

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 5, 2014

CLAIM NO. 201288141

BRIGGS & STRATTON CORPORATION

PETITIONER

VS.

APPEAL FROM HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

JEFFREY DAVIS
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDED

* * * * *

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

ALVEY, Chairman. Briggs & Stratton Corporation ("Briggs") appeals the Opinion and Order rendered May 23, 2014 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") finding Jeffrey Davis ("Davis") sustained injuries to his upper extremities due to cumulative trauma manifesting on March 22, 2012. The ALJ awarded temporary total disability

("TTD") benefits, permanent partial disability ("PPD") benefits increased by the three multiplier and medical benefits. Briggs also appeals from the June 30, 2014 Opinion and Order denying its petition for reconsideration.

On appeal, Briggs argues the ALJ erred in relying upon Dr. Jerry Morris' opinions since they were based upon an incomplete medical history and his assessment of impairment is not in conformity with the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Briggs argues the ALJ erred in finding Davis does not retain the physical capacity to perform the same type of work he did on March 22, 2012 in light of the uncontroverted medical evidence. Finally, Briggs argues the January 25, 2013 and February 15, 2013 interlocutory orders constitute an abuse of discretion.

Davis filed a Form 101 alleging injuries to both hands and wrists due to repetitive use while working as an operator for Briggs which manifested on March 22, 2012. Davis has worked for Briggs since September 2009.

Subsequent to the filing of the Form 101, Davis filed the December 13, 2012 report of Dr. Anthony McEldowney, who diagnosed him with bilateral carpal tunnel syndrome ("CTS"). He found Davis' complaints were a direct result of work-related cumulative trauma to his hands. Dr.

McEldowney recommended bilateral carpal tunnel releases, and stated Davis has not reached maximum medical improvement ("MMI").

Briggs filed the December 12, 2012 report of Dr. Thomas Gabriel, who likewise diagnosed Davis with bilateral CTS which he concluded is work-related. Dr. Gabriel recommended Davis seek treatment with a hand specialist, and a short period of modified work activities. He expected Davis would retain the physical capacity to return to his usual and customary job activities following additional treatment, even if surgery is required.

On January 25, 2013, the ALJ placed the claim in abeyance until Davis attained MMI, and ordered "defendant shall pay π TTD from the date of this order to date of MMI." Briggs filed a petition for reconsideration arguing the ALJ should have ordered it to pay TTD benefits from only April 19, 2012 to July 22, 2012 since Davis' treating physician returned him to unrestricted work on July 23, 2012, and he in fact returned to his previous job as an operator in the same department, performing his regular duties. The ALJ denied Briggs' petition on February 15, 2013, noting it will be entitled to a credit for any TTD payments made to Davis. In an opinion rendered April 12, 2013, this Board dismissed Brigg's appeal of the January 25, 2013 and February 15, 2013

orders since they were not final and appealable. However, the Board suggested the ALJ review the award of interlocutory TTD benefits in accordance with applicable statutory and case law. Subsequently, the ALJ did not revisit the issue of interlocutory TTD benefits. The claim was removed from abeyance on September 30, 2013 after Davis' treating physician, Dr. Heather Gladwell, performed bilateral carpal tunnel releases and determined he had attained MMI.

Davis testified by deposition on December 10, 2012 and at the hearing held May 1, 2014. Davis was born on May 24, 1978 and resides in Paris, Tennessee. Davis testified he began working for Briggs in September 2009. He started working full-time as an operator in the die cast department in August 2010 and alleges he subsequently developed occupational bilateral CTS due to working twelve hour shifts which involved repetitive tasks. Davis testified his duties included breaking cylinders, breaking and filing sumps, inspecting parts, loading flywheel magnets onto a conveyor, and operating a grinder. Likewise, at the hearing, Davis stated "mostly you have the brake cylinders when they come out the machine, you also have to grind heads with a hand held grinder, file - - with the file and load magnets into -

- into a - - onto a conveyor and then just various cleaning and stuff."

Davis testified he first noticed symptoms in his hands in November or December 2011. At that time, he was receiving treatment for unrelated chronic shoulder and back pain from a pain specialist, Dr. Richard Muench. He reported his hand symptoms to Dr. Muench during a February 2012 appointment. After ordering diagnostic testing, in April 2012, Dr. Muench diagnosed Davis with bilateral CTS due to his work activities. Dr. Muench restricted Davis from work from April 19, 2012 to July 22, 2012. Dr. Muench prescribed a wrist brace, referred Davis to a hand surgeon, and continued to prescribe the same medication he had prescribed prior to March 22, 2013 for the unrelated chronic back and shoulder pain. Dr. Gladwell performed a left carpal tunnel release on May 16, 2013 and a right carpal tunnel release on May 30, 2013. Davis indicated he returned to light duty work sometime in August 2013, and then to unrestricted work on September 3, 2013. Davis testified he currently experiences numbness, tingling, pain, grip weakness and limited range of motion in both hands.

Prior to March 22, 2012, Davis testified he sought treatment at Tri-County Family Medicine and Urgent Care ("Tri-County") for gradual onset of low back pain. Tri-

County prescribed medication and eventually referred Davis to Dr. Muench. Davis began treating with Dr. Muench in December 2011 for low back and right shoulder pain, and continues to see him on a monthly basis. Davis testified Dr. Muench currently prescribes Neurontin, Zanaflex, Percocet, Morphine and Ibuprofen. He was prescribed the above referenced medication for his unrelated chronic low back pain on a regular basis prior to March 22, 2012. However, the medication regimen provides partial relief to his hands and allows him to perform his job duties at Briggs.

Davis testified he left the die cast department in January 2013 "because it was just too hard on my hands." He does not believe he can return to his job in the die cast department "because my hands are just - - my hands would be hurting too much to go back to doing that." He was moved to "aluminum machining" in January 2013 where he remains today working full-time, forty hours a week. This job requires Davis to pick up parts, load them into a machine, inspect the parts upon completion, and place them on a conveyor line. Davis stated his job in aluminum machining is lighter in some ways than his job in the die cast department explaining:

Well, you're not - - in die cast, you know, you had to wear real thick gloves because the parts are real hot and - - and there's a lot more, you know, beating them against the table and stuff. Here it's just - - it's mostly just picking them up and setting them in a machine.

Despite the easier duties associated with aluminum machining, Davis stated it requires repetitive use of his hands. He continues to experience constant hand pain and indicated he would be unable to complete his job tasks without the medication prescribed by Dr. Muench. Davis indicated he did not believe he will be able to work for Briggs much longer due to his hand condition, and questioned whether he would be able to find comparable employment and wages in his hometown. Although Davis earned the same hourly wage of \$13.41 in both departments, he asserts he earned more working in the die cast department than he does now in aluminum machining since he was provided more overtime opportunities.

Chelsea Van Rooy ("Rooy"), an occupational nurse for Briggs who handles its workers' compensation claims, also testified at the hearing. Rooy testified Davis has always worked as an operator for Briggs, and he worked in the die cast and machining department. Rooy testified the departments involve similar job tasks for operators. She

agreed that regardless of the departments, an operator has the same general job duty requirements, including lifting three to four pounds, and some standing and sitting. On cross-examination, Rooy acknowledged the jobs in each department are different, but the job requirements are the same. Rooy also testified Davis submitted a job transfer request asking to move to a different department, but never stated, verbally or in writing, it was due to his work injury. The request was not attached as an exhibit or filed into the evidentiary record. Rooy's testimony regarding Davis' work status throughout his course of treatment is consistent with the medical records. Rooy testified Davis currently works full time as an operator and believes he will be able to continue to work for Briggs for the indefinite future.

Briggs submitted the records from Tri-County and Dr. Muench. Davis treated at Tri-County on at least seven occasions from March 5, 2011 to April 4, 2012 for various unrelated complaints, including low back and shoulder pain for which he was prescribed medication. Likewise, on December 29, 2011 and February 23, 2012, Dr. Muench prescribed medication for unrelated low back, right shoulder and leg pain. On March 22, 2012, Davis complained of low back and neck pain, as well as upper extremity numbness and

paresthesias. Dr. Muench ordered EMG/NCV studies and continued to prescribe Davis pain medication. On April 19, 2012, Dr. Muench stated the diagnostic studies confirmed bilateral CTS. He recommended a hand brace, prescribed Percocet and Topamax, and restricted Davis from work due to his CTS. On July 23, 2012, Dr. Muench returned Davis to work without restrictions. Dr. Muench continued to treat Davis on a monthly basis throughout 2013. He regularly prescribed medication for Davis' back and shoulder complaints, and noted Davis' progress with Dr. Gladwell regarding his CTS. On November 20, 2013, the last visit on record, Davis complained of mid back, low back and right shoulder pain. He was assessed for various unrelated conditions, including CTS. Davis was prescribed Neurontin, Percocet, MS Contin and Zanaflex.

Both Briggs and Davis filed the records of Dr. Gladwell, who treated him from March 15, 2013 through September 4, 2013. A repeat EMG performed on April 1, 2013 was consistent with CTS, with no evidence of other focal nerve entrapment, generalized peripheral neuropathy or radiculopathy in either upper extremity. After noting a course of failed conservative treatment and reported severe pain, Dr. Gladwell performed a left carpal tunnel release on

May 16, 2013 and right carpal tunnel release on May 30, 2013.

On March 15, 2013, Dr. Gladwell restricted Davis from forceful gripping or lifting over ten pounds. On March 26, 2013, Virginia Peebles, FNP-C, noted if Davis is only required to lift three to four pounds per his job description, he should be able to complete this without restriction. Davis was restricted from work on May 15 and 16, 2013 due to the first CTS surgery, and was subsequently restricted from using his left upper extremity. Beginning May 28, 2013, Davis was restricted from using either upper extremity. On July 22, 2013, Dr. Gladwell stated "he will return to full duty." During his last visit on September 4, 2013, Dr. Gladwell noted Davis has full range of motion of his wrists and fingers, and his sensory and motor skills are grossly intact. She stated "The patient is overall doing very well. He may continue his activities as tolerated and will follow-up on a p.r.n basis. He is released MMI. **RESTRICTIONS:** Full Duty." Dr. Gladwell assessed a 2% impairment rating pursuant to the 6th Edition of the AMA Guides.

Davis filed the November 19, 2013 report of Dr. Morris. Dr. Morris listed several medical records he reviewed and noted Davis has chronic lumbago for which he

has received treatment for more than five years. Dr. Morris performed an examination and diagnosed the following: 1) CTS, with residual intermittent nerve impairment; 2) CTS, post release with permanent loss of grip and pinch strength; 3) CTS, resulting in lost range of motion of the wrists; 4) chronic pain secondary to CTS, unresolved; 5) iatrogenic hypo-anabolic state secondary to chronic narcotic and other prescription use to control pain; and 6) tobacco use with chronic inflammation. Dr. Morris opined Davis' symptoms are the direct result of the work-related injury culminating in a report for repetitive stress disorder on March 22, 2012. He found Davis had attained MMI but recommended continuing chronic pain management interspersed with orthopedic evaluation and further consultation. Dr. Morris assessed a 10% impairment rating for extremity impairment based on loss of range of motion, and 3% for pain, yielding a combined 13% impairment rating, pursuant to the 5th Edition of the AMA Guides. Dr. Morris' report neither addresses permanent restrictions nor Davis' ability to return to work.

Briggs submitted a January 27, 2014 letter by Dr. Gladwell. She reviewed her course of treatment and noted Davis exhibited pain magnification. She also noted Davis' history of chronic back pain and regular use of prescription narcotic medication, which are non-work-related. Dr.

Gladwell acknowledged her previous impairment rating was based upon the 6th Edition of the AMA Guides. Pursuant to the 5th Edition of the AMA Guides, since Davis did not undergo post-operative EMG or NCV testing, she would assess a 0% impairment rating. She also opined Davis fully recovered from his CTS, can return to all activities and has no long-term restrictions. Dr. Gladwell stated Dr. Morris' assessment of impairment is significantly disproportionate to any physical findings on her examination, particularly in light of his pre-operative EMG/NCV finding of mild CTS. Dr. Gladwell noted she has "never assigned nor seen a 13%" impairment rating for a mild uneventful carpal tunnel syndrome surgical treatment and noted it is not consistent with her findings. She concluded a 13% impairment rating is not justified.

Dr. Morris prepared a February 4, 2014 rebuttal letter. He first noted Dr. Gladwell's critique neither refuted his findings on examination nor changed his assessment of impairment. Dr. Morris noted there was no evidence of exaggeration or malingering during his examination of Davis. Dr. Morris also noted "stating that the Guides require postoperative EMG or NCV may apply to the CTS she treated, but clearly do not apply to the lost range of motion, and, so, does not invalidate that impairment."

Dr. Morris noted medical literature demonstrates CTS surgery has a 57% failure rate with less than 25% of operated persons returning to work.

The BRC order and memorandum stipulated Davis was voluntarily paid TTD by Briggs from April 19, 2012 to July 22, 2012 and again from January 25, 2013 through September 3, 2013 pursuant to the January 25, 2013 order. It identified benefits per KRS 342.730 and TTD (overpayment/underpayment) as contested issues. At the hearing, the parties stipulated Davis' average weekly wage was \$553.00. Counsel for Briggs also agreed Davis is entitled to TTD benefits for the following periods: April 19, 2012 to July 22, 2012; March 15, 2013 to March 25, 2013; May 15, 2013 through July 21, 2013.

In the opinion and Order rendered May 23, 2014, under "benefits per KRS 342.730," the ALJ found Davis to be a credible witness, and the report of Dr. Morris most compelling. He relied upon the report of Dr. Morris regarding diagnosis, causation, MMI, and impairment, stating as follows:

Dr. Morris' diagnoses were that the plaintiff has bilateral carpal tunnel syndrome with residual intermittent nerve impairment and permanent loss of grip and pinch strength and loss of range of motion in his wrists, as well as chronic pain secondary to his carpal

tunnel syndrome. I make the factual determination that Dr. Morris' diagnoses are persuasive and compelling. I further make the factual determination that Mr. Davis' current symptoms and signs are the result of the work-related injuries to both his upper extremities, which became disabling on March 22, 2012, being the result of repetitive motion and cumulative trauma. I make the factual determination that the plaintiff reached maximum medical improvement on November 19, 2013. I further make the factual determination that Dr. Morris' opinion that the plaintiff will sustain a 13% permanent partial impairment to the body as a whole under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, is persuasive and compelling.

The ALJ then performed an analysis pursuant to Fawbush V. Gwinn, 103 S.W.3d 5 (Ky. 2003). The ALJ identified the three essential findings of facts required under Fawbush and its progeny, and summarized Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979) and Jeffries v. Clark & Ward, 2007 WL 2343805 (Ky. App. 2007). The ALJ stated as follows:

Based upon the plaintiff's sworn testimony, which is summarized above, and which I found to be very credible and convincing, and the persuasive and compelling medical evidence from Dr. Morris, which is summarized above, I make the factual determination that Mr. David cannot return to the type of work which he performed at the time of his injuries in accordance with KRS 342.730(1)(c)1. Mr. Davis testified that at the time his work injuries became disabling he was working in the

die cast department, and that he left that department in January, 2013 and began an aluminum machining job. I make the factual determination that he is not physically able to return to work at his former die cast job. Giving the defendant the benefit of the doubt, I make the factual determination that Mr. Davis returned to work for the defendant earning the same average weekly wage that he earned at the time of his work injuries as per KRS 342.730(1)(c)2. I make the factual determination that potentially both the 2 multiplier and the 3 multiplier could apply in this case, and I must determine which is appropriate. I also have to make the determination whether Mr. Davis is unlikely or likely to be able to continue earning the wage that equals or exceeds his wage at the time of his injuries for the indefinite future. Mr. Davis testified that his current job causes him pain and that he probably will not be working for the defendant much longer. He testified that he probably cannot find comparable employment. I make the factual determination that that testimony from the plaintiff is credible and convincing. Based upon the plaintiff's credible and convincing lay testimony and the persuasive and compelling medical evidence from Dr. Morris, all of which is covered above, I make the factual determination that under the decision of the Kentucky Court of Appeals in *Adkins v. Pike County Board of Education*, 141 S.W.3d 387 (Ky. App. 2004), the *Fawbush* analysis includes a broad range of factors, only one of which is the plaintiff's ability to perform his current job. Under the *Adkins* case, the standard for the decision is whether the plaintiff's injuries have permanently altered his ability to earn an income and whether

the application of KRS 342.730(1)(c)1 is appropriate. Based upon the plaintiff's sworn testimony, as covered in detail above, and the medical evidence from Dr. Morris, as covered above, I make the factual determination that it is unlikely that Mr. Davis will be able to continue for the indefinite future to do work from which to earn such a wage. Based upon all of the above-cited evidence from the plaintiff and Dr. Morris, I make the factual determination that the third prong of the *Fawbush* analysis applies here, and that the plaintiff's 2012 work injuries have permanently altered his ability to earn an income and that he is unlikely to be able to continue for the indefinite future to do work from which to earn such a wage. I, therefore, make the factual determination that the third prong of the *Fawbush* analysis applies here and that under that application Mr. Davis is entitled to the 3 multiplier under KRS 342.730(1)(c)1. In making that factual determination, I also rely upon the Opinion of the Kentucky Supreme Court in *Adams v. NHC Healthcare*, 199 S.W.3d 163 (Ky. 2006) and also the very recent Opinion of the Kentucky Court of Appeals in *Ford Motor v. Grant*, 2013 WL 5888275 (Ky. App. 2013).

Regarding TTD benefits, the ALJ first noted the parties stipulations listed in the BRC order. The ALJ then summarized Dr. Gladwell's work restrictions and releases throughout the course of treatment rendered to Davis. The ALJ noted Briggs admitted Davis did not perform his usual and customary work activities from March 15, 2013 through March 25, 2013, from May 17, 2013 to May 27, 2013 and again

from June 11, 2013 to July 21, 2013. Dr. Gladwell released Mr. Davis to full-time work without restrictions on July 22, 2013.

The ALJ then noted Briggs agreed Davis is entitled to TTD benefits from April 19, 2012 to July 22, 2012; March 15, 2013 to March 25, 2013; May 15 and 16, 2013; May 17, 2013 to May 27, 2013; May 28, 2013 to June 10, 2013, and June 11, 2013 to July 21, 2013 based upon Dr. Gladwell's records. Based upon Dr. Gladwell's records, the ALJ determined Davis is entitled to TTD benefits for the periods agreed to by Briggs above at a rate of \$368.67, and awarded the same. The ALJ awarded PPD benefits based upon a 13% impairment rating, increased by the three multiplier, as well as medical benefits. The ALJ also found Briggs "entitled to a credit for workers' compensation benefits heretofore paid."

Briggs filed a petition for reconsideration making the same arguments it now raises on appeal. In the June 30, 2014 Opinion and Order on reconsideration, the ALJ first addressed Briggs' argument regarding the impairment rating assessed by Dr. Morris. The ALJ noted Dr. Morris is a licensed physician qualified to give medical opinions based on the 5th Edition of the AMA Guides. On the other hand, the ALJ noted counsel for Briggs is not a licensed

physician. He stated counsel is not competent or qualified to "give her interpretation of the medical evidence or regarding the meaning of the AMA Guides, Fifth Edition" or to "criticize the medical evidence from Dr. Morris or his medical opinions, since he is a licensed physician." The ALJ again briefly summarized the reports of Dr. Morris, and emphasized he found him very persuasive and compelling. Regarding the Fawbush analysis and the application of the three multiplier, the ALJ made the same analysis previously provided in the May 23, 2014 opinion.

On appeal, Briggs argues the ALJ erred in relying upon the impairment rating assessed by Dr. Morris, since it is not "as determined by" the AMA Guides. Briggs enumerates several instances where Dr. Morris' assessment is not in conformity with the AMA Guides. Briggs also asserts the 3% impairment rating Dr. Morris assessed for pain cannot be related to his CTS, but is due to his chronic unrelated back pain in light of the pre-injury medical records and Dr. Gladwell's records. Briggs argues Dr. Morris' assessment of impairment cannot constitute substantial evidence, and therefore the award of PPD benefits must be reversed.

Briggs argues the award of PPD benefits is clearly erroneous and not supported by substantial evidence. Briggs asserts the ALJ did not consider the pre-injury records from

Dr. Muench and Tri-County or Dr. Gladwell's records, and therefore, did not make findings of fact based on "an accurate or complete presentation of the evidence." Briggs also argues the ALJ erred in relying upon Dr. Morris' opinion since he was not provided an accurate medical history by Davis and did not review the pre-injury records of Dr. Muench and Tri-County. In support of its argument, Briggs relies upon Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004).

Briggs argues the ALJ erred as a matter of law by increasing Davis' award of PPD benefits by the three multiplier. Briggs argues the unrebutted medical evidence demonstrates Davis retains the physical capacity to perform the same type of work he performed on March 22, 2012. Briggs asserts no physician on record assigned permanent restrictions on Davis' work activities, including his treating orthopaedic surgeon, Dr. Gladwell. Briggs notes Dr. Morris did not assign restrictions in his report. Briggs asserts Davis has continued to perform his regular and customary full-time work as an operator since July 22, 2013. Briggs asserts there is no medical opinion suggesting Briggs moved to a different department due to his work-related CTS. Further, regardless of which department Davis was assigned to, Rooy testified the job duties are the same.

In a related argument, Briggs argues since KRS 342.730(1)(c)1 was not applicable, the ALJ erred as a matter of law in awarding enhanced income benefits pursuant to the Fawbush analysis. In the alternative, Briggs argues the evidence does not support the enhancement of income benefits pursuant to a Fawbush analysis.

Finally, Briggs argues the ALJ abused his discretion when he ordered interlocutory TTD benefits in the January 25, 2013 and February 15, 2013 orders during periods when Davis had been released to return to work, was performing his usual duties as an operator and was receiving remuneration. Briggs points out the ALJ did not correct the interlocutory orders as suggested by the Board in its April 12, 2013 opinion. Briggs requests credit for the TTD benefits which were overpaid pursuant to the interlocutory orders.

As the claimant in a workers' compensation proceeding, Davis had the burden of proving each of the essential elements of his cause of action, including the extent and duration of his disability, as well as the application of the multipliers pursuant to KRS 342.730(1)(c). See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Davis 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 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 that 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).

We find unpersuasive Briggs' argument the ALJ could not rely upon Dr. Morris' opinion because the assessment of impairment is not in conformity with the AMA Guides and it is based upon an incomplete and inaccurate medical history. For purposes of granting an award of PPD benefits, an impairment rating pursuant to the AMA Guides is mandatory. See KRS 342.0011(11)(b), (35) and (36). In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003), the Kentucky Supreme Court instructed the proper interpretation of the AMA Guides is a medical question solely within the province of the medical experts. In George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004), the Court further held, while an ALJ is not authorized to independently interpret the AMA Guides, he may as fact-finder consult the Guides in the process of assigning weight and credibility to evidence. So long as

there is sufficient information contained within a medical expert's testimony from which an ALJ can reasonably infer that the assessed impairment is based upon the 5th Edition of the AMA Guides, the ALJ as fact-finder is free to adopt that expert's impairment rating for purposes of calculating an injured worker's permanent disability rating pursuant to KRS 342.730(1)(b).

In his report, Dr. Morris performed an examination of Davis' upper extremities. Dr. Morris noted a negative Tenel's test, a positive Phalen and reverse Phalen test bilaterally, a negative Finkelstein test bilaterally and a negative Spurling's test bilaterally. He observed Davis' range of motion in both wrists, which he noted where abnormal and consistent with the presenting complaints and mechanism of injury. He tested Davis' grip strength. Dr. Morris stated as follows in his assessment of impairment:

His impairments are best rated on the range of motion model and consideration for pain, because he has no measurable sensory deficits at this point and his grip strength loss is likely partly due to the pain and that is affected by the pain medication.

Considering page 467, figure 16-28, and page 469, figure 16-31, he has 17% for extremity impairment based on the losses of range of motion. Moving then to page 439, table 16-3, this converts

to a 10% impairment of the whole person. Furthermore, considering his pain survey derived from page 576 and 577, and reflecting the table 18-3 on page 575, he qualifies for at least a Class II moderate impairment for 3% or more. Combining these on page 604, Combined Value Chart, gives a 13% permanent partial impairment to the body as a whole based on the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

In light of the above assessment, as well as Dr. Morris' February 4, 2014 rebuttal letter, the ALJ could reasonably conclude the impairment rating is based upon the 5th Edition of the AMA Guides, and the application is accurate. While Dr. Gladwell arrived at a different conclusion based upon her examinations of Davis, her opinions represent nothing more than conflicting evidence which the ALJ, as fact-finder, was free to reject. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Furthermore, an ALJ is not required to give an opinion of a treating physician greater weight than the opinion of an examining physician. Sweeney vs. King's Daughters Medical Center, 260 S.W.3d 829 (Ky. 2008). Therefore, we find no error in the ALJ's reliance upon Dr. Morris' 13% impairment rating.

We likewise reject Briggs' argument Dr. Morris' opinions cannot constitute substantial evidence since he had

limited records from Dr. Muench and none from Tri-County. The sufficiency of the medical records reviewed by an evaluating physician, in this instance Dr. Morris, goes to the weight the ALJ chooses to place upon his opinions, and not the admissibility of those opinions. Allegations by Briggs that Dr. Morris failed to review pertinent medical records, those from Tri-County and Dr. Muench, is an issue falling within the exclusive province of the ALJ. Regardless, in his report, Dr. Morris noted Davis "has chronic lumbago for which he has been treated for more than five years, unrelated to this injury." He also listed the records he reviewed which included the April 19, 2012 office note of Dr. Muench, x-rays from Henry County Medical Center, the operative notes of Dr. Gladwell, the office notes of Henry County Orthopedic Surgery, physical therapy notes, and the reports of Drs. McEldowney and Gabriel. In his opinion, it is clear Dr. Morris was aware of Davis' prior chronic back pain through the reported medical history he provided upon examination and by the medical records which reference the history of low back pain and treatment on several occasions. The facts of this case are distinguishable from those in Cepero v. Fabricated Metals Corp., supra. Cepero involved not only a complete failure to disclose, but affirmative efforts by the employee to cover up a

significant injury to the left knee only two and a half years prior to the alleged work-related injury to the same knee. Here, we cannot say Dr. Morris had such an inaccurate or incomplete history that his opinion was completely lacking in probative value.

Therefore, we find no error in the ALJ choosing to rely upon Dr. Morris' opinions regarding injury, causation and impairment. Dr. Gladwell's opinions amount to conflicting evidence which the ALJ was free to reject. Dr. Morris' opinions constitute substantial evidence upon which the ALJ is free to rely upon, and his award of PPD benefits based upon a 13% impairment rating will not be disturbed.

Briggs also challenges the ALJ's finding Davis cannot return to the type of work he performed at the time of his injuries, his former die cast job, in accordance with KRS 342.730(1)(c)1 on several grounds. We reject Briggs' first contention the ALJ failed to consider the entire evidentiary record. In the May 23, 2014 Opinion, the ALJ listed all the evidence of record submitted by the parties, including the records of Tri-County and Dr. Muench, the treatment records of Dr. Gladwell, and Henry County Medical Center. He stated he "carefully reviewed and considered all of the above evidence and the complete and entire record in the case file." The ALJ also provided brief summaries of

Davis' and Rooy's testimony, the reports of Drs. McEldowney, Morris, and Gabriel, and Dr. Gladwell's treatment records and reports. An ALJ is not required to provide a detailed summary of the evidence, nor include the minute detail of his reasoning in reaching his determination. Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973). The ALJ demonstrated his awareness of all the evidence and we believe he has made it sufficiently clear to the parties the evidence upon which his determinations rest.

We next find substantial evidence exists to support the ALJ's determination Davis does not retain the physical capacity to return to his former job, and finding the three multiplier applicable. It is well-settled a claimant's own testimony as to capabilities and limitations may be relied upon by the fact-finder in determining the physical capacity to return to work following an injury. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979); Ruby Construction Company v. Curling, 451 S.W.2d 610 (Ky. 1970).

In the case *sub judice*, the ALJ was presented with the conflicting testimony of Davis and Rooy regarding the physical demands of his job at the time of injury. The ALJ relied upon Davis' testimony, which he summarized as follows in the "Summary of Evidence" section:

The plaintiff, **Jeffrey Davis**, testified that he has been an employee of the defendant for 4 ½ years. He worked in the die cast department, which was a repetitive motion job. The plaintiff stated that he left the die cast department in January, 2013 and began working at an aluminum machining job. He stated that his symptoms had gotten worse and that he was not able to return to work at the die cast job. He testified that his current job causes him pain, and that he has thought about leaving the defendant's employment. He stated that he probably would not be working there much longer. He stated that he probably would not be able to find comparable employment. He testified that he made more money at the die cast job, in that he worked overtime. He stated that his straight time hourly wage was \$13.41 per hour. Mr. Davis stated that before March 22, 2012 he was taking four prescription pain medications on a daily basis. He stated that he could not do his present job without taking those pain medications.

On the other hand, Rooy testified Davis is an operator and is required to lift three to four pounds, sit, stand, and work around stationary machinery. Rooy testified operators have the same requirements regardless of what department they are working in within Briggs. She also stated Davis did not indicate he requested a transfer due to his hand condition. The ALJ acted well within his discretion in rejecting the testimony of Rooy and accepting the testimony of Davis. Magic Coal Co. v. Fox, supra.

We acknowledge Dr. Morris' opinions do not address restrictions or Davis' ability to return to his prior position. We further acknowledge Davis' treating physician returned him to full duty unrestricted work following his surgeries. However, Davis' testimony alone constitutes substantial evidence supporting the ALJ's determination. Therefore, his decision will not be disturbed on appeal.

With that said, we vacate in part and remand the claim to the ALJ with directions to clarify whether Briggs is entitled to a credit for TTD benefits already paid, specifically those voluntarily paid from April 19, 2012 to July 22, 2012 and those paid from January 25, 2013 through September 3, 2013 pursuant to the January 25, 2013 interlocutory order.

Accordingly, the May 23, 2014 Opinion and Order and the June 30, 2014 Opinion and Order denying its petition for reconsideration by Hon. William J. Rudloff, Administrative Law Judge, are hereby **AFFIRMED IN PART, VACATED IN PART,** and the claim is **REMANDED** to the ALJ to clarify whether Briggs is entitled to a credit for TTD benefits already paid.

ALL CONCUR.

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