

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 20, 2022

CLAIM NO. 200770457

VULCAN MATERIALS COMPANY

PETITIONER

VS.

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

PERRY COLEMAN
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING AND REMANDING

* * * * *

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

STIVERS, Member. Vulcan Materials Company (“Vulcan”) seeks review of the December 13, 2021, Opinion and Order of Hon. Grant S. Roark, Administrative Law Judge (“ALJ”) pertaining to a medical fee dispute filed by Vulcan. The ALJ was “not persuaded [Vulcan] has carried its burden of proving the disputed brand name prescription is unreasonable or unnecessary.” Consequently, Vulcan continues to be liable for Perry Coleman’s (“Coleman”) use of the brand name medication

Pristiq. Vulcan also appeals from the January 18, 2022, Order overruling its Petition for Reconsideration.

On appeal, Vulcan asserts the ALJ failed to address the work-relatedness of Pristiq/Desvenlafaxine. Vulcan also argues the ALJ erred in finding the brand name medication, Pristiq, is reasonable and necessary rather than the generic medication, Desvenlafaxine.

BACKGROUND

The record reveals that on February 2, 2012, Hon. J. Landon Overfield, Administrative Law Judge approved a Form 110-I Agreement as to Compensation. The Form 110-I reflects Coleman strained his back while attempting to pull a weed from a drainage ditch. As a result, he sustained a low back injury. The following language is contained under the heading “Medical Information:”

Medical expenses unpaid or contested: All claims for treatment of psychological symptoms and/or conditions are waived which are deemed to be psychiatric/psychological medications may be used for treatment of pain related to physical injuries. Defendant-employer will pay for prescription medications which are reasonable and necessary for treatment for the work injury, which are prescribed for treatment of the work injury by the Plaintiff’s designated physician even if such medications are considered to be psychiatric/psychological medications.

Surgery performed: Yes Nature of Surgery: lumbar X2

Hospitalization(s): N/A Length of hospital stay(s): N/A

Impairment ratings: (Attach entire medical report that provides ratings)

	Date Given	Physician
13%	3/29/2010	Arrendall

Coleman received a lump sum of \$163,000.00 in addition to temporary total disability benefits totaling \$108,407.94, previously paid. The Benefit and Settlement Information section contains, in relevant part, the following:

Plaintiff waives any and all claims for psychological impairment/disability and/or expenses for treatment of psychological symptoms or conditions in connection with this or any claim against Defendant employer. However, Defendant employer will not deny reasonable and necessary prescription medications related to treatment of the work injury, as prescribed by the designated treating physician, even if such medications are deemed to be psychological medications.

...

Other: explanation Future Medical for treatment of the work injury is not waived by this settlement agreement. Only psychological treatment is waived.

Coleman waived his right to past and future income benefits, past medical benefits, future medical benefits (psychological), vocational rehabilitation, and right to reopen.

Under the heading "Other Information" is the following:

The Plaintiff has agreed to accept \$163,000 as consideration for a dismissal of this claim with prejudice. Of the \$163,000 lump sum settlement, \$155,000 is consideration for a waiver of any and all claims to past, present and future income benefits, including temporary total disability benefits, permanent partial disability benefits, and permanent total disability benefits, \$5,000 is consideration for a waiver of any and all any and all claims for psychological impairment/disability and/or expenses for treatment of psychological symptoms or conditions in connection with this or any claim against Defendant employer. However, recognizing that certain medication which are deemed to be psychiatric/psychological medications may be used for treatment of pain related to physical injuries, Defendant-employer will pay for prescription medications which are reasonable and necessary for

treatment for the work injury, which are prescribed for treatment of the work injury by the Plaintiff's designated physician even if such medications are considered to be psychiatric/psychological medications \$1,000 is consideration for a waiver of past, present and future vocational rehabilitation benefits and \$2,000 is consideration for a waiver of any and all rights pursuant to KRS 342.125, the reopening statute.

Other than claims for expenses for treatment of psychological symptoms or conditions, reasonable and necessary medical expenses for treatment of the work injury shall continue to be paid pursuant to the Act. Except that Plaintiff waives any and all claims for psychological impairment/disability and/or expenses for treatment of psychological symptoms or conditions in connection with this or any claim against Defendant employer.

No further action was taken until December 4, 2020, when Vulcan filed a Motion to Reopen to assert a medical dispute. The Form 112 describes the nature of the dispute as follows: "work relatedness of Pristiq medication." Vulcan also filed a Motion to Reopen To Contest Medical Treatment/Bills on the "limited issue of work-relatedness of contested medical treatment and/or bills." Vulcan attached the affidavit of its attorney. The affidavit states that since Pristiq is not being prescribed as reasonable and necessary treatment for the work injury, Vulcan has filed a Motion to Reopen to determine the compensability of Pristiq. Vulcan attached its November 5, 2020, letter to Dr. Andrew Porter posing two questions to him and his answers to the questions:

What medical condition is the Pristiq being prescribed to treat? Depression

Is this medication prescribed specifically for depression, anxiety and/or a psychiatric condition? Yes

Is this medicine being prescribed to treat chronic pain?
No

Please advise. Patient uses medication for depression. Has been taking for several years and works well for patient.

Mr. Coleman reports he requires name brand Pristiq and not generic. In your opinion, is name brand Pristiq medically necessary or can Mr. Coleman utilize a generic brand? Brand name is medically necessary. Generic does not work as well for patient.

The ALJ sustained the Motion to Reopen and the Motion to Join Dr. Porter as a party by Order dated January 13, 2021, after finding Vulcan had made a *prima facie* showing for reopening. The ALJ scheduled a telephonic conference.

Dr. Porter submitted a January 19, 2021, letter addressed To Whom It May Concern which reads as follows:

Mr. Perry Coleman has been seen in my office for medical problems. Several years ago, Mr. Coleman sustained an injury at work. I have prescribed Pristiq for depression related to his chronic back pain as a result of this injury. Mr. Coleman has been on this medication and this medication works well for patient.

Vulcan introduced Dr. Porter's May 4, 2021, deposition. Dr. Porter testified he has practiced medicine in Marshall County since 1983 and is board certified in family practice. Dr. Porter has treated Coleman since he opened his practice in Benton. He prescribes "Pristiq at 100 milligrams."

Dr. Porter noted Coleman had recently undergone shoulder surgery. Dr. Porter believed Coleman has taken a 100 milligram Pristiq tablet for "a long time, long time." Regarding the need to reduce the medication Coleman was presently taking, Dr. Porter testified:

Q: Okay. On any of these medications, Doctor, is there – do you perceive any need to reduce the amount or try to wean him off them after a particular period of time?

A: I would not be – Ambien I would say at some point in time we may, you know, choose to cut back some on it and perhaps then come off if able. Pristiq is not one that I would want to entertain thoughts of stopping it because of it's [sic] dual action because not only does it help depression, it's also helpful as far as cutting back on chronic pain so much so that it is one of several drugs utilized as adjuvant therapy even in cancer patients. And I think he's going to have chronic pain issues because of his back probably from here on and maybe now chronic pain in his shoulder, but that's not part of the deal, I know.

Q: And chronic pain from the shoulder and from the back is really not separable by you as a clinician –

A: I can't define, you know, how much is coming from where and that kind of thing.

Q: Is the prescription of Pristiq for chronic pain an on-label use by the FDA?

A: I can't answer that question, but I know there are papers in the literature which will support what I'm saying about it as far as used as an adjuvant for cancer patients, any patient with chronic pain.

Q: Do you periodically run a urine drug screen or pill count to try and see if Mr. Coleman's taking his medication as prescribed?

A: We do drug screens mandated by our state, yes. I do some pill counts, but I don't do a lot. I mean I feel like I know Mr. Coleman extremely well and after 30-some years you develop a relationship and sometimes you have a comfort level that somebody is not – they're diligent basically. So I know him, I know Twila. You know, I mean just ...

Concerning his efforts to prescribe a generic drug instead of Pristiq,

Dr. Porter testified as follows:

Q: Now, you are prescribing him not the generic Pristiq but the brand name Pristiq. Is that correct?

A: I think that's correct, but I'm not positive about that.

Q: Now, there is a generic for Pristiq. Is that correct?

A: I believe that's correct. It would be desvenlafaxine.

Q: And the deal with the generic is that they are supposed to be the active ingredient is equivalent to the brand name. Is that right, sir?

A: That's supposed to be. Right. But now, I have seen patients that it does not seem as effective as the brand name. Now why that is when people would tell you that it's identical, I don't know. I don't ---

Q: And that's what I was going to ask you, Doctor. In regard to Pristiq, and that's really all I'm interested in, are you aware of any peer-reviewed literature that would stand for the proposition that the generic Pristiq does not get as good of results as the brand-label Pristiq?

A: I am not aware of the literature on that David. I would just tell you I go by a patient's experience. If a patient tells me that it's not as -- it's helping, you know, as effectively as the brand name, I mean I go by -- if I have a trust level with them, I believe it.

Q: Well, I know that you know, Doctor, that on the level of scientific believability that is about the lowest rung that there is anecdotal evidence. Is that right?

A: Yes.

Q: So I guess I'm going to come back to my question and that is have you, in fact, prescribed only the brand name of Pristiq?

A: See, I can't -- I can't relate that because I don't have my old records.

Q: Well, as of today do you know if it's brand name only?

A: I think it is, but I'm not positive.

Q: Do you know whether or not you've ever prescribed him the generic?

A: I would say that I have just from memory.

Q: Okay. So that sounds like to me that you're not sure.

A: Absolutely, that's what I said. I mean I'm not sure because I don't have – I mean we're talking about, you know, 30-some years worth of records or 25 years worth of records.

Q: Doctor, would you agree that the generic and the brand name Pristiq are chemically close enough in any event that if he hasn't been on tried on the generic for a while, that it might be worthwhile to try him on the generic to see if there is – if that helps him as much?

A: You know, I wouldn't have any problem with that at all, David, as long as I would reserve the right to go back if the patient complains that it's not as effective. That's fair enough in my opinion.

...

A: If they'll contact me if that's what they want me to do, I'll give it a try, you know. But now, Perry gets to be the judge on that. If the man comes to me and says, "This is not helping me as much," I don't care what they report in the literature. You know, I've got to look at it for my patient's interests.

Dr. Porter addressed his answers to the questions propounded to him in the November 5, 2020, letter:

Q: Now, you told us that you're not able to access your records right now because we're doing this Zoom meeting, but do you recall answering a questionnaire from the defendant employer in this case in a letter dated November 5 of 2020 when you were asked, it looks like, three or four questions about Mr. Coleman's care?

A: I do not.

Q: Okay. And because we're doing this by Zoom, I don't have a good way to show it to you because that would only be fair and that's what I would do if I were sitting across your table from you. But you were asked what is the medical condition that Pristiq is being

prescribed to treat, and you answered depression. And that's true, isn't it?

A: Part of it would be depression, yes. Chronic pain and depression.

Q: You were secondly asked is this medication prescribed specifically for depression and anxiety and/or a psychiatric condition and you answered yes to that. Do you remember that?

A: No, [sic] do not.

Q: Then you were asked specifically, Doctor, is this medication being prescribed to treat chronic pain and you answered no to that. And I'm not trying to hide the ball on you, I'm just reading what was written.

A: Right. All I can say, David, is that it may have been a recommendation from the psychologist that he needed something for depression, And when it comes to me, if I see somebody that has chronic pain and depression, that tends to make me go down certain pathways.

Like, SNRIs are noted for helping depression so that's what they were first – I mean I'm sure that's what their main development was for. But in the course of treating patients with that, they found that chronic pain was improved with it too and so that opened up a whole realm of other utilization for the same medicine.

Q: So you are not aware of whether or not it is FDA-approved on-label use of chronic pain, but there is not doubt in your medical judgment as we sit here today that that is part of the reason why you are prescribing Pristiq?

A: That is part of the reason that I would continue using Pristiq, yes.

Vulcan also introduced the October 8, 2021, report of Dr. Suzanne Novak. She noted Coleman had undergone three lumbar surgical procedures and a spinal cord stimulator had been replaced on June 28, 2019. Subsequently, it was removed due to infection. Dr. Novak summarized Dr. Porter's opinions expressed in

his May 4, 2021, deposition. Dr. Novak answered the two questions posed to her as follows:

1. Is the prescription Pristiq reasonable, necessary, and related to the work injury of 10/25/2005?

It is important to fully examine the settlement of 2/22/2012 to answer this question.

The work injury is to the low back.

In the settlement the statement is then made that the Defendant employer will not deny reasonable and necessary prescription medications related to treatment of the work injury, as prescribed by the designated treating physician, even if such medications are deemed to be psychological medications. An example of this is that duloxetine, a SNRI antidepressant, is recommended for neuropathic pain as a pain reliever alone (i.e., not for depression). It is not entirely clear as to whether depression as a result of chronic pain is included in this statement.

One must examine the indications Dr. Porter gives for prescribing Pristiq.

Originally, Dr. Porter states Pristiq is used for depression and not for pain. He specifically states Pristiq is used for treatment of a psychiatric condition.

After the filing on 1/19/2021 that disputed the use of Pristiq, he states the drug is used for depression related to chronic back pain as a result of the work injury.

In the deposition, he then states the drug is used for both depression and chronic pain.

The problem with Pristiq is that while it is a drug that is FDA-approved for treatment of depression, it is not listed as an off-label medication for chronic pain of any kind in any FDA-literature. The SNRIs which are recommended for treatment of chronic neuropathic pain are duloxetine (Cymbalta) and venlafaxine (Effexor).

Opinion: If one is looking strictly at the use of Pristiq for treatment of chronic pain, it is not reasonable,

necessary, or related to the work injury. This is because this drug is only indicated anecdotally for this condition.

Opinion: If one is considering that Pristiq is used as a treatment for depression as related to chronic pain, this drug could then be considered reasonable, necessary, or related to the work injury.

Opinion: If an SNRI antidepressant is actually being prescribed for pain, the first-line drugs of this class for this indication are duloxetine and venlafaxine. An option for treatment could be consideration of a switch to one of these drugs. There is no evidence of a trial of either.

2. Is there any reason to prescribe name brand Pristiq rather than the generic form of Pristiq? Please provide your reasoning.

To obtain FDA approval of a generic drug it must contain the same active ingredient, be the same strength, be the same dosage form, and have the same route of administration as the brand name drug. It must be bioequivalent. That means the generic will work in the body in the same way and be as safe and effective [footnote omitted]

The Orange Book (Approved Drug Products with Therapeutic Equivalence Evaluations) lists desvenlafaxine as an AB drug in terms of Therapeutic Equivalence Evaluation Codes. This means that actual or potential bioequivalence problems have been resolved with adequate evidence supporting bioequivalence.

It is recognized that some drugs considered those with narrow therapeutic index, should be substituted with caution. These drugs include warfarin, levothyroxine, carbamazepine, digoxin, lithium, phenytoin, and theophylline. Desvenlafaxine does not fall into this category.

Opinion: Based on the above, I can find no reason that a substitute generic cannot be given to Mr. Coleman for his Pristiq based on bioequivalence.

At the October 12, 2021, hearing, the contested issues were identified:

The Court: All right, thank you. As I said before we went on the record, this is a reopening for a medical dispute and Mr. Brashear, I'm going to ask you, again, to identify exactly what treatment is being challenged.

Mr. Brashear: Okay. There are actually, I guess, two related issues in this claim, Judge. The first is the reasonableness and necessity and work-relatedness of Pristiq or Desvenlafaxine, which is the generic. And then also the reasonableness and necessity of brand name Pristiq versus the generic Desvenlafaxine.

Coleman testified at the October 12, 2021, hearing that Dr. Rex Arendall performed all of his back surgeries and Dr. Porter prescribes all of his medications. Other than taking Pristiq, he takes Lortab as needed. Dr. Porter prescribed Pristiq shortly after Dr. Arendall told Coleman he "couldn't go back to work." He does not remember the year Dr. Arendall expressed this opinion. Although he could not remember the date, Coleman explained why and when Pristiq was prescribed:

Q: Who prescribed that?

A: Whenever I got hurt and Dr. Arendall told me that I could not go back to work, then it threw me in depression. And I went to see a psychiatrist whose name was Gordon Williams. And Dr. Williams – and I'm going to tell you something here that, don't hold me to this, because this could not be true, too. But you guys will know it, y'all are all smarter than I am.

A psychiatrist cannot prescribe medicine but a psychologist can. And instead of him sending me to the psychologist to get the medicine, he just had Dr. Porter to write it.

Q: Okay. Before you started on Pristiq, were you prescribed any other depression medications that you're aware of?

A: No.

At one point, Coleman was prescribed Desvenlafaxine by mistake. He explained why he recently took the generic medication:

Q: At one point, were you prescribed the generic for Pristiq, the Desvenlafaxine?

A: It was – it was filled by mistake. There was never prescription for it. It was always for Pristiq but the drugstore filled it by mistake.

Q: And have you tried the generic recently within the past year?

A: Yes. I've have [sic] been taking it, ordered by the court.¹

Q: Did Dr. Porter write a prescription for the generic then?

A: He did.

Coleman had seen Dr. Porter approximately twice in 2021. He discussed the difference in the effectiveness of Pristiq and Desvenlafaxine:

Q: And as far as you know, does the Pristiq or Desvenlafaxine help your pain at all?

A: Yes.

Q: But it was originally prescribed for depression, correct?

A: And pain.

Q: Okay. And does the generic help your pain at all?

A: It helps it a little. It don't help it as well as the other medicine does, no.

Q: Okay. Do you know what the difference between the generic and the brand name is?

¹ The record establishes Coleman was not ordered to take the generic equivalent. As noted by the ALJ at the hearing, upon being served with the Motion to Reopen, Coleman began taking the generic medication.

A: Well, let's see (inaudible) with the pain is the main thing it does.

...

A: It – I don't know what the difference is but all I know is it does not help the pain as well as Pristiq does.

Coleman also takes a muscle relaxant for his back problems.

After summarizing Coleman's testimony, Dr. Porter's testimony and his answers to the questionnaire as well as Dr. Novak's report, the ALJ provided the following analysis, findings of fact, and conclusions of law:

In this reopening for a medical dispute, the only issue is whether plaintiff's prescription for brand name Pristiq, instead of a generic equivalent, is reasonable and necessary. The employer relies on its reviewing physician, Dr. Novak, who concluded there is no objective reason why the generic drug cannot be just as effective as the brand name Pristiq.

In a post-award medical fee dispute, the employer bears the burden of proving the contested medical expenses are unreasonable or unnecessary. *National Pizza Company v. Curry*, 802 S.W.2d 949 (Ky. App. 1991). Treatment that is shown to be unproductive or outside the type of treatment generally accepted by the medical profession is unreasonable and non-compensable. This finding is 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 4 (Ky. 1993). Plaintiff retains the burden of proof on the issue of work-relatedness. *Addington Resources, Inc. v. Perkins*, 947 S.W.2d 421 (Ky. App. 1997).

In this case, the Administrative Law Judge is not persuaded the defendant has carried its burden of proving the disputed brand name prescription is unreasonable or unnecessary. In reaching this conclusion, the ALJ is most persuaded by the opinions of the treating physician, Dr. Porter, and plaintiff's own testimony at the final hearing. Dr. Porter explained that in treating plaintiff, Mr. Coleman had reported that the generic version did not provide the same level of relief as

name brand Pristiq. Moreover, in the course of this reopening, plaintiff voluntarily agreed to try the generic equivalent for a couple of months to fairly determine whether it provided similar relief as his name brand Pristiq. At the final hearing, Coleman credibly testified that he achieved noticeably better relief from name brand Pristiq than he did from the generic substitute. Simply put, plaintiff's testimony on this point persuades the ALJ that name brand Pristiq is reasonable and necessary because it provides the better level of relief of plaintiff's symptoms. Accordingly, this medical dispute is resolved in favor of the plaintiff and the provider, and the defendant employer shall continue to approve and pay for name brand Pristiq.

Vulcan was ordered to continue to pay for Pristiq.

Vulcan filed a Petition for Reconsideration asserting the ALJ had only addressed the reasonableness and necessity of the medication in question. It cited Dr. Porter's answers to the November 2020 questionnaire and requested the ALJ reconsider his opinion regarding the reasonableness and necessity of the brand name drug. Vulcan observed Dr. Novak saw no reason that a generic drug should not be prescribed to Coleman in place of Pristiq. It asserted Dr. Porter agreed the generic drug is chemically and medically equivalent to the brand name drug and he would recommend the generic medication.

Finding Vulcan did not point to any patent errors, the ALJ overruled the Petition for Reconsideration.

On appeal, Vulcan first argues the ALJ erred in not addressing the issue of the work-relatedness of Pristiq. It stresses the work-relatedness of Pristiq/Desvenlafaxine was raised in the Motion to Reopen and throughout the proceedings. According to Vulcan, there is clear evidence in the record indicating Pristiq was prescribed for Coleman's depression. Thus, per the settlement agreement,

treatment of Coleman's depression is not compensable. It notes Coleman admitted the medication was originally recommended by a psychologist for treatment of depression. Further, Dr. Porter stated on two different occasions Pristiq was prescribed only for depression. Thus, the ALJ erred in failing to address this issue.

Next, Vulcan asserts the ALJ's finding Pristiq is a reasonable and necessary medication as opposed to the generic Desvenlafaxine is error. Vulcan cites to Dr. Porter's statements supporting the proposition that the generic drug is chemically and medically equivalent to the brand name drug. According to Vulcan, Dr. Porter recommended the generic medication at least be used on a trial basis. It also notes Dr. Novak opined Pristiq is only used for depression due to pain and there is no reason the generic drug should not be prescribed for Coleman. In Vulcan's view, there is no medical evidence indicating Desvenlafaxine would be less effective than Pristiq as Drs. Porter and Novak stated the drugs are equivalent. Further, Dr. Porter admitted that claims the brand name is more effective than the generic is "poor science." It argues the ALJ's findings are based solely upon Coleman's testimony. Since there is no medical evidence to support a finding Pristiq is reasonable and necessary treatment of the work injury, Vulcan requests the ALJ's finding Pristiq is reasonable and necessary be reversed.

ANALYSIS

We first address Vulcan's second argument the ALJ erred in finding Pristiq is reasonable and necessary treatment.

In a post-award medical fee dispute, the burden of proof and risk of non-persuasion with respect to the work-relatedness, reasonableness, and necessity of

medical treatment falls on the employer. National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991); C & T of Hazard v. Stollings, 2012-SC-000834-WC, rendered October 24, 2013, Designated Not To Be Published; Conifer Health v. Singleton, 2020-SC-0609-WC, rendered September 30, 2021, Designated Not To Be Published.

Since Vulcan was unsuccessful in establishing Pristiq was not reasonable and necessary treatment, the issue is whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

The claimant bears the burden of proof and risk of persuasion before the board. If he succeeds in his burden and an adverse party appeals to the circuit court, the question before the court is whether the decision of the board is supported by substantial evidence. On the other hand, if the claimant is unsuccessful before the board, and he himself appeals to the circuit court, the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor.

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 claimant 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). For an unsuccessful claimant, this is a great hurdle to overcome. In Special Fund v. Francis, *supra*, the Kentucky Supreme Court said:

If the fact-finder finds against the person with the burden of proof, his burden on appeal is infinitely greater. It is of no avail in such a case to show that there was some

evidence of substance which would have justified a finding in his favor. He must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled “clearly erroneous” if it reasonably could have been made. Thus, we have simply defined the term “clearly erroneous” in cases where the finding is against the person with the burden of proof. We hold that a finding which can reasonably be made is, perforce, not clearly erroneous. A finding which is unreasonable under the evidence presented is “clearly erroneous” and, perforce, would “compel” a different finding.

Id. at 643.

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).

Dr. Porter’s deposition establishes he has prescribed one 100 mg tablet of Pristiq nightly for a “long time.” Significantly, he testified Pristiq is a drug he would not stop prescribing because of its dual action effect of helping Coleman’s depression and reducing his chronic pain. Dr. Porter opined Coleman will continue to experience chronic pain due to his work-related back problems. Although he could

not identify the publication, he believed there is literature supporting his position that Pristiq is also prescribed for patients experiencing chronic pain. He has seen patients who reported the generic medication did not seem to be as effective as the brand name. Dr. Porter explained that he relies upon his patients' experience, and when his patients inform him the generic is not helping as much as the brand name, he believes them. Dr. Porter would not object to experimenting with the generic drug as long as he retained the right to return Coleman to Pristiq if he complained the generic drug is not as effective.

When asked about his answers to the November 5, 2020, questionnaire, Dr. Porter again stated Pristiq is used for depression and chronic pain. He emphasized that although drugs like Pristiq may primarily be used to treat depression, part of the reason he prescribes Pristiq is because of Coleman's pain.

In reaching his decision, the ALJ was persuaded by Dr. Porter's deposition testimony. However, the ALJ also relied upon Coleman's hearing testimony. As noted by the ALJ, Coleman's hearing testimony establishes he voluntarily agreed to try the generic equivalent for a couple of months. Presumably, this was after he was served with Vulcan's Motion to Reopen and Medical Fee Dispute. Coleman testified the generic drug helped reduce his pain but not as much as Pristiq. Relying upon the testimony of Dr. Porter and Coleman, the ALJ concluded Pristiq is reasonable and necessary because it provided more relief of Coleman's symptoms.

Dr. Porter's testimony constitutes substantial evidence supporting the ALJ's decision Pristiq is reasonable and necessary treatment of the pain resulting

from Coleman's work-related condition. Further, the opinions expressed by Dr. Porter in concert with Coleman's testimony summarized herein constitute substantial evidence supporting the ALJ's determination the use of Pristiq is reasonable and necessary treatment of the October 25, 2005, work injury. We emphasize the ALJ enjoyed the discretion to disregard Dr. Porter's answers to the questions posed to him in Vulcan's November 5, 2020, letter, and instead rely upon Dr. Porter's opinions expressed during his deposition.

Since the ALJ possesses the authority to pick and choose amongst the evidence in the record, he was free to rely primarily upon Dr. Porter's deposition testimony, as buttressed by Coleman's testimony, indicating Pristiq provided more pain relief than the generic equivalent. Consequently, this Board is not authorized to disturb the ALJ's decision on appeal. Special Fund v. Francis, supra.

Although the ALJ did not rely upon Dr. Novak's opinions, we note her report is not a ringing endorsement of Vulcan's position Pristiq is not reasonable and necessary treatment of the work injury. In her October 8, 2021, report, in response to the question of whether Pristiq is reasonable, necessary, and related to the work injury, Dr. Novak offered three distinct opinions. She first opined that if one is looking strictly at the use of Pristiq for treatment of chronic pain, it is not reasonable, necessary, or related to the work injury. However, she then opined that if one is considering Pristiq as a treatment for depression as related to chronic pain then Pristiq could be considered reasonable, necessary, or related to the work injury. Finally, consistent with her second opinion, Dr. Novak stated if an SNRI antidepressant is being prescribed for pain, "the first-line drugs of this class for this

indication are duloxetine and venlafaxine.” Therefore, a treatment option was the use of one of those two drugs.

With regard to the first issue raised by Vulcan, we note the ALJ did not specifically address whether Pristiq is work-related. We are inclined to hold that implicit within the ALJ’s ruling is a finding that the use of Pristiq is treatment of the work-related injury. However, in light of the issues identified at the hearing and out of an abundance of caution, we remand the claim to the ALJ for a ruling on the work-relatedness of Pristiq. Even though a Benefit Review Conference Order & Memorandum was not entered identifying the contested issues, Vulcan’s Motion to Reopen states it is contesting the work-relatedness of the medication Pristiq. At the hearing, Vulcan’s attorney identified one of the issues as the work-relatedness, reasonableness, and necessity of Pristiq and/or the generic equivalent. Another issue was the reasonableness and necessity of Pristiq versus Desvenlafaxine. Further, in its Petition for Reconsideration, Vulcan requested the ALJ address the work-relatedness of Pristiq in his decision. Without addressing that issue, the ALJ overruled the Petition for Reconsideration.

Accordingly, the ALJ’s determination that Pristiq is reasonable and necessary treatment of Coleman’s work injury is **AFFIRMED**. However, the claim is **REMANDED** to the ALJ for a determination of the work-relatedness of Pristiq.

ALL CONCUR.

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