

Commonwealth Of Kentucky

Court Of Appeals

NO. 1998-CA-000849-WC

ANDALEX RESOURCES, INC.

APPELLANT

V. PETITION FOR REVIEW OF A DECISION OF
THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-92-26710

JIMMY ARNETT; SPECIAL FUND;
EMPI, INC.; STEVEN D. SPADY,
M.D.; BAPTIST REGIONAL MEDICAL
CENTER; SOUTH EAST KENTUCKY
DIAGNOSTIC CENTER; CORBIN
RADIOLOGY; FIRST REGIONAL
MEDICAL CENTER; MEMORIAL
HOSPITAL; KENTUCKY CLINIC;
W. BRUCE COWDEN; Administrative
Law Judge; UNIVERSITY HOSPITAL;
and WORKERS' COMPENSATION BOARD

APPELLEES

OPINION AFFIRMING IN PART, AND REVERSING AND REMANDING IN PART

* * * * *

BEFORE: GUDGEL, Chief Judge; COMBS and DYCHE, Judges.

GUDGEL, CHIEF JUDGE: This matter is before us on a petition for review of an opinion of the Workers' Compensation Board (board), which affirmed an opinion and award of an Administrative Law Judge (ALJ). The ALJ determined that certain medical expenses incurred by appellee Jimmy Arnett were compensable. Appellant

employer, Andalex Resources, Inc. (Andalex), contends that the ALJ and the board erred by failing to find that Arnett's claim for medical expenses was barred by the statute of limitations or the doctrine of res judicata, and/or by failing to find that the medical expenses were not causally related to a 1992 injury for which appellee was awarded benefits. For the reasons stated hereafter, we affirm in part, and reverse and remand in part.

On January 24, 1994, appellee filed a claim for benefits alleging that he had sustained "a crush injury to left foot and damages also sustained to my left hip." On September 13, 1995, the parties entered into a settlement agreement whereby appellee agreed to a lump sum settlement respecting what was described as a "crush injury to left foot with subsequent RSD." However, no proof was adduced during the proceedings regarding problems associated with appellee's left hip, and the agreement contains no mention of the hip injury.

Shortly after the settlement, appellant filed a motion to reopen for the purpose of contesting the payment of certain medical expenses which it deemed were not compensable. An ALJ granted the motion in part, finding that an MRI and other treatments received from Dr. Javery relating to appellee's hip problems were not compensable, but that certain antidepressant medication prescribed by Dr. Javery was compensable. Neither party appealed from this order.

Appellant thereafter filed other motions contesting the compensability of appellee's additional claims for reimbursement

for certain other medical expenses. A different ALJ found that all of the additional claims were compensable because they were causally related to appellee's 1992 injuries. The board affirmed the ALJ's decision, and this appeal followed.

First, appellant contends that the ALJ and the board erred by failing to find that the two-year statute of limitations set out in KRS 342.185 bars the medical expenses claim at issue herein. Citing the supreme court's decision in Slone v. Jason Coal Co., Ky., 902 S.W.2d 820 (1995), appellant asserts that because no proof was adduced prior to settlement regarding appellee's hip problems, and because the settlement agreement contains no reference to any hip injury, appellee is not entitled to compensation for those expenses. We disagree.

Appellant's argument overlooks the fact that appellee alleged in his claim for benefits that he had hip problems stemming from the 1992 foot injury, and the fact that the settlement agreement does not purport to limit the nature and extent of the injuries for which appellee was to receive benefits. Clearly, appellant had the burden of establishing that medical expenses relating to the hip were not compensable.

After reviewing the medical evidence in this vein, the ALJ exercised his prerogative to believe Dr. Nickerson's testimony that appellee's SI joint dysfunction and hip pain were secondary to biomechanical deficits and muscle imbalances, resulting in an abnormal gait pattern and pain which were related to the 1992 injury. Hence, substantial evidence clearly

supported the ALJ's finding that the medical expenses incurred in treating those conditions were compensable, and that finding may not be set aside. Contrary to appellant's contention, the board did not err by concluding that Slone does not compel a different result. Instead, Slone involved a reopening proceeding in which an injured worker attempted to increase a previous occupational disability award on the ground that a mental condition, which was dormant and nondisabling at the time of injury, had become active and disabling. Because no claim or proof was adduced during the original proceeding regarding the existence of any such dormant mental condition, the court held that the earlier award could not be reopened and that a totally new and different claim for mental disability could not be pursued more than two years after the right to pursue such a claim accrued.

Here, by contrast, we are not concerned with a reopening proceeding in which a claimant is attempting to raise an entirely new claim which was not raised at the time of the original award. Instead, we are dealing with one claim stemming from a single injurious event involving both appellee's foot and his hip, which was fully disclosed in the initial claim for benefits. Thus, appellant was on notice from the very beginning that appellee was claiming both foot and hip problems. Accordingly, when appellant chose to settle the claim, it knew that it would be liable for all necessary medical expenses appellee would incur to treat any of the claimed injuries, including the injury to his hip. Although appellant could have

attempted to exclude any future liability for medical expenses related to the alleged hip problems by addressing that issue in the settlement agreement, it failed to do so. It follows, therefore, that appellant is liable for any medical expenses involving appellee's hip problem to the extent that medical evidence supports a finding that such expenses are attributable to a hip problem caused by the 1992 injury. Since, as noted earlier, substantial evidence supports the ALJ's finding to this effect, the board did not err by affirming the ALJ's finding in this vein.

Next, appellant contends that the court erred by failing to find that appellee's claim for medical expenses is barred by the doctrine of res judicata. Specifically, appellant asserts that because the first ALJ found that the expenses appellee incurred in connection with his treatment by Dr. Javery were not compensable, he is precluded from pursuing the payment of other expenses incurred in connection with the treatment of his hip condition. We agree in part, and disagree in part.

Clearly, as appellee did not appeal from the first ALJ's order, which was both final and appealable as to the issues embraced therein, he lost any right to seek payment of expenses incurred for his "treatment by Dr. Javery including a certain MRI." Hence, both the board and the ALJ erred by allowing appellee to recover any such expenses in the instant proceeding. However, as appellee's remaining medical expenses, other than those involving Dr. Javery, apparently were not the subject of

inquiry in the proceeding before the first ALJ, their recovery is not barred by the doctrine of res judicata.

Finally, we find no merit in appellant's contention regarding medical expenses relating to the treatment of appellee's anxiety. Appellant did not appeal from the first ALJ's finding that the antidepressant medication prescribed by Dr. Javery was a compensable expense. As a final determination therefore has already been made regarding the compensability of the medication, appellant is in no position to relitigate that issue herein. This is especially true in light of the evidence which supports a finding of a causal link between the 1992 injury and the development of anxiety problems.

For the reasons stated, the board's opinion is affirmed in part, and reversed and remanded in part with directions to remand the matter to the ALJ for entry of an order consistent with our views.

ALL CONCUR.

BRIEF FOR APPELLANT:

Dawn S. Logsdon
Lexington, KY

BRIEF FOR JIMMY ARNETT:

Jimmy Arnett
Manchester, KY

BRIEF FOR SPECIAL FUND:

Benjamin C. Johnson
Louisville, KY