testimony from March 19, 2018. Fields testified by deposition on January 15, 2021 and at the hearing held May 19, 2021. At the time of the May 15, 2017 work injury, Fields was working for Revelation as a supervisor. Fields has not returned to any work since the May 2017 work accident. His treatment for the low back condition has included medication, injections, and rhizotomies. Fields indicated he experienced temporary relief from the injections and rhizotomies. The workers' compensation insurer denied further rhizotomies recommended by Dr. Rice. He is currently prescribed Baclofen, Zanaflex, Cymbalta and Hydrocodone. Fields testified Nurse Sizemore referred him to Dr. Gilbert, who has recommended a two-level lumbar fusion. Fields wishes to pursue the recommended surgery. Fields testified his condition has worsened since the original opinion.

Fields filed a motion to bifurcate the claim on April 23, 2021. Fields requested bifurcation on the threshold issues of causation and compensability of the recommended surgery by Dr. Gilbert, along with any potential award of TTD benefits until he attains maximum medical improvement. This motion was not directly addressed by the ALJ.

The ALJ entered an Order on May 4, 2021. The parties stipulated the work-related injury occurred on May 15, 2017 and the claim was decided by the May

18, 2018 Opinion. The parties identified reasonableness and necessity of the decompression fusion surgery at L4-5 and L5-S1 recommended by Dr. Gilbert as the sole contested issue.

In the July 22, 2021 Medical Dispute Opinion and Order, the ALJ overruled Revelation's motion to reopen to assert a medical fee dispute, finding the decompression fusion surgery compensable, stating as follows *verbatim*:

In a post-award medical fee dispute, Defendant/Employer has the burden of proving that the contested medical expenses and/or proposed medical procedure is unreasonable or unnecessary, while the Plaintiff maintains the burden of proving the contested medical expenses and/or proposed medical procedure is causally related treatment for the effects of the work-related injury. *Mitee Enterprises vs. Yates*, 865 SW2d 654 (KY 1993); *Addington Resources, Inc., vs. Perkins*, 947 SW2d 42 (KY App. 1997). In addition, the legislature's use of the conjunctive "and", which appears in subsection 1 of KRS 342.020 "cure and relief" was intended to be construed as "cure and/or relief." *National Pizza Company v. Curry*, 802 S.W.2d 949 (Ky. App. 1991). Unproductive treatment or treatment outside the type of treatment generally accepted by the medical profession is unreasonable and unnecessary. That is a finding made by the administrative law judge based upon the facts and circumstances surrounding each case. *Square D Co. v. Tipton*, 862 S.W.2d 308(Ky. 1993).

The ALJ finds Revelation failed to meet its burden establishing the decompression fusion surgery is unreasonable and unnecessary treatment for the work injury. The evidence shows Fields continues to experience symptoms having failed conservative treatment. Fields' testimony is consistent with the treatment records. The ALJ finds Dr. Gilbert's neurosurgical opinion most persuasive as he explains the standard of care and purpose of the surgery.

Dr. Rice's treatment records document Fields' failed conservative treatment. Dr. Rice treated Fields with medications, injections, and Rhizotomies. Although his

treatment provided some relief, it was not long lasting. Dr. Rice performed Rhizotomies during April through June 2020, which provided some relief. However, on August 4, 2020 Dr. Rice noted Fields' starting to develop more symptoms with his low back pain. He even noted positive straight leg raises, not noted on his previous exam.

Consistent with the treatment records, Fields testified Dr. Rice's treatment provided some relief, but it was not long lasting. Fields testified the Rhizotomies provided relief for about 2-3 months. Further, his back condition continued to worsen. He experiences increased pain in his back into his buttocks and legs. He has more difficulty walking and standing. His treating provider, Nurse Practitioner Sizemore, referred him to neurosurgery with Dr. Gilbert.

Dr. Gilbert opined the proposed surgery is reasonable and necessary. Dr. Gilbert advised Fields has had extensive conservative treatment but continues to experience low back pain with leg pain with numbness, weakness and muscle spasms. On exam, Dr. Gilbert noted Fields has spasms and positive straight leg raise tests in both legs. He ordered a CT scan. He opined Fields has posterior central protrusions and meets the criteria for surgery. Dr. Gilbert explained the standard of care for someone, like Fields, with a positive history, positive exam, and positive imaging, who failed multi-modality conservatism is decompression fusion. He advised the idea behind the fusion is to create more room for the nerves and eliminate those joints. He opined the surgery would improve Fields' quality of life.

Based on the foregoing, the ALJ finds the decompression fusion surgery is compensable.

The ALJ referred the claim to the Frankfort Motion Docket for assignment of Field's pending motion to reopen alleging a worsening of his condition.

Revelation filed a Petition for Reconsideration asserting the ALJ did not mention either the opinions of Dr. Vaughan or Dr. Thomas and did not consider



this evidence in rendering her decision. It noted Dr. Gilbert is the only physician who has recommended the two-level fusion. Finally, Revelation argued the ALJ erred in finding conservative treatment had failed.

The ALJ overruled Revelation's petition, stating as follows *verbatim*:

**IT IS HEREBY ORDERED** the Petition for Reconsideration is **OVERRULED**. As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (KY 1993). The ALJ had the right to believe part of the evidence and disbelieve other parts of the evidence whether it came from the same witness or the same adversary party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (KY 1977). Revelation's Petition is a rearguing of the facts and request to reweigh the evidence. The ALJ considered all the evidence of record, including the evidence from Dr. Thomas and Dr. Vaughan. The ALJ was not convinced by their opinions that the surgery was treatment outside the type generally accepted by the medical professional, unreasonable or unnecessary. The ALJ explained her reasoning for relying on Dr. Gilbert, the treating neurosurgeon.

On appeal, Revelation argues the ALJ did not consider the entirety of the evidence, namely the opinions of Drs. Gilbert and Thomas. Revelation points out Dr. Gilbert is the only physician of record recommending surgical intervention and is the "outlier." Revelation argues the ALJ failed to adequately address the weight of the evidence, which is contrary to Dr. Gilbert's opinion. Revelation argues the entirety of the evidence compels a finding the proposed surgery is not medically reasonable or necessary. In the alternative, Revelation argues the claim should be remanded to the ALJ for a re-examination of the evidence with instructions to provide a more detailed explanation of her determination.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the reasonableness and necessity of medical treatment falls on the employer. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991). Since Revelation was unsuccessful in its burden, the sole issue in this appeal is whether the evidence compels a different conclusion. 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 other words, an unsuccessful party on appeal must prove that the ALJ's findings are unreasonable and, thus, clearly erroneous, in light of the evidence in the record. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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). Similarly, the ALJ has the sole authority to judge the weight to be accorded the evidence and the inferences to be drawn therefrom. 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). The fact-finder may 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 parties' total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). The Board, as an appellate tribunal, 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 reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So 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*.

KRS 342.020 provides the employer must pay for medical benefits that are reasonable and necessary for the cure and relief of an employee's work-related injury. National Pizza Co. v. Curry, *supra*. A medical procedure will not be considered reasonably necessary for the cure and relief of an injury if it is unproductive or outside the type of treatment accepted by the medical profession as reasonable. Square D Co. v. Tipton, 862 S.W.2d at 310. This determination "should be made by the ALJ's based on the particular facts and circumstances of each case, so long as there is substantial evidence to support the decision." *Id.* Where the medical proof regarding the issue is conflicting, the ALJ may pick and choose what evidence is most credible.

Substantial evidence supports the ALJ's determination the proposed fusion surgery is reasonable and necessary, and a contrary result is not compelled. The ALJ was confronted with the conflicting opinions of Drs. Gilbert, Vaughan and Thomas. Both Drs. Thomas and Vaughan opined the fusion surgery is not

reasonable or necessary while Dr. Gilbert opined it is reasonable and necessary. The ALJ chose to rely upon Dr. Gilbert's opinion, in conjunction with the treatment records and Fields' testimony, in finding the contested surgery is compensable. Dr. Gilbert's opinion constitutes substantial evidence supporting the ALJ's determination. The fact that Dr. Gilbert is the only physician recommending surgical intervention goes to the weight of the evidence and does not render his opinion unsubstantial.

Revelation argues the ALJ failed to adequately consider the medical evidence it submitted. While authority generally establishes 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. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). The ALJ sufficiently outlined the evidence she relied upon in reaching her determination. Specifically, in the Order on reconsideration, the ALJ noted she considered all the evidence of record, including the opinions of Dr. Thomas and Dr. Vaughan. The ALJ found their opinions unpersuasive that the surgery was treatment outside the type generally accepted by the medical profession, as unreasonable or unnecessary. The ALJ also noted she explained her reasoning for relying on Dr. Gilbert's opinion in the July 22, 2021 Opinion. We find the ALJ adequately considered the evidence of record and provided a sufficient explanation

in determining the contested surgery is reasonable and necessary. Therefore, the ALJ's determination will not be disturbed.

Accordingly, the July 22, 2021 Medical Dispute Opinion and Order and the August 24, 2021 Order on Petition for Reconsideration rendered by Hon. Monica Rice-Smith, Administrative Law Judge, are hereby **AFFIRMED**. We **REMAND** this claim to the ALJ to refer the pending Motion to Reopen filed by Fields alleging he had sustained an increase in occupational disability to the Frankfort Motion Docket for assignment.

MILLER, MEMBER, CONCURS.

STIVERS, MEMBER, NOT SITTING.

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