

Commonwealth Of Kentucky

Court of Appeals

NO. 2003-CA-002352-WC

CARDINAL KITCHENS

APPELLANT

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-95-36440

ANTHONY L. GRUBBS;
WORKERS' COMPENSATION FUND;
HON. LAWRENCE F. SMITH,
ALJ; AND WORKERS COMPENSATION BOARD,

APPELLEES

OPINION
AFFIRMING

** ** * * *

BEFORE: BARBER AND GUIDUGLI, JUDGES; EMBERTON, SENIOR JUDGE.¹

BARBER, JUDGE: Cardinal Kitchens petitions for review of a
Workers' Compensation Board (WCB) opinion that affirmed findings
of fact and conclusions of law entered by Administrative Law
Judge (ALJ) Lawrence F. Smith awarding further benefits to
Anthony L. Grubbs upon reopening of his claim. We affirm.

¹ Senior Judge Thomas D. Emberton sitting as Special Judge by
assignment of the Chief Justice pursuant to Section 110(5)(b) of the
Kentucky Constitution and KRS 21.580.

Our standard of review is set forth in Western Baptist Hosp. v. Kelly, Ky., 827 S.W.2d 685, 687-688 (1992), and explains that "[t]he function of further review of the WCB in the Court of Appeals is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice."

Having thoroughly considered the case in accordance with those principles we believe that the opinion of the WCB more than adequately addresses the issue raised by Cardinal Kitchens and therefore adopt its opinion as our own, *to wit*:

Cardinal Kitchens, Inc. ("Cardinal") appeals from the decision of Hon. Lawrence F. Smith, Administrative Law Judge ("ALJ"). The sole issue on appeal concerns whether the failure of Anthony L. Grubbs ("Grubbs") to pursue a psychological claim prior to the original settlement of his claim relieves Cardinal of its obligation to pay for expenses related to Grubbs' psychological treatment.

Grubbs injured his low back on August 22, 1995, while he and another employee were installing a heavy kitchen countertop. On December 11, 1996, Grubbs filed his application alleging injury to his back and left leg. By agreement approved March 6, 1997, the parties settled the claim for a lump sum representing a 25% occupational loss. The amount included attorney fees and vocational rehabilitation costs. The nature of the injury was listed as "L5/S1 H, HNP". The agreement did not include a buy-out of medical expenses. Grubbs was able to return to work and continued to work for Cardinal

until 1999. On January 27, 2000, Grubbs filed to reopen his claim arguing his condition had worsened and he was now totally disabled. On reopening, the ALJ determined Grubbs' condition had deteriorated to the point he was now totally disabled. Cardinal does not challenge the ALJ's finding of total disability and, hence, a review of the extensive medical evidence is not necessary for purposes of this appeal.

Grubbs testified by deposition and at the hearing. His testimony indicates that soon after the 1995 work injury, he began to have problems with depression and/or anxiety. At the hearing, Grubbs testified he started to experience depression or anxiety "maybe two months into the injury." He had chronic pain and was not getting any relief so he started to get worried. He acknowledged he experienced symptoms of depression since 1995. He treated with Dr. Galang with Insight about once a month. There was some problem with his insurance that caused him to look elsewhere and later he treated with Seven County. It was possible he began treating with Seven County around August 1999.

Grubbs submitted records from Seven County Services, Inc., establishing he was seen in August 1999 for an evaluation. Notes from a February 2002 psychiatric evaluation included a history of Grubbs reporting a long psychiatric history starting after the 1995 back injury. It was noted that in 1995 he was seen at Insight for depression and anxiety and given different medications that caused side effects and did not work. In August 1999 he transferred services to Seven County Services.

The ALJ found Grubbs' psychological problems were directly related and secondary to his work-related injury. The problems

did not rise to the level of a permanent impairment. The ALJ concluded the medical expenses associated with the psychological problems were compensable. In so finding, the ALJ cited JoAnn Coal Co. vs. Smith, Ky., 492 S.W.2d 192 (1973). Cardinal filed a petition for reconsideration arguing the claim for payment for psychiatric treatment was barred by the statute of limitations since Grubbs was aware of the depression prior to the . . . March 1997 settlement. The ALJ denied that portion of Cardinal's petition.

On appeal, Cardinal argues Grubbs' claim for payment for medical treatment for psychological problems is barred and/or waived since Grubbs was aware of his depression and anxiety prior to the settlement and he did not raise the issue prior to settlement. Cardinal relies on the case of Slone vs. Jason Coal Co., Ky., 902 S.W.2d 820 (1995) in arguing that Grubbs cannot now pursue a claim for payment of psychological treatment. It argues Slone bars payment since the condition must have been part of the original award. In Slone, the employee failed to present a psychiatric condition during the original claim and was precluded from alleging the condition was new in degree of severity. Further, since the condition was known at the time of the award, it was not a new condition.

On appeal, Cardinal has not challenged the work-relatedness of the psychological condition nor does it contest the psychiatric condition was caused by the physical condition and/or the pain associated with that condition. Rather, Cardinal's sole argument relies upon testimony by Grubbs that he was aware of his depression prior to settlement. No medical records relating to treatment for a psychological condition were introduced covering any period prior to Grubbs' treatment with Seven County in 1999.

The Board has previously addressed the issue of whether Slone vs. Jason Coal applies to expenses for psychological treatment upon reopening where a claimant has failed to pursue a psychological claim prior to an award or settlement. While we do not cite our own decision as binding authority, the Board does strive for consistency. . . . In Rogers Self-Serve vs. Mickey Ron Smith, Claim No. 96-97689, rendered February 18, 2000, we held Slone had no application where an award of medical benefits pursuant to KRS 342.020 had been made in the original decision. As award of medical benefits pursuant to KRS 342.020 is not only an award of expenses for treatment up to the date of litigation, but it is also a prospective award for the cure and relief of any effect of the injury thereafter. Even injuries resulting in no occupational disability trigger the requirement of the employer to pay the resulting medical expenses. We noted depression resulting from chronic pain is a frequent and foreseeable consequence in back injuries. In Rogers Self-Serve, there was substantial evidence upon which the ALJ could conclude the psychiatric condition was an effect of the injury and the hospital treatment was reasonable and necessary for the cure and relief from the effects of that injury.

Similarly, in Otto Young vs. Pikeville Coal/Chisholm Mine, Claim No. 92-17748, rendered January 22, 2003, we expressed the opinion that medical expenses appropriately payable pursuant to KRS 342.020 and which were established to be reasonable, necessary and causally related to the injury in question remained compensable even if they involved a condition not raised in the original claim. . . . In Young we stated:

While both income benefits and medical benefits constitute compensation, they have separate and distinct purposes. KRS 342.020

specifically addresses medical expenses. The question put forward that must be answered in addressing medical expenses subsequent to an Opinion and Award is controlled by KRS 42.020, National Pizza Co. vs. Curry, Ky. App., 802 S.W.2d 949 (1991) and Stambaugh vs. Cedar Creek Mining Co., Ky., 488 S.W.2d 681 (1972). It additionally must be noted that the burden of proof post-award on medical expenses is altered. The obligation rests with the employer to challenge medical expenses. Although it may appear as a fine distinction, the medical expenses for treatment of a psychological condition are to be addressed in light of KRS 342.020 and we are of the opinion KRS 342.125 and Slone vs. Jason Coal Co., Ky., 902 S.W.2d 820 (1995) have no applicability to this determination. The question to be addressed therefore is whether these medical expenses were reasonable, necessary and related to the work injury in question.

Here, Cardinal has filed no medical dispute. No specific bills were introduced related to the psychological condition upon reopening. It was uncontroverted Grubbs received psychological treatment related to the work injury and the chronic pain associated therewith. As noted above, the agreement between the parties contained no buy-out of future medical expenses. Thus, upon approval of the agreement, Cardinal remained responsible for all reasonable and necessary medical expenses pursuant to KRS 342.020. The procedure to dispute payment is set forth in 803 KAR 25:012 § 1.

We see no error in the ALJ finding the psychological condition was related to the work injury. The ALJ having concluded the psychological condition was related to the work injury, the provisions of KRS 342.020 are applicable and Cardinal is obligated to pay for all reasonable and necessary medical expenses now and hereafter during disability for the cure and/or relief of the work-

related condition. If Cardinal has reason to challenge specific bills, it is certainly entitled to pursue whatever challenge it so desires in accordance with the statute and regulations concerning medical disputes.

For the foregoing reasons the decision of the WCB affirming the ALJ is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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