

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 10, 2020

CLAIM NO. 201787146

REXFORD PATRICK

PETITIONER

VS.

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

MOUNTAIN ENTERPRISES, INC.
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART, REVERSING IN PART
AND REMANDING

* * * * *

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

STIVERS, Member. Rexford Patrick (“Patrick”) appeals from the October 28, 2019, Opinion and Order and the December 2, 2019, Order overruling his petition for reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). The ALJ determined Mountain Enterprises, Inc. (“Mountain”) is not responsible for any medical expenses associated with Patrick’s work-related injuries.

On appeal, Patrick asserts the ALJ erred in finding his medical treatment is not causally related to his work-related accident. Further, Patrick asserts the ALJ erred by relying upon the opinions of Dr. Michael Best.

BACKGROUND

The Form 101, filed March 26, 2019, alleges Patrick sustained work-related injuries when he was involved in an April 4, 2017, motor vehicle accident (“MVA”).

Patrick was deposed on July 5, 2019. At the time of his deposition, Patrick was working for Mountain, without restrictions, performing his pre-injury job. At the time of the MVA, Patrick was working as a “haul equipment driver” for Mountain. He described the MVA as follows:

A: Well, I was going back and I see that car sitting in the median, and she kept sitting there. And it’s a long straight stretch through there. Well, then she pulling out in the fast lane, and I was in the slow lane. And I thought she was going to go on back up the road in the fast lane, then when I got right – she waited till I got right up on her. She cut right straight in front of that truck.

Q: Okay.

A: And I cut to miss her. I’m trying to get away from her, and I went through the guardrails and over the hill.

...

Q: Okay. So what happened after the road – the truck went off the road?

A: Well, my door was open. I can’t remember if I opened it or it flew open. But I looked and seen that the blazer that I hit, it was rolling back to the four-lane (phonetic), and I was – I was going to go up there and check on her. So I got out of my truck and walked back up to the guardrail, and the time I got up to the guardrail, there was

already about seven, eight cars over there around her. So I just say down.

Patrick immediately felt dizzy and nauseous after the MVA.

Patrick had experienced middle back pain before the MVA. He treated at Saint Joseph Hospital after the crash where the hospital personnel thought his neck was broken. CAT scans were performed and Patrick was transferred by ambulance to Pikeville Medical Center where additional CAT scans were performed.

On April 11, 2017, Patrick saw Dr. George Chaney who took him off work for six weeks. Patrick returned to work after two weeks and just “[s]at there.” Dr. Chaney permitted Patrick to return to work on May 24, 2017. While Patrick was treating with Dr. Chaney, he was also treating with Fugate Family Chiropractic (“Fugate”). At the time of his deposition, Patrick was still infrequently treating with Fugate. He testified as follows:

Q: Okay. So just on average, about how often do you like to go in there to see him?

A: I wish I could go about twice a week, but I don’t never go there anymore. I did for a while.

Q: Do you think you go once a week?

A: No. I ain’t been over there in a while.

Q: Okay. So you’re really not going to Fugate with any frequency right now. Maybe once a month there?

A: Yeah, probably.

Q: What parts of – well, let’s start, - whenever you first started seeing Fugate, what parts of your body were you treating there related to the- specifically in the April 4, 2017 car crash?

A: My back, my neck.

Q: Were you treating any other body parts there that weren't related to the car crash?

A: Now, he treated my shoulder some, but he said that was probably coming from my neck.

Q: Okay. When you go there now or, you know, recently now, in 2019, what parts of your body did they treat at Fugate?

A: My neck, my back. Neck and back.

Q: Do they do the shoulder anymore?

A: No.

Patrick also testified at the August 28, 2019, hearing. Patrick testified that, as a result of the MVA he sustained injuries to his neck, back, and ribs. After the MVA, he remembers undergoing several MRI scans at Pikeville Medical Center.

At the time of the hearing, Patrick was still experiencing neck and back pain. He acknowledged that he had treated for neck and back pain prior to the April 4, 2017, MVA. He described how his pain changed after the MVA:

A: The neck pain I was treated for, I'd get crooks in my neck and I'd just go up to the chiropractor to see if he could get them out, but the pain that – after that wreck, the neck pain and stuff I have now is there all of the time. Like I said, it gets me sick with headaches.

...

Q: Did you ever have to go to chiropractors to get any adjustments to your neck, back or ribs prior to March or,...

A: Yes.

Q: I'm sorry, April 4th of 2017?

A: Yes.

Q: And, how often would you see a chiropractor prior the crash?

A: I went a few times before, but, after the crash, I went there as much as I could there for about a year...

Mountain introduced Dr. Best's July 2, 2019, Independent Medical Examination report. After conducting a physical examination and a medical records review, Dr. Best diagnosed the following: "a. Soft tissue cervical sprain/strain, resolved. b. Soft tissue lumbar sprain/strain, resolved. c. Left-sided chest contusion, resolved." Regarding causation, Dr. Best opined as follows:

Clearly, the patient was involved in a motor vehicle accident. His truck struck an automobile, then proceeded through a guardrail and down a 300-foot embankment. He was extremely fortunate; he had no fractures, no intra-abdominal pathology, no 'permanent harmful change to the human organism.'

Significantly, Dr. Best also answered the following question:

Q: Is the condition directly related to Mr. Patrick's employment with Mountain Enterprises, Inc.? Please explain why or why not.

A: Yes, Mr. Patrick was an employee of Mountain Enterprises, Inc., driving a company truck when the accident occurred.

Dr. Best set forth the following opinions regarding the potential aggravation of a pre-existing condition:

Q: Did the injury precipitate, aggravate or accelerate a preexisting or deteriorating condition beyond normal progression? If so, please explain.

A: Clearly, Mr. Patrick had preexisting cervical pain with bilateral upper extremity numbness treated by George Chaney, MD, as of March 2017. The severity of the symptoms necessitated an MRI of the cervical spine which was performed on March 14, 2017 (3 weeks prior to the MVA). Definitely, the trauma secondary to the

motor vehicle accident caused a temporary exacerbation of the preexisting conditions.

Additionally, Mr. Patrick had a history of chronic headaches and low back pain. These warranted an MRI of the brain which was normal as of June 11, 2013, and an MRI of the lumbar spine which also was normal for right-sided symptoms as of January 28, 2013. The symptoms in his lumbar spine were also a temporary exacerbation of his longstanding low back pain.

Q: Did the incident cause a temporary aggravation of a preexisting condition? If so, please explain.

A: An aggravation indicates that there is a 'harmful change' that has occurred. There was no indication that a harmful change occurred secondary to the motor vehicle accident. The patient did, however, have right leg pain following the accident which has resolved at present. The MRI scan of the lumbar spine following the motor vehicle accident did find a left-sided disc herniation with L4 nerve root compression; however, the symptoms were that of pain into the right leg. Therefore, there is no cause-and-effect relationship between a left-sided disc herniation and right-sided leg pain.

Q: Were the symptoms complained of a mere manifestation of a preexisting, deteriorating condition? If so, please explain.

A: Certainly, the natural aging process (in the form of preexisting mild degenerative disc disease) did have an effect albeit small. The DDD exacerbated the initial post-MVA symptoms. These effects have returned to a pre-MVA level of symptoms.

Dr. Best opined the MVA was the only cause of Patrick's complaints.

When asked if the "natural aging process" contributed, he answered as follows: "No.

There has been no permanent 'harmful change to the human organism' secondary to

the preexisting degenerative disc disease." He further opined, in part, as follows:

Q: Was the claimed injury initially caused by a single event or occurrence? If so, when was said event or occurrence?

A: Once again, the motor vehicle collision followed by the lowboy/semi-tractor trailer truck going through a guardrail and down a 300-foot embankment caused the soft tissue pain. Fortunately, there is no objective evidence of a permanent harmful change to the human organism that occurred secondary to this event.

Dr. Best opined Patrick had achieved maximum medical improvement (“MMI”) and assessed no impairment rating or restrictions. Regarding Patrick’s medical treatment, Dr. Best concluded:

Q: Of the treatment related to the injury, what appears appropriate and necessary? Please be as specific as possible and please explain why or why not.

A: The chiropractic care is a bit extensive and it is questionable whether the patient did require the MRI scans. However, with the records provided the care and treatment was certainly acceptable.

The August 13, 2019, Benefit Review Conference Order and Memorandum lists the following contested issues: benefits per KRS 342.730, notice, average weekly wage, unpaid or contested medical expenses, and KRS 342.165 violation. Under “other” is the following: “RTW wages.” The parties stipulated that a work-related injury occurred on April 4, 2017.

By order dated September 24, 2019, the ALJ bifurcated the claim resulting in Patrick’s entitlement to past and future medical expenses being the only issue to be decided.

The record contains a Form 110 Settlement Agreement, approved by the ALJ on October 24, 2019. The agreement reflects as follows:

Date of injury: 04/04/2017

Where did injury occur: Garrett, KY

Brief description of occurrence resulting in injury: motor vehicle crash

Causes of Injury: disputed and contested

Body parts affected: neck, back, and chest/ribs

Nature of Injury: disputed and contested

Patrick received a \$20,000 lump sum payment. The settlement agreement asserts “[t]he issue of past and future medical benefits is submitted to the ALJ for a determination on compensability.”

In the October 28, 2019, Opinion and Order, the ALJ’s summary of Dr. Best’s medical opinions reads *verbatim* as follows:

Dr. Michael M. Best completed an IME dated July 2, 2019 at which time he reviewed the records, took a history and performed his own examination of Mr. Patrick. Dr. Best’s diagnosis was;

- a) Soft tissue cervical sprain/strain, resolved.
- b) Soft tissue lumbar sprain/strain, resolved.
- c) Left sided chest contusion, resolved.

Dr. Best noted that the accident was the cause of his above mentioned symptoms. However noted that Mr. Patrick had preexisting cervical pain with bilateral upper extremity numbness treated by Dr. Chaney as of March 2017, the severity of which necessitated an MRI performed on March 14, 2017 (3 weeks prior to the MVA). The secondary trauma of the MVA caused a temporary exacerbation of his preexisting conditions. Mr. Patrick also had a history of chronic headaches and low back pain, which warranted a brain MRI, which was normal as of June 11, 2013 and an MRI of the lumbar spine, which was normal as of January 28, 2013. The

symptoms in his lumbar spine were also a temporary exacerbation of his longstanding low back pain.

There was no indication that a harmful change occurred secondary to the MVA, noting that the MRI found a left sided disc herniation with L4 nerve root compression, however, there is no cause-and-effect relationship between left sided disc herniation and right sided leg pain and therefore, disagrees with Dr. Gilbert as far as surgery.

He noted that although the MVA was the only cause of his complaints, the effects have returned to a pre-MVA level of symptoms. Noting that fortunately, there is no objective evidence of a permanent harmful change to the human organism that occurred secondary to this event.

In the opinion of Dr. Best, the chiropractic care was a bit extensive and it is questionable whether the MRI scans were required, however the records provided show the care and treatment was acceptable.

In his opinion, Mr. Patrick is at MMI and requires no further medical care, no surgical intervention or prescriptions. He assigned no impairment and noted that Mr. Patrick requires no restrictions and is capable of returning to his previous work duties.

The ALJ's findings of fact and conclusions of law concerning the compensability of Patrick's past and future medical expenses are set forth *verbatim*:

As indicated above, the only issue remaining for determination of whether the defendant employer is responsible for past and future medical expenses associated with plaintiff's alleged injuries as a result of his work-related motor vehicle accident on April 4, 2017. The defendant maintains plaintiff suffered no permanent injuries, or any injuries to his neck or back as he alleges in this claim, as a result of the motor vehicle accident. It maintains any past or future medical expenses are due to plaintiff's prior, long-standing history of the neck and lower back problems, which were not caused or exacerbated by the motor vehicle accident. In support of this position, he relies on the opinions of its expert, Dr. Best, who examined plaintiff and reviewing is medical

records. Dr. Best pointed out plaintiff had treated for neck and back problems going back to at least 2010. He noted that a lumbar MRI showed some pathology, but it was on the opposite side of plaintiff's symptoms and, as such, is not considered to be a new injury caused by the motor vehicle accident for which any medical treatment could be required. Dr. Best's opinions in this regard are corroborated even by Dr. Gilbert, who commented that plaintiff's preinjury and postinjury cervical MRIs were essentially the same.

Based on the totality of evidence available, the Administrative Law Judge is not persuaded plaintiff has carried his burden of proving his alleged neck and back conditions are causally related to the April 4, 2017 motor vehicle accident. In reaching this conclusion, Dr. Best's opinions are considered most persuasive in this instance. He thoroughly explained that plaintiff's current condition, need for treatment to date and in the future, are due to plaintiff's long-standing and unrelated medical conditions. He also points out that plaintiff did not make any complaints of neck or back pain until months after the motor vehicle accident. Based on plaintiff's prior medical history, Dr. Best's opinions are found most credible. Accordingly, it is determined the defendant employer is not responsible for any medical expenses associated with plaintiff's alleged injuries.

In his petition for reconsideration, Patrick provided the same arguments he now makes on appeal. By order dated December 2, 2019, the ALJ overruled Patrick's petition for reconsideration.

ANALYSIS

We will first dispense with Patrick's second argument on appeal.

In his second argument, Patrick asserts Dr. Best's opinions cannot constitute substantial evidence, as he did not have a true and accurate medical history. He notes there are internal contradictions in Dr. Best's report, specifically regarding whether Patrick's low back pain extended into one leg or both. Therefore, Patrick

contends Dr. Best's opinion cannot constitute substantial evidence relying upon Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004). We affirm on this issue.

As an initial matter, we acknowledge some contradictions within Dr. Best's report. However, Dr. Best ultimately concluded Patrick did not sustain a permanent injury – specifically, a left-sided disc herniation – because Patrick's pain, as stated by Dr. Best, radiated only into the right leg, and there is no causal connection between a left-sided disc herniation and right-sided leg pain. Indeed, Dr. Best's summary of certain medical records – including but not limited to the April 4, 2017, ER records from Pikeville Medical Center, and the June 26, 2017, records from Dr. Josh Bakun at Fugate – indicates Patrick complained of pain radiating into his right leg. However, it appears Patrick, at least intermittently, complained of pain radiating into both legs. As pointed out by Patrick, Dr. Best's summary of the medical records acknowledges this fact. For instance, on page five of his report, Dr. Best wrote as follows:

Today, he [Patrick] complains of neck pain and low back pain. The neck pain radiates into both shoulders and he complains of numbness and tingling in the right hand, second, third and fourth digits. **He states his low back pain radiates into both buttocks.** Today, he rates his total pain level to be 3/10 – Moderate pain. He denies the use of narcotic analgesics. (emphasis added).

Dr. Best also noted as follows:

On March 1, 2018, Mr. Patrick was seen by Norman Mayer, MD, neurosurgeon, who noted, 'Back pain. Onset on April 4, 2017. Severity level is 3. The problem is fluctuating. **Pain is radiating to the left thigh and right thigh.**

...

Mr. Patrick was next seen by neurosurgeon, John Gilbert, MD, on July 24, 2018, where he noted, '**Back pain radiating into the legs** followed by neck pain and occasional tingling in the arms and then mid back pain.' (emphasis added).

Nonetheless, these internal inconsistencies are not enough to implicate Cepero, supra. Cepero was an unusual case involving not only a complete failure to disclose, but also affirmative efforts by the employee to cover up a significant injury to the left knee two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury left Cepero confined to a wheelchair for more than a month. The physician upon whom the ALJ relied was not informed of this prior history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero's left knee impairment was not work-related but, instead, was attributable to the non-work-related injury two and a half years previous.

In Cepero, the Supreme Court found a medical opinion erroneously premised upon the claimant's egregious omission of directly relevant past medical history mandated reversal based on an insufficient history received by the medical expert. The Court held a "medical opinion predicated upon such erroneous or deficient information that is completely unsupported by any other credible evidence can never, in our view, be reasonably probable." Id.

Even though medical records suggest Patrick complained of pain radiating down both legs and not just his right leg, this discrepancy goes to the weight the ALJ chose to give to Dr. Best's opinions and not the admissibility of those

opinions. As there is nothing akin to Cepero in the case *sub judice*, the ALJ was free to rely upon Dr. Best's opinions, and we will not disturb his discretion in that regard. Since Dr. Best's opinions constitute substantial evidence, we affirm the ALJ's reliance upon his opinions.

That said, in response to Patrick's first argument on appeal, we reverse the ALJ's determination Mountain is not responsible for "any medical expenses."

The parties stipulated a work-related injury occurred on April 4, 2017, and Mountain did not request to be relieved of this stipulation. *See* 803 KAR 25:010 §16(2). Further, the ALJ undeniably relied upon Dr. Best's opinions in formulating his decision. The ALJ concluded in the October 28, 2019, Opinion and Order: "Dr. Best's opinions are considered most persuasive in this instance." A review of Dr. Best's report reveals he diagnosed temporary, work-related injuries occurring on April 4, 2017. Dr. Best's July 2, 2019, report contains diagnoses of a soft tissue cervical sprain/strain (resolved), soft tissue lumbar sprain/strain (resolved), and left-sided chest contusion (resolved). Further, when asked if his diagnoses were "directly related to Mr. Patrick's employment with Mountain Enterprises, Inc.," Dr. Best opined as follows: "Yes. Mr. Patrick was an employee of Mountain Enterprises, Inc., driving a company truck when the accident occurred."

Significantly, the ALJ's summary of Dr. Best's opinions acknowledges Dr. Best diagnosed temporary injuries causally related to the April 4, 2017, MVA, as he set forth the following:

- Dr. Best's diagnosis was:
 - a) Soft tissue cervical sprain/strain, resolved.
 - b) Soft tissue lumbar sprain/strain, resolved.

c) Left sided chest contusion, resolved.

- Dr. Best noted that the accident was the cause of his above mentioned symptoms.
- The secondary trauma of the MVA caused a temporary exacerbation of his preexisting conditions.
- The symptoms in his lumbar spine were also a temporary exacerbation of his longstanding low back pain.
- He noted that although the MVA was the only cause of his complaints, the effects have returned to a pre-MVA level of symptoms.

Consequently, since the ALJ relied upon Dr. Best's opinions which included a diagnosis of temporary injuries causally-related to the April 4, 2017, MVA, and since Dr. Best's opinions comprise substantial evidence, a finding of temporary work injuries is mandated. Therefore, since the ALJ's summary of Dr. Best's opinions reflect Patrick sustained temporary work injuries, on remand the ALJ shall find Patrick sustained temporary work-related injuries.

Because Patrick sustained temporary work injuries as a result of the April 4, 2017, MVA, he is entitled to reasonable and necessary medical benefits for the cure and relief from the effects of his work-related injuries. Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). Pursuant to Robertson, supra, Patrick need not establish he sustained permanent injuries in order to be entitled to temporary benefits, including medical benefits.¹

¹ Temporary total disability ("TTD") benefits were not indicated as a contested issue on the BRC Order.

On remand, in resolving the issue of Patrick's entitlement to medical benefits, the ALJ shall find Patrick achieved MMI on July 2, 2019, the date of Dr. Best's report. A review of both October 28, 2019, Opinion and Order and the December 2, 2019, Order indicates the ALJ failed to determine a date of MMI. However, since the ALJ relied upon Dr. Best's opinions and he opined the effects of the April 4, 2017, MVA "have returned to a pre-MVA level of symptoms" and Patrick achieved MMI, the ALJ must infer Dr. Best concluded Patrick achieved MMI as of the date of his report. Importantly, Dr. Best's report is devoid of an opinion concerning an exact date of MMI. Rather, as of the date of his examination, Dr. Best concluded Patrick attained MMI.

On remand, the ALJ shall also find all chiropractic treatment by Fugate and all MRI scans Patrick underwent from April 4, 2017, through July 2, 2019, the date of MMI, for the cure and relief from the effects of his temporary work-related injuries are compensable. In Dr. Best's report, he opined that while the chiropractic care was a "bit extensive" and the MRI scans "questionable," the medical treatment "was certainly acceptable." The ALJ's summary of Dr. Best's opinions acknowledge he was aware of Dr. Best's opinions regarding the medical treatment in question, and ultimately relied upon those opinions. Therefore, the ALJ is directed to find this medical treatment to be compensable.

Finally, on remand, the ALJ is directed to find Patrick is entitled to all other reasonable and necessary medical expenses incurred between April 4, 2017, and July 2, 2019, for the cure and relief from the effects of his temporary work-related injuries. We acknowledge the Form 110 settlement agreement indicates \$9,479.33 in

medical expenses have already been paid. However, the agreement further indicates the date of Mountain's last medical payment was May 30, 2017, and approximately \$1,653.00 in medical expenses remain unpaid or contested.

Accordingly, the ALJ's reliance upon Dr. Best's opinions, as set forth in the October 28, 2019, Opinion and Order and the December 2, 2019, Order, is **AFFIRMED**. We **REVERSE** the ALJ's determination Mountain is not responsible for any medical expenses and **REMAND** for entry of an amended opinion and award finding the date of MMI is July 2, 2019, and all reasonable and necessary medical treatment Patrick underwent from April 4, 2017, through July 2, 2019, including the chiropractic treatment provided by Fugate and all MRI scans, which was for the cure and relief from the effects of his temporary work-related injuries are compensable.

ALL CONCUR.

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