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TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2006-CA-000001-WC

SAYRE CHRISTIAN VILLAGE NURSING HOME

APPELLANT

v.

PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-98-75635

NAOMI RAMSEY; HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: TAYLOR AND VANMETER, JUDGES; BUCKINGHAM,¹ SENIOR JUDGE.

BUCKINGHAM, SENIOR JUDGE: This case involves a petition for review filed by Sayre Christian Village Nursing Home (Sayre) challenging a decision by the Workers' Compensation Board

¹ Senior Judge David C. Buckingham sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

(Board) affirming in part, vacating in part, and remanding an order of an administrative law judge (ALJ). The issue in this case is whether Naomi Ramsey, an employee of Sayre who suffered a work-related back injury and who claims depression resulting from that injury, may recover medical expenses related to the depression after the expiration of the two-year limitations period in Kentucky Revised Statute (KRS) 342.270 despite the fact she did not seek benefits for depression when she filed and settled her back injury claim.

The ALJ denied the claim for medical expenses as time-barred based on KRS 342.270 and *Slone v. Jason Coal Co.*, 902 S.W.2d 820 (Ky. 1995), because Ramsey knew of her depression when she settled her back injury claim and failed to make a claim for it at that time. The Board, relying on an unpublished opinion of this court, reversed the ALJ's decision and held that *Slone* was not controlling and that Ramsey could recover her medical expenses for depression resulting from the back injury pursuant to KRS 342.020, even if she was aware of the depression at the time her back injury claim was resolved. We agree with the ALJ and reverse the Board's decision.

Sayre employed Ramsey as a certified nursing assistant. While engaged in her work for Sayre on June 4, 1998, Ramsey suffered a work-related back injury. As a result of her injury, Ramsey filed claims for both workers' compensation

benefits and social security disability benefits. Ramsey's workers' compensation claim was settled on May 19, 2000. The award indicates Ramsey was found to have 10% permanent partial disability based on the physical injury to her back. In addition, the award made Sayre liable for medical, surgical, and hospital treatment required both at the time of her injury and during the period of her disability. Finally, the award indicates Ramsey had received a favorable ruling on her social security disability claim. Although the social security disability claim was based on both her physical injury and depression related to the physical injury, Ramsey did not include, nor did she attempt to amend to include, her depression within her workers' compensation claim.

Ramsey never returned to work. In fact, her condition continued to deteriorate. In December 2001, Ramsey's treating physician recommended a lumbar discogram to evaluate Ramsey for fusion surgery. Sayre's carrier disputed the necessity of this treatment. As a result, on July 19, 2002, Ramsey filed a motion to reopen her workers' compensation claim. As part of her claim, Ramsey also sought compensation for the medical costs of her depression.

On August 30, 2002, an ALJ granted the motion to reopen. Sayre objected to the necessity of the discogram and to the compensability of Ramsey's treatment for depression. After

reviewing the medical evidence submitted by each side, the ALJ entered an interlocutory order in favor of Ramsey. The ALJ found both that the discogram was reasonable and necessary for the cure and relief of her back injury and that any depression Ramsey might have had at the time of her injury had been compounded by her chronic pain and continued inability to work.² As a result, Sayre was directed to pay the cost of the discogram and the cost of the medications prescribed to treat Ramsey's depression.

In August 2003, Ramsey underwent the discogram. As a result of the test, her treating physician recommended fusion surgery. Ramsey put off the lumbar fusion surgery until January 12, 2004. Following the procedure, Ramsey reached maximum medical improvement on September 21, 2004. Her case was then brought back before the ALJ for resolution of all outstanding issues.

On June 21, 2005, the ALJ entered his opinion and order. The ALJ found Ramsey's permanent partial disability had increased from 10% to 21% based on the physical condition of her back after the fusion surgery. Further, as it relates to this appeal, the ALJ reversed his position on the compensability of Ramsey's depression medication. The ALJ agreed with Sayre's

² Ramsey acknowledged that she had psychological problems prior to the back injury. However, she claimed those problems had been resolved and that her current depression resulted from the back injury.

argument that since Ramsey had failed to bring a claim for depression in her initial workers' compensation claim, any claim for medical expenses relating to the depression was time-barred. The ALJ relied on KRS 342.270³ and *Slone*, 902 S.W.2d 820.

Ramsey filed an appeal with the Board, challenging the ALJ's decision that the treatment prescribed for her depression was not compensable. In an opinion entered November 23, 2005, the Board vacated the ALJ's decision. The Board, relying on an unpublished opinion of this court, distinguished the *Slone* case on the basis that Ramsey was seeking only medical benefits, which had been awarded in the original decision, and was not seeking benefits based upon any occupational disability. The Board thus held that Ramsey could recover medical benefits since KRS 342.020, and not KRS 342.270 and the *Slone* case, was applicable. The Board then remanded the issue to the ALJ for findings as to whether Ramsey's depressed condition was an effect of her earlier work-related injury and, if so, whether the medications prescribed were reasonable and necessary for the cure and relief from the effects of that injury. Thereafter, Sayre filed a petition for review with this court.

Sayre argues that any claim Ramsey had for depression was waived when she failed to include it in her original workers' compensation claim. Sayre points out that Ramsey was

³ KRS 342.270(1) provides a two-year limitations period for filing an application for benefits.

awarded social security disability benefits prior to being awarded workers' compensation benefits. Ramsey had sought social security disability benefits based both on her physical injury and on evidence she suffered from depression connected with that injury. Despite being aware of evidence of her injury-related depression, Ramsey never included a cause of action for it in her workers' compensation claim. Sayre argues that under KRS 342.270 and the *Slone* case, Ramsey is now barred from seeking workers' compensation benefits for depression for the first time through a motion to reopen.

Ramsey's response to Sayre's argument is to note that her depression arose from her work-related injury and thus is compensable. She argues KRS 342.020 governs her claim and that KRS 342.270 and the *Slone* case have no application. For the reasons set forth below, we agree with Sayre and the ALJ that the *Slone* case controls and that Ramsey is precluded from recovering medical expenses for her depression in a motion to reopen.

On a petition to review the actions of the Board, this court will only correct the Board when the Board has overlooked or misconstrued controlling statutes or legal precedent, or when it has committed an error in assessing the evidence that is so flagrant as to cause gross injustice. See *Mountain Clay, Inc. v. Frazier*, 988 S.W.2d 503, 505 (Ky.App. 1998), citing *Western*

Baptist Hosp. v. Kelly, 827 S.W.2d 685, 687-88 (Ky. 1992). In this case, there is no dispute over the applicable facts. There is, however, a dispute as to the law applicable to these facts.

As noted by this court in *Mountain Clay, Inc.*,

KRS 342.125 allows the ALJ to "reopen and review any award or order . . . ending, diminishing, or increasing the compensation previously awarded . . . or change or revoke his previous order[.]"

988 S.W.2d at 505. As it relates to the compensability of medical expenses, KRS 342.125 states

Except for reopening solely for determination of the compensability of medical expenses . . . no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits[.]

See KRS 342.125(3). Further, KRS 342.020 provides in pertinent part that

In addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of injury and thereafter during disability The employer's obligation to pay the benefits specified in this section shall continue for so long as the employee is disabled regardless of the duration of the employee's income benefit.

See KRS 342.020(1).

In interpreting the applicable statutes, this court in *Mountain Clay, Inc.* reiterated that an award of medical benefits is not tied to a finding of occupational disability. 988 S.W.2d at 505, citing *Derr Constr. Co. v. Bennett*, 873 S.W.2d 824 (Ky. 1994). Instead, liability for medical expenses requires only that medical treatment be necessitated by a work-related injury. 988 S.W.2d at 505.

Ramsey is seeking medical benefits for the treatment of her depression to the extent it is related to her back injury. While she acknowledges that she suffered from depression to an extent before her back injury, she alleges that all of her current depression arose from her work-related injury and is compensable under KRS 342.020 and the provision in the original award awarding her medical expenses.

There are striking similarities in this case and the *Slone* case. In each case, the claimant suffered a back injury and also claimed a psychological injury in connection with it. Each claimant filed claims for workers' compensation benefits and for social security disability benefits at approximately the same time. While both claimants alleged a psychological condition related to the physical injury in their social security disability claims, neither claimant alleged the psychological condition in his/her workers' compensation claim. At some time after each claimant had received an award of

workers' compensation benefits, each claimant filed a motion to reopen seeking benefits for the psychological condition.

In *Slone*, the Kentucky Supreme Court held that "[t]he fact that he is now experiencing a worsening of impairment does not entitle him to pursue this matter as a reopening." 902 S.W.2d at 822. Thus, the court affirmed the denial of benefits on a motion to reopen because Slone was aware of the psychological condition when he filed and settled his workers' compensation claim and failed to raise it at that time. *Id.*

The main difference in this case and the *Slone* case is that Ramsey is seeking only medical benefits while in *Slone* the claimant sought an increase in benefits based on an increase in occupational disability due to severe depression. Thus, if *Slone* applies to medical benefits as well, then Ramsey is precluded from recovering such benefits since her depression was known to her when she filed and settled her back injury claim yet she did not raise a claim for benefits at that time.

As we have noted, KRS 342.020(1) requires an employer to "pay for the cure and relief from the effects of an injury[.]" Pursuant to *Coleman v. Emily Enters., Inc.*, 58 S.W.3d 459 (Ky. 2001), depression may be a direct result of a back injury. *Id.* at 461-62. The court stated, "[t]he general rule is that all of the injurious consequences that flow from a

work-related physical injury and that are not attributable to an unrelated cause are compensable." *Id.* at 462-63.⁴

Nevertheless, we cannot overlook the clear language of the court's statement at the conclusion of the *Slone* case when it said:

It is the holding of this Court that a motion to reopen pursuant to KRS 342.125 may not be based on a condition known to the claimant during the pendency of his original claim but which he did not present.

Id. at 822. We are bound to follow the applicable precedents of the Kentucky Supreme Court. See Rules of the Supreme Court (SCR) 1.030(8)(a).

Based on the *Slone* case, we conclude that the Board erred in vacating the ALJ's decision.⁵ Ramsey's motion to reopen to request medical benefits for depression was properly denied by the ALJ.

The Board's opinion is reversed and remanded for disposition in accordance with this opinion.

VANMETER, JUDGE, CONCURS.

TAYLOR, JUDGE, DISSENTS AND FILES SEPARATE OPINION.

⁴ The *Coleman* case is distinguishable from this case because the claimant in *Coleman* sought medical expenses for anxiety and depression at the same time he sought benefits for a back injury.

⁵ We note that the Board erred in reliance on an unpublished opinion of this court.

TAYLOR, JUDGE: I respectfully dissent and submit that the medical expenses sought by Ramsey may be compensable under KRS 342.020. Further, I agree with the Board's conclusion that Slone v. Jackson Coal Co. has no application to this case as concerns the additional medical payments sought by Ramsey.

Accordingly, I agree with the Board that this case should be remanded by the ALJ for additional findings to determine whether Ramsey's depression was caused by the work-related injury and whether the medication prescribed was reasonable and necessary for the cure and relief from the effects of that injury.

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