

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October 4, 2019

CLAIM NO. 201775459

TIM SHORT AUTO SALES

PETITIONER

VS.

APPEAL FROM HON. W. GREG HARVEY,  
ADMINISTRATIVE LAW JUDGE

SHAWN ROBINETTE and  
HON. W. GREG HARVEY,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
AFFIRMING

\* \* \* \* \*

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

**ALVEY, Chairman.** Tim Short Auto Sales (“Tim Short”) appeals from the Opinion, Award and Order rendered May 20, 2019 by Hon. W. Greg Harvey, Administrative Law Judge (“ALJ”). The ALJ found Shawn Robinette (“Robinette”) sustained a work-related lumbar injury on June 2, 2017, and awarded permanent total disability (“PTD”) benefits and medical benefits. The ALJ found Tim Short responsible for “unpaid bills filed of record in this claim on June 22, 2018 and June

28, 2018.” Tim Short also appeals from the June 18, 2019 order denying its petition for reconsideration.

On appeal, Tim Short argues Robinette’s medical providers failed to submit to the workers’ compensation insurer statements for services within forty-five days of the day treatment was initiated pursuant to KRS 342.020(4). It also argues the treating physicians failed to provide treatment plans in accordance with 803 KAR 25:096 §5(1)(c). Tim Short argues none of Robinette’s treating physicians, including his surgeon, Dr. Norman Mayer, submitted pre-authorization requests for proposed medical treatment. It argues the failure of Robinette’s treating physicians to submit statements for services, treatment plans, or pre-authorization requests bar recovery for those past expenses. For the foregoing reasons, we affirm.

Robinette filed a Form 101 on April 24, 2018 alleging he injured his low back on June 2, 2017 while working for Tim Short as a detailer when he was bent over and twisted while vacuuming a car. The Commissioner of the Department of Workers’ Claims notified Robinette in a letter dated January 19, 2018 that his claim had been denied and advised him of the two-year limitation for filing a Form 101 for the June 2, 2017 injury.

Tim Short filed a Form 111 on May 14, 2018 denying the claim on numerous grounds. On the same day, Tim Short filed a Notice of Disclosure identifying numerous anticipated contested issues. Tim Short indicated, “all medical bills incurred are disputed at this time” and that it had not paid any medical bills. Tim Short also filed a Statement of Proposed Stipulations and Notice of Contested Issues. In this document, Tim Short stated, “no TTD benefits were paid, as this

claim was denied in good faith” and “no medical expenses were paid as a result of this claim, which was denied in good faith.”

On June 22, 2018, Robinette filed a “Notice of Filing Unpaid Medical Expenses of Pikeville Medical Center.” The filing listed charges from Pikeville Medical Center for various treatments received by Robinette from June 4, 2017 through May 30, 2018, including office visits, emergency room visits, diagnostic imaging, and expenses associated with the June 28, 2017 lumbar surgery performed by Dr. Mayer. On June 28, 2018, Robinette filed additional unpaid medical expenses from Pikeville Medical Center for treatment received in 2018. On November 13, 2018, Robinette filed an “account analysis report” from United Medical Group for office visits on December 7, 2017, August 7, 2018 and November 5, 2018.

Robinette also filed an Investigative Report dated July 25, 2017 performed by Research Consultants Group on behalf of Zenith Insurance Company, the workers’ compensation insurer. The narrative indicates the consultant group was instructed on July 10, 2017 to meet with Robinette in order to obtain a recorded statement. The meeting occurred on July 20, 2017. Robinette described the June 2, 2017 injury, but stated he did not report it that day. Robinette stated his pain progressively worsened and he went to the emergency room on June 5, 2017. Robinette stated he returned to the workplace on June 7, 2017 and reported his injuries and the June 2, 2017 work incident to Kristi Bailey, a human resources representative. Robinette stated his surgery was unsuccessful.

Robinette filed as evidence records from Pikeville Medical Center Emergency Room, Family Practice, and Pain Management, as well as the treatment records from Dr. Mayer. Those documents reflect Robinette was treated on thirteen occasions between June 4, 2017 and June 14, 2018 for low back pain radiating into his right leg, as well as numbness and tingling. The documents also include the June 28, 2017 operative report indicating Dr. Mayer performed an L2 and L3 laminectomy; right L2-L3 discectomy; bilateral L4-L5 decompression; and L5-S1 decompression. The report reflects a post-operative diagnosis of multilevel lumbar stenosis with herniated nucleus pulposus. Robinette relied upon Dr. David Muffly's March 22, 2018 report and September 6, 2018 supplemental report. Tim Short relied upon Dr. Timothy Kriss's August 8, 2018 report.

Robinette testified by deposition on July 24, 2018, and at the hearing held March 21, 2019. Robinette was born on August 25, 1982, and resides in Pike County, Kentucky. Robinette is a high school graduate. He worked for Walmart for a few years gathering shopping carts and stocking. He began working as an automobile detailer for Deskins Motors in 2006. Robinette continued to work as a detailer when Tim Short purchased Deskins Motors in 2016. Robinette testified that on June 2, 2017, he was on his hands and knees vacuuming the seats of a car. He experienced low back pain radiating into his right leg as he backed out of the car, pushed up, and twisted around. Robinette initially thought he pulled a muscle, and completed his shift. His symptoms progressively worsened to the point that he went to the emergency room on June 4, 2017. He was eventually seen by a neurosurgeon, Dr. Mayer, who performed lumbar surgery on June 28, 2017. Robinette

subsequently underwent post-operative care, and was also given an injection by a pain management physician.

Robinette agreed with the investigative report that he reported the work incident and injury to a human resources representative for Tim Short on June 7, 2017. Robinette testified he signed paperwork completed by the human resource representative. Robinette indicated none of his treatment, including surgery, provided any symptom relief. Robinette denied experiencing any previous lumbar treatment or injuries. He has not returned to any work since June 6 or 7, 2017.

A Benefit Review Conference was held on January 7, 2019. The following were identified as contested issues: Injury as defined by the Act, work-related injury/causation, notice, benefits per KRS 342.730, temporary total disability (“TTD”) benefits, entitlement to past and future medical treatment, exclusion for pre-existing impairment, violation of KRS 342.040, unpaid or contested medical expenses, and maximum medical improvement. The parties stipulated Tim Short had not voluntarily paid TTD benefits or medical expenses.

The ALJ determined Robinette sustained a work-related lumbar injury on June 2, 2017 for which he provided due and timely notice on June 7, 2017. In addressing notice, the ALJ found persuasive the fact that the workers’ compensation insurer had an investigation performed on July 25, 2017. The ALJ also noted the report reflects Tim Short knew of the alleged injury because the insurer was sufficiently notified to assign the claim for an investigation. The ALJ adopted the 26% impairment rating assessed by Dr. Muffly. The ALJ determined Robinette is permanently and totally disabled from the effects of his work injury, and referred him

for a vocational evaluation. The ALJ determined Robinette is entitled to future medical benefits for his lumbar injury and, in addition, “is entitled to have paid, by the Defendant, the unpaid bills filed of record in this claim on June 22, 2018 and June 28, 2018.” The ALJ awarded PTD benefits and medical benefits.

Tim Short filed a petition for reconsideration raising several arguments, including those raised on appeal. The ALJ denied its petition June 18, 2019, stating in relevant part as follows:

First, the Defendant argues Robinette’s medical providers did not submit statements for services in accordance with KRS 342.020(4) within 45 days of the treatment. As a result, the Defendant submits any such bills are not compensable. It also submits that there was no treatment plan in place in accordance with 803 KAR 25:096 Section 5(c) and that the surgery done on Robinette did not receive authorization as none was sought through the workers’ compensation carrier. Plaintiff has responded to the Defendant’s argument by noting the claim was denied by the Defendant in its’ entirety. No temporary total disability or other benefits were paid. The ALJ denies the Defendant’s petition that the past medical expenses are not compensable. This was a denied claim. However, the Defendant knew of the claim as set forth in the Opinion, Award and Order. The obligation to pay was not fixed until the undersigned’s May 20, 2019 decision. Submission of bills to the Defendant, when it denied the claim all along, would have been an exercise in futility as Robinette required emergency surgery to his spine.

On appeal, Tim Short argues Robinette’s medical providers failed to submit a statement for services within forty-five days of the day treatment was rendered. Tim Short asserts the provider did not submit anything to them and that his medical treatment was billed to Robinette’s health insurance provider. Tim Short points out the Form 111 was submitted after the majority of Robinette’s treatment

was rendered, and has no bearing on the provider's failure to submit timely bills accompanied by a medical report and itemized billing statement.

Likewise, Tim Short argues the medical providers failed to submit a treatment plan in accordance with 803 KAR 25:096 §5(1)(c), which deprived it of the right to effectively investigate the claim. Tim Short argues Dr. Mayer did not request pre-authorization for the June 2017 surgery or referral to pain management through the workers' compensation insurer preventing it from investigating the proposed treatment, and therefore, should be relieved from responsibility for those expenses.

We find no merit to the argument the ALJ erred by finding Tim Short liable for medical bills submitted more than forty-five days after service was rendered pursuant to KRS 342.020(1). 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.” Despite its argument, we find it significant that Tim Short did not file a medical dispute subsequent to Robinette filing billing information from Pikeville Medical Center on June 22, 2018. Additionally, we note this claim was denied by Tim Short throughout the litigation. Robinette’s medical expenses were incurred prior to the ALJ’s decision and were raised during the pendency of his claim. Therefore, the ALJ correctly found Tim Short responsible for Robinette’s past medical expenses, and we affirm.

For similar reasons, we find the alleged failure to submit a treatment plan or pre-authorization request does not relieve Tim Short from responsibility of Robinette’s past medical expenses. We again note Tim Short denied this claim in its entirety, and did not voluntarily pay medical expenses or TTD benefits in light of its denial. We also find the rationale contained in R.J. Corman Railroad Construction, supra, is applicable. We additionally note there is no evidence, other than the assertions made by Tim Short’s counsel in its brief to the ALJ and Board, regarding whether a treatment plan was requested in accordance with the regulation or whether it ever provided Robinette a Form 113. We also note Tim Short did not identify the failure to submit treatment plans or pre-authorization requests as a contested issue at the Benefit Review Conference.

Accordingly, the May 20, 2019 Opinion, Award and Order, and the June 18, 2019 Order on petition for reconsideration rendered by Hon. W. Greg Harvey, Administrative Law Judge, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS IN RESULT ONLY.

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