NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

GLENDA P. GRAYSON,

Petitioner/Appellant,

vs.

GERDAU AMERISTEEL US, INC.; INDEMNITY INSURANCE COMPANY OF NORTH AMERICA; and THE OKLAHOMA WORKERS' COMPENSATION COURT OF EXISTING CLAIMS,

Respondents/Appellees.

Case No. 119,667

APPEAL FROM THE WORKERS' COMPENSATION COURT
OF EXISTING CLAIMS

REVERSED AND REMANDED

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OPINION BY GREGORY C. BLACKWELL, JUDGE:

Glenda Grayson appeals a judgment from the Workers' Compensation Court of Existing Claims permitting her employer, Gerdau Ameristeel, and insurance provider, Indemnity Insurance of North America (collectively, Ameristeel or employer), to cease paying for certain pain medication that

Grayson claims is contemplated in her order for continuing medical maintenance. The employer claims the medication is outside the applicable order, and the court below agreed. However, because the court's reading of the relevant order was too narrow, and because the court relied exclusively on a case with much different facts, we reverse and remand for consistent proceedings.

BACKGROUND

In 2010, Grayson filed a claim with the Workers' Compensation Court,[1] alleging a back injury in the course of her employment at Ameristeel. In June 2011, the court appointed an independent medical examiner to assess and evaluate Grayson's condition. The medical examiner determined that Grayson suffered a work-related back injury, and the claim was subsequently allowed. The medical examiner did not recommend Grayson for surgery.

In 2013, Grayson filed for permanent disability and continued medical maintenance. In that case, Grayson retained a doctor and submitted her own report, stating that she would require pain control medication and periodic injections. Ameristeel denied Grayson's request for continued medical maintenance, and a trial date was set. At trial, Ameristeel again objected to continuing medical maintenance and argued in the alternative that any medical maintenance be limited to anti-inflammatories. On May 29, 2013, the trial court issued an order stating:

> [¶ 4] That the respondent and/or insurance carrier shall provide the claimant with reasonable and necessary continuing medical

[1] In 2014, the Workers' Compensation Court was renamed the Workers' Compensation Court of Existing Claims for the purpose of hearing disputes relating to claims that arose before February 1, 2014. 85A O.S.Supp.2013 § 400(A).

> maintenance with Dr. Gaede for anti-inflammatory medications, prescription medication is subject to the rules, limitations and requirements of the Oklahoma Treatment Guidelines for the Use of Schedule II Drugs (www.owcc.state.ok.us/OTG-Drugs.pdf) and review upon application of either party.
>
> [¶ 5] That respondent and/or insurance carrier shall pay all reasonable and necessary medical expenses incurred by claimant as a result of said injury.

The court issued a further miscellaneous order in June 2013, replacing Grayson's continued medical maintenance physician, but not amending any other part of the order.

Beginning in September 2013, Grayson's medical maintenance physician began prescribing Tramadol—a narcotic—for pain management, on top of Grayson's normal anti-inflammatory. After another change in physicians, there is some question as to when and how often Grayson was being prescribed pain management medication.[2] In 2017, Grayson's physician noted that Grayson was again prescribed a narcotic for pain management. Throughout this period, Ameristeel paid for the pain relievers without objection, as it always had for the anti-inflammatory medication.

In 2018, when Ameristeel claims it first became aware that it was paying for the pain medication, it immediately stopped paying. Grayson objected and filed a motion to set the issue for trial as well as a request to change physicians.[3]

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[2] On two different occasions, Dr. Scott Anthony, Grayson's physician beginning in 2015, noted that Grayson was not taking prescription pain medication.

[3] By this time, Grayson was being treated by Dr. Scott Anthony. Grayson sought to make Dr. Anthony her medical maintenance physician pursuant to a new order. Ameristeel did not object and that issue is not part of this appeal.

After trial, the judge issued an order, which appears to have denied Grayson's request to have Ameristeel pay for the pain medication pursuant to the 2013 order. The court specifically stated that "continuing medical maintenance is limited to the order of MAY 29, 2013, per paragraph four (4)."

Grayson appealed to the Court of Existing Claims. On June 7, 2021, the Court issued the order now appealed.[4] The order, which agrees with the result of the trial court's order, nevertheless vacated that order as "contrary to law AND against the clear weight of the evidence." Relying on *Hall v. Sheffield*, 2004 OK CIV APP 26, 86 P.3d 1099, the Court found that the 2013 order did not authorize any medication except anti-inflammatories and even if "the addition of new medications may be reasonable and necessary to treat the claimant's increased symptoms," the only way the employer would be required to pay for such medications would be through "a motion to reopen for change of condition for the worse."[5] Grayson timely appealed.

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[4] Grayson argues that the Workers' Compensation Court of Existing Claims issued two rulings "bearing the same date but with two different outcomes," before a final ruling was filed on June 7, 2021. And indeed, attached to Grayson's initial *Petition for Review*, with a file-stamp date of May 26, 2021, is what appears to be a copy of a certified copy of an order that grants relief to Grayson on essentially the same basis we reverse here. Specifically, the May 26, 2021 order, which appears to be signed by all three members of the court, states that the "review process" referenced in the 2013 order "was included for just this circumstance—to allow modification of medication without the need to reopen the claim." Grayson asks this court to rule that this order "is the correct order." However, a later-filed order, bearing a file-stamp of June 7, 2021, denies Grayson relief. This later order, which was purportedly executed by all three members of the court six days prior to the May 26, 2021 order—was the only order of the Court of Existing Claims attached to Grayson's *Amended Petition for Review*, and is the only order of that court in the record on appeal. Although we remain perplexed as to how the May 26, 2021 order came to be, we consider only the June 7, 2021 order.

[5] In 2014, Grayson did in fact file a motion to reopen for a change in conditions for the worse in the Workers' Compensation Court of Existing Claims. The court appointed an

STANDARD OF REVIEW

Where, as here, there is no relevant conflict in the evidence, "the question is one of law." *Pauls Valley Travel Center v. Boucher*, 2005 OK 30, ¶ 6, 112 P.3d 1175. Questions of law are reviewed *de novo. Highpointe Energy, LLC v. Viersen*, 2021 OK 32, ¶ 11, 489 P.3d 28.

ANALYSIS

This case requires us to decide whether Grayson was required to "reopen" her claim and prove a change of condition for the worse before Ameristeel was required to pay for the new medication, or if the new medication was fairly contemplated with the 2013 order for "continuing medical maintenance."[6] Because we find the order, when read as a whole and in light of controlling precedent, is more fairly read as encompassing the new medication, we reverse.

There are at least three reasons why we read the 2013 order as allowing not just anti-inflammatory medication but any medication prescribed to treat the injury. The first, and most compelling, is that is what the order directly states. The employer, the trial court, and the three-judge panel focused exclusively on paragraph four of the order. However, paragraph five requires the employer to pay "all reasonable and necessary medical expenses incurred by claimant as a result of said injury." Thus, under the 2013 order, there is no limitation in this broad language as to when the medication must be prescribed.

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independent medical examiner, but the motion to reopen was reserved for future hearing and is currently pending before that court.

[6] *Compare* 85 O.S.2011 § 342 (allowing "additional ... medical benefits" after the employee has "suffered a change of condition for the worse") *with id.* § 308 (defining continuing medical maintenance).

The only limits are that it be as a result of the injury and that it be reasonable and necessary. Both the trial judge and the Court of Existing Claims referenced only paragraph four and ignored the very broad language of paragraph five.

Second, the 2013 order states that any "prescription medication is subject to the rules, limitations, and requirements of the Oklahoma Treatment Guidelines for the Use of Schedule II Drugs (www.owcc.state.ok.us/OTG-Drugs.pdf) ...." We have reviewed the referenced document, which "shall apply to Scheduled II Drugs only." Schedule II drugs do not include anti-inflammatory medications. 21 U.S.C. § 812 (defining and listed Schedule II drugs). Rather, the list appears to consist of primarily narcotic pain relievers, exactly of the type Grayson seeks here. If Grayson's continuing medical maintenance had been limited to anti-inflammatory medications, there would have been no reason to include this language in the 2013 order.

Finally, the 2013 order for medical maintenance was made "subject to ... review upon application of either party." We view this language as the three-judge panel did in their apparently abandoned May 26, 2021 order, *see* note 4 *supra*, that is, "allow[ing] modification of medication without the need to reopen the claim." The employer in this case started paying for the new medication in September 2013, just a few months after the 2013 order went into effect. They paid, on and off, for more than five years, during which, at any point, they could have sought a determination as to whether the new medication was a "reasonable and necessary medical expense[] incurred by claimant as a result of said injury." They did not do so.

This reading of the 2013 order is also consistent with the case law relied on by the parties, most notably, *Hall v. Sheffield*, 2004 OK CIV APP 26, 86 P.3d 1099 and *Armstrong v. Unit Drilling*, 2002 OK 17, 43 P.3d 383.

In *Hall*, which was exclusively relied on by the three-judge panel, the claimant injured his back in the scope of his employment. *Hall*, ¶ 1. In 1999, the Workers' Compensation Court ordered Hall's employer to provide continuing medical maintenance. *Id.* ¶ 1. In 2003, the employee requested that his employer provide him a hot tub with whirlpool jets as part of his medical maintenance. *Id.* The trial court denied the plaintiff's request, holding that the hot tub was not covered in the original order for medical maintenance, and that the claimant was required to file a motion to reopen in order to add such a request to the order. *Id.* ¶ 2. Division III of the Court of Civil Appeals affirmed the trial court's decision, reasoning that the employer was required to follow the medical maintenance order but was not required to go beyond its scope. *Id.* ¶ 7.

Hall is a much different case than this one. First, there is no reference in *Hall* to the type of "catchall" language we have in paragraph five of the 2013 order. Rather, the court quotes the order in *Hall* as allowing "continuing medical care in the nature of prescription medication ... and monthly [doctor's] visits." *Id.* ¶ 1. Clearly, a hot tub is neither prescription medication nor a doctor visit and we view that case as limited to its facts.[7]

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[7] Ameristeel seizes on the statement in *Hall*, interpreting *Armstrong*, which states that "only those things first authorized in the medical maintenance order may be brought to the court's attention in any manner other than a motion to re-open for change of condition for the worse." *Hall*, ¶ 6. We find this proposition to be well-stated. However, as discussed above, we take a different view of what was "first authorized" by the 2013 order.

Grayson argues, and we agree, that the facts of this case are more analogous to *Armstrong* than *Hall.* In *Armstrong,* the Workers' Compensation Court entered an order finding that a claimant was totally and permanently disabled and that "respondent and insurance carrier shall pay all reasonable medical expenses incurred by claimant as a result of the injury." *Id.* ¶ 1. From the date of this order, the employer paid for certain prescription drugs the employee was taking due to the injury. *Id.* Six years after that order, claimant's employer and insurance carrier ceased paying for claimant's prescription drugs. *Id.* ¶ 2. The trial judge determined that the employer and carrier's initial provision of prescription drugs to claimant was "gratuitous" but the Supreme Court reversed. *Id.* ¶ 3. The Court held that the employer and carrier were required to pay for claimant's medical expenses. *Id.* The Supreme Court reasoned that though the original order was apparently silent on the provision of prescription medication, the parties agreed to the arrangement because the claimant specifically requested the medication without an objection from the employer. *Id.* ¶ 11.

This case is quite similar to *Armstrong,* where the Court did not require the claimant to reopen his claim in order to require the employer to continue to pay for the same prescription medication it had been providing for years. *Id.* ¶ 6. The relevant language of the underlying orders in each case is virtually identical. Nor is there any incompatibility between *Hall* and *Armstrong.* In *Armstrong,* the Court heard evidence that the employer originally understood the order to include a variety of heart medications on a permanent basis. *Id.* ¶ 10. *Hall,* in

contrast, saw the claimant seek a hot tub some four years after the initial order. *Hall*, ¶ 1. It strains credulity to argue that a hot tub, for medicinal purposes or not, was contemplated by the parties in the initial order in *Hall*. These two cases are complementary and consistent in their holdings that continuing medical maintenance reasonably contemplated in an original order for such maintenance is fundamentally different than maintenance that was not and could not have been contemplated or was contemplated and rejected.

The final order that is the subject of this appeal states that medical maintenance is limited to the May 2013 order, per paragraph four, and cites to *Hall*. As we have seen, the language of the May 2013 order, when read in its entirety, is far broader and is substantially similar to the *Armstrong* order, which required the employer and insurance carrier to cover prescription pain medications without a reopening. For these reasons, the June 7, 2021 order of the Workers' Compensation Court of Existing Claims is reversed, and the matter is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

BARNES, J. (sitting by designation), concurs, and WISEMAN, P.J., dissents.

WISEMAN, P.J., dissenting:

I must respectfully dissent. The Workers' Compensation trial court and its three-judge panel read the order under review correctly: the May 2013 order in Paragraph 4 limited Claimant's continued medical maintenance to anti-inflammatory medication only. Otherwise, the trial court would have ordered

"anti-inflammatory and pain medications" and Employer would have no basis to object now to paying for Claimant's prescription pain medication.

The majority also cites the language in Paragraph 4 referring to the Oklahoma Treatment Guidelines for Schedule II Drugs as evidence that pain medication was ordered. I would respectfully disagree—this in my view is standard language inadvertently included by the trial court in Paragraph 4 and cannot by its oblique reference supersede or enlarge the court's allowed treatment. And if we are to be governed by the inadvertent reference to Schedule II drugs, it should be noted that tramadol, prescribed for Claimant, is not a Schedule II drug, but a Schedule IV drug, not covered by the referenced Guidelines.

Further, the specific anti-inflammatory finding in Paragraph 4 should control over the general boilerplate provision in Paragraph 5. The provisions of Paragraph 4 are not expanded by the provisions of Paragraph 5—Paragraph 5 is circumscribed by the limitations in Paragraph 4. The majority's reading makes Paragraph 4's provision for "anti-inflammatory medication" completely superfluous because under its reading, Paragraph 5's general language controls and results in no limits on any "reasonable and necessary medical expenses" for which Employer must pay if they resulted from this injury.[1] There would be no need to specify anti-inflammatories—they would be encompassed by the

[1] It could be argued that if the order under review in *Hall v. Sheffield Steel Corp.*, 2004 OK CIV APP 26, 86 P.3d 1099, had contained a similar Paragraph 5 provision, the claimant there would have been entitled to a hot tub for continuing medical maintenance.

unlimited language in Paragraph 5. This position was not argued by the parties in Claimant's quest for pain medication coverage or intended by the court's May 2013 order. If we follow this view of Paragraph 5's primacy over Paragraph 4, we could never without litigation determine the scope of Employer's responsibility for Claimant's medical expenses—she could seek coverage for any and all "medical expenses" she attributed to this injury and require Employer to litigate the reasonableness and necessity of those expenses. The majority opinion adopts a position on Paragraph 5 that is novel to the proceedings and which even Claimant has not raised or asserted. As Claimant argued in her appellate brief:

> [P]rescription medication was authorized in the prior orders in this case and it is only modification of the prescription medication that is sought by [Claimant]. The limitation of the trial court to only a certain type of prescription medication is not supported by the medical evidence; provision of other prescription medication which is specifically stated by the agreed treating physician to be for maintenance of the work-related injury is clearly within the review anticipated by the 2013 order for medical maintenance.

As Claimant stated in her appellate brief, her Form 9 sought modification of the medical maintenance order to allow prescription pain medication either on the basis that the order provided for review at the request of either party or based on Employer's provision of pain medication over the course of years. She has not argued that Paragraph 5 entitles her to prescription pain medication or she would not be seeking modification of the medical maintenance order. Reliance on Paragraph 5 in the disposition of this appeal is misplaced.

The WCC trial court and the three-judge panel, both in a much better position to determine the scope of the Court's May 2013 order, reached the

correct conclusion and rejected any authorized treatment beyond anti-inflammatories without a motion to re-open. I would for the reasons given sustain the three-judge panel's decision. I respectfully dissent.

December 5, 2022