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NOT TO BE PUBLISHED OPINION

THIS OPINION IS DESIGNATED “NOT TO BE PUBLISHED.” PURSUANT TO THE RULES OF CIVIL PROCEDURE PROMULGATED BY THE SUPREME COURT, CR 76.28(4)(C), THIS OPINION IS NOT TO BE PUBLISHED AND SHALL NOT BE CITED OR USED AS BINDING PRECEDENT IN ANY OTHER CASE IN ANY COURT OF THIS STATE; HOWEVER, UNPUBLISHED KENTUCKY APPELLATE DECISIONS, RENDERED AFTER JANUARY 1, 2003, MAY BE CITED FOR CONSIDERATION BY THE COURT IF THERE IS NO PUBLISHED OPINION THAT WOULD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 OPINIONS CITED FOR CONSIDERATION BY THE COURT SHALL BE SET OUT AS AN UNPUBLISHED DECISION IN THE FILED DOCUMENT AND A COPY OF THE ENTIRE DECISION SHALL BE TENDERED ALONG WITH THE DOCUMENT TO THE COURT AND ALL PARTIES TO THE ACTION.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 19, 2009
NOT TO BE PUBLISHED

Supreme Court of Kentucky

2008-SC-000405-WC

FINAL

DATE 4/9/09 Kelly Klaber D.C.
APPELLANT

CRYSTAL SPRINGS, INC.

ON APPEAL FROM COURT OF APPEALS
V. CASE NO. 2007-CA-002397-WC
WORKERS' COMPENSATION BOARD NO. 92-042481

HAROLD DEMPSEY; DR. AHMED
MALIK; HONORABLE ANDREW F.
MANNO, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

MEMORANDUM OPINION OF THE COURT

AFFIRMING

An Administrative Law Judge (ALJ) determined in this post-award medical fee dispute that hypertension resulted from the claimant's work-related injury and that the employer must pay for treating the condition. The Workers' Compensation Board affirmed and the Court of Appeals affirmed the Board. Appealing, the employer asserts that no evidence supported a finding that the claimant's work-related injury caused his hypertension. We affirm because the record contained substantial evidence to support the finding of causation.

This appeal concerns the effects of an accident that occurred in 1992, as a result of the claimant's work as a coal miner. He testified that he received an

electrical shock and lost consciousness when a breaker box exploded as he attempted to set it to charge batteries. He regained consciousness in the hospital where he remained for several days, in part due to cardiac irregularities. His application for benefits alleged low back complaints, depression, and a cardiac condition.

Medical evidence regarding the cardiac condition came from Drs. Causey and Leonelli. Dr. Causey noted evidence of Wolfe-Parkinson-White (WPW) Syndrome, which produces cardiac arrhythmia. He thought that the condition was probably congenital but acknowledged that the claimant was placed on an EKG monitor after the accident. He last saw the claimant in April 1993 and recommended no further treatment because the condition was asymptomatic at the time. Dr. Leonelli noted, however, that the claimant was in apparent good health before the electric shock but had periodic episodes of chest pain with associated dizziness and palpitations after his discharge from the hospital. He recommended further testing to determine the mechanism of the arrhythmia. The ALJ found Dr. Leonelli to be more credible and determined that the cardiac condition resulted from the accident.

After finding that the work-related accident caused back, psychiatric, and cardiac injuries,¹ the ALJ awarded a 20% disability for the back condition

¹ In 1992 KRS 342.620(1) defined the term "injury" as "any work related harmful change in the human organism" Although the parties and the ALJ who decided the subsequent medical reopening refer to the claimant's "injury," he sustained back, psychiatric, and cardiac injuries.

and a 40% disability for the psychiatric condition. The ALJ awarded only medical benefits for the cardiac condition, noting that it was not disabling.

The claimant moved to reopen in 1999, alleging a worsening of his conditions. He complained of steady back pain with spasm and numbness in his legs; of constant headaches, depression, flashbacks, nightmares, and suicidal thoughts; and of cardiac arrhythmia, chest and left arm pain, and difficulty breathing. He stated that he took two blood pressure medications and Nitrostat. Finding no increased occupational disability, the ALJ dismissed the reopened claim.

The employer filed the present medical fee dispute in January 2005, contesting the reasonableness and necessity of further pain management for the back injury and of further psychotropic medication and psychotherapy for the psychiatric injury. The employer also contested the compensability of the treatment that Dr. Malik provided for the cardiac condition. The ALJ found the pain management and psychiatric treatments to be reasonable and necessary, found Dr. Malik's treatment to be for a work-related condition, and ordered the employer to pay the disputed expenses.

Appealing regarding the cardiac treatment, the employer asserted that the ALJ erred by requiring it to pay for the treatment of hypertension and hyperlipidemia as well as of WPW Syndrome. The Board noted that the ALJ failed to address the two conditions specifically or to state specifically that Dr. Malik provided treatment for work-related conditions. Thus, it vacated that

portion of the decision and remanded the claim for additional findings.² The findings on remand are presently at issue.

The claimant testified at reopening that he continued to experience cardiac fluttering and arrhythmia and to take medication for the condition. He complained that the employer began to refuse to pay for treatment only after he reopened the claim. He denied experiencing hypertension before the work-related injury.

The earliest mention of hypertension (high blood pressure) is found in Dr. Mann's medical records from 1998. While providing treatment for the work-related injuries, he noted complaints of increased weight and blood pressure as well as stress that the claimant attributed to his relationship with his daughter. He referred the claimant to Dr. Puram for the treatment of hypertension in 1999. Dr. Mann noted on June 28, 2001, that Dr. Puram continued to treat the claimant's arrhythmia and had prescribed Zestril. Noting that his blood pressure had remained elevated for the last several visits, Dr. Mann advised the claimant to take both Zestril and Toprol. Zestril is used for the treatment of hypertension and Toprol is used for the treatment of hypertension as well as for the long-term treatment of angina pectoris (i.e., chest pain).³

² See Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982).

³ Physicians's Desk Reference 649, 698 (58th ed. 2004).

The claimant first saw Dr. Malik, a cardiologist, in October 2003. He gave a history that included cardiac arrhythmia and intermittent chest pain since the 1992 accident as well as hypertension. Responding to a subsequent questionnaire, Dr. Malik indicated that he treated premature ventricular complexes (a form of arrhythmia),⁴ hypertension, chest pain, and an abnormal Cardiolite scan. He indicated that he prescribed Zestril and Toprol, which relieved the claimant's symptoms. Asked whether the treatment was reasonable, necessary, and related to the injury at work in 1992, he did not mark "yes" or "no" but stated that he had been treating the claimant for the previously-listed conditions.

Dr. Mahmood noted in November 2005 that the claimant experienced anxiety and depression secondary to chronic pain. Medical records from Mountain Comprehensive Care and testimony from Dr. Matthew indicated that the claimant had been treated since 1993 for post-traumatic stress disorder; major depressive disorder with psychotic features, and chronic pain disorder. He continued to be treated for depression, anxiety, and pain disorder in 2005.

Dr. Cassidy evaluated the claimant's cardiac status for the employer in January 2006, noting that the current medications included Zestril, Toprol, and nitroglycerine. He was "very dubious" that any of the claimant's cardiac problems were caused by electrocution, noting that WPW Syndrome is a relatively common disorder that can remain asymptomatic for decades. He

⁴ See <http://www.mayoclinic.com/health/premature-ventricular-contractions/DS00949>.

stated that he did not think the claimant's "minimal coronary disease was caused by electrocution," noting that multiple risk factors affect the development of the condition.

When amending the award on remand, the ALJ noted the claimant's testimony that his hypertension began after the electrical shock and that workers' compensation paid for his medication until his unsuccessful reopening. The ALJ also noted that Dr. Mann's records showed he had taken Toprol and Zestril for hypertension since at least 2001. The ALJ acknowledged that Dr. Cassidy thought the claimant had no serious cardiac problem and nothing referable to his "electrocution" but stated that medical records related his hypertension "to many factors, including stress and anxiety as well as pain issues related to the work injury." Noting that Dr. Malik treated the claimant for hypertension, chest pain, premature ventricular complexes, and abnormal Cardiolute scan, the ALJ found the employer responsible for treating the claimant's heart condition, including his hypertension.

The employer asserts that the ALJ erred because no medical evidence of record showed a causal connection between the injury and the claimant's hypertension. It complains that the ALJ failed to identify the medical records that supported the decision. It also complains that the Board usurped the ALJ's role as fact-finder when affirming because it drew inferences from the evidence that the ALJ failed to state. We disagree.

The ALJ determined in the initial claim that the electrical shock caused back and psychiatric injuries as well as a cardiac injury that produced episodes of chest pain, dizziness, and arrhythmia and continued to require medical treatment. The employer points out that this appeal involves the status of the cardiac condition nearly ten years later and whether the claimant's hypertension resulted from the work-related accident. The employer asserts that he failed to meet his burden of proof because the record contained no medical evidence to support a reasonable finding of causation and that the ALJ's decision should not have been affirmed because it was based on unspecified medical records.

Although the employer had the burden to prove that a contested post-award medical expense for treating the cardiac arrhythmia, chest pain, or other related symptoms that were present at the time of the award was unreasonable or unnecessary, the claimant had the burden to show that a condition not present in the initial claim (i.e., hypertension) was work-related.⁵ KRS 342.285 gives an ALJ the sole discretion to determine the quality, character, and substance of evidence.⁶ An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same

⁵ See Mitee Enterprises v. Yates, 865 S.W.2d 654 (Ky. 1993); Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997).

⁶ Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

adversary party's total proof.⁷ Although a party may note evidence that would have supported a different decision, such evidence is not an adequate basis to reverse on appeal.⁸ A finding that favors the party with the burden of proof may not be disturbed on appeal if substantial evidence supports it, in other words, if the finding is reasonable under the evidence.⁹ An appellate body does not usurp the ALJ's role by noting reasonable inferences that the ALJ could have drawn from the evidence relied upon.

This is not a case in which the ALJ reached a conclusion of law but failed to recite sufficient facts to reveal the basis for the conclusion.¹⁰ The ALJ summarized the lay and medical evidence in the first opinion rendered in the medical reopening. The amendment rendered on remand contained a sufficient basis for the conclusion that all of the treatment Dr. Malik provided was related to the effects of the claimant's injuries.

Expert testimony generally is required to prove that a medical condition is work-related.¹¹ No physician stated explicitly that the electrical shock or the effects of the injuries that the shock produced helped to cause the claimant's hypertension. We note, however, that the existence of a causal relationship between factors such as stress, anxiety, and pain and the development of

⁷ Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977).

⁸ McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

⁹ Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

¹⁰ See Shields v. Pittsburgh & Midway Coal Co., *supra*.

¹¹ Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184 (Ky. app. 1981).

hypertension is one that is known to the general public.¹² The ALJ relied upon evidence that, when considered as a whole, permitted a reasonable finding that the effects of the claimant's work-related injuries helped to cause his hypertension. That is not to say that it would have compelled a favorable finding had one not been made.

The claimant testified that he began to experience hypertension after the accident, and the record contained no evidence of its existence before 1998. His testimony that the employer paid for blood pressure medications for a period of time permitted a reasonable inference that it considered the condition to be work-related although it would not have compelled such an inference. The ALJ noted specifically that medical records related the condition to many factors, including stress, anxiety, and pain related to the claimant's injuries.

Although the employer emphasizes that Dr. Mann's records from 1998 associated the hypertension with non-work-related stress, numerous medical records indicate clearly that the claimant's injuries produced ongoing sources of stress since 1992. Among them were severely disabling back pain, psychiatric symptoms that included depression and anxiety due to chronic pain, and cardiac symptoms that included chest pain and arrhythmia. Dr. Malik stated that his treatment relieved the claimant's cardiac symptoms, including hypertension. He failed to state specifically that he treated the effects of a work-related injury, but his response to the questionnaire did

¹² See <http://www.nih.gov/medlineplus/ency/article/00468.htm>.

permit a reasonable inference that he considered all of the treatment he provided to be reasonable, necessary, and for the effects of the work-related injuries, including the treatment for hypertension.

We disagree with the employer's assertion that Dr. Cassidy's testimony compelled a decision in its favor. The initial award resolved any issue concerning whether the cardiac condition that produced arrhythmia and chest pain resulted from the electrical shock. Dr. Cassidy disputed the cause of the cardiac symptoms and found no serious cardiac condition, but his testimony did not compel a finding that Dr. Malik provided unreasonable or unnecessary treatment for the work-related cardiac injury. Dr. Cassidy's negative testimony regarding the cause of the hypertension referred only to the "electrocution." It did not address the effects of the resulting back, psychiatric, and cardiac injuries over the nearly ten-year period since the accident, which permitted a reasonable inference that he failed to consider whether the injuries affected the development of hypertension. Thus, the ALJ did not disregard uncontradicted medical testimony when concluding that hypertension resulted from the injuries.¹³

The decision of the Court of Appeals is affirmed.

All sitting. All concur.

¹³ See Mengel v. Hawaiian-Tropic Northwest and Central Distributors, Inc., 618 S.W.2d 184 (Ky. App. 1981).

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