

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001730-WC

ERIC BAKER

APPELLANT

v. PETITION FOR REVIEW OF A DECISION
OF THE WORKERS' COMPENSATION BOARD
ACTION NO. WC-07-74434

KENTUCKY EMERGENCY MEDICAL
SERVICE; HON. HOWARD FRASIER, JR.,
ADMINISTRATIVE LAW JUDGE; AND
WORKERS' COMPENSATION BOARD

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: NICKELL AND VANMETER, JUDGES; SHAKE,¹ SENIOR JUDGE.

VANMETER, JUDGE: Eric Baker petitions for the review of an opinion of the
Workers' Compensation Board ("Board") affirming the opinion of the

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 Statute (KRS) 21.580.

Administrative Law Judge (“ALJ”), as well as the ALJ’s subsequent order denying in part Baker’s petition for reconsideration regarding the compensability of the medication Lortab. For the following reasons, we affirm.

On October 5, 2007, Baker suffered a work-related injury while working for Kentucky Emergency Medical Service (KEMS). He began receiving treatment from Dr. Michael Ratliff at Pikeville Medical Center/Pain Management Center that, among other things, involved a medication regimen including prescriptions for Hydrocodone (Lortab), Lyrica, Cymbalta, and Ambien.

Baker and KEMS agreed to a settlement of income benefits and reasonable and necessary treatment of Baker’s right leg, yet KEMS reserved the right to file, and did file, numerous medical fee disputes challenging the reasonableness and necessity of continued office visits, the use of a back brace, re-trial of a spinal cord stimulator, a caudal epidural steroid injection, and the use of certain medications to treat Baker’s injury.

In a March 12, 2010 medical report, Dr. Ratliff noted that he planned to continue prescribing Lyrica, Cymbalta, and Ambien, but he was discontinuing the Lortab prescription because Baker expressed that the drug was not effective in controlling his pain. However, at the final hearing held on April 21, 2010, Baker testified Dr. Ratliff had continued a prescription for Lortab and began a prescription for Elavil.

On May 28, 2010, the ALJ issued an opinion resolving the medical fee disputes, concluding that the back brace, re-trial of a spinal cord stimulator, and

caudal epidural steroid injection were not reasonable and necessary for the treatment of Baker's injury and, therefore, not compensable. The ALJ also concluded that the medication regimen of Lyrica, Cymbalta, and Ambien, as well as regular office visits every three months were compensable.

Baker petitioned the ALJ for reconsideration, requesting the ALJ to amend the opinion to include Lortab and Elavil as compensable medications. Thereafter, the ALJ amended its opinion and ordered Lortab to be compensable for a period not to exceed three months, should Dr. Ratliff deem it reasonable and necessary in order to wean Baker from the medication over this period of time. Additionally, the ALJ reserved opinion on the compensability of Elavil in order to permit Dr. Ratliff the opportunity to determine if changes need to be made to the current medication regimen.

Baker appealed to the Board seeking review of the ALJ opinion, as well as the order on the petition for reconsideration. The Board affirmed the ALJ's opinion and subsequent order ruling on the petition for reconsideration, concluding that the ALJ's findings were supported by substantial evidence. This appeal followed.

The standard for appellate review of a Board decision "is limited to correction of the ALJ when the ALJ has overlooked or misconstrued controlling statutes or precedent, or committed an error in assessing the evidence so flagrant as to cause gross injustice." *Bowerman v. Black Equip. Co.*, 297 S.W.3d 858, 866 (Ky.App. 2009) (citing *W. Baptist Hosp. v. Kelly*, 827 S.W.2d 685, 687-88 (Ky.

1992)). We review an award by an ALJ to determine whether its findings were reasonable under the evidence. *Special Fund v. Francis*, 708 S.W.2d 641, 643 (Ky. 1986). We note that the “ALJ, as the finder of fact, and not the reviewing court, has the sole authority to determine the quality, character, and substance of the evidence.” *Square D Co. v. Tipton*, 862 S.W.2d 308, 309 (Ky. 1993) (citation omitted).

Baker argues the Board erred by affirming the ALJ’s opinion and subsequent order limiting the compensability of Lortab to a three-month period. We disagree.

The medical reports of Dr. Ratliff reveal that he discontinued the prescription of Lortab because Baker stated the medication was not effective in controlling his pain. In addition, KEMS provided the physician review report of Dr. Bart Olash, who opined that the use of Lortab was not medically necessary or appropriate for treatment of Baker’s right leg injury. Although Baker testified that Dr. Ratliff has continued to prescribe Lortab since the March 12, 2010, medical report, sufficient evidence supports the conclusion that the use of Lortab is not a reasonable or necessary treatment for Baker’s injury. Accordingly, the Board did not err by affirming the ALJ’s opinion and order.

Finally, Baker requests this court to establish guidelines that direct an ALJ to determine that continued conservative treatment by a physician is compensable. We decline to do so. When an employee selects a physician to treat an injury, an employer may challenge any treatment as medically unreasonable or unnecessary and present evidence to support such a challenge. *Nat’l Pizza Co. v. Curry*, 802

S.W.2d 949, 951 (Ky.App. 1991). The ALJ sits in the best position to weigh the evidence and to determine the compensability of medical treatment based upon the evidence presented. *Square D Co.*, 862 S.W.2d at 309. This court will not establish guidelines requiring an ALJ to determine that any conservative treatment recommended by the treating physician is compensable despite mitigating evidence presented by an employer.

The opinion of the Workers' Compensation Board is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEES:

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