AnCommonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 23, 2014

CLAIM NO. 201272273

ANTHONY COOK PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

ARNOLD MOVING CO., INC.
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING

* * * * * *

BEFORE: ALVEY, Chairman, STIVERS and RECHTER, Members.

ALVEY, Chairman. Anthony Cook ("Cook") seeks review of the decision rendered November 21, 2013, by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits for a left shoulder injury he sustained on August 20, 2012

while working for Arnold Moving Company, Inc. ("Arnold Moving"). The ALJ dismissed Cook's claim for an alleged September 2, 2011 right shoulder injury, and denied his request for the assessment of a 30% safety penalty pursuant to KRS 342.165(1). Cook also appeals from the order denying his petition for reconsideration issued January 6, 2014.

On appeal, Cook argues the ALJ erred by failing to find he sustained a right shoulder injury due to compensating for his left shoulder injury; failing to award medical benefits for the right shoulder; and in failing to award TTD benefits from August 21, 2012 through October 29, 2012. Cook argues the ALJ erred in awarding credit for all disability benefits paid. He further argues the ALJ erred by awarding PPD benefits for the left shoulder injury based only upon a 3% impairment rating, and in failing to assess a three multiplier pursuant to KRS 342.730(1)(c)1. Finally, Cook argues the ALJ erred in failing to perform the appropriate analysis in deciding whether his award should be increased for Arnold Moving's safety violation pursuant to KRS 342.165(1).

Regarding the findings pertaining to whether Cook sustained a permanent right shoulder injury as defined by the Kentucky Workers' Compensation Act, as well as the

award of PPD benefits based upon the 3% impairment rating assessed by Dr. Robert Jacob, the allowance of credit for benefits voluntarily paid, and finding the three multiplier pursuant to KRS 342.730(1)(c)1 inapplicable, the ALJ's decision is supported by substantial evidence, and a contrary result is not compelled, therefore we affirm. Regarding entitlement to TTD benefits from September 24, 2012 to October 14, 2012, whether Jacob sustained a temporary right shoulder injury, the assessment of a multiplier pursuant to KRS 342.730(1)(c)2, and the allegation of a safety violation, we vacate and remand for additional findings.

Cook filed a Form 101 on May 13, 2013, alleging he sustained neck and right shoulder injuries when he fell from a walk board on September 2, 2011. He also alleged he injured his left shoulder and upper extremity when a walk board slid from beneath him as he was unloading a seventy-five pound box which caused him to fall on August 20, 2012. He alleged he sustained a subsequent injury to his right shoulder due to over compensation for his left shoulder injury. Cook's work history consists of working as a laborer, driver, and truck owner/operator.

Cook testified by deposition on August 8, 2013, and at the hearing held October 16, 2013. Cook is a

resident of Louisville, Kentucky who was born on July 4, 1968. He completed the eleventh grade in Florida, and later obtained a GED. Cook also has a commercial driver's license. Cook worked for Arnold Moving on both alleged injury dates as a driver/mover. Prior to his employment with Arnold Moving, Cook worked primarily as a truck driver. He stated he was released to return to light duty work in the spring of 2013 with limitations of no over-the-shoulder work, and no lifting over ten to fifteen pounds. He returned to work at Arnold Moving in the office performing clerical duties, and he has been promoted to dispatcher, although he stated he earns less money, because he works fewer hours.

On September 2, 2011, Cook was involved in moving household products to a residence in Glasgow, Kentucky. He fell approximately forty-eight inches from a walk board, or ramp, and landed on his right shoulder. He reported the accident to his supervisor, Christal Trowbridge ("Trowbridge"). He missed two to three days of work, and saw Dr. Mary Lewis on one occasion. He then returned to his regular job where he continued to work until the August 20, 2012 accident. He had no medical treatment for the right shoulder injury except the one time visit with Dr.

Lewis, but stated he continued to experience a dull ache in his shoulder afterward.

On August 20, 2012, he was involved in moving household goods to a residence at Ft. Knox, Kentucky. When he stepped on a walk board, it came loose, causing him to fall approximately sixty inches onto his left shoulder. He reported the accident to Trowbridge the following day.

Cook alleged a safety violation because the walk board was not attached to the truck. He stated on numerous occasions he had reported the slippage of the unsecured ramps, and nothing had been done about it. He stated pins were never provided to secure the ramps. Cook testified he does not know the industry standard for use of walk boards or ramps.

Trowbridge testified by deposition on October 16, 2013. She is the vice president for local operations for Arnold Moving. She was Cook's supervisor at the time of both accidents, and described him as a good employee. She stated his current job includes scheduling/dispatching employees. He audits logs, and provides day-to-day communications between drivers and customers. She stated the ramps used by the company are in accordance with industry standards, and Arnold Moving was never cited by any entity for using them. She stated it is the driver's

responsibility to secure the ramps, and any driver can stop a move if it is determined unsafe.

In support of the Form 101, Cook filed the September 6, 2011, office note of Dr. Lewis of Medeast Physicians, LLC. Cook stated he fell approximately four and a half feet. He stated as a result of the accident he had left knee pain and an abrasion to his left lower leg. He also complained of right shoulder, neck and low back pain. Dr. Lewis stated he had sustained a soft tissue injury with muscle strain to the right side of his neck and right shoulder. She also stated he complained of stiffness despite exhibiting a good range of motion.

Cook sought no additional treatment until August 21, 2012 after he fell injuring his left shoulder on August 20, 2012. He had difficulty raising his left arm above his shoulder. On August 23, 2012, Dr. Lewis diagnosed a left shoulder strain, and released Cook to light duty work. Dr. Lewis continued to treat Cook until September 21, 2012. At that time she noted he had a left shoulder strain with minimal improvement. She restricted him to lifting no more than five pounds with the left upper extremity, and no over-the-shoulder activity. She also referred him to an orthopedic surgeon.

Cook first saw Dr. Stacie Grossfeld, an orthopedic surgeon, on September 28, 2012. She noted his complaints of left shoulder pain stemming from a fall he sustained on August 20, 2012. She diagnosed bicep tendonitis, and restricted him from lifting greater than five pounds. After continued complaints, Dr. Grossfeld recommended an MR Arthrogram of the left shoulder. After reviewing the test results she diagnosed a fifty percent rotator cuff tear, and degenerative tear of the superior labrum. Surgery was performed on December 6, 2012. She noted he had a complete tear of the biceps tendon. She recommended physical therapy. On January 23, 2013, Dr. Grossfeld noted right and left shoulder pain. She diagnosed rotator cuff tendonitis. She released Cook to return to work on February 21, 2013, with no lifting greater than five pounds with the left upper extremity.

Cook filed the July 13, 2013 report of Dr. Warren Bilkey who evaluated him at his attorney's request. Dr. Bilkey diagnosed a right shoulder strain with rotator cuff tendinitis and residual chronic pain and limitation of motion due to the September 2, 2011 accident. He also diagnosed a left shoulder strain, rotator cuff tear, labrum tear, and residual left shoulder chronic strain due to the August 20, 2012 accident. He also stated Cook is

deconditioned. Dr. Bilkey stated Cook had reached maximum medical improvement ("MMI") for the injuries on the left, but not on the right. He recommended restrictions of no lifting over twenty-five pounds with the right upper extremity, and no lifting over fifteen pounds with the left upper extremity, and to avoid overhead work. Dr. Bilkey assessed impairment ratings for each upper extremity pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). He assessed a 4% impairment rating to the right upper extremity and 8% to the left upper extremity. He also assessed a 3% additional impairment. He apportioned 1% to the September 2, 2011 injury, and 14% to the August 20, 2012 injury.

Dr. Robert Jacob evaluated Cook on September 18, 2013. In his report dated September 19, 2013 he noted Cook complained of bilateral shoulder pain due to two work-related injuries. Cook reported his right shoulder pain has increased since he sustained the left shoulder injury, and is aggravated by use. Dr. Jacob noted Cook had returned to his normal job after his first injury, and had no medical care after the initial office visit. Dr. Jacob found Cook did not sustain a harmful change to his right

shoulder due to either the September 2011 or August 2012 accidents.

Dr. Jacob diagnosed post-traumatic left shoulder impingement syndrome, with pre-existing non-occupationally related undersurface tear of his left supraspinatus which became symptomatic due to his work injury, which has now resolved. He assessed a 3% impairment rating based upon the AMA Guides. He said Cook's right shoulder complaints are unrelated to his left shoulder injury. He also opined Cook did not need the right shoulder MRI recommended by Dr. Grossfeld.

A benefit review conference was held on October 8, 2013. The parties stipulated Cook's average weekly wage was $978.15, and although he is still working, whether he retains the capacity to return to the type of work performed at the time of injury was preserved as an issue. The other issues preserved were benefits per KRS 342.730, work-relatedness/causation of the right shoulder complaints, unpaid or contested medical expenses, injury as defined by the Act, exclusion for pre-existing disability/ impairment, TTD benefits, KRS 342.165 violation, and a medical dispute.

The ALJ rendered his decision on November 21, 2013. He found Cook had sustained an injury as defined to

the left, but not the right shoulder, and suffered from no pre-existing active disability or impairment to either shoulder. He awarded TTD benefits at the rate of $652.10 for the weeks stipulated to by Arnold Moving, that being August 21, 2012 to September 23, 2012; October 15, 2012 to October 29, 2012; December 6, 2012 to March 17, 2013; and April 1, 2013 through June 30, 2013, with credit afforded for any benefits previously paid. The ALJ ruled in favor of Arnold Moving regarding the MRI Arthrogram of the right shoulder requested by Dr. Grossfeld, but awarded medical benefits pursuant to KRS 342.020. Although the ALJ did not designate the condition for which the benefits were awarded, it is presumed the award was for the left shoulder injury only. The ALJ awarded PPD benefits based upon the 3% impairment rating assessed by Dr. Jacob for the left shoulder, but found Cook is not entitled to the application of the two or three multiplier found in KRS 342.730(1)(c)1 or 2. The ALJ found Arnold Moving committed no intentional safety violation. Finally, the ALJ determined vocational rehabilitation was not appropriate.

Arnold Moving filed a petition for reconsideration requesting a finding it is entitled to credit for $14,833.32 against the award of TTD benefits. It claimed this was the actual amount of temporary benefits

paid. Cook filed a petition for reconsideration requesting additional findings of fact regarding his right shoulder condition, and the request for the MR Arthrogram. Cook also requested additional findings of fact regarding entitlement to the treatment for the September 2, 2011 right shoulder injury. Cook requested additional findings of fact regarding the appropriate impairment for the left shoulder, and enhancement of his benefits pursuant to KRS 342.730(1)(c)1. Finally, Cook requested additional findings regarding entitlement to TTD benefits and underpayment of benefits during the period awarded.

In the order on reconsideration rendered January 6, 2014, the ALJ amended his decision to include the temporary benefits voluntarily paid by Arnold Moving, for which it was allowed to take credit against the amount owed. The ALJ denied Cook's petition for reconsideration.

Cook, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Cook was not successful in his burden regarding the right shoulder, a higher impairment rating, the assessment of multipliers, and the assessment of a safety penalty, the question on appeal is whether the evidence is so

overwhelming, upon consideration of the record as a whole, as to compel a contrary result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

"Compelling evidence" is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). Where evidence is conflicting, the ALJ may choose whom or what to believe. Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). The ALJ may 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. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal.

Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). It is well established, an ALJ is vested with wide ranging discretion. Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006); Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976). So long as the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

That said, the ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). This Board is

cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). We also find instructive the holding of the Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354, 358 (Ky. 2004), where the Kentucky Supreme Court remanded the claim to the ALJ "for further consideration, for an exercise of discretion, and for an explanation that will permit a meaningful review."

We find the ALJ's determination of no permanent right shoulder injury, and his award of PPD benefits based on the 3% impairment rating assessed by Dr. Jacob is supported by substantial evidence. That said, however, there is no question Cook had a work accident on September 2, 2011 where he fell from a walk board onto his right shoulder causing him to miss a few days of work, and to need medical treatment, albeit one office visit. While the ALJ dismissed the claim for permanency, he was required to make a determination of whether Cook sustained a temporary

injury, and if so his entitlement to medical benefits for such injury.

Since the rendition of Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), this Board has consistently held it is possible for an injured worker to establish a temporary injury for which temporary benefits may be paid, but fail to prove a permanent harmful change to the human organism for which permanent benefits are authorized. In Robertson, the ALJ determined the claimant failed to prove more than a temporary exacerbation and sustained no permanent disability as a result of his injury. Therefore, the ALJ found the worker was entitled to only medical expenses the employer had paid for the treatment of the temporary flare-up of symptoms. The Kentucky Supreme Court noted the ALJ concluded Robertson suffered a work-related injury, but its effect was only transient and resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis. The Court stated:

> Thus, the claimant was not entitled to income benefits for permanent partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident.

Here, the ALJ determined Cook sustained no injury to his right shoulder, however the uncontroverted evidence establishes he fell on September 2, 2011, missed some work, and had at least one office visit. Therefore, while the ALJ determined Cook did not sustain a permanent injury to his right shoulder, he must make a determination of whether there was a temporary injury. If he so determines, he must make a determination of whether Cook is entitled to medical benefits pursuant to KRS 342.020 based upon the holding in FEI Installation Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007). Clearly, the ALJ may award medical benefits despite the lack of a permanent injury after providing sufficient reasons for the award.

Next, regarding the safety penalty issue, KRS 342.165(1) provides in pertinent part as follows as applies to this issue:

> If an accident is caused in any degree by the intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, the compensation for which the employer would otherwise have been liable under this chapter shall be increased thirty percent (30%) in the amount of each payment.

The purpose of KRS 342.165 is to reduce the frequency of industrial accidents by penalizing those who intentionally failed to comply with known safety regulations. *See* Apex Mining v. Blankenship, 918 S.W.2d 225 (Ky. 1996). The burden is on the claimant to demonstrate an employer's intentional violation of a safety statute or regulation. Cabinet for Workforce Development v. Cummins, 950 S.W.2d 834 (Ky. 1997). On the other hand, as a general rule workers' compensation acts are no fault. The purpose of workers' compensation is to pay benefits to an injured worker without regard to negligence on the part of either the employer or the employee. *See* Grimes v. Goodlet and Adams, 345 S.W.2d 47 (Ky. 1961).

As referenced above, application of the safety penalty requires proof of two elements. Apex Mining v. Blankenship, supra. First, the record must contain evidence of the existence of a violation of a specific safety provision, whether state or federal. Secondly, evidence of "intent" to violate a specific safety provision must also be present. Enhanced benefits do not automatically flow from a showing of a violation of a specific safety regulation followed by a compensable injury. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). The worker also has the burden to demonstrate the

employer intentionally failed to comply with a specific statute or lawful regulation. Intent to violate a regulation, however, can be inferred from an employer's failure to comply because employers are presumed to know what state and federal regulations require. *See* Chaney v. Dags Branch Coal Co., 244 S.W.3d 95, 101 (Ky. 2008).

Violation of the "general duty" clause set out in KRS 338.031(1)(a) may be grounds for assessment of the safety penalty in the absence of a specific regulation or statute addressing the matter. Apex Mining v. Blankenship, supra; Brusman v. Newport Steel Corp., 17 S.W.3d 514 (Ky. 2000). KRS 338.031(1)(a) requires the employer "to furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or likely to cause death or serious physical harm" to employees. Two cases wherein the court discussed the violation of KRS 338.031(1)(a) for the purposes of KRS 342.165(1) are discussed below.

In Apex Mining v. Blankenship, supra, the injured worker was required to operate a grossly defective piece of heavy equipment which had its throttle wired open, the brakes did not work, and it had caused prior accidents. The court found the egregious behavior of the employer

justified imposition of the safety penalty in the absence of a specific statute or regulation.

However, in Cabinet for Workforce Development v. Cummins, supra, the court stated not every violation of KRS 338.031(1)(a) required the imposition of a penalty for the purposes of KRS 342.165. The claimant's work site as a teacher of refrigeration, air conditioning, and heating at an adult vocational school was not properly ventilated. The court agreed with the Board that the employer's action was not an obvious and egregious violation of basic safety concepts such as would overcome the general language of KRS 338.031. The court distinguished the facts from Apex Mining, noting the potentially dangerous condition of the piece of heavy equipment and the fact the employer had taken no steps to correct it.

We believe the facts in Apex Mining illustrate one end of a continuum of employer conduct that ranges from egregious to the other end of the continuum illustrated in Cummins where the employer's conduct is innocuous. The question here is whether the hazard to which Cook was exposed is one the employer had actual or imputed knowledge so as to justify awarding an increase in compensation.

Here, the ALJ declined to assess a safety penalty against Arnold Moving finding as follows:

> . . . there is no substantial evidence of probative value showing an intentional failure of the employer to comply with any specific statute or lawful administrative regulation made thereunder, communicated to the employer and relative to installation or maintenance of safety appliances or methods, and therefore, no penalty is appropriate in this case.

However, he failed to address whether there was a violation of the "general duty clause" contained in KRS 338.031, despite Cook's testimony he repeatedly advised of the hazard. On remand, the ALJ must address this argument, and must provide a more detailed analysis in resolving this issue.

Next, the ALJ's determination enhancement of Cook's benefits by the three multiplier pursuant to KRS 342.730(1)(c)1, is inapplicable is supported by the evidence. The ALJ clearly determined, based upon Dr. Jacob's testimony, Cook retains the capacity to perform his previous work. This supports his finding the three multiplier is inapplicable. Cook has returned to work for Arnold Moving on a full-time basis. On remand, the ALJ must provide an analysis as to whether he is entitled to the two multiplier pursuant to KRS 342.730(1)(c)2, if his employment should cease related to his work injury. Chrysalis House, Inc. v. Tackett, 283 S.W.3d 671 (Ky.

2009); Hogston v. Bell South Telecommunications, 325 S.W.3d 314 (Ky. 2010). Although Cook earns less than he did prior to his work-related injury, we do not believe the statute operates to deprive him of an enhancing multiplier to which he would otherwise qualify pursuant to the above decisions.

Finally, regarding credit for benefits voluntarily paid by Arnold moving, KRS 342.0011(11)(a) defines TTD as, "[T]he condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment." This definition has been determined by our courts to be a codification of the principles originally espoused in W.L. Harper Const. Co., Inc. v. Baker, 858 S.W.2d 202, 205 (Ky. App. 1993), wherein the Court of Appeals stated:

> TTD is payable until the medical evidence establishes the recovery process, including any treatment reasonably rendered in an effort to improve the claimant's condition, is over, or the underlying condition has stabilized such that the claimant is capable of returning to his job, or some other employment, of which he is capable, which is available in the local labor market. Moreover, . . . the question presented is one of fact no matter how TTD is defined.

In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Supreme Court further explained, "[i]t would not be reasonable to terminate the benefits of an employee when she is released to perform minimal work but not the type that is customary or that she was performing at the time of his injury."

In other words, where a claimant has not reached MMI, TTD benefits are payable until such time as the claimant's level of improvement permits a return to the type of work he was customarily performing at the time of the traumatic event.

In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed until MMI is achieved, an employee is entitled to a continuation of TTD benefits so long as he remains disabled from his customary work or the work he was performing at the time of the injury. The Court in Helms, supra, stated:

> In order to be entitled to temporary total disability benefits, the claimant must not have reached maximum medical improvement and not have improved enough to return to work.

Id. at 580-581.

Here, the ALJ provided only a credit for the amount paid. Although Cook argues Arnold Moving should not be allowed credit for temporary partial disability

benefits, the ALJ made no such finding. We find no error in the ALJ providing a credit for the amount actually paid, and therefore his provision of credit for such amounts is affirmed. Cook also argues the ALJ erred in not awarding TTD benefits for the period of August 21, 2012 through October 29, 2012. However, the ALJ did in fact award TTD benefits for that time period, with the exception of the period from September 24, 2012 through October 14, 2012. Therefore, on remand the ALJ must determine whether Cook was entitled to TTD benefits from September 24, 2012 to October 14, 2012, and provide a sufficient analysis as to why he is or is not entitled to those benefits.

On remand, the ALJ shall make the determinations as directed above. This Board may not and does not direct any particular result because we are not permitted to engage in fact-finding. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

For the foregoing reasons, the November 21, 2013 Opinion and Order and the January 6, 2014 Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff are hereby **AFFIRMED IN PART**, **VACATED IN PART** and **REMANDED**. On remand, the ALJ is directed to enter additional as directed above.

ALL CONCUR.

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