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TO BE PUBLISHED

Supreme Court of Kentucky

2020-SC-0301-WC

WONDERFOIL, INC. APPELLANT

V.

ON APPEAL FROM COURT OF APPEALS
NO. 2019-CA-1671
WORKERS' COMPENSATION BOARD NO. 16-WC-02058

RICHARD RUSSELL; HONORABLE GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD APPELLEES

OPINION OF THE COURT BY JUSTICE KELLER

AFFIRMING

Richard Russell sustained a work-related injury while employed by Wonderfoil, Inc. He initiated a claim for benefits pursuant to Kentucky Revised Statutes (KRS) Chapter 342, the Workers' Compensation chapter. An Administrative Law Judge (ALJ) granted permanent partial disability (PPD) benefits to Russell but found certain medical expenses were submitted untimely and were therefore non-compensable. Russell appealed the ALJ's denial of those medical expense benefits to the Workers' Compensation Board (the Board). The Board reversed the ALJ finding the expenses were submitted timely. Wonderfoil then appealed to the Court of Appeals, which affirmed the

Board's decision. Wonderfoil now appeals to this Court as a matter of right. *See Vessels v. Brown-Forman Distillers Corp.*, 793 S.W.2d 795, 798 (Ky. 1990); KY. CONST. § 115. After a thorough review of the record and arguments of the parties, we affirm the Court of Appeals.

I. BACKGROUND

On November 10, 2014, Richard Russell was employed by Wonderfoil, Inc. when he sustained a work-related injury to his right arm. Wonderfoil was engaged in the business of foil stamping, embossing, and die cutting. Russell was the president of Wonderfoil, owned a one percent share in the company, and worked as a pressman at the time of his injury. While Russell was running the press machine, his shirt sleeve got caught in the running press resulting in second and third degree burns to his hand and arm. He was hospitalized in the burn unit at the University of Louisville Hospital for several days and received follow-up treatment in plastic surgery and physical therapy. The injury was timely reported to Wonderfoil; however, no first report of injury was filed, and the company's workers' compensation insurer was not informed of the accident.

On September 16, 2016, Russell filed a Form 101, initiating his workers' compensation claim. On his Attachment to Form 101/Compliance with BRC Order form, Russell indicated that whether Wonderfoil had paid any medical benefits or expenses at that time was unknown. On October 31, 2016, Wonderfoil filed a Form 111 denying the claim. Although Wonderfoil admitted Russell's "accident was covered under the Workers Compensation Act," it

"assert[ed] that there are genuine and legitimate issues and defenses of . . . causation & work-relatedness, occurrence of 'injury' as defined by KRS 342.0011(1), liability for contested or disputed medical benefits, [and] potential medical dispute issues."

On February 1, 2017, Wonderfoil filed a Notice of Stipulations and Contested Issues. In that notice, Wonderfoil stipulated that Russell "sustained an injury in the course and scope of his employment" and that "[n]o medical expenses have been paid to date." The issue of medical benefits, however, was not listed as contested. A Benefit Review Conference was held on February 7, 2017. In the administrative law judge's order and memorandum issued after the benefit review conference, "unpaid or contested medical expenses" was listed as a contested issue, and the parties stipulated that Russell "sustained a work-related injury."

On March 23, 2018, Russell filed a Status Report stating that "he was going to attempt to gather together all of his outstanding bills as it relates to this claim." On May 14, 2018, Russell submitted a Notice of Unpaid Medical Expenses with medical bills attached containing dates of services in 2014 and 2015.

A formal hearing was held on February 27, 2019. After the hearing, both parties were ordered to submit briefs. Wonderfoil argued that KRS 342.020(4)[1]

[1] "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." KRS 342.020(4).

requires medical bills to be submitted within forty-five days of treatment and that Russell submitted his bills well beyond that forty-five-day time period. Wonderfoil went on to argue that because Russell did not timely submit his unpaid medical bills, it was not responsible to pay the bills. Russell did not address the timeliness of the submission of his medical bills.

On April 29, 2019, the ALJ issued his Opinion, Order, and Award. Relevant to the issue before us, the ALJ found that Russell did not timely submit his medical bills, so they were not compensable. Specifically, the ALJ found:

> The parties also listed unpaid medical expenses as a contested issue. The defendant points out that plaintiff submitted medical expenses from 2014 and 2015 and did not submit them within 45 days. Of course, as the claimant and not a medical provider, plaintiff had 60 days from the dates of service to submit such expenses,[2] but the fact remains that these expenses were not submitted until May 14, 2018, long beyond 60 days from the dates of service or even 60 days after the claim was filed in 2016. Accordingly, unpaid medical expenses to date are not compensable as not being timely submitted for payment.

Russell filed a Petition for Reconsideration arguing that he "was relieved of the duty of filing expenses within 60 days of the award as this was <u>not</u> accepted as a compensable claim and the notice of claim acceptance or denial clearly states that causation was disputed." He further argued that "[t]he filing of the expenses on May 14, 2018, before the claim was decided is 'reasonable'

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[2] The ALJ was presumably referring to 803 KAR 25:096, § 11(2) which states in pertinent part, "Expenses incurred by an employee for access to compensable medical treatment for a work injury . . . shall be submitted to the employer or its medical payment obligor within sixty (60) days of incurring of the expense."

pursuant to the case law," however, he did not cite to any specific caselaw. The ALJ denied his petition.

Russell then appealed to the Workers' Compensation Board. He argued that the "60 day rule applies [only] after an interlocutory decision or in post final award/settlement," relying on *Brown Pallet v. Jones*, Claim No. 2003-69633 (Workers' Comp. Bd. Sept. 28, 2007) and *Garno v. Solectron USA*, 329 S.W.3d 301 (Ky. 2010). The majority of the Board found that the ALJ erred by finding Wonderfoil was not liable for Russell's medical bills on the basis the bills were submitted untimely. The Board extended the reasoning of *Brown Pallet* and *Garno* to find that "the sixty-day requirement contained in 803 KAR 25:096 § 11 is likewise not applicable until an award has been entered finding the claim is compensable." Therefore, that requirement "applies only after an interlocutory decision or final award has been entered. Since an interlocutory award was not entered [in this case], the sixty-day rule was not applicable until after the ALJ rendered his decision."

Wonderfoil then filed a Petition for Review in the Court of Appeals asserting the same arguments raised below and noting particularly that the issue of whether Russell sustained a work-related injury was no longer in dispute as of January 30, 2017, and yet Russell still did not submit any medical expenses until May 14, 2018. Russell, on the other hand, asserted that the Board correctly interpreted the statutes, regulations, and caselaw and therefore should be affirmed.

The Court of Appeals undertook a thorough review of the Board's opinion and held that "the Board's interpretation of controlling precedent and the 60-day submission requirement of 803 KAR 25:096, § 11 are reasonable." The Court of Appeals then noted that it "generally defer[s] to an administrative agency's interpretation of its own regulations," citing *St. Joseph Hospital v. Littleton-Goodan*, 260 S.W.3d 826, 828 (Ky. 2008). Therefore, the Court of Appeals held that "the mandatory deadlines specified in KRS 342.020(1)[[3]] and its accompanying regulations apply post-award, whether that award is final or interlocutory. Because medical expenses are not compensable until an award is entered, it is reasonable that an employee is not required to submit medical expenses until an award is entered." The Court of Appeals then affirmed the Board.

Wonderfoil now appeals to this Court. It argues that the Court of Appeals ignored the plain, unambiguous language of 803 KAR 25:096, § 11, erred in giving any deference to the Board's interpretation of the regulation, and misconstrued the caselaw in interpreting the regulation.

II. ANALYSIS

Review by this Court of workers' compensation cases is limited "to address[ing] new or novel questions of statutory construction, or to reconsider[ing] precedent when such appears necessary, or to review[ing] a question of constitutional magnitude." *W. Baptist Hosp. v. Kelly*, 827 S.W.2d

[3] It appears the Court of Appeals mistakenly cited KRS 342.020(1) when it should have cited KRS 342.020(4).

685, 688 (Ky. 1992). "As a reviewing court, we are bound neither by an ALJ's decisions on questions of law or an ALJ's interpretation and application of the law to the facts. In either case, our standard of review is de novo." *Ford Motor Co. v. Jobe*, 544 S.W.3d 628, 631 (Ky. 2018) (citing *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 866 (Ky. App. 2009)).

When interpreting administrative regulations, "we apply the same rules that are applicable to statutory construction and interpretation." *Comprehensive Home Health Servs., Inc. v. Prof. Home Health Care Agency, Inc.*, 434 S.W.3d 433, 441 (Ky. 2013) (citing *Revenue Cabinet v. Joy Techs., Inc.*, 838 S.W.2d 406 (Ky. App. 1992)).

> When engaging in statutory interpretation, it is imperative that we give the words of the statute their literal meaning and effectuate the intent of the legislature. We have repeatedly stated that we "must not be guided by a single sentence of a statute but must look to the provisions of the whole statute and its object and policy." And the intent of the General Assembly "shall be effectuated, even at the expense of the letter of the law."

Samons v. Kentucky Farm Bureau Mut. Ins. Co., 399 S.W.3d 425, 429 (Ky. 2013) (citations omitted). Further, "a court should not, if possible, adopt a construction that renders a provision meaningless or ineffectual or interpret a provision in a manner that brings about an absurd or unreasonable result." *Schoenbachler v. Minyard*, 110 S.W.3d 776, 783 (Ky. 2003) (citations omitted).

803 KAR 25:096, § 11(2) states as follows:

> Expenses incurred by an employee for access to compensable medical treatment for a work injury or occupational disease, including reasonable travel expenses, out-of-pocket payment for prescription medication, and similar items shall be submitted to the employer or its medical payment obligor within sixty (60) days

> of incurring of the expense. A request for payment shall be made on a Form 114.

Although the plain language appears clear at first blush, the regulation is patently unclear about when it applies. One must ask if the regulation applies only post-award, during litigation but pre-award, or even before the potential claimant files his claim. Because we cannot determine the answer to that question based on the plain language of the regulation, we must look to the regulatory scheme as a whole and seek to effectuate the intent of the Commissioner of the Department of Workers' Claims in promulgating the regulation. *Samons*, 399 S.W.3d at 429.

Upon review, it is clear that the regulatory scheme anticipates, expects, and in fact requires medical expenses will be submitted while the claim is being litigated.

> 803 KAR 25:010, § 7(2) includes the following provision:
>
> (e) Within forty-five (45) days of the issuance of the Notice of Filing of Application, the parties shall file a notice of disclosure, which shall contain:
> . . .
> 7. For plaintiff, all known unpaid bills to the parties, including travel for medical treatment, co-pays, or direct payments by plaintiff for medical expenses for which plaintiff seeks payment or reimbursement. Actual copies of the bills and requests for reimbursement shall not be filed but shall be served upon opposing parties if requested.

Thus, a claimant is required to submit all unpaid medical expenses to the employer within forty-five days of filing his initial claim application. Further, 803 KAR 25:010, § 7(2)(f) requires that the claimant amend his notice of disclosure within ten days of receiving new or additional information. That

regulation states, “All parties shall amend the notice of disclosure within ten (10) days after the identification of any additional witness, or receipt of information or documents that would have been disclosed at the time of the original filing had it then been known or available.” 803 KAR 25:010, § 7(2)(f). These time limits are more stringent than those contained in the regulation at issue.

803 KAR 25:010, § 13(9)(a) provides an additional procedural point at which the claimant is required to submit all unpaid medical expenses. That regulation states that the claimant “shall bring to the BRC [benefit review conference] copies of known unpaid medical bills not previously provided and documentation of out-of-pocket expenses including travel for medical treatments. Absent a showing of good cause, failure to do so may constitute a waiver to claim payment for those bills.” 803 KAR 25:010, § 13(9)(a).

These two regulations provide evidence that the regulatory scheme governing workers’ compensation claims anticipates that medical expenses will be provided to the employer pre-award and throughout the litigation of the claim. To interpret the sixty-day submission requirement found in 803 KAR 25:096, § 11 as applying pre-award would result in a direct contradiction with 803 KAR 25:010, § 7(2)(f), which requires the claimant disclose unpaid medical bills within forty-five days of filing his claim and within ten days of receiving new bills after the initial forty-five days has passed. Accordingly, when viewed in the context of the regulatory scheme, 803 KAR 25:096, § 11’s application

only post-award best effectuates the intent of the Commissioner and prevents an absurd result.

Russell argues that *R.J. Corman Railroad Construction v. Haddix*, 864 S.W.2d 915 (Ky. 1993), *Brown Pallet v. Jones*, Claim No. 2003-69633, and *Garno v. Solectron USA*, 329 S.W.3d 301 support this interpretation of the regulation. Wonderfoil, on the other hand, argues that both the Board and the Court of Appeals misconstrued these cases.

In *R.J. Corman Railroad Construction v. Haddix*, Brian Haddix sustained work-related injuries while employed by R.J. Corman Railroad Construction (Corman). 864 S.W.2d at 916. Haddix claimed both physical and psychological injuries. *Id.* While the claim was pending, Corman paid certain medical expenses, but did not pay any expenses it considered to be for treatment of Haddix's claimed psychological injury. *Id.* at 918. Corman, however, did not explicitly contest those expenses prior to the briefing stage in front of the ALJ. *Id.* The ALJ found that those medical expenses were not compensable because the psychological injury was not compensable. *Id.* On appeal, the Board found that regardless of whether the psychological injury was compensable, Corman was required to pay the medical expenses because "it waived any objection to payment by failure to timely contest." *Id.*

This Court disagreed with the Board. We noted that the requirement found in KRS 342.020(1)[4] that employers must pay medical expenses within

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[4] At the time *Haddix* was rendered, KRS 342.020(1) stated, in pertinent part, "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

thirty days of receipt of the statement of services "is clearly intended to hasten payment of those medical bills that the employer is obligated to pay." *Id.* However, "[u]ntil an award has been rendered, the employer is under no obligation to pay any compensation, and all issues, including medical benefits, are justiciable." *Id.* Accordingly, we held that the relevant portion of KRS 342.020 only "applies to medical statements received by an employer **after** an ALJ has determined that said bills are owed by the employer." *Id.* (emphasis added). Finally, we stated, "The proper time to contest issues involved in a workers' compensation claim, including whether certain medical treatment should be at the expense of the employer, is at the hearing before the ALJ." *Id.* at 919.

In *Brown Pallet v. Jones*, Brown Pallet appealed to the Board from an ALJ decision in favor of Jones in a medical fee dispute regarding a surgery performed on Jones. Prior to the surgery, Brown Pallet's insurance carrier informed Jones and the surgeon that it would not pay for the surgery, so Jones paid for it himself. When Jones eventually pursued medical benefits for this surgery, Brown Pallet argued that neither Jones nor the surgeon had submitted the bill within the time periods prescribed in KRS 342.020(1)[5] and 803 KAR 25:096, § 11(2) and (3) and therefore the medical expense was not compensable.

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services within thirty (30) days of receipt of a statement for services." This same language is now in KRS 342.020(4).

[5] *See* n.3, *supra.*

The Board disagreed with Brown Pallet. The Board cited to this Court's opinion in *Haddix*, 864 S.W.2d 915. In that case we held that KRS 342.020(1), which requires employers to pay medical bills within thirty days of the receipt of the statement for services, only applies to medical statements received by an employer "after an ALJ has determined that said bills are owed by the employer." In other words, we held that the portion of KRS 342.020(1) that required medical providers to make payment for services within thirty days of receiving a statement only applies post-award, either interlocutory or final.

The Board in this case then extended our rule in *Haddix* to include the portion of KRS 342.020(1)[6] that required a medical provider to submit statements for services within forty-five days "of the day treatment is initiated." Accordingly, the Board found that "the requirement that the provider submit statements for services within forty-five days of treatment would also apply post-award and not during the pendency of a claim." The Board went on to state that even if KRS 342.020(1) applied, the insurance carrier's notice that it would not pay for the surgery constituted reasonable grounds for not submitting the bill. The Board affirmed the ALJ's decision in favor of Jones.

Our interpretation of 803 KAR 25:096, § 11(2) is a natural and logical extension of *Haddix* and *Brown Pallet***,** despite *Brown Pallet*'s lack of precedential value to this Court.

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[6] At the time *Brown Pallet* was rendered, KRS 342.020(1) stated, in pertinent part, "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." This same language is now in KRS 342.020(4).

Although Russell argues that *Garno v. Solectron USA*, 329 S.W.3d 301, also supports the Board's interpretation, it is mostly irrelevant. In that case, Garno filed an application for workers' compensation benefits for injuries sustained while employed by Solectron USA. *Id.* at 302. The ALJ bifurcated the claim because Garno had not yet reached maximum medical improvement. *Id.* In an order and award entered on March 24, 2006, the ALJ found the injuries to be work-related and awarded TTD and medical benefits. *Id.* at 303. Several other issues were held in abeyance until Garno reached MMI. *Id.* On January 29, 2007, prior to a final order being entered, Garno submitted multiple medical expenses reimbursement requests, some of which dated to 2002 and 2003. *Id.* Solectron's insurance carriers disputed those requests, asserting they were untimely and not supported by necessary documentation. *Id.* The ALJ noted "that the March 2006 order found expenses for treating the work-related injuries to be compensable [and] determined that [Garno] offered no reasonable excuse for her failure to submit reimbursement requests until January 11, 2007." *Id.* at 304. The ALJ then concluded "that expenses incurred more than 60 days before January 11, 2007 and subsequent expenses incurred more than 60 days before submission were not compensable under KAR 25:096, § 11." *Id.*

Garno appealed, arguing "that her obligation to submit reimbursement requests did not begin with the interlocutory order of March 24, 2006 because the order would not have been enforceable." *Id.* She argued that she merely had to submit the reimbursement requests "within a reasonable period after

[the ALJ] entered the final award" and that she had in fact submitted them before he entered the award. *Id.* This Court disagreed with Garno's argument. Instead, we held that the ALJ's interlocutory order was enforceable. *Id.* at 305. We noted that the interlocutory order entered in March 2006 found Garno's injuries to be work-related and ordered the payment of medical benefits. *Id.* We then held that nothing in the record compelled a finding by the ALJ that Garno submitted her reimbursement requests prior to January 2007 or that a reasonable cause existed for her failure to submit the requests before then. *Id.* Accordingly, we affirmed the lower courts' finding that the medical expenses were submitted untimely and were therefore not compensable. *Id.*

Because *Garno* decided whether the sixty-day time frame applied post-interlocutory award, it does not shed much light on whether that same time frame should apply pre-award (interlocutory or final). However, any limited relevancy it may have is consistent with our interpretation of the regulation at issue in the case before us.

Additionally, our interpretation does not offend due process by creating unfair surprise to employers, despite arguments made otherwise to this Court. Even under our interpretation of 803 KAR 25:096, § 11(2), a claimant is still required to submit medical expenses they wish to have paid pursuant to 803 KAR 25:010, §§ 7 and 13. Those medical expenses must be included in the claimant's notice of disclosure that must be filed within forty-five days of the issuance of the Notice of Filing of Application. 803 KAR 25:010, § 7(2)(e)7. The claimant is then under a continuing obligation to turn over new medical

expenses within ten days of receiving those expenses pursuant to 803 KAR 25:010, § 7(2)(f). Further, a claimant is required to bring copies of unpaid medical bills and expenses to the benefit review conference. 803 KAR 25:010, § 13(9)(a). If he or she fails to do so and does not show good cause, such failure "may constitute a waiver to claim payment for those bills." *Id.* These requirements prevent employers from being unfairly surprised by requested medical expenses and provide a mechanism by which claimants may be penalized for failure to comply.

We recognize that Wonderfoil did not defend on the basis of Russell's failure to submit his medical expenses under any other regulation, and had it, the result today might have been different. Although Russell's delayed disclosure was not best practice, we hold that Russell timely submitted his medical expenses. Having engaged in an independent regulatory analysis, we need not determine if the Board's interpretation of 803 KAR 25:096, § 11 should be accorded any deference. Accordingly, we affirm the Board and the Court of Appeals in their reversal of the ALJ and their remand of the case for the ALJ to determine whether the medical expenses are related to Russell's work injury.

III. CONCLUSION

For the foregoing reasons, we affirm the Court of Appeals.

All sitting. All concur.

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