

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-002696-WC

SABRINA LEWIS SMITH

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-89-32092

HAZARD APPALACHIAN REGIONAL HOSPITAL;
SPECIAL FUND; HON. RICHARD H. CAMPBELL, JR.,
Administrative Law Judge; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING IN PART, REVERSING IN PART
** ** * * * * *

BEFORE: COMBS, GARDNER, and HUDDLESTON, Judges.

COMBS, JUDGE: Sabrina Lewis Smith appeals from the decision of the Workers' Compensation Board (Board) affirming the Administrative Law Judge's (ALJ) denial of her request to resolve a medical fee dispute. After reviewing the record, we affirm in part and reverse in part.

Smith sustained work-related back injuries in June and October 1988 and in July 1989 while employed by Hazard Appalachian Regional Hospital (Hazard ARH). On February 13, 1991, she settled claims for those injuries for the temporary

total disability benefits previously paid -- plus a lump-sum payment of \$15,000.00. Hazard ARH remained liable for the costs of any ongoing reasonable or necessary medical treatment arising from those work-related injuries.

On December 18, 1995, Smith moved to reopen, alleging a worsening of her condition and consequent increased occupational disability -- as well as seeking to compel payment of various medical expenses. The expenses involved medical treatment rendered for Smith's low back by Dr. James Thomas on May 21, July 5, and August 16, 1996.

On January 30, 1997, Administrative Law Judge Thomas A. Dockter issued his opinion and order denying Smith's motion to reopen on the grounds that she had not proven an increase in occupational disability attributable to her work-related injuries. In his opinion, the ALJ stated as follows:

Therefore, this Administrative Law Judge finds that the Plaintiff has failed to establish a causal nexus between the injuries which she suffered for the Defendant-Employer in 1988 and 1989 and the physical symptoms which now adversely affect her. The intervening accidents and injuries to Plaintiff's low back break the causal link between the work-related injuries involved in the initial claim and those which she now suffers.

In dismissing Smith's case on the issue of the reopening, ALJ Thomas Dockter did not specifically address the issue of medical expenses. Hazard ARH raised this omission in its petition for reconsideration in February, 1997 -- specifically requesting a ruling that it be absolved and released from all liability for all medical expenses. Judge Dockter denied this request -- perhaps mindful of the fact that the original

settlement agreement between the parties had provided that Hazard ARH would remain liable for ongoing medical expenses. He entered his order accordingly on March 10, 1997, dismissing petitions for reconsideration from both Smith and Hazard ARH, rejecting Smith's claim for a worsening of her condition, and refusing to absolve Hazard ARH from liability for medical expenses related to the original injuries. Smith appealed to the Workers' Compensation Board, which affirmed ALJ Dockter as to the worsening of her medical condition.

Smith pursued that portion of her claim that pertained to reimbursement of medical expenses - which is the sole issue on appeal before us now. On September 17, 1997, Smith filed a Form 112 (Request to Resolve Medical Fee Dispute), which she attached to her affidavit alleging that Hazard ARH had refused to pay bills from Marymount Hospital and Mary Breckinridge or to reimburse her for past medical bills and medicine. Also attached to the Form 112 was an invoice dated August 5, 1997, from Dr. Thomas in the amount of \$33 for the treatment of "back pain"; invoices from Mary Breckinridge Healthcare for treatment of a nonspecific nature from February 1997 through August 1997 in the total amount of \$959.25; and invoices from Marymount Medical Center relating to discharges of December 18, 1995, and May 30, 1996, with no references to what treatment was rendered.

The matter was initially referred to an Arbitrator, who denied Smith's motion on the basis that ALJ Dockter's previous opinion and award affirmed by the Board had made a finding to the effect that her current back problems were not shown to be

causally related to her work injury. The arbitrator summarily rejected the medical expenses without a finding as to whether they had arisen from her original injuries. Thereafter, Smith requested and was granted a *de novo* review before an ALJ.

Administrative Law Judge Richard H. Campbell, Jr., conducted the *de novo* review and issued an opinion and order denying Smith's motion. Like the Arbitrator, Judge Campbell relied upon the earlier opinion and order of ALJ Dockter, now interpreting it to mean that Hazard ARH was not obligated to provide any further medical benefits to Smith. ALJ Campbell analyzed the earlier opinion as follows:

Notwithstanding Judge Dockter's failure to offer any comment when he overruled the petition for reconsideration Hazard ARH filed subsequent to the issuance of the January 30, 1997, Opinion and Order, it appears that the findings and rulings contained in that decision included a determination that Smith's low back condition following a March, 1995, nonwork-related incident and injury could no longer be related to the 1988 and 1989 work injuries that were the subject matter of this claim and the February 13, 1991, settlement agreement. Although the Court of Appeals decision in Addington Resources, Inc. v. Perkins, Id., indicates that medical expenses arising from a subsequent injury attributable to a nonwork-related incident may be deemed a consequence of a prior work injury and therefore compensable, a contrary decision was rendered in the instant claim, and that decision has not been set aside. Thus, effective with the finality of Judge Dockter's January 30, 1997, Opinion and Order, Hazard ARH was relieved of any further obligation to provide Smith medical benefits for her work injuries. Such is the law of this case, despite the avenue to compensability that the holding in Addington Resources could have provided Smith had that decision been available to her and Judge Dockter before January 30, 1997.

Opinion and Order of ALJ Richard H. Campbell, Jr., April 29, 1998, pp.7-8. (Emphasis added.) The Board affirmed this line of reasoning, and we believe that it erred in doing so.

Judge Campbell was correct in rejecting the applicability of Addington Resources, Inc. v. Perkins, Ky.App. 947 S.W.2d 421 (1997), to this case since ALJ Dockter's opinion preceded that decision and no appeal was taken beyond the Workers' Compensation Board. Thus, the law of the case doctrine dictates that there may be no re-litigation of the issue of compensability of any intervening back injury. Pennwalt Corp. v. Beale, Ky. App., 840 S.W.2d 830 (1992). However, we find error in his finding that "Hazard ARH was relieved of any further obligation to provide Smith medical benefits for her work injuries." That statement is logically flawed and factually inconsistent – both with ALJ Dockter's actions (*i.e.*, he specifically denied such an outcome sought by Hazard ARH) and with the terms of the original settlement between the parties guaranteeing ongoing liability of Hazard ARH for Smith's medical expenses arising from the original injuries.

As to the specific medical bills involved in the case at this juncture, ALJ Campbell noted that the affidavit submitted by Smith lacked any information as to when the disputed medical expenses had been presented to her employer for payment and that the face of the contested billings failed to reflect any information in support of Smith's contention that the treatment underlying those billings was rendered for the effects of Smith's 1988 and 1989 work-related injuries.

On appeal, the Board resolved the dispute wholly on procedural grounds, explaining as follows:

KRS 342.020 requires an employer to pay medical expenses incurred for the cure and relief from the effects of a work-related injury. The provider of services is required to submit the statement for services within 45 days of the date the treatment is initiated and every 45 days thereafter so long as medical services are rendered, with the employer or its payment obligor being required to make payments for those services directly to the provider within 30 days of receipt of that statement.

803 KAR 25.012, § 1, establishes the procedure for resolving medical fee disputes. It requires the filing of a Form 112 accompanied by copies of all disputed bills and a supporting affidavit setting forth facts sufficient to show that the moving party is entitled to the relief sought together with necessary supporting expert testimony. It further requires that, if the injury claims upon which the medical fee dispute is based has [sic] been resolved by an opinion or order of an ALJ, a motion to reopen under 803 KAR 25:010 be filed in addition to the Form 112. Under 803 KAR 25:010, a motion to reopen is to be accompanied by, in this claim, at least an affidavit evidencing the grounds to support reopening.

In the instant proceeding, none of the documents attached to Smith's Form 112 or motion to reopen establish [sic] that the medical expenses in question were for the treatment of her work-related injuries. As noted both in Pikeville Coal Co. v. Sullivan, Ky., 895 S.W.2d 574 (1995), and Stambaugh v. Cedar Creek Mining Co., Ky., 488 S.W.2d 681 (1972), in a reopening proceeding, the moving party must make a prima facie showing before the respondent is required to marshal its defenses. Smith, having failed to make such a prima facie showing, the ALJ correctly overruled her request to resolve the medical fee dispute herein.

(Board opinion at 6-8). Having resolved the issue on procedural grounds, the Board declined to consider the legal effect of the original opinion and order denying Smith's motion to reopen.

In her petition for review, Smith alleges that the Board "misconceived the appeal" and urges the court to hold that any past and future medical expenses related to her work injury are indeed compensable. We agree that the Board misconceived her appeal substantively by affirming ALJ Campbell as to this issue of general compensability of medical expenses related to the 1988 and 1989 injuries. While we cannot dispute the finding that Smith failed procedurally to make a *prima facie* showing that the medical bills at issue here were causally related to the original injuries, that failure is procedurally fatal only as to this particular batch of bills and is in no way a bar to her right to assert a claim for medical reimbursements in the future if she can properly document that they arose from the original injuries and make her *prima facie* case accordingly.

The opinion of the Worker's Compensation Board is therefore affirmed in part and reversed in part.

ALL CONCUR.

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