OPINION ENTERED: January 20, 2012

CLAIM NO. 198305792

DIXIE FUEL COMPANY
(HARLAN CUMBERLAND COAL CO.) PETITIONER

VS. **APPEAL FROM HON. LAWRENCE F. SMITH, ADMINISTRATIVE LAW JUDGE**

JAMES A. BURGAN,
UK HEALTHCARE,
KY MEDICAL SERVICES,
and HON. LAWRENCE F. SMITH,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Dixie Fuel Company (Harlan Cumberland Coal Co.) ("Dixie"), seeks review of a decision on reopening rendered on October 3, 2011 by Hon. Lawrence F. Smith, Administrative Law Judge ("ALJ") finding certain medical treatment provided by the University of Kentucky Healthcare, Kentucky Medical Services (UK), to James A.

Burgan, ("Burgan"), to be work-related, reasonable and necessary. In so ruling, the ALJ relied on the medical opinions of Dr. Sibu Saha, and rejected the opinions of Drs. Bart Olash and Matthew Vuskovich. No petition for reconsideration was filed.

On appeal, Dixie generally argues the ALJ erred in relying upon the opinion of Dr. Saha in determining the treatment provided by UK was reasonable, necessary and causally related to coal workers' pneumoconiosis ("CWP"), for which Burgan was awarded total occupational disability benefits in an opinion and award rendered November 19, 1984 by the "old" Worker's Compensation Board. Dixie argues Dr. Saha's report/affidavit falls short of constituting substantial evidence upon which the ALJ can base his opinion. We affirm.

On July 2, 1984, the Worker's Compensation Board determined Burgan was permanently totally disabled due to CWP and/or silicosis, however insufficient information was provided to make a monetary award. On November 19, 1984, the Worker's Compensation Board, after being provided wage information, determined Burgan was entitled to benefits at the rate of $254.33 per week, finding Dixie to be responsible for 25% of the award, and the Special Fund to be responsible for the remainder.

Burgan testified by deposition on May 6, 2011. He was born on April 14, 1950. Burgan testified he has continued to experience pulmonary difficulty since his 1984 award. In the 1980s, he suffered from a collapsed lung after a needle biopsy. In the 1990s, he was hospitalized six weeks due to Blastomycosis in the left lung. In 2010, he was hospitalized for 9 or 10 days due to breathing difficulties, and sustained a collapsed right lung. He was placed on oxygen which he uses on a constant basis. Dr. Saha performed surgery in 2010, and subsequently prescribed oxygen, without which Burgan believes he could not survive.

The medical documentation establishes Burgan treated from July 13, 2010 through July 20, 2010 at UK for Blastomycosis involving the lungs, pulmonary insufficiency following a procedure, anemia, hemorrhage complicating a procedure, iatrogenic pneumothorax, hypertension and fluid overload. The July 20, 2010 discharge summary from UK noted a right upper lobe lung mass. Dr. Saha, Burgan's treating cardio-thoracic surgeon, provided a diagnosis of fibrosive pleuritis and changes of coal worker's lung with macules and nodules. In his affidavit dated August 1, 2011, Dr. Saha stated the treatment from July 13, 2010 through July 20, 2010 was required to establish a tissue diagnosis for which he determined a working diagnosis of

nodular pulmonary fibrosis. Dr. Saha stated the treatment was due to progressive shortness of breath and worsening of lung disease which he determined was due to progression of complicated CWP.

Dixie filed a medical dispute and motion to reopen the claim on September 15, 2010 to challenge billings from UK. Dixie supported its motion to reopen with the utilization review report of Dr. Bart Olash dated August 18, 2010. Dr. Olash determined Burgan suffers from simple, not complex CWP, which does not require treatment. Specifically, Dr. Olash stated the following:

> In reviewing the chart, I find no documentation to support a diagnosis of complicated coal workers pneumoconiosis. Although this gentleman has simple coal workers pneumoconiosis, this is a benign condition that causes few, if any, mild symptoms and never requires treatment. It is never the cause, aggravating factor, or precipitating factor to the other medical problems mentioned above which require treatment.
>
> As such, I see no association between the treatment rendered at UK Chandler Medical Center 07/13/10 and 07/20/10 and this gentleman's past history of simple coal workers pneumoconiosis.

Dr. Olash stated the major component of the billings from UK was due to complications from surgery

which simple CWP "did not cause, significantly contribute to, or substantially aggravate."

Dixie then submitted the May 12, 2011 records review report prepared by Dr. Vuskovich. Dr. Vuskovich noted the records provided to him indicated Burgan suffered from pneumonia one month prior to his hospitalization at UK. Dr. Vuskovich concluded as follows:

> ● Within a reasonable degree of medical certainty the $59,611.32 University of Kentucky Medical Center hospital charges were not related to Mr. Burgan's simple coal workers' pneumoconiosis which was diagnosed in 1982 and verified through lung biopsy on 7/12/10. Simple coal workers' pneumoconiosis did not cause, did not significantly contribute to, and did not substantially aggravate Mr. Burgan's pulmonary condition that resulted in his being evaluated with a right lung surgical biopsy on 7/13/10.
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> ● Within a reasonable degree of medical certainty the large right upper lung focal opacity described on 6/9/10 by Dr. Sibu Saha which extended to the pleural surface represented residual pneumonia because when Dr. Saha surgically inspected this area on 7/13/10 he found considerable pleural adhesions and scarring; the aftermath of pneumonia that extended to the pleural surface. Coal workers' pneumoconiosis does not involve the pleural surfaces. Simple coal workers' pneumoconiosis that was present since 1982 did not cause, significantly contribute to or substantially aggravate Mr. Burgan's pneumonia. His pneumonia was likely related to the

fact that he suffered a stroke so severe that it affect[sic] his eye and he had problems moving his left arm. He likely aspirated some material into his right lung. A tendency to aspirate might have been potentiated by the fact that Mr. Burgan was taking two narcotics and as Dr. Saha documented on 6/9/10, 'Drinks some beer'. Narcotics and alcohol depress the central nervous system and predispose to aspiration. This might have played a role in Mr. Burgan developing pneumonia around the time he had a stroke.

- Within a reasonable degree of medical certainty the major portion of Mr. Burgan's UK hospital services charges was related to treating the complications of his surgery. Simple coal workers' pneumoconiosis did not cause, significantly contribute to, or substantially aggravate these complications which included profuse bleeding, respiratory failure from surgical lung damage, hypoxemia, anemia, and volume overload.

- Within a reasonable degree of medical certainty Mr. Burgan did not have right lung Blastomycosis. Blastomycosis infection heals with granulomas. The UK pathologist noted that he did not find granulomas.

- Within a reasonable degree of medical certainty the high SUV PET scan abnormality documented by Dr. Saha was the consequence of infectious pneumonia not coal workers' pneumoconiosis. It was unrelated to coalmine dust exposure and to the fact that Mr. Burgan had simple coal workers' pneumoconiosis.

- Within a reasonable degree of medical certainty Mr. Burgan did not have progressive massive fibrosis (PMF)

> because the UK pathologist did not describe tissue appearances of PMF. Moreover, the large focal opacity described by Dr. Saha on 6/13/10 was a new finding that triggered Dr. Vaezy's decision to refer Mr. Burgan to Dr. Saha. PMF is a chronic progressive condition.

In a supplemental report dated August 4, 2011, Dr. Vuskovich disagreed with the opinions expressed by Dr. Saha in his affidavit, and reiterated the treatment at UK was not related to either simple or complex CWP. Neither Dr. Vuskovich nor Dr. Olash are cardio-thoracic surgeons or pulmonologists.

In the opinion and order entered October 3, 2011, the ALJ stated the following:

> Having reviewed the evidence of record and having considered the testimony presented at the formal hearing[1], IT IS HEREBY ORDERED:
>
> KRS 342.020 requires the employer to pay for the cure and relief from the effects of any 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. Upon reopening, the employer has the burden of proving that a treatment is

[1] There is no indication a hearing was held. The order dated September 14, 2011 sets forth a briefing schedule agreed to by the parties by telephone conference conducted August 4, 2011.

> unreasonable and unnecessary, while the employee bears the burden of proving work-relatedness. ***Mitee Enterprises v. Yates***, 865 S.W.2d 654, 655 (Ky. 1993).
>
> In the present case having considered all the evidence, the ALJ is more persuaded by the opinions of Dr. Saha with regard to reasonableness, necessity and work relatedness. With regard to work-relatedness, while the ALJ respects the petitioner's physicians, only Dr. Saha surgically entered the respondent's body and observed the interior of the respondent's lungs firsthand. He opined that what he found related directly to the respondent's occupational disease, and he stated that he did not find cancer.
>
> With regard to reasonableness and necessity, Dr. Saha has as his continuing responsibility the respondent's physical well-being. The ALJ finds persuasive his reasons for opining that the procedure was reasonable and necessary. I therefore find the treatment provided to the respondent from July 13, 2010 through July 20, 2010 at UK Healthcare reasonable, necessary and work-related. The petitioner shall be responsible for the expense of the procedure.

In a post-award medical dispute, the burden of proof regarding the reasonableness and necessity of the treatment at issue rests with the employer while the burden remains with the injured worker concerning questions pertaining to work-relatedness/causation. See KRS 342.020; Mitee Enterprises vs. Yates, 865 S.W.2d 654 (Ky. 1993);

Addington Resources, Inc. v. Perkins, 947 S.W.2d 421 (Ky. App. 1997); R.J. Corman Railroad Construction v. Haddix, 864 S.W.2d 915, 918 (Ky. 1993); National Pizza Company vs. Curry, 802 S.W.2d 949 (Ky. App. 1991). Since Burgan was successful in establishing, to the satisfaction of the ALJ, a causal nexus between his hospitalization and treatment at UK to CWP for which he was awarded benefits in 1984, the question on appeal is whether the ALJ's finding concerning causation is supported by substantial evidence. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Substantial evidence is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). The ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky.

1977). In that regard, causation and the work-relatedness of a condition are factual questions to be determined within the sound discretion of the ALJ, and the ALJ, as fact-finder, is vested with broad authority to decide such matters. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003); Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969). In addition, the Act does not require causation to be proved through objective medical findings. *See* KRS 342.0011(1); Staples, Inc. v. Konvelski, 56 S.W.3d 412, 415 (Ky. 2001). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Contrary to Dixie's assertions, Dr. Saha's testimony regarding causation rises to the level of substantial evidence. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940). Dr. Saha's medical opinion establishing a causal nexus between Burgan's CWP, and the treatment at UK in 2010, qualifies as substantial evidence sufficient to support the outcome selected by the

ALJ. Smyzer v. B. F. Goodrich Chemical Co., supra; Special Fund v. Francis, supra. Upon consideration of the ALJ's analysis, we are likewise satisfied the proper legal standard was utilized in deciding the issue of causation and the ALJ made adequate findings of facts sufficient to apprise the parties of the basis for his decision. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). Hence, we find no error.

Accordingly, the decision resolving the medical dispute in Burgan's favor rendered October 3, 2011 by Hon. Lawrence F. Smith, Administrative Law Judge, is hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

SMITH, MEMBER, NOT SITTING.

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