Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 11, 2013

CLAIM NO. 201280723

APRIL YOUNG PETITIONER

VS. **APPEAL FROM HON. ALLISON E. JONES, ADMINISTRATIVE LAW JUDGE**

WESLEY MANOR REHABILITATION
and HON. ALLISON E. JONES,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. April Young ("Young") seeks review of the opinion, order and award rendered April 18, 2013 by Hon. Allison Emerson Jones, Administrative Law Judge ("ALJ") awarding her temporary total disability ("TTD") benefits from March 27, 2012 to July 12, 2012, permanent partial disability ("PPD") benefits and medical benefits for a work-

related neck injury sustained on March 27, 2012. She also seeks review of the May 28, 2013 order denying in part her petition for reconsideration.

On appeal, Young argues the ALJ misinterpreted Dr. Robert Sexton's opinion and erred in relying upon Dr. Robert Sasser's release to return to her regular work duties with Wesley Manor Healthcare ("Wesley Manor") in finding she retains the capacity to return to her prior work. Young argues the ALJ erred in relying upon Dr. Sasser's release in terminating TTD benefits. Finally, Young argues the ALJ misinterpreted the opinion of Dr. Michael Cecil and erred in dismissing her psychological claim. Because there is substantial evidence in the record supporting the ALJ's determinations and no contrary result is compelled, we affirm.

Young filed a Form 101 alleging injuries to her neck, bilateral shoulders, and mid-lower back occurring on March 27, 2012 as she was repositioning a patient. The ALJ subsequently granted Young's motion to amend the Form 101 to include a claim for post-traumatic stress disorder ("PTSD") in an order dated November 5, 2012.

Young testified by deposition on October 9, 2012 and at the hearing held February 20, 2013. Young earned an associate's degree in nursing, and is certified as a medical

assistant. Young is a registered nurse who has worked in such capacity in a variety of settings since graduating in 1999.

Young testified she began working for Wesley Manor on October 24, 2011 as a nurse supervisor which entailed both administrative and physical nursing duties. Her position required unrestricted use of her neck, shoulders and back. Young testified she did not return to work following her March 27, 2012 work incident, and was subsequently fired on April 2, 2012. She has not worked anywhere else since.

Young testified on March 27, 2012, she was asked to watch over a difficult patient who repeatedly attempted to get out of his wheelchair. Young stated the patient continuously grabbed her neck while she repositioned him in his wheelchair to prevent him from falling. Young indicated at least four other certified nurse's assistants were injured by the same patient. Young also stated another patient under her care passed away the same night. Young testified she experienced pain in her low back, shoulders and neck, and could hardly move due to this incident. However, she completed her shift since no other employee could relieve her.

Young first treated with her family physician, Dr. Ali Kazemi, on April 5, 2012 who ordered x-rays, prescribed medications, and restricted her from work. She also went to BaptistWorx the same day where physical therapy was recommended. She currently treats with Dr. Sasser on a monthly basis for both her alleged physical and psychological injuries. Young has also seen a counselor and currently treats with Dr. David Kissel, a psychiatrist.

Young currently experiences neck pain radiating into her lower back and to the top of her thighs. She also experiences numbness in her right ring finger and wrist, and down the back of her thighs. Young stated she has difficulty sleeping, experiences flashback memories, and has anxiety. Young is currently prescribed Ultram, Naprosyn, Celebrex, and Wellbutrin from Drs. Sasser and Kissel.

At both the hearing and deposition, Young insisted she is currently under restriction from Dr. Sasser. At the hearing, Young stated she is restricted from sitting for long periods of time, lifting over twenty pounds, and twisting or bending. Young disputed the accuracy of Dr. Sasser's May 30, 2012 release to return to regular duties on July 12, 2012. She explained Dr. Sasser's nurse mixed her up with another patient. Thereafter, the nurse corrected Young's restrictions to a twenty pound lifting limit. Young

testified she “probably” has documentation to this effect but failed to bring it to the hearing. No documentation supporting this contention was ever filed as evidence.

At the deposition, Young testified her mental state, as well as her current condition and restrictions prevent her from returning to her pre-injury nursing activities. Young testified at the hearing she could return to her former job as a registered nurse under her current restrictions and limitations only if it was light duty.

Young testified she began receiving unemployment benefits shortly after being fired on April 5, 2012. Young stated she has actively sought employment within her restrictions. Young confirmed as a condition of receiving unemployment benefits, she indicated she was ready, willing and able to work. She stated she is ready to work at a job within her limitations, less physically demanding and “more calm.”

In support of her claim, Young filed the April 5, 2012 records from BaptistWorx. Young presented with complaints of neck and low back pain, emotional stress, depression and inability to sleep due to being fired and the March 27, 2012 incident. Ms. Teresa Wright, APRN, diagnosed cervical and lumbar muscle strains and “anxiety R/T injury & job-loss.” Ms. Wright returned Young to work with

restrictions, prescribed medication, referred her to physical therapy and ordered her to follow up with BaptistWorx.

Young also filed the records from Dr. Kazemi of University Physicians Associates. On April 5, 2012, Dr. Kazemi's examination revealed no decreased neck range of motion, flexion, extension or rotation and no symptoms of upper extremity numbness, tingling or weakness. Dr. Kazemi diagnosed neck pain and requested a cervical spine x-ray. In addition, Young complained of back pain and depressive symptoms on April 19, 2012. Dr. Kazemi prescribed Paxil for adjustment disorder and Tramadol for neck pain and referred her to psychological therapy. On June 14, 2012, Dr. Kazemi stated as follows regarding Young's return to work status:

> pt to return to work when appropriate and pt tolerates duties necessary for her job. Mrs. Young is also due to see the psychiatrist who will address her depression and PTSD further, which may help in assessing her return to work.

Wesley Manor filed the records from Dr. Sasser. A "Disability Certificate" dated May 30, 2012 states:

> This is to certify that [April Young] was under my professional care from 5-30-12 to 7-11-12.
>
> This is to further certify that [April Young] has now recovered sufficiently to

> be able to return to regular work duties on 7-12-12.

Dr. Sasser did not impose restrictions. Neither Wesley Manor nor Young filed additional treatment records from Dr. Sasser.

Young submitted the August 2, 2012 psychiatric assessment by Dr. David Kissel from Our Lady of Peace. Dr. Kissel noted Young did not demonstrate symptoms consistent with PTSD. Dr. Kissel also noted Young reported she has been fired from twenty-five nursing jobs in the last fourteen years. Dr. Kissel diagnosed depressive disorder not otherwise specified. He recommended Young continue weekly pyschotherapy and prescribed an increased dosage of Paxil.

Young submitted the October 10, 2012 report by Dr. James Farrage, Jr. who diagnosed her as status post cervical myoligamentous strain with secondary myofascial pain symptoms who is otherwise neurologically intact. He noted she has a mild element of lumbago and depression. Dr. Farrage found Young had attained maximum medical improvement ("MMI") and assessed a 5% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition, ("AMA Guides") for her cervical spine condition. He deferred to the treating

psychiatrist regarding any impairment for psychological disorder. He assigned restrictions and opined Young does not retain the physical capacity to return to her previous job description without significant accommodation.

Wesley Manor filed the November 29, 2012 report of Dr. Sexton, who diagnosed cervical spondylosis characterized by a protruding degenerated disc at C4-5, disc/osteophyte at C5-6 and C6-7, and severe neuroforaminal stenosis at C5-6 and C6-7; resolved cervical sprain/strain without discopathy, radiculopathy, neuropathy or myelopathy; resolved thoracic sprain/strain; developmental thoracic scoliosis; lumbago NOS; and resolved shoulder strain/sprain. Dr. Sexton opined the March 27, 2012 did not cause a harmful change to Young's neck, shoulder or lumbar spine. Rather, her current complaints relate to pre-existing conditions. As a result of the March 27, 2012 work event, Dr. Sexton declined to assign permanent restrictions, found further medical treatment unnecessary and assessed a 0% impairment rating to Young's neck, shoulder or back pursuant to the AMA Guides. He stated there are no demonstrable medical impediments to Young returning to work as a registered nurse. Dr. Sexton further noted the record indicates Young has been discharged from nursing positions twenty-five times in fourteen years.

Wesley Manor submitted the January 4, 2013 neuropsychological report evaluation by Michael Cecil, Psy.D., who concluded the evaluation and testing results do not reflect Ms. Young's psychological and neuropsychological functioning. He found Young's level of effort questionable and she tended to magnify her current psychopathological symptomatology. Dr. Cecil opined Young did not suffer any psychological or neuropsychological impairment directly related to her physical condition caused by the alleged work accident. He ultimately diagnosed, "R/O malingering, R/O schizophrenia, paranoid type; R/O schizotypal personality disorder." He recommended Young seek mental health treatment to explore schizotypal personality disorder if not schizophrenia, paranoid type, which predated the March 2012 work event.

In a February 7, 2013 addendum, Dr. Cecil reiterated Young did not suffer a psychological or stress-related condition directly related to a physical condition caused by the alleged work accident. He specifically found Young does not meet the criteria for PTSD and declined to assign permanent restrictions.

Wesley Manor also filed several records pre-dating the March 2012 work accident which we will not summarize further since they are not relevant to this appeal.

In her April 18, 2013 opinion, the ALJ determined Young suffered a compensable work-related neck injury on March 27, 2012 and awarded PPD benefits based upon a 5% impairment rating. The ALJ found Young retains the physical capacity to return to her prior work, stating as follows:

> . . . . With respect to Young's ability to return to her prior employment, the ALJ relies on Dr. Sexton's evaluation and Dr. Sasser's treatment records, both of which indicate that Young retains the physical capacity to return to her prior employment.

The ALJ also found no psychological condition resulting from Young's physical injury sustained in the March 27, 2012 incident, stating as follow:

> With respect to Young's alleged psychological injury, the ALJ relies on Dr. Cecil. Dr. Cecil opined: "I do not believe that Ms. Young has suffered any psychological or neuropsychological impairment directly related to her physical condition caused by the alleged work accident." The ALJ finds his opinion to be persuasive as more consistent with the other records and testimony. The ALJ notes that even in the BaptistWorx records, Ms. Wright indicated that the alleged psychological problems were caused by the "injury and job loss." Upon reviewing the record, the ALJ is convinced that any psychological issues are not a result of the physical injury, but by Young's termination.
>
> . . . .

> Young did not sustain a temporary or permanent psychological injury as a result of her March 27, 2012, work injury. As such, she is not entitled to any past or future medicals for the alleged psychological injury.
>
> In so finding, the ALJ relies on . . . Dr. Cecil with respect to the alleged psychological injury.

After reviewing the applicable statutory and case law, the ALJ awarded Young TTD benefits from March 27, 2012 to July 12, 2012, stating as follows:

> **2. <u>Findings of fact & conclusions of law.</u>**
>
> The ALJ finds Young is entitled to TTD benefits at the rate of $598.03 per week from March 27, 2012, the date of her work-related injury to July 12, 2012, the date Dr. Sasser released her to return to work. The ALJ further finds that the total amount of TTD due from Wesley Manor shall be offset by the total amount of unemployment benefits Young received during this same period.
>
> **3. <u>Evidentiary basis & analysis</u>**
>
> In so finding, the ALJ relies on the parties' stipulations (injury date and AWW), Young's testimony (ability to return to work and fact that she received unemployment), and Dr. Sasser's treatment records indicating that as of July 12, 2012, he was releasing Young to return to regular duty employment.

The ALJ provided Wesley Manor an offset for the amount of unemployment benefits Young received during the

period of TTD. The ALJ awarded PPD benefits and medical benefits for Young's cervical injury. Young filed a petition for reconsideration asserting the same arguments she now makes on appeal. The ALJ denied all relevant portions of her petition in a May 28, 2013 order.

On appeal, Young argues the ALJ erred in awarding TTD benefits through July 12, 2012. She asserts Dr. Sasser's May 30, 2012 note releasing her to regular work duties on July 12, 2012, cannot constitute substantial evidence since it is prospective only. She points out projected MMI and return to work dates are subject to change depending on length of recovery, job duties, and accommodations by employers. Young also testified the release was a mistake, and was actually for another patient.

For the same reasons, Young also argues the ALJ erred in finding she retains the capacity to return to her former job with Wesley Manor by relying upon Dr. Sasser's prospective work release document. Young also asserts the ALJ misinterpreted Dr. Sexton's report and cannot rely on his opinions regarding restrictions, stating as follow:

> The medical logic of Dr. Sexton is the following: Since there was no 'injury', there are no ratings or restrictions directly attributable to the work event. However, the ALJ concluded the Petitioner sustained and (sic) 'injury' on 3/27/12 and awarded indemnification

> benefits for such a work 'injury" as defined by the Act. The Petitioner respectfully submits, therefore, that the ALJ also committed error in relying upon the opinions of Dr. Sexton of no restrictions when the ALJ has found that the Petitioner actually sustained a work 'injury'. . . .

Finally, Young argues the ALJ erred in dismissing her psychological claim. She states the ALJ misinterpreted Dr. Cecil's report since he never addressed whether "there was a psychological 'injury' independent of the physical 'injury' or whether there was a temporary 'injury' which may have required TTD and medical benefits . . ."

As the claimant in a workers' compensation case, Young bore the burden of proving each of the essential elements of her cause of action before the ALJ, including duration of TTD benefits, the applications of multipliers, and causation of an alleged psychological injury. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Young was unsuccessful in these respects, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. 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 discretion to determine 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). 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). An ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence supporting a different outcome than 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences which otherwise could have been drawn

from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

With the above standards in mind, we find the evidence in the record supports all of the ALJ's conclusions, and no contrary result is compelled. We first address Young's argument relating to duration of TTD benefits. KRS 342.0011(11)(a) defines TTD as the condition of an employee who has not reached MMI 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 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.

TTD is a factual finding in which the ALJ is called upon to analyze the evidence presented and determine the date the injured employee either: 1) reaches MMI; or 2)

attains a level of improvement such that he is capable of returning to gainful employment. KRS 342.0011(11); W.L. Harper Const. Co., Inc. v. Baker, supra; Central Kentucky Steel v. Wise, supra. Generally the duration of an award of TTD may be ordered only through the earlier of those two dates. Thus, an award of TTD benefits means the employee has not reached MMI and has not attained a level of improvement which would permit the employee to return to the type of work that is customary or that she was performing at the time of the injury.

In the case *sub judice*, the ALJ's determination Young is entitled to TTD benefits from March 27, 2012 through July 12, 2012 is supported by substantial evidence, and no contrary result is compelled. The ALJ relied upon the stipulated injury date of March 27, 2012, Dr. Sasser's return to work document, and Young's own testimony. Young testified she began receiving unemployment benefits shortly after being terminated by Wesley Manor. Young indicated she was willing and able to work as a condition of receiving those benefits. Young also testified she is actively seeking employment. At the deposition, Young testified she had applied for a manager of consulting position with a cable company, as well as several nursing agencies. At the hearing, Young stated she is looking for employment within

her restrictions. Dr. Sasser's May 30, 2012 record reflects he certified Young "has now recovered sufficiently to be able to return to regular work duties on 7-12-12." Young's testimony and Dr. Sasser's note constitute substantial evidence upon which the ALJ could rely upon in making the factual determination she is entitled to TTD benefits from March 27, 2012 through July 12, 2012.

We are not persuaded by Young's argument Dr. Sasser's May 30, 2012 record releasing her to regular duty on July 12, 2012 cannot constitute substantial evidence since it is prospective. Rather, this goes to the weight of the evidence which the ALJ is free to consider. We also note neither party filed additional records from Dr. Sasser indicating his projected date of release to regular duty had been altered throughout his treatment of Young. Finally, Young asserts her testimony establishes Dr. Sasser's release to regular work duties was a mistake and meant for another patient. By relying upon the Dr. Sasser's record, the ALJ clearly found this testimony not credible, and acted well within her discretion in so finding. Square D Co. v. Tipton, supra.

We likewise find the ALJ's determination Young retains the ability to return to her prior employment supported by substantial evidence, and no contrary result

is compelled. The ALJ relied upon Dr. Sexton's November 29, 2012 report and Dr. Sasser's record releasing Young to full duty on July 12, 2012. For the same reasons stated in the above analysis, we again find Dr. Sasser's May 30, 2012 record constitutes substantial evidence upon which the ALJ could rely.

In his November 29, 2012 opinion, Dr. Sexton diagnosed Young with several ailments related to her back, shoulders and neck. He determined the diagnoses were due to pre-existing conditions, not the March 27, 2012 event. Dr. Sexton assessed a 0% impairment rating and assigned no permanent restrictions due to the March 27, 2012 event. He specifically noted "there are no demonstrable medical impediments to Ms. Young returning to work as a registered nurse." Dr. Sexton's report also constitutes substantial evidence supporting the ALJ's determination Young retains the physical capacity to return to her prior employment.

We find no merit in Young's argument the ALJ erred in relying upon Dr. Sexton's opinion regarding restrictions when the ALJ found Young in fact sustained a work-related neck injury due to the March 27, 2012 event, a finding contrary to the opinion of Dr. Sexton. 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, supra. Therefore, while the ALJ did not adopt Dr. Sexton's opinion regarding whether Young sustained an injury due to the March 27, 2012 event, she was free to believe his opinion pertaining to another issue.

Finally, no contrary result is compelled regarding the ALJ's determination a psychological injury did not result from the physical injury. The ALJ relied upon Dr. Cecil's opinion and the records of BaptistWorx. In his January 4, 2013 report, Dr. Cecil diagnosed R/O malingering, R/O Schizophrenia, paranoid type and R/O Schizotypal personality disorder. After noting her questionable level of effort and tendency to magnify her current psychological symptomology, Dr. Cecil stated as follows:

> I do not believe that Ms. Young has suffered any psychological or neuropsychological impairment directly related to her physical condition caused by the alleged work accident. The current evaluation does reveal a lack of full effort and symptom magnification. According to the 5th Edition of the AMA Guides, I rate her whole person impairment as 0% as a result of her work-related injury. Ms. Young should follow up with mental health treatment to explore what appears to be at least a schizotypal personality disorder if not

> schizophrenia, paranoid type that predate her on-the-job event.

In an addendum dated February 7, 2013, Dr. Cecil stated as follows:

> In reference to question #2, I do not believe Ms. Young has suffered a psychological or stress-related condition that is directly related to a physical condition caused by the alleged work accident.

He further imposed no restrictions and concluded Young does not meet the criteria for PTSD. The April 5, 2012 BaptistWorx record demonstrates Young was diagnosed in part with “anxiety R/T injury & job-loss.” Dr. Cecil’s opinions and the records of BaptistWorx constitute substantial evidence supporting the ALJ’s determination Young did not suffer any psychological injury due to the March 27, 2012 work event, and a contrary result is not compelled.

Accordingly, the April 18, 2013 opinion, order and award rendered by Hon. Allison Emerson Jones, Administrative Law Judge, and the May 28, 2013 order denying in relevant part her petition for reconsideration are hereby **AFFIRMED**.

ALL CONCUR.

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