

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001080-WC

TRIM MASTERS, INC.

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-05-64530

RITA RICHARDSON; HON. EDWARD D.
HAYS, ADMINISTRATIVE LAW JUDGE;
AND WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * ** * ** *

BEFORE: TAYLOR, CHIEF JUDGE; STUMBO, JUDGE; SHAKE,¹ SENIOR
JUDGE.

STUMBO, JUDGE: Trim Masters, Inc. appeals from an opinion and order and
order on petition for reconsideration in which Administrative Law Judge (ALJ)

Edward Hays found that Rita Richardson was entitled to future and ongoing

¹ Senior Judge Ann O'Malley Shake, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and Kentucky Revised Statutes (KRS) 21.580.

medical benefits related to a work injury. The ALJ also ruled on certain specific medical procedures that Trim Masters argued were not related to Richardson's work injury. The decision of the ALJ was affirmed by the Workers' Compensation Board (hereinafter referred to as the Board). Trim Masters argues that the holdings of the ALJ and Board were contrary to applicable law and would have us reverse. We find no error in the ALJ's opinion or the Board's affirmation. We therefore affirm.

Richardson injured her lower back while working for Trim Masters on October 7, 2005. Richardson filed a workers' compensation claim which was resolved on April 27, 2007. Richardson was awarded present and future medical expenses for the lower back injury.

On November 4, 2008, Trim Masters filed a motion to reopen and medical fee dispute contesting the reasonableness and necessity of injective therapy and physical therapy, both requested by Richardson's primary pain physician Dr. Anjum Bux. Trim Masters also contested the causal relationship of any further treatment including, but not limited to emergency room visits of October 3, 2008, and October 13, 2008. Trim Masters contended that none of these medical expenses were related to the work injury.

Trim Masters filed additional medical fee disputes on November 12, 2008, and November 25, 2008, contesting the compensability of bilateral

trochanteric bursa injections² as not causally related to the lower back injury. Trim Masters claims these injections are for hip injuries, not back injuries.

Richardson did not reply to the motions and ALJ James Kerr issued an order on January 5, 2009. The order only discussed the November 4, 2008 fee dispute and ruled that the radiofrequency injective therapy, physical therapy, and two October emergency room visits were not related to the work injury. Trim Masters was relieved of its responsibility for paying these costs. The bursa injections were not referred to in the order. Trim Masters also contends that this order also cut off all future medical treatments, not just those specifically mentioned. This issue will be discussed in more detail later.

After this order, Trim Masters declined to pay for any further medical treatments. On January 16, 2009, Richardson filed a motion for clarification of the January 5, 2009 order. She sought a determination of whether the order cut off all future medical benefits or simply rejected those specifically mentioned.

Ultimately, this case was heard by ALJ Hays in order to determine if the bursa injections were compensable and if all future medical benefits were terminated by the January 5, 2009 order.

ALJ Hays found that the January order only made the specifically mentioned medical services non-compensable. ALJ Hays also found that the bursa injections helped manage Richardson's pain and that they were compensable. He based his finding on the testimony of Dr. Bux and Ms. Richardson.

² These types of injections are given in the hip.

Trim Masters then appealed to the Board. Trim Masters argued that the bursa injections should be non-compensable because there was no work-related hip injury and that the January order foreclosed all rights to future medical treatment. The Board disagreed and affirmed ALJ Hays' opinion. This appeal followed.

Trim Masters puts forth two arguments, that the bursa injections treat a hip injury and are not related to Richardson's lower back injury and that the January 5, 2009 order stopped all future benefits, is *res judicata*, and should therefore be affirmed by this Court.

“The function of further review of the [Board] in the Court of Appeals is to correct the Board only where the Court perceives the Board has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice.” *Western Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687 - 688 (Ky. 1992). We find that the Board correctly affirmed the ALJ's opinion.

Neither the ALJ nor Board found that Richardson suffered from a hip injury. They only found that the bursa injections gave Richardson relief from pain. Richardson stated that the pain from her back radiated into her hips and that the bursa injection helped relieve the pain. Her testimony was supported by the testimony of Dr. Bux. This evidence was sufficient to support the ALJ's findings; it was substantial evidence to support the finding that the pain was related to the work-related injury and the expenses were compensable. Because there was

evidence to support the opinions of the ALJ and Board, we cannot say there was an error so flagrant as to cause gross injustice.

As for the issue regarding the January 5, 2009 order, we find, as did the Board, that ALJ Kerr only rendered the specific medical services non-compensable and did not stop all future medical treatment. The order in question states that it was brought “upon motion by the defendant-employer to contest *certain* medical expenses” (Emphasis added). It then discusses specific expenses: the radiofrequency injective therapy, physical therapy, and two October emergency room visits. The order then states that the “contested medical expenses are unreasonable or unnecessary for treatment of plaintiff’s work-related condition” It is clear from the plain wording of the order that it was only addressing the specific medical services and not all future medical expenses.

Based on the above, we find no error with the opinions of ALJ Hays or the Board that the bursa injections are compensable and that the January, 2009 order does not stop all future medical benefits. We therefore affirm.

ALL CONCUR.

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