Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 18, 2015

CLAIM NO. 201370321

APRIL THOMAS PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

CENTRAL HARDIN HIGH SCHOOL and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING AND REMANDING

* * * * * *

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

ALVEY, Chairman. April Thomas ("Thomas") seeks review of the Opinion and Order rendered July 20, 2015 by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") and the August 26, 2015 order denying her petition for reconsideration. The ALJ dismissed Thomas' claim after finding her sudden cessation of the use of Klonopin caused

her fall at work on August 20, 2013, and there was no evidence of work-relatedness.

On appeal, Thomas argues the ALJ failed to make findings of fact on whether her work activities were a contributing factor in her episode which caused her fall, and whether the positional risk doctrine is applicable. We vacate and remand to the ALJ for additional findings of fact on the application, if any, of the positional risk doctrine. We will only discuss the evidence relevant to the issues on appeal.

Thomas filed a Form 101 alleging she injured her low back and head on August 20, 2013 when she "passed out in the locker room at the school and fell against a wooden locker that did not have a door on it. Lower back hit the edge of the locker and she received a laceration to the head." At the time, Thomas was a school counselor and assistant coach for the cheerleading squad at Central Hardin High School ("Central Hardin"). Subsequent to filing the claim, Thomas moved to Chapin, South Carolina.

Thomas testified by deposition on October 13, 2014, and at the hearing held May 27, 2015. Thomas started working for Central Hardin on September 20, 2012 as an assistant counselor and coach for the school's cheerleading squad. Thomas assisted coaching the cheerleading squad in

the afternoons with Jacqueline Shauna Thompson ("Thompson"), who was the head coach. Thomas' daughter, Bailey Thomas ("Bailey"), was a member of the Central Hardin cheerleading squad at all relevant times.

On August 20, 2013, Thomas went to a cheerleading practice which lasted from 4:00 to 7:00 p.m. Thomas stated she only had eaten a lean pocket around 2:00 p.m. that day, and the weather was very hot. She had a particularly busy day since she worked mostly by herself, allowing Thompson to attend another meeting. Thomas began by warming up the cheerleaders. This consisted of a twenty minute cardio work-out, which included stair climbing. Thomas stated she ran the stairs with the cheerleaders. She described the cardio work out as very intense. The remainder of her time was spent coaching the cheerleading squad, which required her to be on her feet and constantly moving. When Thompson returned from her meeting, Thomas left practice to pick up her youngest son. Thomas returned to Central Hardin to pick up Bailey. Thomas went into the locker room to discuss music options for an upcoming routine. The next thing she remembered was waking up in an ambulance on her way to the emergency room. Thomas was diagnosed with an L4 compression fracture. Bailey, Thompson, Thomas' son, and

Desmond Owens ("Owens"), a fellow cheerleader, were present at the time of the episode.

Thomas confirmed she had been previously prescribed Klonopin for panic attacks and she had difficulty sleeping. She usually took her medication every night. However, she had not taken her medication for several days prior to August 20, 2013 because her physician had been out of town, and she was unable to get her prescription refilled at the pharmacy. Thomas testified she had never experienced a similar episode either before or after August 20, 2013.

Thompson, Owens, and Bailey all testified by deposition. Their testimony centered on whether Thomas' low back struck the base frame of a locker as she fell subsequent to the episode. Bailey provided consistent testimony regarding the events of Thomas leading up to the episode and fall. Bailey testified as she was talking to Thompson in the locker room, she saw out of the corner of her eye her mother's head tilt backwards looking at the ceiling. She called out to her mother, who did not respond. Bailey stated Thomas' body and arms stiffened and when her head went back,

> she just fell straight back and she was still like really stiff and what happened is she went back into the

> locker and hit the locker and her upper body kind of sort of went into the locker because it was hollow and the door wasn't there, so she hit the bottom of the locker, her lower back hit, and as soon as that hit, she kind of slid down onto the floor and I do know that I can't remember if it was before or after she hit the ground, my coach she ran and cocked her head, so that her head wouldn't like hit the ground or something . . .

Thompson, a coach and teacher for Central Hardin, testified Thomas had briefly left cheerleading practice on August 20, 2013 to pick up her son. Thomas returned, and went into the locker room. Pictures introduced at her deposition depict the locker room and the lockers. One locker near the corner of the wall was hollow and had no door. On the adjoining wall was a file cabinet.

Thompson testified she was sitting in her office chair at the computer desk when she heard Bailey scream. Thompson stated Thomas' eyes were rolled back and her back was arched. Thompson jumped to help her. By the time she reached her, Thomas had started to fall. Thompson reached for the back of Thomas' neck to protect her head. Thomas landed on her buttocks on the floor, slumped over with her back against the locker and file cabinet. Thompson then eased Thomas onto the floor to lie down. Thompson disputes Bailey's testimony that Thomas' upper body went into the

locker or that her low back struck the base of the locker as she fell down. Thompson insists Thomas landed directly on the floor on her buttock. Thompson also disputes Thomas' testimony she was coaching by herself that day. Thompson insists she was present for the cheerleading session.

Owens, a student at Central Hardin and a cheerleader at the time of the incident, provided testimony consistent with Thompson's. Owens testified he heard Bailey scream in the locker room. He then saw Thompson ease Thomas to the ground. Owens stated Thomas would have fallen, but Thompson, "she kind of, like, floated her down to the ground." Owens did not see Thomas' head or shoulder fall into the hollow locker, or her body strike anything on the way down.

The relevant portions of the medical records from Hardin Memorial Hospital were filed by Thomas and Central Hardin. Thomas was brought to the emergency room following a single isolated seizure on August 20, 2013 in the evening, and the notes indicate she had recently discontinued Klonopin. Diagnostic studies demonstrated an acute burst fracture at L4. The following day, Thomas was examined by Dr. Thomas Harralson. He noted Thomas had a history of anxiety and being on chronic Benzodiazepine

therapy when she lost consciousness and fell to the floor during a cheerleading training session on August 20, 2013. Thomas reported she had felt “shaky” for several days prior after running out of her Klonopin medication, stating her primary care physician was out of town when she attempted to get her medication refilled. Dr. Harralson diagnosed a syncopal episode with possible seizure and L4 burst fracture with minimally displaced posterior fragment. Thomas was also seen by Dr. Thad Jackson who noted she had fallen after passing out while coaching cheerleading. Although the etiology of her fall is unknown, Dr. Jackson noted she had discontinued taking Klonopin four days prior to the incident. Dr. Jackson diagnosed acute K4 fracture after a fall of unknown etiology, and prescribed a brace.

Thomas was discharged from Hardin Memorial Hospital on August 23, 2013, and a discharge summary was prepared by Dr. David Yerkes. In the history section, he noted:

> The patient is a pleasant 45-year-old, white female with a history of insomnia that she was taking Klonopin for. Unfortunately, she had a mix up with her pharmacy and was unable to receive her Klonopin for approximately four days. She was at a school function and was not doing any significant activity in particular other than just standing there talking. According to reports, she stiffened her arms and threw her

> head back and fell. Her head was caught by a bystander, but she did injure her back. She became unconscious and rolled her eyes back in her head and bit her tongue and was unresponsive for a period of several minutes . . . .

Dr. Yerkes provided discharge diagnoses of Benzodiazepine withdrawal seizure and L4 compression fracture. He advised Thomas to follow up with Dr. Jackson and restricted her to light duty with no lifting over ten pounds. He prescribed Percocet, Klonopin, Colace, and Celexa.

In support of her claim, Thomas filed the December 20, 2014 report of Dr. James Owen. Dr. Owen noted Thomas passed out and fell into a wooden locker on August 20, 2013. Thomas was a cheerleading coach leading exercises on a hot day. She had led a thirty minute exercise and two hour practice before leaving to pick up her kids. She returned, and was standing listening to music when she lost consciousness. Thomas also reported eating very little food that day. Dr. Owen also noted Thomas had not taken her Klonopin for approximately three days prior to episode. After performing an examination and reviewing the medical records, Dr. Owen diagnosed, 1) Benzodiazepine withdrawal seizure associated with significant exertional activity, sweating and lack of food

the day of the seizure; and 2) L4 compression fracture as a result of the above. Dr. Owen stated Thomas' injury caused her complaints, and was in part pre-existing due to the use and rapid cessation of Klonopin. He noted the mechanism of injury was by direct trauma and excessive torsion torque to the lumbar spine. Dr. Owen assessed a combined 21% impairment rating. Dr. Owen found Thomas had reached maximum medical improvement, provided restrictions, and stated she has the capacity to return to her job.

In an addendum dated January 23, 2015, Dr. Owen indicated he had reviewed the lay testimony provided by Thomas, Thompson, Bailey and Owens. Dr. Owen opined if the locker door frame was not there, it is unlikely she would have sustained a compression fracture. Therefore, the location of the seizure, at work in the locker room, was a primary reason for the damage that occurred. Dr. Owen also indicated the lack of Klonopin and the rapid cessation was the primary cause of the seizure, but her "weight and activity and electrolyte disturbance from sweating and the stress of the day" are contributing factors.

Central Hardin filed the October 16, 2013 physician peer review report prepared by Dr. F. Albert Olash. After reviewing the medical records, Dr. Olash opined the seizure was due to Benzodiazepine withdrawal.

He stated the fall was not work-related noting the work activities did not cause her to fail to get her prescription. Therefore, Dr. Olash concluded the seizure, syncope, and L4 compression fracture are independent and unrelated to Thomas' work activities. Dr. Olash noted Thomas had a history of insomnia for which she had been taking Klonopin for approximately a year. Thomas had run out of the medication three to four days prior to her seizure due to a mix-up at the pharmacy, and it was this withdrawal which caused the seizure and subsequent injury. He noted the fact the seizure occurred while at work is incidental, and had no causal effect.

> This could just as easily occurred when she was driving her automobile or while she was at home, and I do not believe that her work activities were in any way responsible for the injury that required evaluation and subsequent treatment. Therefore, the diagnoses of seizure, syncope, and L4 fracture as well as subsequent treatment are not directly related to work activities.

Central Hardin filed the April 2, 2015 report of Dr. George Nichols, a forensic pathologist. After reviewing the medical records and testimony of Thomas, Bailey, Thompson and Owens, Dr. Nichols opined the syncopal episode or seizure was most probably due to Benzodiazepine withdrawal. Due to the nature of Thomas' lumbar injury and

review of the depositions, he also concluded Thomas likely fell into an open locker with her low back contacting the lower shelf within the locker.

Finally, Central Hardin filed the April 3, 2015 medical records review of Dr. Daniel Wolens, who reviewed the medical records and the testimony of Thomas, Thompson, Bailey and Owens. Dr. Wolens stated there is agreement within the medical record that the cause of Thomas' unconsciousness was a seizure due to sudden cessation of Klonopin use, and he believed this was a rational conclusion. Dr. Wolens disagreed with Dr. Owen's opinion that other factors contributed to her unconsciousness. He noted Thomas reported twenty minutes of aerobic activity followed by two hours of cheerleading training, followed by her picking up her son. He noted Thomas, a conditioned athlete, was at low risk from loss of consciousness due to physical activity and dehydration. Further, her period of activity was short, approximately twenty minutes, followed by:

> 2+ greater intervals between the time that her physical activity ended and the time when her seizure began. During this time, there would have been a considerable degree of equilibrium throughout her body for fluids, electrolytes, and body temperature such that any risk for exercise-induced

> dehydration and electrolyte disturbance would have been eliminated.

Dr. Wolens also stated that whether Thomas fell into the locker is irrelevant regarding her development of an L4 compression fracture. Dr. Wolens explained the fracture occurred as a result of compression, which occurs when the body falls in a flexed position. "Whether that flexed position was into the locker, into the wall, or onto the floor is a moot point." Dr. Wolens would have expected a worse injury to the head if Thomas had fallen directly to the ground than into the locker. Therefore, "falling into the locker does not present a unique risk or elevated risk for the development of an L4 compression fracture and was protective of a head injury should the fall have continued directly to the floor."

After reviewing the testimony, Dr. Wolens indicated the testimony of Thompson and Owens seemed to be the most valid in light of the discharge summary notes by Dr. Yerkes and potential bias of Bailey, Thomas' daughter.

In the July 20, 2015 opinion, the ALJ summarized the medical and lay evidence. The ALJ dismissed Thomas' claim stating as follows:

> 18. The ALJ is compelled to mention that the Plaintiff presented well at the final hearing and that she was pleasant and well-spoken. The

> overwhelming evidence in this matter however compels an adverse result.
>
> 19. When considering the objective medical evidence in this case, the ALJ is persuaded by the diagnosis of Dr. Harralson, the Hardin Memorial emergency room physician, the findings of Dr. Olash, and the conclusions of Dr. Wolens, all of whom agree that the Plaintiff's withdrawal from klonopin precipitated by the sudden cessation of the use thereof is the cause of the Plaintiff's episode and fall. There is no evidence that this episode is causally work related and the ALJ therefore finds that the Plaintiff has failed in its burden to establish that there was a work related injury.

Thomas filed a petition for reconsideration requesting the ALJ to consider and make additional findings of whether her employment was a contributing factor in causing her fall and whether the positional risk doctrine is applicable. In the order on Thomas' petition for reconsideration dated August 26, 2015, the ALJ stated as follows:

> . . . The ALJ found and reiterates the finding herein that there is no evidence that this episode is causally work-related and the Plaintiff has failed in its burden to establish that there was a work related injury. The most credible and convincing evidence supports the finding that withdrawal from klonopin precipitated by the sudden cessation of the use thereof is the cause of the Plaintiff's episode and fall. . . .

On appeal, Thomas acknowledges the ALJ found her sudden cessation of Klonopin the cause of her episode and fall, but argues the analysis does not end there. Thomas argues the ALJ failed to discuss or make findings on whether her work activities were a contributing factor in her episode and fall, citing to Jefferson County Public Schools/Jefferson County Board of Education v. Stephens, 208 S.W.3d 862 (Ky. 2006). Thomas asserts Dr. Owen opined her substantial exertion on a nearly empty stomach contributed to her collapse. Thomas asserts Dr. Wolens' opinion is based upon an incorrect history and cannot substitute substantial evidence since he made an erroneous assumption she only exerted herself for twenty minutes and had time to equilibrate. She asserts this is at odds with her own testimony. Thomas also argues the ALJ failed to discuss or make findings of fact on whether there was an increased risk of injury due to her work environment, also known as the positional risk doctrine. Thomas cites to Indian Leasing Co. v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978) and Stasel v. American Radiator & Standard Sanitary Corp., 278 S.W.2d 721 (Ky. 1955). Thomas argues the opinions of Drs. Wolens and Nichols are irrelevant since there is no 'could have been worse' defense.

Thomas, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her cause of action including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Thomas was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is 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). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

This Board finds no merit in Thomas' argument the opinions of Dr. Wolens cannot constitute substantial evidence. Although Thomas provides no citation, we assume she relies upon Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004). The case *sub judice* is easily distinguished from Cepero, an unusual case involving not only a complete failure to disclose, but affirmative

efforts by the employee to cover up a significant injury to the left knee only two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury left Cepero confined to a wheelchair for more than a month. The physician upon whom the ALJ relied was not informed of this prior history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero's left knee impairment was not work-related but, instead, was attributable to the non-work-related injury two and a half years previous. Here, Dr. Wolens listed and summarized the medical and lay evidence of record, and rendered his conclusions on causation. His interpretation of the events leading up to the episode and fall based upon a complete review of the record is not a basis to render his opinion unsubstantial.

This Board also finds Thomas' reliance upon Jefferson County Public Schools/Jefferson County Board of Education v. Stephens, 208 S.W.3d 862 (Ky. 2006) misplaced. There, the Court addressed the burden of proof regarding unexplained falls versus idiopathic falls. The Court ultimately concluded substantial evidence supported the ALJ's determination the Claimant's fall was not idiopathic, but unexplained, and therefore compensable. Thomas does

not dispute she had an idiopathic fall or argue she had an unexplained fall. As noted by the ALJ, the cause of the fall was clearly explained by the medical evidence.

That said, we vacate and remand for additional findings addressing Central Hardin's liability, if any, under the positional risk theory for idiopathic falls. The opinions of Drs. Owen and Wolens are conflicting, and Thomas specifically requested additional findings of fact in her petition for reconsideration.

In Stasel v. American Radiator & Standard Sanitary Corp., 278 S.W.2d 721 (Ky. 1955), the claimant was injured while at work when he fell against a hot stove or upon hot sand due to a fainting spell which was subsequently diagnosed as an epileptic seizure. The medical evidence revealed Stasel suffered from a congenital epileptoid condition. In reversing the circuit court's decision affirming the Workers' Compensation Board's holding Stasel's injury was not compensable, the former Court of Appeals, now Supreme Court, stated, in relevant, part, as follows:

> The place of employment may be structurally sound and in good condition and yet constitute a source of danger to one hired to work there and if the place may be fairly said to be the efficient and operative cause of the injury, then the employee is

> entitled to compensation, even though some infirmity or disability not traceable to the employment may be remotely connected with the injury.
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> . . .
>
> The appellant was hired to work in appellee's plant after passing a pre-employment physical examination; he was required to wear a special face mask to protect his respiratory system; there were unusual hazards and risks in the physical conditions of his place of work; and he became unconscious while performing his duties and fell into a hot stove or hot sand and suffered severe burns. Therefore, under these facts the only fair and reasonable finding that could be made was that the peculiar hazards of his employment were a contributing factor to his accident and injury. We think there affirmatively appears a clear causal connection between the conditions under which the appellant was working and the occurrence of the injury.

Id. at 723, 724.

In Indian Leasing Co. v. Turbyfill, 577 S.W.2d 24 (Ky. App. 1978), Turbyfill suffered from advanced artherosclerosis, however his condition did not interfere with his ability to work as a truck driver for Indian Leasing Co. On the date of his injury, Turbyfill suffered a coronary occlusion resulting in a myocardial infarction. He lost consciousness and fell twelve feet onto concrete where he sustained "crushing injuries to his skull and lacerations of the brain." Id. at 25. The medical

evidence established the coronary occlusion and myocardial infarction were the result of Turbyfill's work exertion acting upon his pre-existing artherosclerosis. The medical evidence also indicated the cause of his death was the fall which crushed his skull. The Workers' Compensation Board determined Turbyfill sustained a work-related injury and apportioned 95% of the liability to his employer and 5% to the Special Fund. In affirming the award, the Court of Appeals stated, in relevant part, as follows:

> The basic rule, for which there is now general agreement, is that the effects of such a fall are compensable if the employment placed the employee in a position increasing the dangerous effects of such a fall, such as on a height, near machinery or sharp corners, or in a moving vehicle.
>
> . . .
>
> Liability under the positional risk theory for idiopathic falls is limited to those cases in which the employment placed the employee in a position increasing the dangerous effects of the idiopathic fall. The Stasel case was treated as having been decided under the positional risk theory. Id., 462 S.W.2d at 904, footnote 4. In level fall cases involving no increased danger attributable to the employment, liability may be imposed on the employer only if the work was a substantial factor in causing the injury.
>
> . . .

> Turbyfill's employment placed him atop the loaded trailer where the risk of injury from any fall was greatly magnified. There was substantial evidence that he did not die from the myocardial infarction which caused the fall. Rather, the evidence supports a finding that he died from the results of the fall, namely the crushing skull injuries and brain laceration received when his head struck the concrete. The board could find that Turbyfill would have survived had he not suffered the myocardial infarction at work.
>
> . . .
>
> Had Turbyfill not been working atop the loaded trailer, it is likely that he would have survived the myocardial infarction. When the employment places the employee in a position of danger increasing the effects of a fall, the Special Fund should not be required to relieve the employer of liability for the results of the fall alone. It was the function of the board to apportion the percentages of disability, and the circuit court did not err in refusing to disturb the board's award. [citation omitted]

Id. at 26, 27, 28.

The medical evidence is conflicting on this specific issue. Although the ALJ clearly determined Thomas' sudden cessation of Klonopin caused her episode and fall relying upon Dr. Harralson, Dr. Olash, and Dr. Wolens, he did not clarify or address whether Thomas' employment placed her in a position increasing the dangerous effects

of the idiopathic fall. We do not direct any particular result and the ALJ may make any determination which is supported by the evidence. The ALJ failed to provide additional findings of fact addressing this issue despite Thomas' petition for reconsideration.

Therefore, on remand, the ALJ is directed to provide an analysis on the applicability of the positional risk doctrine and cite to the evidence in support of his ultimate determination. Again, we do not direct any particular result.

Accordingly, the July 20, 2015 Opinion and Order and the August 26, 2015 order on petition for reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, is **VACATED** and **REMANDED** for additional findings addressing the applicability of the positional risk doctrine.

RECHTER, MEMBER, CONCURS.

STIVERS, MEMBER, CONCURS IN RESULT ONLY.

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