

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2010-CA-001146-WC

CHARLES GRIMM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-85-12770

WHAYNE SUPPLY CO.;  
DR. C. C. SMITH; HON. OTTO  
DANIEL WOLFF, ADMINISTRATIVE  
LAW JUDGE; AND WORKERS'  
COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: CAPERTON, MOORE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Charles Grimm petitions for the review of an opinion of the Workers' Compensation Board (Board) affirming an opinion and order rendered by an Administrative Law Judge (ALJ) sustaining Wayne Supply Company's (Wayne Supply) medical fee dispute contesting the reasonableness

and necessity of Grimm's chiropractic treatment.<sup>1</sup> For the following reasons, we affirm.

In 1985, Grimm sustained a work-related injury to his lower back while working for Whayne Supply. In 1988, Grimm was awarded workers' compensation benefits based on a determination by an ALJ that he was permanently totally disabled. In the early 1990's, Grimm began treatment with Dr. C.C. Smith, a chiropractor, due to back spasms. Dr. Smith diagnosed Grimm with "multiple lumbar discs bulging and herniations with L5-S1 stenosis."

On June 8, 2007, Whayne Supply filed a motion to reopen the claim for adjudication of a medical fee dispute concerning Grimm's chiropractic treatment, which the ALJ granted. In support of its motion, Whayne Supply submitted a utilization review by Dr. Kenneth Jenkins, a chiropractor. After reviewing Grimm's medical records, Dr. Jenkins averred that Dr. Smith's diagnosis was incorrect because a myelogram, CT scan, and x-rays were all negative. Dr. Jenkins opined that Dr. Smith's treatment was not appropriate for Grimm since nothing indicated Grimm has responded to the treatment.

On February 13, 2008, Dr. David Jenkinson, an orthopedic surgeon, performed an independent medical examination (IME) of Grimm and reported that no evidence in Grimm's medical records suggested he suffered a disk herniation. In addition, Dr. Jenkinson stated that he knew of no scientific data to support the

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<sup>1</sup> Appellees include Whayne Supply, Dr. C.C. Smith, Honorable Otto Daniel Wolff, ALJ, and Kentucky Workers' Compensation Board.

chiropractic treatment, and therefore, found no credible rationale to justify Grimm's continued chiropractic treatment.

Grimm provided the report of Dr. Joseph Rapier, an orthopedic surgeon, dated March 24, 2008, in which Dr. Rapier stated he believed Grimm to have degenerative disc disease as a result of the work-related injury. However, in a letter dated April 15, 2008, Dr. Rapier recommended treatment in the form of non-steroidal anti-inflammatory medication, an exercise program, and moist heat and/or ice. In his letter, Dr. Rapier did not recommend chiropractic treatment for Grimm's condition.

Grimm testified that due to the chiropractic treatment, he was able to cut down the amount of pain medication he used for relief. At the time of the benefit review conference, Grimm stated he was being treated by Dr. Smith once every other week, or about two to three times a month. Additionally, Grimm acknowledged that he continues to have pain in his lower back.

Based upon this evidence, the ALJ sustained Wayne Supply's medical dispute and held Wayne Supply to no longer be required to compensate Grimm for chiropractic treatment.<sup>2</sup> Grimm filed a petition for reconsideration, which the ALJ denied. The Board affirmed the ALJ's opinion and order, and this appeal followed.

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<sup>2</sup> Grimm continues to receive income and medical benefits.

Grimm argues the ALJ erred by finding his chiropractic treatment to be unreasonable and unnecessary and denying compensation for further treatment. We disagree.

The standard for appellate review of a Board decision “is limited to correction of the ALJ when the ALJ has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.” *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 866 (Ky.App. 2009) (citing *W. Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992)). The ALJ “has the sole authority to determine the quality, character, and substance of the evidence.” *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993) (citation omitted).

The Kentucky Supreme Court explained the standards required by an ALJ in determining the compensability of medical treatment, as follows:

KRS<sup>3</sup> 342.020(1) allows a worker to choose her own physician and to have whatever medical treatment is reasonably necessary for the cure and/or relief of her injury. The burden of proving that a treatment is unreasonable is on the employer. . . . KRS 342.020(3) indicates that the legislature did not intend to require an employer to pay for medical expenses which result from treatment that does not provide “reasonable benefit” to the injured worker. . . . [T]his section relieves an employer of the obligation to pay for treatments or procedures that, regardless of the competence of the treating physician, are shown to be unproductive or outside the type of treatment generally accepted by the medical profession as reasonable in the injured worker’s particular case.

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<sup>3</sup> Kentucky Revised Statutes.

*Id.* at 309-10 (internal citation omitted).

In the instant case, both Dr. Jenkins and Dr. Jenkinson concluded that the chiropractic treatment Grimm was receiving was unreasonable and unnecessary. Dr. Jenkins asserted that Grimm's condition had shown no sign of improvement or change throughout the course of his chiropractic treatment. Dr. Jenkinson stated he knew of no scientific data to support the continued use of chiropractic treatment and concluded that there was nothing in Grimm's medical records to suggest the treatment prevented further deterioration of Grimm's condition. Even Dr. Rapier's report, provided by Grimm, suggested Grimm's condition should be treated with medication, exercise, heat and/or ice, but notably made no mention of chiropractic treatment. Only Dr. Smith, Grimm's treating chiropractor, recommended the continued course of chiropractic treatment for Grimm.

Under these circumstances, the ALJ's determination that continued chiropractic treatment was unreasonable and unnecessary for the cure and relief of Grimm's condition was supported by substantial evidence. *See id.* at 310 ("decisions should be made by the ALJs based on the particular facts and circumstances of each case, so long as there is substantial evidence to support the decision."). Accordingly, the ALJ did not err by sustaining Wayne Supply's medical dispute.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Leonard Stayton  
Inez, Kentucky

BRIEF FOR APPELLEE  
WHAYNE SUPPLY CO.:

Timothy J. Walker  
Lexington, Kentucky