

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October 11, 2019

CLAIM NO. 201602058

RICHARD RUSSELL

PETITIONER

VS.

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

WONDERFOIL, INC. and  
HON. GRANT S. ROARK,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
REVERSING & REMANDING

\* \* \* \* \*

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

**ALVEY, Chairman.** Richard Russell (“Russell”) appeals from the April 29, 2019 Opinion, Order and Award, and the May 23, 2019 Order on Reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge (“ALJ”). The ALJ determined Wonderfoil, Inc. (“Wonderfoil”) is not responsible for unpaid medical expenses because they were not timely submitted. The ALJ also denied Russell’s petition for reconsideration.

On appeal, Russell argues the ALJ erred in finding the contested medical bills are not compensable. He argues Wonderfoil contested liability for payment of the medical bills, and in its Form 111 denied the claim based upon causation, work-relatedness, occurrence of a work injury, and liability for contested or disputed medical expenses. For the foregoing reasons, we determine the ALJ erred in finding the medical bills submitted by Russell are not compensable, reverse his determination, and remand for entry of a decision finding the bills were properly presented for consideration.

Russell filed a Form 101 on November 10, 2014 alleging he injured his right arm when his shirtsleeve caught in a machine he was operating for Wonderfoil. He suffered severe burns and was admitted to University of Louisville Hospital, where he remained for six days. The injury was timely reported to Wonderfoil, however no first report of injury was filed and the company's workers' compensation insurer was not informed of the accident.

Wonderfoil filed a Form 111 on October 31, 2016, denying the claim. In particular, Wonderfoil denied liability for contested or disputed medical bills, along with potential medical disputes. Interestingly, Wonderfoil indicated it had paid all known medical expenses.

At his deposition taken on January 9, 2017, Russell indicated he had a 1% ownership interest in Wonderfoil, and his sisters owned the remainder. He testified he reported the injury, and one of his sisters called to check on him afterward. But as noted above, the injury was not reported to the workers' compensation insurer. Because he was unsure whether workers' compensation

insurance covered his injury, Russell submitted his medical bills to his health insurer, Anthem. Anthem paid a portion of the bills, and he was responsible for the remainder. Wonderfoil filed stipulations on February 1, 2017 noting it had paid no medical bills.

A Benefit Review Conference was held on February 2, 2017. At that time, unpaid or contested medical bills was listed as an issue. On May 23, 2017, the ALJ entered an order giving the parties forty-five days to settle the claim, or to advise whether a formal hearing was necessary. Russell filed a status report on March 23, 2018 indicating he was gathering his medical bills to submit for payment. On May 14, 2018, Russell filed his unpaid medical bills. Wonderfoil did not file an objection to the submission of these bills, nor did it file a medical dispute.

On December 14, 2018, the ALJ again ordered the parties to file status reports. Wonderfoil submitted a status report on December 21, 2018 indicating settlement negotiations were ongoing. On January 3, 2019, Russell filed a status report indicating a settlement was not forthcoming. He also filed a motion to schedule a telephonic conference.

A hearing was held on February 27, 2019. At the hearing, the parties agreed that unpaid medical bills remained a contested issue

In its brief to the ALJ, Wonderfoil argued as follows:

Plaintiff has filed unpaid medical bills allegedly related to treatment for this injury. As this injury was never reported to the workers' compensation carrier at the time of the injury the bills were not submitted to the carrier. Even after the Form 101 was filed and the carrier became aware of the work related injury, the bills were still not submitted. According to KRS 342.020(4) medical bills must be submitted within forty-five (45)

days of treatment. The medical bills filed by Plaintiff are from service dates in 2014 and 2015. The 45 day time period has clearly passed. As such, Defendant/Employer is not responsible for the payment of the medical bills filed into the record.

Wonderfoil did not cite to the sixty-day rule contained in 803 KAR 25:096 §11.

Citing KRS 342.020 and 803 KAR 25:096, the ALJ determined the unpaid medical expenses are not compensable because they were not timely submitted.

The ALJ specifically found as follows:

The parties also listed unpaid medical expenses as a contested issue. The defendant points out that plaintiff submitted medical expenses from 2014 and 2015 and did not submit them within 45 days. Of course, as the claimant and not a medical provider, plaintiff had 60 days from the dates of service to submit such expenses, but the fact remains that these expenses were not submitted until May 14, 2018, long beyond 60 days from the date of service or even 60 days after the claim was filed in 2016. Accordingly, unpaid medical expenses to date are not compensable as not being timely submitted for payment.

Russell filed a Petition for Reconsideration arguing as follows:

1. Considering the inconsistent line of cases concerning Petitions for Reconsideration as well as the changes in KRS Chapter 342, and out of an abundance of caution, Plaintiff states that nothing in this Petition for Reconsideration should be considered to be a waiver of any other appealable issue that is not a patent error appearing on the face of the award or any errors on questions of law.
2. The Administrative Law Judge's[sic] erred in not awarding unpaid medical expenses. The Claimant was relieved of the duty of filing expenses within 60 days of

the award as this was not accepted as a compensable claim and the notice of claim acceptance or denial clearly states that causation was disputed. The filing of the expenses on May 14, 2018, before the claim was decided is “reasonable” pursuant to the case law.

In denying the petition, the ALJ stated as follows:

This matter comes before the Administrative Law Judge upon the plaintiff's petition for reconsideration of the Opinion & Order rendered in this matter on April 29, 2019. Having reviewed the petition, the ALJ is not persuaded plaintiff points out any patent errors to justify an Award of past medical expenses. Nothing in his petition provides any authority for his argument and it is otherwise contrary to the statute and regulations referred to in the Opinion. Accordingly, plaintiff's petition is overruled.

On appeal, Russell argues the submitted medical expenses are compensable. He asserts the unpaid medical expenses were filed before the claim was decided, and therefore are timely. Russell also emphasizes that Wonderfoil did not submit evidence to dispute the expenses, nor did it file a notice of denial. Russell specifically argues as follows:

This injury claim was filed on September 16, 2016. The record reflects that there was no First Report of Injury. A notice of claim denial or acceptance was filed October 31, 2016. The claim denial specifically stated that among the reasons for denial were causation, work-relatedness, occurrence of an injury and liability for contested or disputed medical expenses and potential medical dispute issues.

Medical records from the University of Louisville were filed and the deposition of Richard Russell was taken. Medical reports from Dr. Richard DuBou and Dr. Warren Bilkey were placed into evidence. The BRC was held on February 7, 2017. A notice of unpaid medical expenses was filed on May 14, 2018. No evidence was

filed by the Defendant/employer concerning those expenses and no notice of denial of those specific medical expenses was filed. The hearing was held on February 27, 2019 and the parties again stipulated that no medical expenses at all had been [sic] in relation to this claim and that unpaid or contested medical expenses remained an issue although both IME physicians had stated that the Claimant had suffered a compensable injury on November 10, 2014.

We find the ALJ erred by finding Wonderfoil is not liable for the payment of Russell's medical bills. This Board has held on a number of occasions the forty-five day rule for submission of statements for services in KRS 342.020(1) has no application in a pre-award situation. The Kentucky Supreme Court in R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915, 918 (Ky. 1993) pointed out the requirement in KRS 342.020(1) for the payment of bills within 30 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." By extension, we find the sixty-day requirement contained in 803 KAR 25:096 §11 is likewise not applicable until an

award has been entered finding the claim is compensable. We agree with Russell 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. Since an interlocutory award was not entered, the sixty-day rule was not applicable until after the ALJ rendered his decision.

We also find it significant that Wonderfoil did not object to Russell's filing of the medical bills, nor did it file a medical dispute although they were filed more than nine months prior to the hearing. We additionally note that Wonderfoil, or its insurer, never paid any medical bills, which it admitted in its stipulations filed on February 1, 2017. We also note that in its Form 111, Wonderfoil completely denied the claim.

Based upon the foregoing, we find the ALJ erred in determining the contested medical bills are not compensable. On remand, the ALJ shall review the bills and determine whether they are related to the work injury, and if so, find that Wonderfoil is responsible for payment.

Accordingly, the April 29, 2019 Opinion, Order and Award, and the May 23, 2019 Order on reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge are hereby **REVERSED**. This claim is **REMANDED** for entry of a decision in accordance with this decision.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, DISSENTS AND FURNISHES A SEPARATE OPINION.

**RECHTER, Member.** I dissent. There is nothing in 803 KAR 25:099 Section 11(2) or (3) stating the deadline to submit a Form 114 only applies post-award. The only exception is a finding by the ALJ that reasonable grounds exist to excuse the untimely filing. In light of this absence of statutory language, the majority relies on Haddix, Garno, and Jones to conclude that 803 KAR 25:099 Section 11(2) “does not apply pre-award.”

Haddix is inapplicable; it concerned the *employer’s* duty to pay bills within thirty days. There is no language in that case absolving the employee or medical provider of its duty to timely submit bills pre-award. Garno concerned the employee’s obligation to timely submit a Form 114, but the Supreme Court did not consider the exact question before us. Rather, the Garno court simply held that the employee’s duty to submit her bills existed at the time of an interlocutory order adjudicating work-relatedness; the Court did not answer the question of whether the duty existed before that order. Jones is an opinion of this Board interpreting Haddix to conclude that the medical providers’ duty to timely submit bills does not exist prior to an award. Besides being factually distinguishable, because the provider had previously received an express denial from the employer, the Jones claim was never appealed to a higher court and remains of limited precedential value.

Even when read most broadly, the above-cited cases support, at best, the conclusion that it may be “reasonable” for a claimant to delay submission of a Form 114 until an ALJ has entered a final or interlocutory award of medical benefits. But the finding of what constitutes reasonable grounds remains within the ALJ’s

discretion. This Board has no authority to require such a finding absent a clear abuse of that discretion.

Here, Russell filed a Form 101 in September 2016 for medical expenses incurred in 2012 through 2014. By the time his Form 101 was filed, he was no longer being treated for his work injury. This claim was actively litigated until February 2017, when Wonderfoil stipulated work-relatedness and causation in a BRC order, but listed unpaid medical expenses as a contested issue. The ALJ then ordered the parties to attempt settlement. Russell's pleadings indicate he engaged in these settlement talks, yet still did not produce his outstanding medical bills. Over a year later, in May 2018, Russell finally submitted his Form 114.

The ALJ acted well within his discretion to conclude Russell did not provide reasonable grounds to submit his medical expenses over four years after the expenses were incurred, two years after the claim was filed, fifteen months after he became aware Wonderfoil was no longer contesting work-relatedness and causation, and a year after first engaging in settlement negotiations. The ALJ is in the best position to determine what constitutes reasonable grounds under the particular circumstances of a claim. It is not the function of this Board to usurp that discretion, or to read unwritten exceptions into the plain language of a regulation.

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