Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 25, 2014

CLAIM NO. 201094338

BARBARA MORRIS PETITIONER

VS. **APPEAL FROM HON. J. LANDON OVERFIELD, CHIEF ADMINISTRATIVE LAW JUDGE**

MS COMMUNITY HEALTH
AND HON. J. LANDON OVERFIELD,
CHIEF ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

ALVEY, Chairman. Barbara N. Morris ("Morris") seeks review of the Opinion, Award and Order rendered April 25, 2014 by Hon. J. Landon Overfield, Chief Administrative Law Judge ("CALJ"), awarding temporary total disability ("TTD") benefits and temporary medical benefits for an exacerbation of her cervical condition sustained on March 3, 2010 while

working for MS Community Health LLC ("MS Community"). The CALJ dismissed her claim for permanent partial disability ("PPD") benefits and medical benefits after June 1, 2012. Morris also appeals from the order issued May 21, 2014 denying her petition for reconsideration.

On appeal, Morris argues the CALJ's finding she did not sustain a permanent disability while employed by MS Community is clearly erroneous and not supported by reliable, probative and material evidence. We note the CALJ performed a proper analysis pursuant to Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001); FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007). Because the CALJ's determination is supported by substantial evidence, and a contrary result is not compelled, we affirm.

Morris filed a Form 101 on February 17, 2012, alleging she injured her neck on March 3, 2010 when a co-worker's angry husband ran into her and knocked her over as she was performing her duties as a phlebotomist for MS Community.[1] She caught herself on the counter and did not fall completely to the floor. Morris is a high school

[1] It is noted the claim was original assigned to Hon. Caroline Pitt Clark, Administrative Law Judge, but it was reassigned to the CALJ by order dated May 14, 2012.

graduate with a phlebotomist certification. Her employment history includes work as a phlebotomist, assembly line worker, cafeteria worker, assistant manager of a department store, security guard and sewing machine operator.

Morris, a resident of Drakesboro, Muhlenberg County, Kentucky testified by deposition on October 11, 2012 and October 4, 2013. She also testified at the hearing held February 25, 2014. Morris underwent cervical surgery in 1995 due to a motor vehicle accident ("MVA"). Morris stated her right-sided neck pain has continued since the MVA despite the 1995 surgery. In 2009, she developed pain in the left side of her neck with numbness into her left arm. She underwent surgery in October 2009 for her ongoing neck problems. The surgery relieved the numbness, but her neck pain continued. She was eventually allowed to return to work four hours per day. On March 3, 2010, she was still working four hours per day and her limitations stemming from the October 2009 surgery had never been lifted. Prior to March 3, 2010, Morris was taking Lortab for pain, and muscle relaxers.

On March 3, 2010, Morris was standing in front of a computer at work, when the angry husband of a co-worker entered the lab, knocking her over in the process. She grabbed the counter in an attempt to avoid falling to the

floor. She experienced a pop and pain in her neck on impact. She stated she later developed pain and numbness in her right arm, leg and foot. She saw Dr. Kelly Vincent, her family physician, on March 8, 2010, and was taken off work. She was released to return to work without restrictions on June 1, 2010, and continued to work as a phlebotomist until January 23, 2012. She has not been released to work, nor has she returned to work since that date.

Morris had additional neck surgery on April 9, 2012, and April 17, 2012. She stated the surgery relieved her numbness, but not her pain. She continues to treat with a pain management physician in Bowling Green, Kentucky. She stated she is unable to turn her head from side-to-side, or up-and-down. She has limited ability to drive, can only sit or stand for brief periods of time, and is able to do only limited housework. She currently takes Dilaudid for pain, and Zanaflex, a muscle relaxer.

Morris supported her claim with the office notes of Dr. Charles Crawford, of the Norton Leatherman Spine Clinic. On November 22, 2010, Dr. Crawford noted Morris complained of a work-related injury occurring in March 2010 with increasing neck pain and no radiculopathy. He noted the neck pain was localized to the mid portion of the base of her neck. He recommended a corpectomy at C4-C5, and a

posterior fusion at C3-C6. On January 14, 2011, he noted a previous two-level cervical ACDF in 1995, after which her pain continually worsened. He noted a posterior fusion was performed on October 21, 2009, after which she did well, and returned to work in December 2009. He noted her neck pain was exacerbated by a work injury. He stated she had a pre-existing condition, which was exacerbated by the work-related injury.

Morris subsequently filed additional records of Dr. Crawford for treatment from July 25, 2011 through May 13, 2013. In his note dated July 25, 2011, Dr. Crawford stated the following regarding the October 2009 surgery, "We had considered doing a larger surgery initially with a corpectomy and posterior reconstruction but they decided on a less invasive option at that time of just doing a posterior repair." He noted she initially improved after the surgery, but had a setback when she was injured at work. On February 12, 2011, he noted surgery would be performed. On June 11, 2012, Dr. Crawford noted Morris had undergone a posterior fusion from C2-T2, with a corpectomy for her cervical kyphosis. His last office note is dated May 13, 2013 at which time he recommended she follow up with pain management.

Records from Dr. George Raque were submitted by both Morris and MS Community. On July 14, 2009, Dr. Raque saw Morris for complaints of neck pain she had continued to experience since the 1995 MVA. She reported her condition had worsened in the past year with no additional trauma. On August 28, 2009, Dr. Raque noted Morris had a pseudoarthrosis at C5-6 with kyphosis at that level. He also noted disk bulging at C6-C7. He stated, “The patient’s previous neck operation was 14 years ago so it is highly unlikely that this is every [sic] going to go on to heal since it hasn’t done so in all this time.” On November 13, 2009, he saw her for follow-up of the decompression and fusion at C5-C6 performed in October 2009. He saw her again on December 30, 2009 and allowed a limited return to work. Dr. Raque saw Morris on February 22, 2010, noting she had returned to work four hours per day.

Dr. Raque next saw Morris on March 12, 2010. He noted her neck pain had been exacerbated by an incident at work. On August 5, 2011, he noted Morris had complained of neck pain for years, but it was worsened a year and a half in the past due to a work-related incident. His operative note dated April 9, 2012 was also introduced.

Both Morris and MS Community introduced records of Dr. Vincent, her family physician, which include one office

note of Dr. Barry Hardison, dated December 21, 2009, who saw her after a syncopal incident. Dr. Vincent's records reflect he saw Morris on July 28, 2008; October 8, 2008; and December 13, 2008 for chronic neck pain. Additional records beginning May 14, 2009 note increased neck pain for which she was referred to Dr. Raque for consideration of surgery. On October 2, 2009, Dr. Vincent noted Morris had degenerative disk disease and depression, and stated she was cleared for cervical surgery. On December 21, 2009, he noted Morris had returned to work part-time, and had nearly passed out while working. On December 30, 2009, he noted her depression had increased. On January 13, 2010, he noted Morris was still having a lot of neck pain, and his diagnosis consisted of neurocardiac syncope, degenerative disk disease and depression, for which he prescribed Toprol. On February 9, 2010, he noted Morris was confused, anxious and continued to experience syncopal episodes. She requested a referral to a neurosurgeon due to her neck pain which she described as worsening throughout the day.

Dr. Vincent next saw Morris on March 8, 2010. He noted she had chronic neck pain with an acute exacerbation due to an altercation at work. On March 15, 2010, he noted she had chronic neck pain, cervical disk disease and depression. Dr. Vincent saw Morris again in April and May

2010. On June 1, 2010, he released Morris to return to work.

Dr. David Gaw evaluated Morris at her request on July 24, 2013. Dr. Gaw diagnosed post-op posterior fusion from C2-T2 and anterior fusion from C3-C5; severe loss of movement of the cervical spine; and chronic pain syndrome. No additional surgery was recommended. He opined her condition was caused by the March 3, 2010 work incident which aggravated her pre-existing cervical condition. He assessed a 31% impairment rating pursuant to the American Medical Association, Guides to Evaluation of Permanent Impairment, Fifth Edition ("AMA Guides"). In a supplemental report dated September 17, 2013, Dr. Gaw stated Morris should avoid awkward positions of her neck, or holding her neck in a static position for more than short periods of time. He also noted she should avoid more than occasional overhead pushing, pulling or lifting, she would have difficulty driving, and should avoid ever lifting over ten pounds overhead or with outstretched arms.

Dr. Gaw testified by deposition on December 2, 2013. He stated Morris related her problems to March 3, 2010 when she was knocked over in a lab. He noted she had difficulty moving her neck. He stated Morris had a pre-existing degenerative neck condition "advanced" by the work

incident. Based upon a comparison of the AMA Guides, Dr. Gaw opined 27% of the 31% impairment rating he assessed would have been active prior to March 3, 2010. Dr. Gaw agreed the treatment records from January and February 2010 reflect she continued to have neck pain.

MS Community filed x-ray, myelogram and MRI reports from Norton Hospital, Muhlenberg Community Hospital and Muhlenberg Medical Center. The studies prior to the October 2009 surgery revealed degenerative changes and disk bulging at multiple cervical levels. A CT-Scan dated March 12, 2010 revealed bony narrowing due to osteoporosis at C3-C4 and C6-C7.

MS Community filed the November 18, 2011 intake sheet from the Center for Pain Management, completed by Morris. In that form, she stated the pain started in her neck after the October 2009 surgery. She complained of pain and numbness on the right. She made no mention of the March 3, 2010 incident.

MS Community filed the May 13, 2010 report prepared by Dr. Daniel Wolens who performed a records review at its request. Dr. Wolens noted the March 3, 2010 incident at work. Dr. Wolens noted Morris was complaining of severe neck pain prior to that incident as evidenced by her

treatment with Hydrocodone on February 9, 2010. He stated as follows:

> Therefore there would be an unlikely chance of any change in pathology.
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> …
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> Although it is possible that this individual's quantity of pain increased somewhat as a result of the 3/3/2010 incident, clearly this individual had a pre-existing and active condition that was described prior to 3/3/2010 as being severe, uncontrolled by Hydrocodone, and previously been recommended to undergo operative intervention involving at least three and possibly four additional levels. Therefore, I would not consider her current condition to be associated with the incident of 3/3/2010.

Dr. John Stanton evaluated Morris at MS Community's request on May 24, 2013. Dr. Stanton noted he reviewed extensive medical records. He noted Morris' 1995 MVA when she sustained a neck injury and an episode of neck pain in 2006 when Morris attempted to stop a rolling vehicle. He noted the records he reviewed reflect Morris continued to complain of neck pain two weeks prior to March 3, 2010. He noted the following:

> On February 19, 2010, over four months post-surgery, she was still having some problems with syncope and was very confused and had asked to see her neurosurgeon again. She was "still complaining of severe neck pain, usually in the muscles and is worse as the day

> goes on". She was referred back to Dr. Raque.

Dr. Stanton diagnosed a healed fusion from C3-T12 with significant cervical stiffness and no evidence of neurologic dysfunction. He stated Morris sustained a cervical strain on March 3, 2010. He stated there was no evidence of a significant worsening of her neck condition, only a subjective increase in her neck pain. He stated she had no impairment rating due to the March 3, 2010 incident which he classified as only a strain. He further noted the additional surgery was not performed until two years later. He stated the surgeries performed in 2012 were medically reasonable but did not result from the 2010 strain.

Dr. Stanton stated specifically as follows:

> It appears therefore that the surgery that was performed in April of 2012, two years after the alleged injury, was for treatment of chronic neck pain and the failed fusion at C5-C6 rather than any specific injury that had occurred on March 3, 2012. Again, it should be noted that the surgery that was performed on March of 2012 was almost identical to the surgery recommended by Dr. Crawford in 2009.
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> …
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> The injury that the patient sustained on March 3, 2010 was a strain to the cervical spine. There was no evidence that the patient sustained any significant worsening of her condition, only subjective increase in the pain in

> her neck. The patient was noted to have severe pain just two weeks prior to the alleged injury and the changes of the C3-C4 osteophytes and slight bulging of the disc are not significantly different than those noted in previous MRI studies in 2009.
>
> The patient appeared to have sustained at most a strain of her cervical spine and an aggravation of preexisting degenerative changes, but the ultimate reason for her surgery was failed fusion at C5-C6 and preexisting changes up and down her cervical spine.

MS Community also filed records from Owensboro Heart and Vascular which will not be summarized.

The CALJ rendered an Opinion, Award and Order on April 25, 2014, awarding TTD benefits for the period from March 8, 2010 (the date Morris was taken off work by Dr. Vincent) to June 1, 2010 (the date Dr. Vincent allowed her to return to work). The CALJ also awarded medical benefits from March 3, 2010 through June 1, 2010.

The CALJ specifically found as follows:

> In particular, the CALJ finds much of Dr. Crawford's evidence to lack credibility. While he makes a gallant attempt to aid his patient's cause in this litigation, he has skipped over the significance of the problem which existed in January and February 2010. In addition, his opinion when subjected to scrutiny, is that Plaintiff's condition which existed prior to the March 3, 2010 was chronic and pre-existing and was EXACERBATED by the

work-related incident which is the subject of this litigation.

The CALJ finds the most credible and convincing evidence in the record concerning the cause of Plaintiff's current impaired condition to be the opinions of Dr. Wolens and Dr. Stanton. Based on those opinions and the medical evidence concerning Plaintiff's condition before March 3, 2010, the CALJ is convinced that the work-related incident resulted in a temporary exacerbation of Plaintiff's cervical spine malady and did not result in a permanent injury as defined by the Kentucky Workers' Compensation Act.

That said, the CALJ is convinced that the exacerbation on March 3, 2010 did result in a period of temporary total occupational disability and the need for medical care. According to Plaintiff's testimony and the medical records, Plaintiff worked after the incident on March 4 and 5, 2010, but was off work beginning March 8, 2010 until she returned to work on June 2, 2010. During that time she was under the care of Dr. Vincent who treated her conservatively and referred her for physical therapy. Therefore, Plaintiff is entitled to temporary total disability benefits beginning March 8, 2010 through June 1, 2010 payable at the rate of $221.17 per week. Plaintiff is also entitled to medical expense benefits for office visits with Dr. Vincent, any prescription medication prescribed for Plaintiff by Dr. Vincent other than the medications which were prescribed for Plaintiff in January and February of 2010, and for the physical therapy regimen prescribed by Dr. Vincent. Plaintiff's entitlement to any and all workers compensation benefits

> relating to the March 3, 2010 incident shall terminate June 1, 2010.

Morris filed a petition for reconsideration on May 8, 2014 arguing the CALJ erred in basing his decision on the opinions of Drs. Wolens and Stanton. The petition for reconsideration was denied by order issued May 21, 2014.

Morris, as the claimant in a workers' compensation case, bore the burden of proving each of the essential elements of her cause of action before the ALJ. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since she was unsuccessful in her burden, 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 her 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 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). 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). Mere evidence contrary to the ALJ's decision is inadequate 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).

As noted by the CALJ, Morris has continued to complain of neck pain since her MVA in 1995, which resulted in cervical surgery. Her neck complaints increased in 2009 resulting in additional surgery. The procedures ultimately performed in 2012 were the same as those recommended in 2009. Morris continued to complain of neck pain after the October 2009 surgeries, and she continued to take pain medication and muscle relaxers. It is clear Morris sustained an exacerbation of her neck pain on March 3, 2010 when her co-worker's husband collided with her. She sought medical treatment five days later when she was taken off

work until June 1, 2010. She continued to work for over a year and a half thereafter.

The record contains substantial evidence supporting the CALJ's finding Morris sustained only a temporary injury or exacerbation, and no contrary result is compelled. The CALJ acted well within his discretion as fact-finder relying upon the totality of the medical evidence, including the reports of Drs. Wolens and Stanton, along with Morris' own testimony in arriving at his conclusions. Magic Coal Co. v. Fox, supra.

The CALJ explained why he did not find Dr. Crawford's opinions particularly credible, and additionally why he did not believe she sustained a permanent injury on March 3, 2010. Since substantial evidence exists in the record and no contrary result is compelled, we will not disturb the CALJ's determination Morris' work incident caused only a temporary injury without resulting permanent impairment.

Since the rendition of Robertson v. United Parcel Service, supra, 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. Id. at 286

Here, the CALJ correctly followed this standard, and awarded temporary medical benefits for her cervical strain which he determined existed through June 1, 2010 when she was released to return to work pursuant to FEI Installation v. Williams, supra. While Morris points to evidence which could have supported an award in her favor, that in and of itself does not compel a finding she is entitled to any additional award.

Accordingly, the April 25, 2014 Opinion, Award and Order, and the May 21, 2014 order on reconsideration rendered by Hon. J. Landon Overfield, Chief Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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