OPINION ENTERED: June 28, 2013

CLAIM NO. 201201122

BRIAN K. REILLEY PETITIONER

VS. **APPEAL FROM HON. CHRIS DAVIS, ADMINISTRATIVE LAW JUDGE**

AUTOZONE, INC.
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

BEFORE: ALVEY, Chairman, and STIVERS, Member.

STIVERS, Member. Brian K. Reilley ("Reilley") seeks review of the March 1, 2013, opinion and order of Hon. Chris Davis, Administrative Law Judge ("ALJ") dismissing his claim for income and medical benefits against Autozone, Inc. ("Autozone"). Reilley also appeals from the March 25, 2013, order denying his petition for reconsideration.

In his Form 101, Reilley alleged an injury occurring as follows:

> Plaintiff states that he was injured on or about June 16th 2008 at work, and thereafter, cumulatively, he became disabled, and sustained multiple exacerbations and aggravations, mostly work-related, and on or about sometime within about a few days before November 17th 2011, or thereabouts, he returned to work after a short hiatus related to headaches (he was suffering from back pain also), and he requested to return to work and his doctor gave him a back injection on November 10th 2011, and he returned to work, and then he was back at this doctor's office on November 17th 2011, with his doctor's office noting "increasing back pain," "injections not helping," "burning sensations has radiated down right leg", and he has been disabled since then.

Reilley alleged the injury occurred due to heavy lifting and twisting over time. With respect to the body part injured, he alleged as follows: "low back with right ankle and foot numbness, tingling, swelling and pain and burning radiculopathy; developing gait disorder; anxiety, depression and/or other mental disorder." Concerning the date and means notice was given, Reilley stated "the employer paid medical benefits until the statute of limitation lapsed on the June 16th 2008 traumatic event, then stopped paying."

Autozone filed a special answer asserting Reilley's claim was barred by the applicable statute of limitations or repose. Thereafter, the parties introduced medical evidence and Reilley's November 1, 2012, deposition. Autozone filed a motion to bifurcate which the ALJ sustained by order dated December 7, 2012, indicating he would only decide whether the statute of limitations barred Reilley's claim and, if necessary, decide the remaining issues "after discovery at a later date." Reilley testified at the January 29, 2013, hearing.

During his November 1, 2012, deposition, Reilley testified he began working for Autozone in February 2008 as a parts sales manager. Reilley denied having any back problems prior to June 16, 2008. Reilley described the injury of June 16, 2008, as follows:

> Q: So you hired in in February. In June 16 you were the parts sales manager at the Benton, Kentucky store. What happened to you on or about June 16, 2008?
>
> A: I was installing –
>
> . . .
>
> A: It was a normal day. A normal practice we put on batteries just normal, nothing different. I was changing a battery and I was – took the battery out and put a new battery in, and as I sat it down a cable got hung, it lodged in there. I grabbed the cable

> instantly, instinctively, and just all of a sudden as I twisted and turned I just fell straight to the ground, pretty much flash [sic] of – it's really hard to describe. A flash – black flash or something and I was down. I woke up looking around and I was on the ground and pretty much prematurely [sic] paralyzed.

Reilley indicated an employee who witnessed his accident filled out the accident report. He missed three days of work due to the 2008 injury.

After the injury, he transferred to a store in Paducah where he became the store manager. When he was promoted to store manager he was informed he could not continue to work in light duty restrictions. Consequently, he went to the chiropractor he had seen after the injury and directed him to remove the light duty restrictions. Reilley continued to see the chiropractor after the restrictions were lifted. Reilley was treated by his chiropractor for two years after the injury for which Autozone's carrier bore the financial responsibility. Since the injury, Reilley has seen three different chiropractors for his back.

Reilley acknowledged he developed anxiety and anger issues due to the 2008 work injury and other subsequent work injuries. He denied being off work for non-work-related reasons. Reilley stated he was off work

between October 17, 2011, and November 14, 2011, for reasons related to his work-related injury, testifying as follows:

> Q: Now, looking at these records I see where you were off work from October 17th to November 14th, 2011 on a nonworkers – Workmans' Compensation-related problem. Did you give notice to Autozone that you were going to be off work from October 17, 2011 to November 14th, 2011 for a nonwork-related problem?
>
> A: No, I did not give notice to them for a nonwork-related problem. That's exactly what they documented. I told them it was a work-related problem but I did document it that I would be out that date.
>
> Q: Let me back up. I might have been confused with my question.
>
> So you were going to be out that period of time, that approximately 30 days? We agree that you had given prior notice that you were going to be off that 30-day period or approximate 30-day period?
>
> A: I was sanctioned to get these injections and I was receiving a lot of medication through the doctors which I did have some strong afflictions [sic] to. But the reasoning that I was out and it was documented through Autozone it was documented it was work related. I never documented it nonwork related. They said it was nonwork related.
>
> Q: Did you – let me just back up a little bit. So you told Autozone that, "I need to be off work from October to November." Right?

> A: I didn't tell Autozone anything. The doctors did.

During the time Reilley was off work between October 17, 2011, and November 14, 2011, he testified he received "continuation of pay." Reilley testified he began experiencing pain radiating into his right leg after receiving trigger point injections in the latter part of 2011. Reilley's relevant testimony is as follows:

> Q: I do have one question for you. You may have said this and I may have just missed it, but when did the pain radiating down you – was it right or left leg?
>
> A: It was my right leg.
>
> Q: When did the pain radiating down your right leg start? Approximately.
>
> A: I would say – I received trigger point injections and I received three different trigger point injections, and I had a follow up to my trigger point injection. I had [sic] went to – back to Tri-Rivers for a follow-up after the trigger point injections and I think it was during the time that they had me out – I think that coincides with the time they had me out was around November 17th. I thought they were going to help. They talked me into it. I had [sic] went back and I told them that the injections was [sic] not helping and, of course, I was getting the constant burning sensation and then it was actually radiating down on my right – the right leg and that what they were trying to do was not helping.

Reilley denied experiencing any such symptoms prior to November 2011.

Reilley described a later incident at work when the hood of a car fell on his back:[1]

> Q: Okay. So there might have been one other incident where a hood fell on your back that you would have completed some type of initial injury report. Now, when this hood fell on your back did it affect any other parts of your body that you weren't already having problems with?
>
> A: Pain is – it was pain. No. It just was kind of the same occurrence. It's just –
>
> Q: Well let me ask where the pain is separately. I just want to know did it affect any other body part? Like your head, your arms, your legs, anything that was different than what you had before?
>
> A: It gave me a small abrasion above my back which is now gone.
>
> Q: All right. So that's different than what you had before? An abrasion.
>
> A: Yeah. It hit me –
>
> Q: With respect to the pain that you had, was the pain about the same as you were having before? I mean, how did it affect your existing condition?
>
> A: It didn't make it better.

[1] An Autozone record dated January 6, 2012, indicates this event occurred on December 16, 2011. "Plaintiff's Verified Notice of Proof of Progressing Injury" filed January 9, 2013, contains the January 6, 2012, summary of this event.

Q: You said it did not make it better?

A: Yes.

Q: Okay. I mean, did it make it worse in any appreciable degree? Describe for me, if you could – I mean, was it, you know, worse for a couple of hours, couple of weeks? Was it about the same? Your best characterization.

A: When I sit in this chair, the pain gets worse. When I stand up, the pain gets worse. Everything I do makes it worse. So imagine if a hood fell on you, it would probably make it worse.

Q: So was the worse, was that just a temporary thing there? I mean, once you were out of that situation, like if you stand up, or sit in a chair, would that kind of resolve?

A: No. I'm talking about currently. No. the pain still – it's – the pain is still there. Pain is kind of relevant because when pain gets so deep and so harsh it becomes numb, and it becomes fire and it becomes burn. So it's – it's – you – you really can't describe it. I can't – you can't describe pain. So whether my pain – I believe it increased. I believe that it's constantly – constantly increasing. And I'm going to stick to my answer that it definitely did not make my back any better than what it is right now when a hood fell on me. That's all I really can say because it didn't make it any better. Now, it probably made it worse but we currently have no documentation whether I went to the doctor or not. I don't recall.

Reilley also testified that in April 2012 he fell at work on his back while lifting light objects. On that occasion an employee filled out a report concerning the incident.

At the time of his deposition, Reilley had been demoted and held the position of parts sales manager at the Benton store where he initially began working for Autozone.

At the January 29, 2013, hearing, Reilley testified his back pain began shooting into his buttocks, legs, and feet in late 2010. He explained the pain traveled down his leg into his calf and sometimes into his heel.

In the March 1, 2013, opinion and order, the ALJ entered the following findings of facts and conclusions of law:

> 8. The issue to be decided is whether or not the claim is barred by the statute of limitations.
>
> As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. *Square D Company v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky.App. 1995). In weighing the evidence the ALJ must consider the totality of the evidence. *Paramount Foods Inc., v. Burkhardt*, 695 S.W. 2d 418 (Ky., 1985).

> In analyzing this claim the Administrative Law Judge has reviewed all of the evidence in this claim, as summarized above. The Administrative Law Judge has also reviewed the parties' briefs and arguments.
>
> I have carefully reviewed the evidence of the Plaintiff's injury, his medical history and the time he missed from work. To his credit, and the credit of his attorney, he does not deny that the origination of his problems is a single traumatic event taking place on June 16, 2008. He makes an argument that as that condition worsened it therefore tolled the statute of limitations, or, more accurately, that each worsening began its own new limitations period.
>
> Whether or not this argument is rational and fair it does not, as pointed out by the Defendant, have any basis in current statute or case law. It is not up to the undersigned to develop new rules of law.
>
> Inasmuch as the parties have stipulated that the Plaintiff's date of injury is June 16, 2008, the Plaintiff has testified that he never missed work for sufficient time to trigger TTD, on or before June 16, 2010, the Plaintiff makes no other arguments to toll the statute and provides no evidence to support any other argument, and this claim was not filed until August 23, 2012 it must be dismissed as outside the statute of limitations.

Reilley filed a petition for reconsideration requesting an additional finding that it was uncontroverted he experienced back pain which became "radicular within two

years from the date the Form 101 was filed" due to "cumulative work activity" which included but was not "limited to specific traumatic events at work of greater magnitude than his usual day to day activities." Reilley also requested a finding that Dr. Charles A. Barlow's medical report specifically addressed the progression of his back condition. Upon making this finding of fact, Reilley requested as follows:

> Plaintiff also requests a conclusion regarding the effect of the requested findings of fact, as tolling or not tolling the statute of limitation, for development of radiculopathy within that period two years back from the date of filing the Form 101, when analyzed by reference to **Special Fund v. Clark**, 998 S.W.2nd 487, 490 (Ky. 1999), viz..

The ALJ overruled Reilley's petition for reconsideration finding Reilley was attempting to argue that although his initial injury was due to a traumatic event, the worsening over time converted it into a cumulative trauma injury involving a different statute of limitations. The ALJ also concluded Reilley was rearguing the merits of the claim.

On appeal, Reilley contends Special Fund v. Clark, 998 S.W.2d 487, 490 (Ky. 1999) is controlling. Reilley asserts the ALJ erred in finding current law does

not recognize his "prima facie claim." He argues his complaints prior to the development of lumbar radiculopathy would not merit an impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Since the only evidence of lumbar radiculopathy occurred within two years of the filing of the Form 101, Reilley argues the statute did not run on his claim as he fell within Category II of the AMA Guides meriting an impairment rating during this two year period.

Reilley also maintains Autozone had the burden of establishing he had a pre-existing active impairment as it is an affirmative defense. In this case, he posits there is no proof of a pre-existing active impairment. Further, he contends the non-verifiable radicular pain occurred within two years of the filing of his claim. Reilley contends there is no evidence in the record attributing any part of Dr. Barlow's impairment rating to a pre-existing condition present more than two years prior to the date of filing the Form 101. Reilley argues as follows:

> But that is the problem with the ALJ's position in the case sub judice. Erroneously concluding that current law, as a matter of law, does not recognize petitioner/employee's prima facie case, the ALJ felt then that he did not need to find the facts related

> to this particular claimant's prima facie case.

Reilley requests the decision be vacated and remanded as follows:

> [t]o find the facts necessary to draw reasonable inferences about petitioner/employee's prima facie case in light of **Special Fund v. Clark** supra, being mindful of the burden of proof implications for an affirmative defense.

Reilley's argument he sustained subsequent cumulative traumas after sustaining the June 16, 2008, injury and this case is controlled by Special Fund v. Clark, supra, has no merit. In Special Fund v. Clark, supra, Clark injured his right knee in 1985 when he slipped on oil. Although an accident report was filed and Clark was paid temporary total disability ("TTD") benefits for approximately three weeks, he returned to work and in 1987, underwent surgery on both knees, and missed approximately five weeks of work. Clark filed no claim because of this injury. He continued to work until July 27, 1994. He came under the treatment of a physician who performed a prosthetic replacement of his left knee and attributed 80% of Clark's impairment to arthritis and 20% to the aggravation of his work by the degenerative condition. Clark was examined by another physician in October 1995 who

indicated the type of work he performed probably contributed to the development of his condition and caused it to accelerate. A third physician also examined Clark in October 1995 and assigned a 16% impairment, two-thirds of which he opined dated back to at least 1987. The physician indicated most of Clark's impairment was due to wear and tear on the knee rather than a specific injury.

Clark filed a workers' compensation claim on July 3, 1995, alleging among other things a gradual injury to his knees. Although the employer argued his claim was barred by the statute of limitations, the ALJ ultimately concluded Clark's entire disability was due to a cumulative trauma which first manifested in 1987 at which point he underwent bilateral knee surgery; that Clark returned to work after surgery with some degree of active disability; that he continued to be subject to mini-trauma through July 27, 1994, and his disability progressively increased during the period between his return from surgery and July 27, 1994. The ALJ concluded each mini-trauma during the period effectively constituted a separate injury, therefore disability which could be attributable to the trauma occurring within two years immediately preceding the filing of the claim was separately compensable from that which was pre-existing and active when Clark returned to work after

the surgery. The ALJ determined only fifty-five weeks came within the two year period of limitations and prorated 75% of the occupational disability over Clark's work life and determined a 3.3 occupational disability remained compensable.

The Board affirmed the ALJ's decision but the Court of Appeals reversed concluding all of the trauma after surgery caused the second gradual injury which became manifest on July 27, 1994. Finding Clark had returned to work with a thirty percent occupational disability after surgery and had sustained an additional forty-five percent occupational disability between his return to work and his last day of work, the Court of Appeals concluded the claim for the second gradual injury was timely filed and Clark was entitled to an award of forty-five percent occupational disability. On appeal, the Supreme Court reversed stating as follows:

> Our opinion in *Alcan Foil Products v. Huff* explained that in *Randall Co. v. Pendland* it had been recognized that because of the manner in which a gradual injury develops, the worker will not be aware that an injury has been sustained until it manifests itself in the form of physically and/or occupationally disabling symptoms. We noted that, unlike the case with KRS 342.316 which controls claims for occupational disease, the period of limitations set forth in KRS 342.185 is

> not tolled by continued employment after the worker becomes aware that a work-related gradual injury has been sustained. We pointed out that the notice requirement also arises with the manifestation of disability and that one of the purposes of the notice requirement is to give the employer an opportunity to take measures to minimize the worker's impairment and, hence, its liability. In view of the foregoing, we construed the meaning of the term "manifestation of disability," as it was used in *Randall Co. v. Pendland*, as referring to physically and/or occupationally disabling symptoms which lead the worker to discover that a work-related injury has been sustained.
>
> Once a worker is aware of the existence of a disabling condition and the fact that it is caused by work, the worker would also be aware that continuing to perform the same or similar duties was likely to cause additional injury. For that reason, the rationale which supports the decision in *Randall Co. v. Pendland* does not support tolling the period of limitations for whatever additional injury is caused by trauma incurred after the worker discovers the existence of a work-related gradual injury. It follows, therefore, that where a claim is not filed until more than two years after the worker's discovery of an injury and the fact that it was caused by work, KRS 342.185 would operate to prohibit compensation for whatever occupational disability is attributable to trauma incurred more than two years preceding the filing of the claim. [footnote omitted]

Id. at 490.

The Supreme Court remanded the claim to the ALJ for findings of fact regarding when Clark became aware his work contributed to the development of his degenerative condition in his knee. If manifestation of the disability occurred in 1987 then the decision of the ALJ should be reinstated. If it occurred at a subsequent point in time more of the claim would be compensable and the decision should be amended accordingly.

Here, the parties stipulated Reilley sustained a work-related injury on June 16, 2008. Reilley's testimony establishes he was well aware of the 2008 injury and any subsequent injuries he sustained while working for Autozone. Thus, Reilley did not sustain a cumulative trauma injury. As noted in Special Fund v. Clark, supra, when there is a gradual injury the worker is unaware that an injury has been sustained until it manifests in the form of physically occupationally disabling symptoms. In this case, Reilley was aware of any worsening of his physical condition as each physical change manifested in the form of physical or occupationally disabling symptoms. Thus, Special Fund v. Clark, supra, is inapplicable.

The sole question is whether Reilley sustained a subsequent work injury after June 16, 2008. In his Form 101, Reilley alleged on or about November 17, 2011, after

he returned to work, he began experiencing increased back symptoms and radiculopathy. However, there is no substantiating medical testimony establishing that in November 2011 Reilley sustained an injury as defined by the Act separate and apart from the June 16, 2008, injury. In fact, the BRC order reflects the parties stipulated Reilley sustained a work-related injury or injuries on June 16, 2008. There is no mention in the BRC order of a subsequent work injury.

Reilley's contention there was a further aggravation of the June 16, 2008, injury which occurred within two years of August 23, 2012, the date upon which he filed his workers' compensation claim, is not borne out by Dr. Barlow's November 5, 2012, report. Dr. Barlow's report does not establish Reilley sustained a compensable injury within two years of August 23, 2012. After conducting an examination and reviewing various medical records, Dr. Barlow diagnosed a "bulging disc lumbar spine with right radiculopathy." Dr. Barlow answered the following questions:

> **1. Please given an opinion about these injuries being work related.** The lumbar pain in 2008 was job-related. He continued to have intermittent lumbar pain with work incidents over the years. The 2010 furniture moving episode did not cause any residual

> symptoms or signs. In 2011 he began to have right lower extremity radiculopathy following another work incident. This the first instance of disc derangement. Imaging study in September 2011 showed a protruding disc at L4-5. **Please state whether the client could return to the job in which he was injured.** He cannot return to the job in which he was injured.
>
> **2. Please give a maximum medical improvement date if applicable.** The MMI date is 01/01/2012.
>
> **3. Please give an impairment rating if applicable.** He has history and physical findings compatible with a specific injury, nonverifiable radicular pain and no significant neuropathy. This places him in DRE Category II, giving 8% whole person impairment.
>
> **4. Please give any permanent restrictions.** Restrictions include the following: all lifting with knees keeping the back straight; lo [sic] lifting more than 20 pounds up to 15 times per hour; no twisting or bending at the waist; sitting or standing with 10 minute break every 2 hours.

While Dr. Barlow noted Reilley began having lower extremity radiculopathy in 2011 following another work incident and this was the first disc derangement, he did not identify this as a work-related <u>injury</u>. Rather, he stated Reilley had a history and physical findings compatible with <u>a specific injury</u>. He indicated Reilley had nonverifiable radicular pain and no significant neuropathy. Also, Dr. Barlow's impairment rating does not

attempt to apportion any percentage of the impairment rating to an event which occurred within two years of August 23, 2012. Rather, his report is silent as to the event to which he attributed the 8% whole person impairment. Since the parties stipulated to only one injury and Dr. Barlow referenced only one injury, the ALJ could reasonably conclude the injury to which Dr. Barlow was referring was the June 16, 2008, injury.

Significantly, Reilley does not allege a work injury occurring on December 16, 2011, when the car hood fell on his back. In addition, Reilley's deposition and hearing testimony are inconsistent as to when he began experiencing radicular symptoms. In his deposition, Reilley identified his radicular complaints as occurring sometime in November or December of 2011. At the hearing, Reilley testified as follows:

> Q: Have you got a problem with your back?
>
> A: Yes.
>
> Q: When did the back pain start shooting into your buttocks, leg or legs, or foot or feet?
>
> A: Sometime late 2010.
>
> Q: What happened then?
>
> A: It progressed, it further went down. It sometime traveled down the leg, down

> the calf, sometime down the heel. But now it's getting worse, it's not going away. I mean it was I could do things normal as much as I possibly can, but now I actually have a lot more problems doing normal things.
>
> Q: But the movement into your buttocks and down your leg and into your foot, that whole process started sometime in late 2010?
>
> A: Yes.

Clearly, the hearing testimony does not reference any event occurring in 2011. Thus, the ALJ was free to disregard Reilley's testimony and Dr. Barlow's history regarding the problems which developed subsequent to June 16, 2008, and conclude the sole source of his low back problems was the June 16, 2008, injury.

Further, the August 19, 2011, report of Deborah DeGuire, ARNP, reflects she received the following history from Reilley:

> This is a 33 year old gentleman who has come in with increasing anxiety. He was seen in the office yesterday. The patient states he has long term problems with his back. He was involved in an accident work related in 08. He has continued to work and he is a manager now at Auto Zone. He states that he has pain. He was in yesterday, had an injection into the SI joint bilaterally. States that he got absolutely no relief from that injection. He states that he was unable to sleep during the night. He feels agitated. His [sic] said his Lortab

> might as well not even be taking, he has taken 3 already today at work and has not had any relief. He says he has pain in the middle of his back and he awoke this morning and he had pain and he stood and showed me an area on his back, high lumbar. Felt like it went through to his chest, made it difficult to breath. No [sic] he is having pain in both hips, more on the right than the left. He said that pain spreads down his right leg into his foot. It feels like his foot is tingling like it is falling asleep. He states he has been having increased trouble now with anger problems.

A subsequent note of Daryl DeGuire, CRNA, dated November 10, 2011, reflects as follows:

> The patient is a 33 year old white male who presents today with a history of back pain for trigger point injections. The patient states he has a work related injury to his low back on 06/16/08 lifting a battery to change it. He presents today with ongoing back pain and trigger point. He has been to Rehab Associates of Bowling Green, he has also been to Dr. Truong and has tried multiple medication treatments without helping his back pain. He has also tried chiropractic services and physical therapy. He had poor outcome from those, did not continue those treatments.

Both documents establish Reilley had significant low back problems prior to November 2011. Notably, the August 19, 2011, record establishes Reilley had radicular problems due to the 2008 injury at least three months before he alleged his radicular problems began. These

medical records permit the ALJ to conclude all of Reilley's symptoms stem from the stipulated injury of June 16, 2008, and not any subsequent event or injury.

Reilley's argument his condition did not merit an impairment rating pursuant to the AMA Guides until he developed the lumbar radiculopathy in November or December of 2011 is a lawyer's assessment of the AMA Guides and is not supported by any medical evidence. Thus, we find Reilley's assertion to be without merit.

As Reilley did not establish he sustained a work-related injury within two years of the filing of his Form 101, the ALJ properly dismissed Reilley's claim for a June 16, 2008, injury as being barred by the statute of limitations.

KRS 342.185(2) reads as follows:

> (2) The right to compensation under this chapter resulting from work-related exposure to the human immunodeficiency virus shall be barred unless notice of the injurious exposure is given in accordance with subsection (1) of this section and unless an application for adjustment of claim for compensation shall have been made with the commissioner within five (5) years after the injurious exposure to the virus.

There is no question Reilley did not file a Form 101 within two years of June 16, 2008, or within two years after the last payment of TTD benefits.

We feel compelled to address the documents attached to a pleading styled "Plaintiff's Verified Notice of Proof of Recurrent Progressing Injury." The first document attached is the first report of injury regarding the June 16, 2008, injury which indicates the part of the body affected is the trunk/lower back area.[2] The other documents are styled "Autozone Physician Report Work-Related Injury Only."

The Autozone Physician Reports, except for the March 26, 2012, report, pertain to a recurrence or aggravation of the pre-existing condition, identifying back pain and the body part injured as the lower back. In the first report, the date of incident is left blank. In the two subsequent reports the 2008 injury is referenced.

As previously noted, the last report dated March 26, 2012, indicates Reilley was treated on March 26, 2012, for a new work-related injury and a recurrence of an aggravation of a pre-existing condition. The type of

[2] Within these completed forms is also a document containing a description of an injury prepared and signed by John Jackson II in which he indicates he and another employee were working on a battery when Reilley attempted to help them. In the course of trying to locate the battery, the hood fell on Reilley.

injury indicated was a slip and fall. The body part injured was low back.

The four Autozone Physician Reports refer to an aggravation of the June 16, 2008, injury except for the last one which references a second injury. However, that document also refers to an aggravation of a pre-existing condition. Significantly, Reilley does not allege a March 26, 2012, injury. Contrary to Reilley's assertion, these documents relate to a recurrence of symptoms and not a progressing injury.

We conclude substantial evidence supports the ALJ's conclusion Reilley sustained only one work injury on June 16, 2008, and his workers' compensation claim arose out of that injury and not another injury which occurred within two years of the filing of the Form 101 on August 23, 2012.

Accordingly, the March 1, 2013, opinion and order and the March 25, 2013, order ruling on the petition for reconsideration are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

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