

RENDERED: MAY 16, 2008; 10:00 A.M.

NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2008-CA-000215-WC

BRENDA STIDHAM

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-97-02667

HAZARD ARH; CENTRAL BAPTIST HOSPITAL;  
BAPTIST HEALTHCARE SYSTEM; DR. WILLIAM  
SKINNER; DR. C. KRISHNASWAMY; APPLACHIAN  
HEART CENTER; KENTUCKY MEDICAL SERVICES  
FOUNDATION; ROCK MOUNTAIN HOLDINGS, LLC,  
SE; CARDIOLOGY ASSOCIATES OF KENTUCY;  
CENTRAL KENTUCKY ANESTHESIA, P.S.C.;  
ARH HOMPLACE CLINIC; HON. LANDON  
OVERFIELD, ADMINISTRATIVE LAW JUDGE;  
WORKERS' COMPENSATION BOARD

APPELLEES

### OPINION AFFIRMING

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BEFORE: COMBS, CHIEF, JUDGE, NICKELL, JUDGE; GRAVES,<sup>1</sup> SENIOR JUDGE.

GRAVES, SENIOR JUDGE: Brenda Stidham petitions for review from an opinion of the Workers' Compensation Board (Board) which affirmed the Administrative Law Judge's (ALJ) determination that Stidham's present and continuing heart treatment requirements

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<sup>1</sup> Senior Judge John W. Graves sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

are not related to a 1996 work-related heart attack for which she was awarded permanent partial disability benefits. Stidham contends that the ALJ too broadly foreclosed the possibility that future medical expenses connected with the 1996 heart attack would be required. For the reasons stated below, we affirm.

Stidham suffered a work-related heart attack on May 6, 1996, while employed by Hazard ARH. She subsequently underwent heart surgery and was eventually awarded total permanent occupational disability benefits. In connection with the award, Stidham was also awarded a medical coverage benefit to pay for any future expenses associated with the 1996 heart attack.

Beginning in the spring of 2006, Stidham was required to undergo multiple hospitalizations and continuing treatment for cardiac-related illness. She sought payment for the hospitalizations and treatment based upon her prior workers' compensation award. In response, on September 1, 2006, Hazard ARH filed a medical fee dispute contesting the compensability of Stidham's continued heart treatment. A "second notice" contesting expenses was filed by Hazard ARH on May 22, 2007.

On June 8, 2007, the ALJ issued an opinion and order finding that the contested medical expenses were not compensable because the expenses were not associated with the 1996 heart attack but, rather, was related to atherosclerosis, a heart condition separate and apart from the 1996 heart attack. The opinion and order also indicated that any continuing expenses would not be considered as related to the May 1996 heart attack. Stidham filed a motion for reconsideration seeking clarification that "the opinion and order be corrected to clarify that the defendant-employer is absolved of responsibility for continuing cardiac care related to the atherosclerosis, but that the defendant-employer would still remain responsible for any treatment related to the May

6, 1996, heart attack should any be necessary in the future.” On July 6, 2007, the ALJ entered an order denying the motion.

Stidham subsequently appealed to the Board. On January 3, 2008, the Board entered an opinion affirming the ALJ’s determinations. This petition for review followed.

Before us, Stidham does not contest the ALJ’s determination that the expenses under consideration in the present fee dispute are not compensable. Rather, she argues that the ALJ “should not have found the defendant-employer absolved of liability for all future cardiac care.”

The ALJ addressed the issues before us, in relevant part, as follows:

#### SUMMARY OF EVIDENCE

In the reopening, Defendant Employer has submitted opinions from Daniel Wolens, M.D., an occupational medicine specialist, William H. Skinner, M.D., Plaintiff’s treating cardiologist, and Stephen Wagner, M.D., a board certified cardiologist and associate professor of medicine in the Department of Cardiology at the University of Louisville Medical School.

Dr. Wolens reviewed Plaintiff’s medical records and authored a report on September 25, 2006. It was his opinion that the treatment resulting in the medical expenses which have been contested is treatment “directed at atherosclerotic disease” and underlying conditions which caused Plaintiff’s atherosclerosis, all of which are completely unrelated to the May 6, 1996 work-related incident.

Defendant Employer has also submitted a medical questionnaire completed on January 19, 2007 by Plaintiff’s treating cardiologist, Dr. Skinner. Dr. Skinner, through the questionnaire, gave the opinion, with reasonable medical probability, that Plaintiff’s cardiac problems resulting in her hospitalization in April 2006 and subsequent treatment were not caused by the May 6, 1996 work-related incident. It was his opinion that the cardiac problems requiring her treatment beginning in April 2006 were atherosclerosis with acute coronary syndrome, a condition which was the natural progression of her disease process. Dr. Skinner had continued to follow Plaintiff after her discharge from Central

Baptist Hospital in May of 1996 and it was his opinion that Plaintiff's ongoing cardiac problems and need for ongoing treatment since May of 1996 were not related to the incident work [sic] of May 6, 1996. Plaintiff's current cardiac problems, according to Dr. Skinner, are caused by her non-work-related factors and her tobacco abuse. (Emphasis added).

Pursuant to K.R.S. 342.315, Plaintiff was evaluated in April 1998 by Dr. Wagner at the University of Louisville Medical School. Dr. Wagner's Form 108-OD was submitted in the underlying claim. Defendant Employer had Plaintiff re-evaluated by Dr. Wagner on January 8, 2007. Dr. Wagner also reviewed Plaintiff [sic] medical records, including those which resulted from her hospitalization and medical care beginning in April 2006. Dr. Wagner was of the opinion that any treatment of plaintiff's cardiac problems after 2002 was not related to the May 6, 1996 work-related incident. Continuing cardiac problems and treatment for those problems "are related to non-work-related factors." Dr. Wagner testified to those same opinions in a deposition taken February 9, 2007. (Emphasis added).

There is no medical evidence to rebut the opinions of Drs. Wolens, Skinner and Wagner. . . .

#### FINDINGS OF FACT

1. The medical expenses contested by Defendant Employer and any medical expenses for continuing treatment of Plaintiff's cardiac conditions are not reasonably necessary for the cure and relief of the effects of Plaintiff's May 6, 1996 work-related injury. In making this finding, I have relied on the opinions of Drs. Wolens, Skinner and Wagner.

2. Pursuant to K.R.S. 342.020, the contested medical expenses and continuing medical expenses for treatment of plaintiff's cardiac condition are not compensable and are not the responsibility of Defendant Employer.

It is well settled that "the ALJ, as fact-finder, has the sole authority to judge the weight, credibility and inferences to be drawn from the record." *Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997).

The un rebutted medical evidence was that Stidham's present heart problems requiring treatment are not connected with the work-related heart attack.

Stidham does not even contest this. Further, however, that ALJ drew a reasonable inference from the medical evidence that the full-range of effects relating to the 1996 heart attack have been fully resolved, and that there is no reasonable medical possibility that any additional treatment for that attack will be incurred in the future. The medical evidence, as set forth above, fully supports this inference and, indeed, this result is compelled by the record before this Court. As such, we will not disturb the ALJ's determination upon this issue. With the foregoing said, however, had the medical proof established that the 1996 heart attack made Stidham more susceptible to an early onset of atherosclerotic disease, or had the evidence suggested that future medical expenses could be incurred as a result of the 1996 attack, we may well have reached a different result.

Stidham also contends that the cause should be remanded to the ALJ to permit her to "respond to the second medical dispute" filed by Hazard ARH on May 22, 2007. However, a review of Stidham's Petition for Reconsideration reflects that this issue was not raised therein.

KRS<sup>2</sup> 342.281 has been construed as the statutory counterpart of CR<sup>3</sup> 52.04, requiring that an issue be raised in a petition for reconsideration to be filed in order to preserve a patent error or omission of fact for judicial review. See *Osborne v. Pepsi Cola*, 816 S.W.2d 643 (Ky. 1991); *Hall's Hardwood Floor Co. v. Stapleton*, 16 S.W.3d 327 (Ky.App. 2000). Hence, this issue is not properly preserved for our review. In any event, we agree with the Board's discussion of the issue, and adopt its reasoning as follows:

The filing of this notice did not constitute as separate and distinct medical fee dispute. 803 KAR 25:012 Sec. 1 provides that a single Form 112 may encompass

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<sup>2</sup> Kentucky Revised Statutes.

<sup>3</sup> Kentucky Rules of Civil Procedure.

statements, services, or treatment previously rendered as well as future statements, services, or treatment of the same nature or for the same condition if specifically stated. . . . Stidham's continuing cardiac care was already an issue before the ALJ at the time Hazard filed the notice of continued medical expense controversy. Since the employer was contesting ongoing treatment, Stidham should have been aware the treatment extending from March 4, 2007 through March 29, 2007 would be contested as well. Medical records from the treatment were attached to the notice of continued medical expense controversy. Again, we note Stidham points to nothing in the medical evidence that would support a finding in her favor.

When reviewing one of the Board's decisions, this Court will only reverse the Board when it has overlooked or misconstrued controlling law or so flagrantly erred in evaluating the evidence that it has caused gross injustice. *Western Baptist Hosp. v. Kelly*, 827 S.W .2d 685, 687-88 (Ky. 1992). Such not having occurred here, we will not disturb the Board's determination upon the issue.

For the foregoing reasons the opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Monica Rice Smith  
Hyden, Kentucky

BRIEF FOR APPELLEE HAZARD, ARH:

Joe W. Aubrey  
Louisville, Kentucky