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Commonwealth of Kentucky

Court of Appeals

NO. 2008-CA-001037-WC

RANGER CONTRACTING — APPELLANT

v. PETITION FOR REVIEW OF A DECISION OF THE WORKERS' COMPENSATION BOARD ACTION NO. WC-01-65710

BROCK MORLEY; DR. ANBU NADAR; HON. GRANT S. ROARK, ADMINISTRATIVE LAW JUDGE; AND WORKERS' COMPENSATION BOARD — APPELLEES

OPINION
AFFIRMING

** ** ** ** **

BEFORE: CAPERTON, KELLER AND NICKELL, JUDGES.

NICKELL, JUDGE: Ranger Contracting (Ranger) appeals from a final order of the Workers' Compensation Board (Board) affirming an Administrative Law Judge's (ALJ) award of medical benefits to Brock Morley (Morley) and his treating physician, Dr. Anbu Nadar (Dr. Nadar), following the reopening of a claim

resulting from a disputed medical fee. After reviewing the record, applicable statutes and case law, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND

On December 8, 2001, Morley fell nearly forty feet from a platform while working for Ranger in a coal processing plant. He was treated for extensive injuries to his left side, specifically to his hip, ribs, and scapula. As a result of injuries to his hip, Morley underwent surgery and several months of physical therapy. A settlement reached by Morley and Ranger was approved by the Chief ALJ on August 3, 2004. Based upon our reading of the briefs, the settlement agreement, which is not included in the record for our review, did not specifically mention any injuries to Morley's neck or back, although Ranger paid for pre-settlement office visits during which Morley complained to Dr. Nadar of lower back pain. However, in 2006, Ranger's workers' compensation carrier declined to pay for Feldene and Lortab prescribed by Dr. Nadar to relieve Morley's back pain. Morley paid for the medication himself.

On October 14, 2005, Morley moved to reopen the settled claim to seek compensation for medical treatment of his neck and low back which he now attributed to the 2001 work-related fall based upon Dr. Nadar's medical opinion. Ranger opposed reopening the claim on three grounds: claim preclusion as codified in KRS[1] 342.270; Morley's failure to notify Ranger of the desired

[1] Kentucky Revised Statutes.

compensation within two years of the 2001 accident as required by KRS 342.185(1); and lack of causation.

The ALJ convened a hearing on September 27, 2006, at which medical reports from several treating and evaluating physicians were placed into the record and Morley testified. Morley confirmed Dr. Nadar had treated him for back pain prior to approval of the settlement on August 3, 2004, and stated he continues experiencing back pain which manifests itself primarily on the left side of his body. He also testified Ranger's workers' compensation carrier had paid for an office visit to Dr. Nadar in 2005 but had refused to pay for Feldene and Lortab on April 20, 2006, so Morley paid for the medication.

Following briefing by both parties, the ALJ issued a six-page opinion on November 27, 2006, finding in favor of Morley and Dr. Nadar. The ALJ briefly summarized the medical opinions of various doctors who had seen Morley since 2001. In particular, the ALJ noted Dr. Peter Kirsch "found no evidence relating the low back pain to the injury." Dr. Bart Olash indicated Morley "did not report neck pain until March 2005" and "concluded that the use of Skelaxin, Feldene, and Lortab were unrelated to the work injury." According to an affidavit submitted by Morley, Dr. Nadar had told him *after* the settlement that his "low back pain was directly related to the work injury." Independent medical evaluator Dr. Gregory Snider understood from Morley that his neck pain began in December 2004 and concluded "further formal medical treatment with regard to the work injury was not reasonable or necessary." Despite differing medical opinions, the ALJ found

Dr. Nadar's opinion and testimony to be more credible, as was his prerogative under *Magic Coal Co. v. Fox*, 19 S.W.3d 88, 96 (Ky. 2000). Via deposition, Dr. Nadar established Morley had complained to him of low back pain for the first time in October 2002. As the ALJ stated, "Dr. Nadar attributed [the back pain] to the work injury because [Morley] had experienced pain on the left side of his lower back when he was injured. He concluded that [Morley] began to notice the lower back pain when his hip problems began to subside."

The ALJ concluded *Slone v. Jason Coal Co.,* 902 S.W.2d 820 (Ky. 1995), requiring all known claims to be raised prior to settlement or be waived, was inapplicable because it dealt with a request for *income* benefits for a known, but unasserted, condition, whereas Morley was seeking to reopen his original claim to be compensated for medical expenses flowing from his workplace injury. The ALJ stated, the original award of medical expenses "includes and anticipates all effects of an injury so long as the treatment rendered is for a condition causally related to the originally claimed work injury." For the same reason, the ALJ rejected Ranger's argument that reopening was barred by the two-year statute of limitations expressed in KRS 342.185(1). Based upon Dr. Nadar's opinion that Morley's complaints of back pain were a consequence of injuries sustained in the work-related fall, the ALJ found sufficient proof of causation. Finally, the ALJ found Dr. Nadar's conservative treatment plan, (exercise, moist heat and some medication), was "reasonable and necessary and compensable." Ranger's petition for reconsideration was denied by the ALJ.

Ranger appealed to the Board, but asked that the appeal be held in abeyance until the Supreme Court of Kentucky had rendered its decision in *Ramsey v. Sayre Christian Village Nursing Home,* 239 S.W.3d 56 (Ky. 2007). Because there was evidence that both Ramsey and Morley knew of other claims, but did not assert them before settlement, the Board granted Ranger's request and abated the appeal.

Ramsey and the case *sub judice* were handled by the same ALJ. Ramsey injured her back while lifting a patient in a nursing home. In 1998, she applied for benefits for her back injury. That same year, she was prescribed medication for depression and anxiety, but never listed psychological issues in her workers' compensation claim and did not move to amend her claim. However, she listed both her back injury and depression as the bases for a 1999 social security disability award. Because Ramsey failed to include depression as a basis for her workers' compensation claim, even though it was clearly known to her, the ALJ, citing *Slone,* rejected her request to reopen the original claim on the same grounds alleged by Ranger in this appeal. Ultimately, the Supreme Court affirmed this Court's opinion in *Ramsey* and reiterated,

> KRS 342.270(1) codifies the decision in *Slone v. Jason Coal Co., supra.* It requires a claim to be filed within two years of the date of accident and requires all known causes of action to be joined to the claim or waived. It is obvious that [Ramsey] knew of her depression during the initial proceeding. Because she failed to assert that she was entitled to medical benefits for the condition until more than two years after the award, the ALJ did not err in dismissing that portion of her claim at reopening.

Ramsey, 239 S.W.3d at 59.

After removing Ranger's appeal from abeyance, the Board issued a twenty-nine page opinion affirming the ALJ on May 1, 2008. The opinion devoted nearly nineteen pages to a recitation of the facts and the medical evidence. The Board found *Ramsey* to be "substantially different" from the case at bar because both Ramsey's testimony and the medical evidence confirmed she was prescribed medication for depression soon after her injury. In analyzing *Ramsey,* the Board concluded that because Ramsey never mentioned depression in her workers' compensation claim and did not move to amend her application for benefits, the ALJ's award was "based solely upon the physical injury. . ." and "this was not a case where it could be reasonably inferred the ALJ intended for the award of medical benefits to include the treatment for depression." In distinguishing Morley's claim, the Board noted his back pain did not surface until nearly a year after his accident, and then resurfaced shortly after the settlement of his claim was approved. The Board found it highly relevant that Morley's back pain always accompanied hip pain which was clearly a result of his 2001 fall. According to the Board's opinion,

> Morley could not assert a claim for an injury to his back because the test results and other medical records reflected Morley sustained no apparent injury to his lumbar spine. Further, it appears Morley was never told or aware he had a low back injury as a result of this fall on December 8, 2001. Thus, the ALJ concluded there was no claim for Morley to assert either pre-settlement or post-settlement and Morley's low back problems were

> merely one of the effects of the December 8, 2001 work injury.

In short, the Board found the ALJ reasonably concluded from all the evidence that Morley did not injure his low back during the fall, but rather, his back pain was "a symptom or natural consequence of the injury to his left hip and femur." *See Addington Resources, Inc v. Perkins*, 947 S.W.2d 421, 423 (Ky. 1997). The Board also found Dr. Nadar established a causal relationship between Morley's low back pain and his work injury which was supported by Morley's continuing complaints of hip and leg pain. Finally, the Board concluded the ALJ had not abused his discretion in finding the work injury caused Morley's back pain and went on to conclude the ALJ's decision was supported by substantial evidence and should not be disturbed. *Special Fund v. Francis,* 708 S.W.2d 641, 644 (Ky. 1986).

ANALYSIS

Ranger contends the ALJ erred in allowing the reopening of Morley's claim because Morley had experienced and reported pain in his back to Dr. Nadar *prior* to settling the original claim in 2004 but had never alleged a work-related back injury. In support of its contention, Ranger argues Morley never amended his original complaint to include an allegation of any back condition resulting from the 2001 work-related incident, either within or without the two-year statutory window provided by KRS 342.185(1). As a consequence thereof, Ranger asserts the ALJ erred in granting the reopening. We disagree.

We believe the ALJ correctly distinguished the holding in *Slone*, and agree with the ALJ's aforementioned legal analysis determining *Slone* to be inapplicable to Morley's reopening which seeks compensation for medical expenses flowing from his claimed work-related injuries. We agree with the ALJ's conclusion that an award of medical expenses pursuant to KRS 342.020 "includes and anticipates all effects of an injury so long as the treatment rendered is for a condition causally related to the originally claimed work injury." Dr. Nadar's medical opinion alone, that Morley's recurring back pain was a consequence of the injuries he sustained in the work-related fall and claimed prior to the original award, is evidence of substance upon which the ALJ could reasonably find a causal link. For that reason, we not only affirm the ALJ's determination that Morley's current medical treatment for back pain is compensable under KRS 342.020 because there is sufficient proof of a causal connection between it and the originally claimed work-related injuries, we also affirm the ALJ's determination that Morley's motion to reopen for medical benefits associated with his ongoing back pain was not barred by the two-year statute of limitations expressed in KRS 342.185(1).

Ranger cannot reasonably contend it had no notice of any back pain associated with the work-related injuries claimed prior to the original award. Neither can we lend any credence to Ranger's assertion that it was surprised by Morley's motion to reopen the claim to seek further medical treatment for his recurring back pain. Such arguments are entirely inconsistent with the extensive

medical documentation of Morley's complaints of back pain relative to his original work-related injuries. Specifically, Morley's reports of back pain were noted throughout Dr. Nadar's medical records, and Ranger's insurance carrier received copies of that documentation. The dubious nature of Ranger's contentions is further unveiled by its insurance carrier's action prior to the original award in paying for certain medical visits Morley had with Dr. Nadar at which his complaints of back pain were addressed.

Ranger's argument on appeal is myopic. It ignores the clear intent articulated in KRS 342.020(1), which requires Ranger to 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 the injury and thereafter during disability, or as may be required for the cure and treatment of an occupational disease."

(emphasis added). Pain is a symptom of an underlying medical condition. It is a consequence of an underlying medical injury or disease, or a response thereto. The experience of pain does not equate to a medical condition, injury or disease, but is merely a symptom or an effect of an underlying medical condition, injury or disease which must be diagnosed and treated. Pain is not a medical condition in and of itself. The American Heritage Medical Dictionary 592 (2nd ed. 2004) has defined pain in medical terms as "[a]n unpleasant sensation occurring in varying degrees of severity as a *consequence* of injury, disease, or emotional disorder."

(emphasis added). More particularly, pain is defined in Mosby's Medical Dictionary 1377 (7th ed. 2006) as:

> [a]n unpleasant sensation caused by noxious stimulation of the sensory nerve endings. It is a subjective feeling and an individual *response* to the cause. Pain is a cardinal *symptom* of inflammation and is valuable in the diagnosis of many disorders and conditions. It may be mild or severe, chronic or acute, lancinating, burning, dull or sharp, precisely or poorly localized, or *referred.* Experiencing pain is influenced by physical, mental, biochemical, psychologic, physiologic, social, cultural, and emotional factors.

(emphasis added). Because pain may be "referred," or "felt in a part of the body at a distance from its area of origin,"[2] diagnosis of the specific condition, injury, or disease causing such pain can be difficult.

KRS 342.185 states that "…no proceeding under this chapter for compensation for an *injury*… shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof and unless an application for adjustment of claim for compensation with respect to the *injury* shall have been made with the office within two (2) years after the date of the accident." (emphasis added). The statutory definition of "injury" is set forth in KRS 342.0011(1) which states in part:

> any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is *the proximate cause* producing *a harmful change in the human organism evidenced by objective medical findings*. . . . (emphasis added).

[2] The American Heritage Medical Dictionary 701 (2nd ed. 2004).

"Compensation" is defined by KRS 342.0011(14) to mean " . . . all payments made under the provisions of this chapter representing the sum of income benefits and medical and related benefits[.]" Thus, when KRS 342.185 requires that notice of a work-related injury be provided to the employer as soon as practicable and that an appropriate application for adjustment of claim for compensation with respect to the injury be made within two years after its occurrence, it is referring to the work-related traumatic event, itself, and the resulting medical condition.

Conversely, KRS 342.020(1) clearly requires the employer to "pay for the cure and relief from the *effects* of an injury or occupational disease . . . as may reasonably be required at the time of the injury and thereafter during disability." (emphasis added). Whether termed a "symptom," "effect," or "consequence," of a work-related injury, pain, by its very definition, is clearly a response to an underlying stimulus or condition. KRS 342.185 does not require workers to timely provide notice and file claims for all known symptoms, but for all known conditions. The fact that Morley knew he was experiencing back pain did not require him to report or to file a claim for a back condition, particularly when his medical providers attributed his back pain to other diagnosed work-related injuries. Therefore, the mere fact that Morley suffered back pain in 2002, mentioned it to Dr. Nadar, and received treatment, is not fatal to his reopening when his treating physician attributed the back pain to another specified condition emanating from the work-related event.

For the foregoing reasons, we affirm the decision of the Board.

ALL CONCUR.

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