IMPORTANT NOTICE
NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED "NOT TO BE PUBLISHED." PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD ADEQUATELY ADDRESS THE ISSUE BEFORE THE COURT. OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.

RENDERED: March 22, 2007
NOT TO BE PUBLISHED

Supreme Court of Kentucky

FINAL
DATE 4-12-07 E.A.Grumpl.

2006-SC-0342-WC

SHARON HOLLAN — APPELLANT

V.

APPEAL FROM COURT OF APPEALS
2005-CA-000772-WC
WORKERS' COMPENSATION NO. 76-1053

IBM, MARK SCOTT, D.C.,
JIMMY H. BLANTON, D.C.,
HON. MARCEL SMITH, ALJ,
WORKERS' COMPENSATION BOARD — APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

This appeal concerns a motion to reopen to resolve a medical fee dispute. An Administrative Law Judge (ALJ) determined that the chiropractic and related travel expenses at issue were neither reasonable nor necessary treatment for the claimant's work-related injury. The Workers' Compensation Board (Board) and the Court of Appeals affirmed; however, the claimant continues to assert that the principle of res judicata entitles her to be compensated for the treatment. Having concluded that the principle is inapplicable to the matter at issue and that the decision was reasonable under the evidence, we affirm.

On or about June 7, 1976, the claimant fell while working and struck her buttocks and coccyx (tailbone) on the sharp corner of a piece of office furniture. She began to

complain of soreness in the tailbone, headaches, and neck, shoulder, and arm pain. Her complaints persisted when the claim was decided, nearly three years after the accident. After considering testimony from numerous physicians, including two psychiatrists and a neurosurgeon, the "old" Board determined that she "sustained a rather severe conversion reaction to a rather minor work incident." Dr. George conducted a psychiatric evaluation for the Board under KRS 342.121, which has since been repealed. He attributed the persistent physical symptoms to post-traumatic conversion hysteria, described the condition as an emotional overreaction to what should have been a relatively minor accident, and recommended continued psychotherapy. He testified that the accident and the emotional stress of the claimant's job had aroused a dormant, non-disabling personality disorder into disabling reality, causing half of her disability. Based on Dr. George's testimony, the Board conducted a Young v. Fulkerson, 463 S.W.2d 118 (Ky. 1971), analysis and apportioned the obligation to pay income benefits for total occupational disability equally between the employer and the Special Fund.[1] The board noted specifically that psychiatric care would be beneficial and awarded such medical treatment "as may reasonably be required at the time of the injury and thereafter during disability." The award did not indicate that any specific medical expenses were presently at issue.

No disagreement arose over post-award medical bills until 2001, when the parties filed an agreed order indicating that the employer's insurance carrier had denied

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1 In 1976, KRS 342.120 held the Special Fund liable for disability due to the combined effects of an injury and any pre-existing disability or pre-existing dormant condition. In Young v. Fulkerson, supra, the court determined that the statute required the "old" Board to determine the disability that the injury would have caused had there been no pre-existing disability or dormant condition, to exclude the disability that existed immediately before the injury, and to hold the Special Fund liable for the rest.

certain medical bills without filing a medical fee dispute as required by KRS 342.735(3) and the regulations. See also, Mitee Enterprises v. Yates, 865 S.W.2d 654 (Ky. 1993). The order indicated that the carrier had satisfied the outstanding bills and agreed to a $3000.00 civil penalty without admitting wrongdoing.

On September 17, 2003, the employer filed a Form 112, Medical Fee Dispute. It contested the medical care provided by two chiropractors (Drs. Scott and Blanton) and the taxicab fares to Dr. Blanton's West Virginia office. The employer also filed a motion to reopen and to join the medical providers as parties. It supported the motion with a peer review report from Drs. Nemunaitis, Granacher, and Gill and also with a report from Dr. Slavic, a chiropractor.

The claimant testified that she injured her neck as well as her tailbone in the accident and remained in constant pain. Chiropractic treatment helped to alleviate it. Dr. Scott treated her low back with acupressure and deep finger massage, while Dr. Blanton treated her cervical region. She thought that two treatments per week from Dr. Scott and one per week from Dr. Blanton would be sufficient. She stated that Dr. Feinberg, an osteopath, provided cranio-sacral adjustments and treated her sacrum. Dr. Young, her primary care physician, prescribed medication. A letter from Dr. Dyson, an internal medicine specialist who also treated her, stated that she continued to need chiropractic care.

Dr. Scott began treating the claimant in 1998. His July 17, 1999, letter indicated that some of her pain was physical and that she was addicted to pain medication. As of 2003, he administered trigger point therapy, which he described as "massaging the aggravated muscles and surrounding areas, then stretching them so that they keep

from balling up." He stated that the treatment differed from Dr. Blanton's and that the two types of therapy benefited each other.

Dr. Blanton began to treat the claimant on referral from Dr. Scott. He stated that he did not review her medical records or consult with Dr. Scott before initiating treatment. He diagnosed a subluxation of the upper cervical region and indicated that his treatment had helped but that she still had pain. In his opinion 12-24 adjustments per year would not be sufficient.

In June, 1999, Dr. Nemunaitis conducted a peer review analysis of the claimant's treatment. He noted that the physical examinations and extensive diagnostic studies performed in 1976-78 revealed no physical harm. The neurosurgeon and orthopedic surgeons thought that the claimant's symptoms were psychogenic, and a psychiatric examination had confirmed the diagnosis of conversion hysteria. Dr. Nemunaitis noted that a 1990 CT myelogram revealed normal bulging cervical and lumbar discs and that EMGs were also normal. In his opinion, the claimant needed no further treatment. Her present treatment was unnecessary and inappropriate because her condition was primarily psychiatric.

Dr. Granacher examined the claimant and performed extensive evaluations both in 1999 and 2000. He reported that she had a 10% permanent impairment rating due to a conversion disorder, a condition in which emotional problems are converted into physical symptoms that are demonstrated as a pseudo-neurological disorder or alleged pain syndrome. He attributed the entire impairment to the arousal of a pre-existing personality disorder by the tail bone bruise and stated that if any significant medical or surgical condition had caused the symptoms, it would have made itself known in the preceding 24 years. In his opinion, the underlying personality disorder was

longstanding and untreatable. It would cause the claimant to "function illogically in her search for a medical cure;" therefore, the best approach was not to provide unnecessary treatment that would reinforce her behavior.

Dr. Gill, an anesthesiologist, reported in October, 2000, that chiropractic and osteopathic care should be denied as unreasonable and unnecessary. She noted that the claimant's initial diagnosis was coccygeal pain, that all diagnostic studies were negative, and that a psychiatrist had attributed the symptoms that she continued to experience in 1978 to conversion hysteria. Noting that the cause of the symptoms was psychiatric in nature, Dr. Gill concluded that no amount of manipulation would resolve them. In her opinion, further physical, chiropractic, or manipulative therapy should be denied as medically unnecessary.

Dr. Slavic reviewed the claimant's medical records in June, 2003, and noted a history indicating that she bumped her sacroiliac region or buttocks on an open desk door and was thrown forward into a wall, jerking her neck. He noted her continued complaints of perceived symptoms despite minimal clinical findings, noted the evidence of significant psychological overlay, and concluded that no chiropractic care would cure her condition. It was warranted only on an as-needed basis for an exacerbation or aggravation of the injury and should be limited to 12-24 visits per year. In his opinion, concurrent treatment by two chiropractors was not reasonable or necessary and would be detrimental. Likewise, continued osteopathic manipulation was neither beneficial nor medically necessary.

Relying on Dr. Granacher and noting that his testimony was supported by the other peer review evidence, the ALJ concluded that the treatment by Drs. Scott and Blanton was neither reasonable nor necessary. Therefore, their fees and the related

taxicab bills were not compensable. After her petition for reconsideration was summarily denied, the claimant appealed.

The claimant takes issue with the ALJ's reliance on Dr. Granacher's testimony. He testified that she had a 10% whole-body impairment, that it was due entirely to the arousal of a pre-existing condition, that there had been no change in her condition since the initial award, and that no further medical treatment was reasonable or necessary. The claimant notes that the "old" Board attributed 50% of her disability to the June 7, 1976, injury, alone. Relying on Moore v. Gas & Electric Shop, 216 Ky. 530, 287 S.W. 979, 980 (1926), she asserts that the fact was binding at reopening under the principle of res judicata. Therefore, the ALJ erred by relying on Dr. Granacher's testimony that no treatment would cure or relieve her physical injury because it contradicted the finding. We disagree.

In 1976, Chapter 342 defined an injury as being "[a]ny work-related harmful change in the human organism." The "old" Board determined that the claimant "sustained a rather severe conversion reaction to a rather minor work incident." It did not determine that she sustained an appreciable physical harm. When apportioning liability for permanent disability, it relied on Dr. George's testimony and noted that "although the injury at work should have produced a relatively minor injury, the work situation itself apparently was a contributing factor to the plaintiff's functional overlay." The opinion awarded reasonable and necessary medical expenses for treating the injury and stated that psychiatric care would be beneficial. It mentioned no specific medical expense, and none was at issue at the time.

KRS 342.020(1) permits compensation for medical treatment "for the cure and relief from the effects of an injury . . . as may reasonably be required at the time of the

injury and thereafter during disability." As construed in Mitee Enterprises v. Yates, supra, the statute requires an employer to pay or contest a statement for post-award medical services within 30 days after receiving it. KRS 342.125(3) and National Pizza Co. v. Curry, 802 S.W.2d 949 (Ky. App. 1991), permit a final award to be reopened to resolve such a dispute. Codifying the decision in Mitee Enterprises v. Yates, supra, KRS 342.735(3) places the burden of proof regarding the compensability of post-award medical expenses on the employer. It is immaterial whether the employer paid previous medical bills voluntarily or whether previous bills were incurred for reasonable and necessary medical treatment. At issue in a medical expense reopening are whether the contested expenses pertain to treating the work-related injury and whether the treatment is reasonable and necessary when it is performed.

This reopening concerned whether chiropractic treatment that Drs. Scott and Blanton provided in 2003 was reasonable and necessary for the effects of the injury that occurred in 1976. Relying on Dr. Granacher and the peer review report, the ALJ determined that it was not, explicitly limiting the decision to the contested expenses. The decision was reasonable under the evidence; therefore, it was properly affirmed on appeal.

The decision of the Court of Appeals is affirmed.

Lambert, C.J., and Cunningham, Minton, Noble, Schroder, and Scott, JJ., concur. McAnulty, J., not sitting.

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