

RENDERED: DECEMBER 7, 2012; 10:00 A.M.  
NOT TO BE PUBLISHED

# Commonwealth of Kentucky

## Court of Appeals

NO. 2011-CA-001669-WC

C & T OF HAZARD

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-99-93979

CHANTELLA STOLLINGS;  
DR. KATHERINE BALLARD;  
THE PAIN TREATMENT CENTER;  
HON. R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE;  
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

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BEFORE: ACREE, CHIEF JUDGE; COMBS AND LAMBERT, JUDGES.

LAMBERT, JUDGE: Appellant, C & T of Hazard, appeals from a decision of the Workers' Compensation Board affirming the denial of a motion to reopen an award to resolve a medical fee dispute. C & T argues that the Board erred by

concluding that the incorrect application of the burden of proof constituted harmless error and that the Board improperly substituted its view of the evidence for that of the Administrative Law Judge (ALJ). We affirm.

Appellee, Chantella Stollings, suffered a work-related back injury in 1999. In 2003, she was awarded temporary total disability benefits (TTD), permanent partial disability benefits (PPD), and future medical benefits. In 2008, Stollings began treatment with Dr. Katherine Ballard for pain management. Dr. Ballard prescribed the daily use of the opioid analgesics, Oxycontin, Baclofen, and Neurontin. Dr. Henry Tutt performed an independent medical evaluation upon Stollings on October 29, 2009. On January 4, 2010, C & T filed a motion to reopen the award on the basis that the pain management treatment was neither work-related nor reasonably necessary.

In an order entered on February 4, 2011, the ALJ found that C & T failed to carry its burden of proving that the medical treatment was unreasonable and unrelated to the work injury. C & T filed a petition for reconsideration arguing that the ALJ erred by requiring it to prove that the medical fees were not work-related instead of requiring Stollings to prove that the fees were work-related. The ALJ denied the petition for reconsideration. In a 2 to 1 decision, the Board held that the ALJ erred by applying an incorrect burden of proof, but that such error was harmless because substantial evidence supported a finding that the treatment was work-related and reasonably necessary. This appeal followed.

C & T argues that the misapplication of the burden of proof was not harmless error and that the Board substituted its view of the evidence for that of the ALJ. Misapplication of the burden of proof has been held to be harmless error if substantial evidence supports a finding under the correct standard. *McManus v. Kentucky Retirement Systems*, 124 S.W.3d 454, 459 (Ky.App. 2003); *Garmeada Coal Co. v. Mabe*, 310 Ky. 801, 222 S.W.2d 829 (1949). The reliance of C & T upon *Black Star Coal Co. v. Hall*, 257 Ky. 481, 78 S.W.2d 343 (1935) is misplaced because that case dealt with the beyond a reasonable doubt criminal standard as opposed to preponderance of the evidence civil standard. *Garmeada*, 222 S.W.2d at 804.

As stated above, misapplication of the burden of proof constitutes harmless error if there is substantial evidence to support a finding under the correct standard. Substantial evidence is defined as “evidence of substance and consequence when taken alone or in light of all the evidence that is sufficient to induce conviction in the minds of reasonable men.” *Owens–Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 414 (Ky. 1998). Further, it is well-established that 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). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Miller v. East Kentucky Beverage/Pepsico, Inc.*, 951 S.W.2d 329, 331 (Ky. 1997). The fact-finder may reject any testimony and believe or disbelieve various parts of the evidence, even if it comes from the same

witness or the same adversary party's total proof. *Magic Coal v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000).

Despite applying an incorrect burden of proof standard, the ALJ found on page 10 of the opinion and order that the post-award treatment was work-related and reasonably necessary. The ALJ specifically stated that he found the testimony of Stollings and Dr. Ballard was persuasive and that the testimony presented by Dr. Tutt was unpersuasive. Dr. Ballard testified that she had reviewed Stollings's entire medical history and noted that Stollings received excellent pain relief for prior non-work-related back injury. Dr. Ballard testified that Stollings experienced chronic neck and back pain since the time of the work-related injury and that the chronic pain condition required treatment by opioid analgesics. Therefore, we conclude that the findings of the ALJ were supported by substantial evidence of record.

Accordingly, the decision of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Scott M.B. Brown  
Stephanie D. Ross  
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BRIEF FOR APPELLEE:

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