

RENDERED: MARCH 10, 2006; 2:00 P.M.  
NOT TO BE PUBLISHED

# Commonwealth Of Kentucky

## Court of Appeals

NO. 2005-CA-000772-WC

SHARON HOLLAN

APPELLANT

v. PETITION FOR REVIEW OF A DECISION  
OF THE WORKERS' COMPENSATION BOARD  
ACTION NO. WC-76-01053

IBM; MARK SCOTT, D.C.;  
JIMMY H. BLANTON, D.C.;  
HON. MARCEL SMITH,  
ADMINISTRATIVE LAW JUDGE;  
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION  
AFFIRMING

\*\* \*\* \* \* \*

BEFORE: COMBS, CHIEF JUDGE; JOHNSON AND McANULTY, JUDGES.

JOHNSON, JUDGE: Sharon Hollan has petitioned for review from an opinion of the Workers' Compensation Board entered on March 11, 2005, which affirmed, upon reopening, the Administrative Law Judge's denial of payment for certain chiropractic bills and transportation expenses related to the treatment of Hollan's injury. Having concluded that the Board has not "overlooked or misconstrued controlling statutes or precedent, or committed an

error in assessing the evidence so flagrant as to cause gross injustice,"<sup>1</sup> we affirm.

On April 9, 1979, the "old" Board awarded Hollan permanent total disability benefits for a "rather severe conversion reaction<sup>2</sup> to a rather minor work incident."<sup>3</sup> The award also contained typical language that entitled Hollan to future medical benefits "for the cure and relief from the effects of the injury . . . as may reasonably be required at the time of the injury and thereafter during disability."

On September 19, 2003, IBM filed a Form 112 Medical Fee Dispute,<sup>4</sup> alleging that Hollan was receiving the same care from two separate chiropractors and contesting expenses Hollan incurred in traveling via taxicab to one of the chiropractors located outside Kentucky. Further, IBM argued that there was no relationship between the disputed charges and the subject injury. IBM also filed a motion to reopen and a motion to join as parties Dr. Mark Scott, a chiropractor in Ashland, Kentucky,

---

<sup>1</sup> Western Baptist Hospital v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992).

<sup>2</sup> A conversion reaction is defined as "[a] neurosis marked by the presence of bodily symptoms with no physical cause." Webster's II New College Dictionary 247 (2001).

<sup>3</sup> On June 7, 1976, while employed by IBM, Hollan hit a sharp corner of an open drawer on her desk, injuring her buttocks and coccyx bone and causing her to stumble forward into the wall. She caught herself against the wall with her hands and strained her neck.

<sup>4</sup> Prior to this filing, IBM filed a notice of claim denial or acceptance form on January 22, 2004 (and January 23, 2004) denying Hollan's claims and noticing the reopening of the medical fee dispute.

and Dr. Jimmy Blanton, a chiropractor in West Virginia.<sup>5</sup> KRS<sup>6</sup> 342.125 states that a claim may be reopened more than four years after the date of the original award "solely for determination of the compensability of medical expenses[.]"

Hollan began treating with Dr. Scott in 1998. Dr. Scott did not testify by deposition, nor in person, and no medical report was filed. However, letters from Dr. Scott dated July 17, 1999, September 22, 2003, and November 10, 2003, were filed of record. In these letters, Dr. Scott stated that he was currently treating Hollan with trigger point therapy, which "involves massaging the aggravated muscles and surrounding areas, then stretching them so that they keep from balling up." In his earliest letter, he indicated that some of Hollan's pain was physical and that she was addicted to pain medicine. Hollan stated in her deposition on March 8, 2004, that Dr. Scott treated her with acupuncture and deep finger massage.

At Hollan's request, Dr. Scott referred her to Dr. Blanton. Dr. Blanton was deposed on March 9, 2004. He did not review any of Hollan's prior medical records and, while he was aware that Hollan had been receiving treatment from Dr. Scott, he did not consult with Dr. Scott before beginning his treatment

---

<sup>5</sup> This was an amended and supplemental motion for reasons not relevant to this appeal.

<sup>6</sup> Kentucky Revised Statutes.

of Hollan.<sup>7</sup> Dr. Blanton diagnosed Hollan with subluxation of the upper cervical region; i.e., misalignment of the two top bones in Hollan's neck that placed pressure on her nerves. Dr. Blanton stated that his treatment of Hollan consisted of upper cervical, specific technique and torque release technique. He stated that his treatment of Hollan helped, but she still had pain. Dr. Scott stated in his letters that his treatment of Hollan differed from that of Dr. Blanton, but that he felt the two therapies together would benefit one another.<sup>8</sup>

In support of its motions, IBM filed a medical report by Dr. Andrew P. Slavic, a chiropractor, dated June 28, 2003. Dr. Slavic reviewed Hollan's medical records from 1976 to March 2003, and concluded there was significant psychological overlay and that nothing would cure Hollan's injuries. He stated that any chiropractic care Hollan received was warranted "on a strictly as needed basis only for exacerbation/aggravation" and should be received locally. Dr. Slavic further noted that Hollan's treatment by two separate chiropractors was not reasonable, nor medically necessary, and that he would limit

---

<sup>7</sup> Dr. Blanton stated that Hollan told him that Dr. Scott performed "trigger point" technique on her; however, Dr. Blanton stated that he taught new patients how to do the trigger point technique and other exercises on themselves or to have someone do it for them at home.

<sup>8</sup> There were also letters filed in the record from Dr. Lillian Dyson, an internal medicine physician, dated October 20, 2003, who stated that she treated Hollan and that Hollan needed to continue chiropractic care. Hollan was also treated at the time of the hearing by Dr. Gail Beinberg, an osteopath who provided her craniosacral adjustments and treated her sacrum, and by Dr. Lori Young, her primary physician, who provided her medications.

Hollan's visits to 12 to 24 times per year. Dr. Blanton testified that he did not agree with Dr. Slavic's estimation of proper chiropractic treatment for Hollan to be 12 to 24 times per year. He stated that 12 times was not enough, but that 24 times per year might be appropriate. Hollan testified that she would be satisfied with treatment from Dr. Scott one time per week and from Dr. Blanton two times per week.

Dr. Lisa Gill, an anesthesiologist, provided a peer review analysis case report dated October 20, 2000, on behalf of IBM's insurance carrier Liberty Mutual.<sup>9</sup> Dr. Gill concluded that Hollan's injuries were psychological in nature, that she had a confirmed diagnosis of conversion hysteria, and that she had reached maximum medical improvement from the 1976 injury. She opined that any further physical, chiropractic, osteopathic, or manipulative therapy should be denied as not medically necessary.

Dr. John Nemunaitis, a physical medicine and rehabilitation specialist, provided a peer review analysis on behalf of IBM dated June 4, 1999.<sup>10</sup> Dr. Nemunaitis specifically referred to medical reports from 1976 to 1978 which indicated

---

<sup>9</sup> Dr. Gill's analysis was based on review of medical records and a telephone conversation with Hollan's attending physician.

<sup>10</sup> Dr. Nemunaitis also talked to Hollan's treating physician, Dr. Marc Dubic, who stated that he had no treatment plan for Hollan and believed her problems were psychiatric.

that Hollan was diagnosed with conversion hysteria. He concluded that no further medical treatment was necessary since her condition was primarily psychiatric and she had sustained minimal physical impairment.

Dr. Robert P. Granacher, Jr., a psychiatrist, examined Hollan on July 19 and 20, 1999, and again on March 8, 9 and 10, 2000.<sup>11</sup> He reviewed Hollan's extensive medical and family history, performed a mental status examination and administered several psychological tests. In his report dated April 11, 2000, Dr. Granacher diagnosed Hollan with a 10% whole person psychiatric impairment based on the AMA Guides to the Evaluation of Permanent Impairment due to a conversion disorder, and further stated that he thought 100% of Hollan's impairment was due to the arousal of a pre-injury personality disorder.

In his deposition, taken four years after his evaluation, Dr. Granacher stated:

The best approach to this woman is to do nothing. Certainly, no one should attempt surgery or any major intervention. There is absolutely no evidence that she has anything significant in her medical background to account for her symptomatology. Clearly, if she had any significant medical or surgical disorder, it would have made itself known in the last 24 years. . . .

---

<sup>11</sup> Dr. Granacher stated that his "complete examination and testing required fourteen and one-half hours. Eight and one-half hours were required to organize, index and abstract records, and three hours were further devoted to reviewing [the] medical records, reviewing [ ] test data, and preparing [his] report."

[T]he best description of her present situation is that she had a dormant, nondisabling personality disorder which was 100% and entirely aroused by virtue of the tail bone bruise.

Dr. Granacher further testified that because Hollan had a somatization disorder, she was "going to function illogically in her search for a medical cure," and that it was inhumane to practice this type of medicine on Hollan because it reinforced her behavior. He described Hollan's problem as a conversion disorder, in which one converts emotional problems to physical symptoms. He also described it as a pseudoneurological disorder and as an alleged pain syndrome. He further stated that Hollan did not act depressed.

The Chief ALJ entered an order on October 24, 2003,<sup>12</sup> granting IBM's motion to reopen the claim and joining Dr. Scott and Dr. Blanton as parties. The ALJ assigned to the claim entered his opinion and order on August 23, 2004. The ALJ concluded as follows:

Having reviewed the entirety of the evidence, not only as summarized here, but as contained in the entire record, this Administrative Law Judge is more persuaded by the opinions of Dr. Robert P. Granacher. His opinions are well reasoned and are well supported by objective findings. Dr. Granacher's opinions are corroborated by the Peer Review Report. KRS 342.020 provides

---

<sup>12</sup> For some unknown reason, there was a second order entered on December 12, 2003, providing the same relief.

that the defendant-employer is liable for medical treatment that is reasonable and necessary. I am persuaded by Dr. Granacher's opinions and I find that the treatment at issue is not reasonable and necessary for this lady. I therefore find that defendant-employer is not liable under KRS 342.020 for the disputed bills of Dr. Blanton or Dr. Scott. I further find that under KRS 342.020 the defendant-employer is not liable for the taxi cab expenses in dispute.

Hollan filed a timely petition for reconsideration on September 2, 2004, which was summarily denied by an order entered on September 28, 2004. Hollan then appealed to the Board, which affirmed the ALJ in an opinion entered on March 11, 2005. This petition for review followed.

Hollan first claims that Dr. Granacher's opinion that no medical care is necessary contradicts the "old" Board's award of medical benefits "as reasonably required at the time of the injury and thereafter during disability." Hollan argues that the result reached by the opinion is barred by the doctrine of res judicata.<sup>13</sup> "Thus, where there is an identity of parties and an identity of causes of action, the doctrine precludes further litigation of issues that were decided on the merits in a final

---

<sup>13</sup> Slone v. R & S Mining, Inc., 74 S.W.3d 259, 261 (Ky. 2002) (stating that the doctrine of res judicata "stands for the principle that once the rights of the parties have been finally determined, litigation should end").



judgment."<sup>14</sup> We disagree with the applicability of the doctrine in this instance.

Hollan cites Parson v. Union Underwear Co.,<sup>15</sup> in support of her argument. She claims that because the original award attributed 50% of her disability to the injury alone, the ALJ and the Board could not rely on Dr. Granacher's testimony that there was no treatment available which would provide a cure and relief for her physical injury. The Board stated in its opinion that Hollan had "misinterpreted the import of the 1976 award," as "it [did] not contain a component for the physical injury."

The Board stated, "simply because treatment may have been reasonable or unchallenged in the 1970's, 1980's, or 1990's does not necessarily mean it is reasonable now." The original award of medical benefits clearly stated that it was limited to those benefits that were reasonable at the time of injury and during disability.<sup>16</sup> We agree with the Board that although Hollan's treatment may have been reasonable and necessary when the award was made in 1979, it does not mean that the same treatment is reasonable and necessary at this point in time.

---

<sup>14</sup> Id.

<sup>15</sup> 758 S.W.2d 43 (Ky.App. 1988).

<sup>16</sup> See KRS 342.020.

The ALJ as the fact-finder had the sole discretion to determine the "weight[, ] credibility,"<sup>17</sup> "quality, character, and substance of evidence."<sup>18</sup> Since IBM was successful in meeting its burden of proof that Hollan's chiropractic bills were not reasonable, necessary, or related to Hollan's original injury,<sup>19</sup> the issue on appeal is whether substantial evidence supports the ALJ's conclusion.<sup>20</sup> Substantial evidence is "evidence of substance and relevant consequence having the fitness to induce conviction in the minds of reasonable [people]" [citations omitted].<sup>21</sup>

The ALJ's findings of fact and conclusions concerning the reasonableness and necessity of Hollan's current treatment are supported by substantial evidence represented by the specific medical bills in dispute. While there was testimony of record to the contrary, there was expert testimony that the chiropractic treatment Hollan was currently receiving was unnecessary for her condition. This is especially true since the basis for the original disability award was primarily for a psychological impairment, and there was expert testimony that

---

<sup>17</sup> Smyzer v. B.F. Goodrich Chemical Co., 474 S.W.2d 367, 369 (Ky. 1971).

<sup>18</sup> Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418, 419 (Ky. 1985).

<sup>19</sup> National Pizza Co. v. Curry, 802 S.W.2d 949, 951 (Ky.App. 1991).

<sup>20</sup> Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986); Burton v. Foster Wheeler Corp., 72 S.W.3d 925, 929 (Ky. 2002).

<sup>21</sup> Smyzer, 474 S.W.2d at 369.

her condition continued to relate to the psychological disorder and did not warrant chiropractic treatment. As the Board recognized, Hollan was able to "note evidence that would have supported a conclusion that is contrary to the ALJ's decision, [however,] such evidence is not an adequate basis for reversal on appeal" [citations omitted].<sup>22</sup> Therefore, we conclude that the Board's affirmance of the ALJ's opinion was correct.<sup>23</sup>

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

ALL CONCUR.

BRIEF FOR APPELLANT:

Sterling R. Corbett  
Flatwoods, Kentucky

BRIEF FOR APPELLEE, IBM:

Timothy J. Walker  
Lexington, Kentucky

---

<sup>22</sup> Burton, 72 S.W.3d at 929.

<sup>23</sup> Hollan's other claims before the Board related to the ALJ's designation of the effective dates for the denial of medical fees and denial of her taxicab expenses. Hollan has not raised these issues before this Court.