

RENDERED: JULY 12, 2013; 10:00 A.M.
NOT TO BE PUBLISHED

Commonwealth of Kentucky
Court of Appeals

NO. 2012-CA-002111-WC

SUTTON RANKIN LAW, PLC

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-10-70107

KIMBERLY M. SUTTON; EMPI;
KY REHABILITATION SERVICES;
KENWOOD SURGERY CENTER; SUMMIT
MEDICAL - EDGEWOOD; TRI-STATE
ORTHOPAEDIC PRODUCTS, INC.; UC
HEALTH; UNIVERSITY OF CINCINNATI
PHYSICIANS; UNIVERSITY
ORTHOPAEDICS AND SPORTS MEDICINE;
HON. STEVEN G. BOLTON, SUCCESSOR
to HON. JOSEPH W. JUSTICE,
ADMINISTRATIVE LAW JUDGE; and
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

BEFORE: CAPERTON, CLAYTON, AND TAYLOR, JUDGES.

CAPERTON, JUDGE: Appellant, Sutton Rankin Law, PLC, appeals from a decision of the Workers' Compensation Board, which affirmed the January 5, 2012, award of certain past medical benefits issued by Administrative Law Judge (ALJ) Joseph W. Justice. Sutton Rankin argues that the Board erred by concluding that the 45-day requirement for the submission of statements of services provided by Kentucky Revised Statutes (KRS) 342.020(1) and the administrative regulations were inapplicable to this case. We affirm.

Kimberly M. Sutton (Kimberly) worked as a receptionist two to three days a week for Sutton Rankin. On July 21, 2010, Kimberly slipped and fell, injuring her right knee while she was carrying a bin of soft drinks in preparation for the firm's annual picnic. She did not report the injury to Sutton Rankin and handled treatment through her personal insurance carrier.

Kimberly consulted Dr. Angelo J. Colosimo on July 26, 2010. Following an MRI, Dr. Colosimo performed surgery on her right knee on December 8, 2010. Subsequently, Kimberly underwent physical therapy at Novacare Rehabilitation. The knee injury proved to be more extensive than Kimberly realized and she did not return to work for five weeks after the surgery.

Sutton Rankin received notice of a workers' compensation claim on December 10, 2010. Following an investigation, the carrier for Sutton Rankin determined that any claim would be denied as non-work-related on February 4, 2011. Accordingly, Kimberly filed her Form 101 on June 6, 2011. Thereafter,

Sutton Rankin received a group of medical bills and statements of service in early September 2011. Sutton Rankin refused to pay the bills and filed a medical fee dispute on September 6, 2011.

On January 5, 2012, the ALJ awarded Kimberly temporary total disability (TTD) benefits in the amount of \$170.67 per week from December 8, 2010, until January 12, 2011, and the amount of \$8.70 per week from July 22, 2010, for a period not to exceed 425 weeks. In the award, the ALJ concluded that Kimberly was “not precluded from collecting medical benefits when the bills were not submitted to the carrier within 60 days from the time they incurred” because “[t]he requirements of KRS 342.020(1) do not apply during the pendency of the claim....”¹ Sutton Rankin filed a petition for reconsideration, which the ALJ denied in an order entered on February 3, 2012. In the February 3, 2012, order, the ALJ stated that he was aware of the 45-day requirement contained in KRS 342.020(1) and cited additional authority. The Board affirmed the award of the ALJ in an order entered on November 9, 2012. This appeal followed.

The sole issue before this Court is whether the Board erred by concluding that the 45-day requirement for the submission of statements of service

¹ We note that KRS 342.020(1) does not refer to a 60-day requirement for the submission of benefit claims. Rather, the statute provides for certain 30- and 45-day requirements. The 60-day requirement is contained in 803 Kentucky Administrative Regulations (KAR) 25:096 Section 11(2) and refers to the time period in which a claimant must seek reimbursement for out of pocket expenses for access to compensable medical treatment. The Board found that Kimberly did not attempt to seek reimbursement and that the 60-day requirement contained in 803 KAR 25:096 Section 11(2) was inapplicable. Sutton Rankin has not made any argument concerning 803 KAR 25.096 Section 11(2) in its brief to this Court. Therefore, any issue in this regard has been waived. *Commonwealth v. Bivins*, 740 S.W.2d 954, 956 (Ky. 1987).

contained in KRS 342.020(1) and the administrative regulations were inapplicable to the present case.

The role of this Court in reviewing decisions of the Board “is to correct the Board only when we perceive that the Board has overlooked or misconstrued controlling law or committed an error in assessing the evidence so flagrant as to cause gross injustice.” *Western Baptist Hospital v. Kelly*, 827 S.W.2d 685, 687-88 (Ky. 1992). We review this matter with this standard in mind.

KRS 342.020(1), the determinative provision at issue, *sub judice*, states:

In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease. The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefits. In the absence of designation of a managed health care system by the employer, the employee may select medical providers to treat his injury or occupational disease. Even if the employer has designated a managed health care system, the injured employee may elect to continue treating with a physician who provided emergency medical care or treatment to the employee. The employer, insurer, or payment obligor acting on behalf of the employer, shall make all payments for services rendered to an employee directly to the provider of the services within thirty (30) days of receipt of a statement for services. The commissioner shall promulgate administrative regulations establishing conditions under which the thirty (30) day period for

payment may be tolled. *The provider of medical services shall submit the statement for services within forty-five (45) days of the day treatment is initiated and every forty-five (45) days thereafter, if appropriate, as long as medical services are rendered.* Except as provided in subsection (4) of this section, in no event shall a medical fee exceed the limitations of an adopted medical fee schedule or other limitations contained in KRS 342.035, whichever is lower. The commissioner may promulgate administrative regulations establishing the form and content of a statement for services and procedures by which disputes relative to the necessity, effectiveness, frequency, and cost of services may be resolved.

(Emphasis added). “Statement for services” for a nonpharmaceutical bill is defined by 803 Kentucky Administrative Regulations (KAR) 25:096 Section 1(5)(a) as:

[A] completed Form HCFA 1500, or for a hospital, a completed Form UB-92, with an attached copy of legible treatment notes, hospital admission and discharge summary, or other supporting documentation for the billed medical treatment, procedure, or hospitalization....

Regulation 803 KAR 25.096 Section 6 provides that “[i]f the medical services provider fails to submit a statement for services as required by KRS 342.020(1) without reasonable grounds, the medical bills shall not be compensable.”

Regulation 803 KAR 25.096 Section 6 excuses the failure to submit a statement for services within 45 days upon a showing of reasonable grounds. An employee has reasonable grounds for failing to submit statements for services or to seek reimbursement when the employer has denied the claim as being non-work-related.²

² While not binding authority, we find persuasive and rely upon the unpublished decision of the Supreme Court of Kentucky in *Wolford & Werthington Lumber v. Derringer*, 2010 WL 3377731

It is undisputed that the statements for services were not provided within the 45-day time period. However, the record indicates that the insurance carrier for Sutton Rankin considered the claim denied as not being work-related on February 4, 2011. Because Sutton Rankin denied Kimberly's claim as being non-work-related, we conclude that she had reasonable grounds for failing to comply with the 45-day requirement.

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

CLAYTON, JUDGE, CONCURS.

TAYLOR, JUDGE, CONCURS IN RESULT ONLY.

BRIEF FOR APPELLANT:

Stephanie D. Ross
Florence, Kentucky

BRIEF FOR APPELLEE:

Elizabeth A. Munninghoff
Michael T. Sutton
Edgewood, Kentucky

(Ky. 2010)(2009-SC-000620-WC), as there is no other published opinion directly on point. *See* Kentucky Rules of Civil Procedure (CR) 76.28(4)(c).