Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: June 26, 2015

CLAIM NO. 201400837 & 201400836

BOOTH ENERGY GROUP PETITIONER

VS. **APPEAL FROM HON. J. GREGORY ALLEN, ADMINISTRATIVE LAW JUDGE**

EDWARD HANDSHOE and
HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Booth Energy Group ("Booth") appeals from the Opinion, Award & Order rendered November 17, 2014 by Hon. J. Gregory Allen, Administrative Law Judge ("ALJ"), awarding Edward Handshoe ("Handshoe") permanent partial disability ("PPD") benefits for a work-related injury to his left shoulder caused by cumulative trauma. The ALJ also

awarded medical benefits for both the left shoulder injury and the occupational hearing loss. Booth also seeks review of the January 5, 2015 order denying its petition for reconsideration.

On appeal, Booth argues the ALJ erred in finding Handshoe sustained a work-related injury to his left shoulder caused by cumulative trauma arising out of his employment. In the alternative, Booth argues the ALJ erred in failing to apportion the award of PPD benefits pursuant to Southern Concrete Contractors, Inc. v. Campbell, 662 S.W.2d 221, 222 (Ky. App. 1983). Booth also argues the record does not support an award of medical benefits for the hearing loss claim. For the reasons set forth below, we affirm.

Handshoe filed a Form 101 on April 10, 2014 alleging he sustained cumulative trauma injuries to his back, neck and shoulders while working for Booth as an underground coal mining electrician and repairman. He alleged the date of injury as October 15, 2013. He was not working at the time he filed the claim, and had not worked since October 15, 2013. Handshoe is a high school graduate. He worked for over forty years in the coal mining industry, of which all except a year and a half was underground. He began working for Booth in 2011. In addition, Handshoe

filed a Form 103 alleging occupational hearing loss, which was consolidated with the injury claim. He also filed a Form 102 alleging he had contracted coal workers' pneumoconiosis, which was not consolidated with the other two claims, was placed in abeyance, and will not be further discussed.

Handshoe testified by deposition on June 25, 2014 and at the hearing held September 23, 2014. Handshoe was born on March 7, 1952 and resides in Hueysville, Floyd County, Kentucky. Handshoe began working for Booth in 2011, and worked there for approximately two and a half years. He worked for various other mines prior to his employment with Booth. His only work other than coal mining was brief employment in carpentry when he was a teenager. He has an underground mining card, foreman papers and an explosives certificate. He received vocational training in electrical, diesel mechanics, hydraulics and motors at a vocational school.

While working for Booth, Handshoe was paid $27.80 per hour, and worked on the third shift, six days per week, averaging 55 to 60 hours. He repaired and tested machines and equipment. Despite having two trainees who assisted him, Hardshoe stated his job required heavy lifting of sixty to one-hundred pounds, crawling under equipment, and working

in a sixty inch coal seam. He last worked on October 15, 2013 when he left to have surgery to treat unrelated prostate cancer. He never returned to work after the surgery. He has not filed for unemployment benefits since he last worked. Handshoe stated he has experienced neck and back pain for several years, and actually sustained an injury while working for another employer in the 1980's or 1990's. He stated he has had hearing loss for a number of years. When he was hired by Booth, he had a pre-employment physical examination and was advised he needed hearing protection, but was not advised the condition was work-related.

Handshoe complained of low back pain going into both legs and hips, and difficulty with bending. He stated he can stand for thirty to forty-five minutes, and sit for thirty minutes. It is painful for him to pick up a gallon of milk. He wakes up frequently when he tries to sleep, and he has a constant ringing in his ears.

In support of the Form 101, Handshoe filed the February 27, 2014 note of Dr. Dale Williams, D.C., who noted Handshoe's complaints of low back pain radiating into both hips, increased with standing or walking. He also noted neck pain radiating bilaterally into the shoulders and arms. Handshoe also complained of problems with the right rotator

cuff. Dr. Williams diagnosed lumbalgia with moderate to severe degeneration, and a segmental disk. He also diagnosed cervicalgia with severe degeneration and radicular pain in the bilateral upper extremities, especially in the hands. He opined the cervical and lumbar degeneration is accumulative and consistent with the occupational hazards of the coal mining industry and equipment operation.

Handshoe also filed the Form 107-I report prepared by Dr. Arthur L. Hughes who examined him at his attorney's request on April 24, 2014. He noted Handshoe reported previous low back injuries in the 1970's and 1980's, which had resolved. Handshoe complained of right and left hip pain radiating into both legs; neck pain and popping; left upper arm pain; and, finger tingling and numbness. Handshoe reported he could sit as needed, stand for up to fifteen minutes, and lift less than twenty pounds.

Dr. Hughes diagnosed low back pain with radicular symptoms; neck pain; right shoulder pain with limitation of motion; and, left shoulder pain with limitation of motion. He opined Handshoe's injuries caused his complaints. He stated Handshoe does not retain the capacity to perform the work performed on the date of injury. Dr. Hughes stated, "He has, therefore, sustained cumulative trauma to the neck, lower back and both shoulders causing injury to the bones,

joints, muscles, tendons and ligaments which have resulted in pain and loss of function of these regions of the body". Dr. Hughes further stated, "The pains reached a level of disabling reality prior to his cessation of work on October 15, 2013".

Dr. Hughes assessed an 18% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), of which he apportioned 5% to the low back, 0% to the neck, 8% to the right shoulder, and 7% to the left shoulder. Dr. Hughes recommended restrictions of no lifting over five pounds frequently or over twenty pounds on a maximum basis. He also recommended Handshoe avoid bending or twisting of the neck and back, or use of his arms above shoulder level.

In support of the hearing loss claim, Handshoe submitted the December 23, 2013 audiology report from Dr. Lisa M. Koch, Au.D., at Beltone. This reflects Handshoe has a mild degree of sensorineural hearing loss. The report further reflects Handshoe needs open fit hearing aids.

A university evaluation was performed by Drs. Raleigh O. Jones and Trey A. Cline on July 15, 2014 and their report was filed in the record. The report reflects Handshoe has a pattern of hearing loss compatible with that

caused by hazardous noise exposure in the workplace, and the use of hearing protection was recommended. A 0% impairment rating pursuant to the AMA Guides was assessed.

Booth filed the September 26, 2011 note of Dr. Keith Hall, an orthopedic surgeon, who saw Handshoe for his right shoulder complaints at the request of Dr. Jason Rice, a family physician. Dr. Hall stated Handshoe had findings consistent with right rotator cuff tendonitis. He noted Handshoe had a malunion of the left elbow. Dr. Hall recommended Handshoe not undergo surgery.

Dr. David Jenkinson examined Handshoe at Booth's request on May 20, 2014. He noted Handshoe worked every day until he had the October 2013 prostate surgery, despite complaints of neck, shoulder and low back pain. Handshoe did not describe any work activity which would result in cumulative trauma. He assessed 0% impairment pursuant to the AMA Guides for the neck or back complaints, and assessed a 10% impairment rating for age-related shoulder degeneration. Dr. Jenkinson opined there was no evidence of a work-related injury to the shoulders. He would not recommend any restrictions, and noted Handshoe could return to work. He further noted Handshoe requires no treatment for any work-related injury.

Dr. David Muffly prepared a report dated September 6, 2014 at Booth's request, upon his review of certain records, including those from Drs. Rice, Hall, Williams, Jenkinson, and Hughes. Dr. Muffly diagnosed lumbar degenerative disk disease at L5-S1; right shoulder tendinitis with congenital impingement, and no rotator cuff tear; conditions consistent with degeneration; and no sign of cumulative change. Dr. Muffly opined Handshoe had not sustained cumulative injuries to the shoulders, lumbar spine or cervical spine. Dr. Muffly assessed a 0% impairment rating due to Handshoe's work for Booth.

Booth filed records from Dr. Chip Salyers, D.C., for chiropractic treatment Handshoe received from January 18, 2008 for low back and hip pain. Booth also filed treatment records from Dr. Steven Harrison, D.C. for a period from October 29, 1999 through February 18, 2011, for treatment of various complaints including the low back, right shoulder and arm, neck, and hips.

Booth filed records from the Paul B. Hall Medical Center for treatment of the prostate cancer, including the operative note. Booth also filed records from the Highlands Regional Medical Center for diagnostic testing and treatment of the right shoulder complaints. Those records were for

treatment on August 27, 2009; September 15, 2011 and July 5, 2013.

A Benefit Review Conference ("BRC") was held on September 9, 2014. At the BRC, the parties agreed Handshoe's ability to return to his previous work was at issue. Booth stipulated to an alleged injury date of October 15, 2013. The other issues preserved were benefits pursuant to KRS 342.730; work-relatedness/causation; unpaid future medical benefits; whether Handshoe sustained an injury as defined by the Act; credit for unemployment benefits (this issue was withdrawn at the Hearing because Handshoe never drew unemployment benefits); exclusion for prior active; CWP; hearing loss; and apportionment pursuant to Southern Concrete Subcontractors v. Campbell, supra.

The ALJ rendered his decision on November 17, 2014, dismissing Handshoe's claims for low back, neck and right shoulder injuries. The ALJ outlined the definition of injury, and the case law regarding the burden of proof, including the necessity of establishing work-relatedness, causation and the extent and duration of the alleged injuries. He then outlined the history of the concept of cumulative trauma as first referenced in Haycraft v. Corhart Refractories Co., 544 S.W.2d 222 (Ky. 1976). The ALJ additionally discussed apportionment in cumulative trauma

claims as outlined in Southern Concrete Subcontractors v. Campbell, supra.

Regarding Handshoe's allegation of injuries to the low back, neck and right shoulder, the ALJ specifically stated, "the plaintiff has not sustained his burden that these conditions were either caused, aggravated, or worsened by his work and alleged cumulative trauma with the defendant but are essentially conditions consistent with plaintiff's age irrespective of his occupation".

Regarding the allegation of injury to the left shoulder, the ALJ noted Handshoe had no history of previous problems; however, both Drs. Hughes and Jenkinson recorded deficits on examination. The ALJ noted Dr. Hall evaluated both shoulders in 2011, and noted only a problem with the right shoulder. Regarding compensability of Handshoe's left shoulder condition, the ALJ found as follows:

> Based upon the testimony of Dr. Hughes, the ALJ finds the plaintiff has sustained an injury as defined by the Act as a result of his 40 years of manual labor resulting in cumulative trauma to the left shoulder. Moreover, the ALJ relies upon the opinion of Dr. Hughes to find the plaintiff's left shoulder condition reached a disabling condition prior to his cessation of work with the defendant. The ALJ infers from this testimony that the plaintiff's left shoulder condition was caused and aroused from its dormant state to a

> disabling state during the plaintiff's employment with the defendant. As there are no medical records indicating any active process in that shoulder prior to beginning work with the defendant, the ALJ believes such an inference is reasonable under the facts of this case and does not find any portion of the plaintiff's left shoulder condition due to active conditions.
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> Having determined the plaintiff has carried his burden of demonstrating a work-related cumulative trauma condition to the left shoulder, the ALJ must now determine his impairment rating. Dr. Hughes calculated a 12% upper extremity impairment which translates to a 7% whole person impairment. Dr. Jenkinson assessed an 8% upper extremity impairment which translates to a 5% whole person impairment rating. As both impairments are based on range of motion studies, the ALJ believes the most recent and best results are most indicative of the plaintiff's current condition. Therefore, the ALJ finds the plaintiff has 7% whole person impairment for the left shoulder based on the opinion of Dr. Hughes. This translates to a permanent disability rating of 5.95% as per KRS 342.0011(36).

The ALJ enhanced the award of PPD benefits by the multipliers contained in KRS 342.730(1)(c)1 & 3. For his analysis, the ALJ stated as follows:

> Having determined the plaintiff retains a permanent impairment rating, the ALJ must now determine if he is entitled to any multipliers.

KRS 342.730(1)(c) provides:

> 1. If, due to an injury, an employee does not retain the physical capacity to return to the type of work that the employee performed at the time of injury, the benefit for permanent partial disability shall be multiplied by three (3) times the amount otherwise determined under paragraph (b) of this subsection, but this provision shall not be construed so as to extend the duration of payments; or
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> 2. If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.

With respect to the analysis required in determining whether the three multiplier is applicable, in Miller v. Square D Co., 254 S.W.3d 810, 814 (Ky. 2008) the Supreme Court stated as follows:

> Thus, it seems more likely that the legislature intended for the phrase 'the type of work that the employee performed at the time of injury' to refer broadly to the various jobs or tasks that the worker performed for the employer at the time of injury rather than to refer narrowly to the job or task being performed when the injury occurred.

This determination reaffirmed the principle set forth in Ford Motor Co. v. Forman, 142 S.W.3d 141 (Ky. 2004). There the Board had reversed the ALJ's determination the three multiplier did not apply and remanded explaining the correct standard was whether the claimant lacked the physical capacity to return to the same type of work she performed at the time of the injury. Therefore, her return to the same job classifications might or might not be relevant. Accordingly, the Board directed the ALJ to analyze the evidence concerning the actual jobs the claimant performed at the time of her injury and those she could perform after returning to work. Id. at 144. The Court of Appeals affirmed and in affirming the Court of Appeals, the Supreme Court stated:

> When used in the context of an award that is based upon an objectively determined functional impairment, 'the type of work that the employee performed at the time of injury' was most likely intended by the legislature to refer to the actual jobs that the individual performed.
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> . . .
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> For that reason, proof of the claimant's present ability to

> perform some jobs within the classification does not necessarily indicate that she retains the physical capacity to perform the same type of work that she performed at the time of injury. On remand, the ALJ must analyze the evidence to determine what job(s) the claimant performed at the time of injury and to determine from the lay and medical evidence whether she retains the physical capacity to return to those jobs. Id. at 145.

> Here, the ALJ finds the testimony of Dr. Hughes most probative. The physician limited the plaintiff to no more than a 5 pound lift regularly and 20 pounds maximally with either arm. The ALJ believes that at a minimum the plaintiff's job duties, even with assistance, would require him to exceed these limitations. Therefore the ALJ finds the plaintiff is entitled to a three times multiplication of his benefits awarded herein.

Regarding apportionment of the award of PPD benefits, the ALJ found as follows:

> As per the holding in of Southern Kentucky Concrete Subcontractors v Campbell, 662 S.W.2d 221 (Ky. App. 1983), the ALJ is to determine the percentage of plaintiff's disability attributable to the work performed by him while employed by the defendant. Absence evidence to the contrary, the defendant shall be liable for that percentage of disability which is equal to the percentage of plaintiff's work spent with the defendant. Campbell at 222-223.

> Here, the plaintiff testified to 40 years of work being exposed to repetitive or cumulative trauma. His employment with the defendant encompasses 2 ½ years of that total. However, as determined above, the ALJ has determined the plaintiff's left shoulder condition was aroused from a dormant state during his time period of employment with the defendant. Therefore, there is no apportionment necessary pursuant to the holding in Campbell.
>
> Therefore, plaintiff's award is calculated as follows: $564.52 x 5.95% x .85 x 3.6=$120.92 per week beginning October 15, 2013 as this is the date of alleged injury stipulated to by the parties. The ALJ having found a work-related cumulative trauma injury to the plaintiff's left shoulder, that condition is no longer "alleged" and the stipulation is binding on the parties for purposes of liability and payment of awarded benefits herein.

Finally, the ALJ noted the evidence submitted regarding the hearing loss from both Beltone and Dr. Jones establishes a pattern compatible with exposure to noise, but insufficient to establish an impairment rating in excess of 0%. The ALJ stated as follows:

> Generally, KRS 342.315(2) requires presumptive weight to be afforded the clinical findings and opinions of the university evaluator. However, the ALJ has the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence and he expressly states his reasons for doing so within the body of

> his decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, supra. Whether a party overcomes the presumption established under KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, supra. The ALJ has considered the medical opinions of Beltone and finds nothing in that opinion that would overcome the presumptive weight afforded Dr. Jones. Therefore, the ALJ finds the plaintiff has a 0% impairment and disability rating for his alleged hearing loss.

Regarding medical benefits, the ALJ found as follows:

> KRS 342.020(1) provides that "[i]n addition to all other compensation provided in this chapter, the employer shall pay for the cure and relief from the effects of an injury . . . the medical, surgical, and hospital treatment, including nursing, medical, and surgical supplies and appliances, as may reasonably be required at the time of the injury and thereafter during disability." In FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the Supreme Court instructed that KRS 342.020(1) does not require proof of an impairment rating to obtain future medical benefits, and the absence of a functional impairment rating does not necessarily preclude such an award. Instead, liability for medical expenses exists "for so long as the employee is disabled regardless of the duration of the employee's income benefits."

> Moreover, it has consistently held that a worker who has established a work-related impairment rating has also established a disability for purposes of KRS 342.020 and need prove nothing else to receive an award of future medical benefits. Therefore, plaintiff is entitled to a general award of future reasonable, necessary and work-related medical benefits pursuant to KRS 342.020 for his left shoulder condition and hearing loss.

Booth filed a petition for reconsideration requesting additional findings regarding the manifestation date of the alleged cumulative trauma, and the award of PPD benefits enhanced by KRS 342.730(1)(c)1 & 3. Booth also requested the ALJ reconsider the award of medical benefits for Handshoe's hearing loss.

The ALJ entered an order on reconsideration on January 5, 2015 noting a contradiction in his decision and stated the following:

> The defendant correctly identifies a clear contradiction in the ALJ's findings. The ALJ has reviewed his file and notes and concludes that the sentence that reads "as both impairments are based on range of motion studies, the ALJ believes the most recent and best results are most indicative of the plaintiff's current condition" was erroneously placed into the final opinion perhaps from a previous draft the ALJ had considered. While inclusion of this sentence may shed light into the thought process of the ALJ, it was an

> error to leave it in the final Opinion, Order and Award and to the extent this sentence makes for an obvious inconsistency, the sentence set forth above is hereby stricken from the Opinion, Order and Award dated November 17, 2014. The ALJ reiterates that it relies upon the opinion of Dr. Hughes for the conclusion and assessment of 7% impairment.

The ALJ then noted while Booth accurately recited the law regarding the date of manifestation, the date of injury was October 15, 2013 as he previously determined. Regarding the application of KRS 342.730(1)(c)1 & 3, the ALJ reiterated his previous determination, and that he had performed all analysis necessary to support his determination. Regarding medical benefits for the hearing loss, the ALJ determined there currently was no request or dispute for treatment for this condition, and any future such request could be challenged by a medical dispute.

On appeal, Booth argues substantial evidence does not support the ALJ's finding of a work-related injury to the left shoulder caused by cumulative trauma arising from his employment. Booth additionally argues the ALJ erred regarding the manifestation date of Handshoe's condition. In the alternative, Booth argues the ALJ erred in failing to apportion the award of PPD benefits pursuant to Southern Concrete Subcontractors v. Campbell, supra. Finally, Booth

argues the ALJ erred in awarding medical benefits for Handshoe's hearing loss claim.

As the claimant in a workers' compensation proceeding, Handshoe 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 Handshoe was successful in his burden, the question on appeal is whether substantial evidence existed in the record supporting the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

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). Although a party may note evidence supporting a different outcome than that 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 function of the Board in reviewing an ALJ's decision is limited to determining whether the findings made are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). 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 other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (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).

In this instance, the ALJ's determination Handshoe sustained an injury to his left shoulder is supported by the opinions rendered by Dr. Hughes. The ALJ provided an adequate analysis addressing why he determined

Handshoe had in fact sustained a work-related injury to his left shoulder. He noted the absence of left shoulder problems prior to Handshoe's employment by Booth. He specifically noted the examination by Dr. Hall in 2011 which revealed no difficulty with the left shoulder. He additionally outlined the findings by Dr. Jenkinson. Based upon the evidence, the ALJ determined Handshoe sustained a work-related left shoulder injury. The ALJ's determination falls squarely within the discretion afforded to him and will not be disturbed.

Likewise, we find no error with the ALJ's determination the date of injury to the left shoulder was October 15, 2013. While Booth argues the ALJ erred regarding the manifestation date, this is incorrect. Date of manifestation is separate from the date of injury. As we have previously stated, the date a cumulative trauma injury manifests is relevant for purposes of notice and statute of limitations, not for a determination of the date of onset of disability, or actual date of injury.

A cumulative trauma injury "manifests" for purposes of notice and statute of limitations when the injury is diagnosed and a physician informs the claimant the injury is work-related. *See e.g.* Alcan Foil Products v. Huff, 2 S.W.3d 96, 101 (Ky. 1999). The date of

manifestation for notice and statute of limitation purposes is not one and the same as the date when one is entitled to temporary total disability benefits. American Printing House for the Blind ex rel Mutual Ins. Corp. of America v. Brown, 142 S.W.3d 145 (Ky. 2004). As noted by the ALJ, Booth correctly articulated the law regarding manifestation. However, a later manifestation (when Handshoe was apprised his condition was work-related) does not preclude the ALJ's finding he sustained an injury on October 15, 2013. Because the ALJ's determination of the injury date is supported by substantial evidence, it will not be disturbed.

Regarding the ALJ's application of the enhancement of the award of PPD benefits by the multipliers contained in KRS 342.730(1)(c)1 & 3, again we find this is supported by substantial evidence. The evidence clearly establishes Handshoe did not return to work after October 15, 2013. It is well-established the claimant's own testimony as to his condition has some probative value and is appropriate for consideration by the ALJ. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979). Here the ALJ based his application of the statutory multipliers, in part, upon Handshoe's own assessment of his inability to return to work along with the opinion of Dr. Hughes. This constitutes substantial evidence supporting the application of the statutory

multipliers, and again, the ALJ's decision will not be disturbed.

Regarding the ALJ's determination of apportionment, again we find no error. The ALJ clearly considered the impact of Southern Concrete Subcontractors v. Campbell, supra, and found it inapplicable in this instance. He determined Handshoe had a pre-existing, dormant, left shoulder condition, which was aroused into disabling reality by his work at Booth. In Kentucky, the employer is responsible for that portion of an injury which is attributable to the arousal of a pre-existing dormant condition into disabling reality by a work injury. McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001).

Booth presented no evidence the left shoulder injury was due to the entirety of his work life. Absent such testimony or evidence, Southern Concrete Subcontractors v. Campbell, supra, has no application. Booth bore the burden of establishing apportionment and failed to do so. A contrary result is not compelled. Because the ALJ performed the appropriate analysis, in light of all evidence of record, and determined Handshoe's left shoulder injury was compensable in its entirety, we find no error, and the ALJ's decision regarding apportionment is affirmed.

Finally, regarding Booth's argument the ALJ erred in awarding medical benefits for Handshoe's hearing loss claim, again we find no error. Pursuant to FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the ALJ may award future medical benefits despite the lack of a permanent impairment rating after providing sufficient reasons for the award. The ALJ clearly noted the audiology report from Beltone, and the report of the university evaluators establish a hearing loss compatible with noise exposure which do not arise to the level necessary for the assessment of an impairment rating pursuant to the AMA Guides.

KRS 342.315(2) governs medical evaluations by university medical schools and states as following:

> The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the executive director. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically state in the order the reasons for rejecting that evidence.

KRS 342.315(2) generally requires presumptive weight be afforded the clinical findings and opinions of the university evaluator. An ALJ has the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence and the reasons for doing so are expressly stated within the body of the decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Whether a party overcomes the presumption established pursuant to KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, Id.

Here, the ALJ determined both the Beltone and university evaluation reports support Handshoe's allegation he sustained some minimal occupational hearing loss. Booth presented no evidence to the contrary. Therefore, absent any evidence to the contrary, the ALJ's decision regarding Handshoe's hearing loss, and entitlement to medical benefits shall not be disturbed.

Accordingly, the November 17, 2014 Opinion, Award and Order, and the January 5, 2015 order on reconsideration

rendered by Hon. J. Gregory Allen, Administrative Law Judge, are **AFFIRMED**.

ALL CONCUR.

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