Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 25, 2014

CLAIM NO. 201200480

CASEY SHEWMAKER PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

EMPLOYER'S SOLUTIONS STAFFING GROUP III, INC.
KNOPP & FLYNN CHIROPRACTIC CENTER
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING AND REMANDING
* * * * * *

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

STIVERS, Member. Casey Shewmaker ("Shewmaker") seeks review of the August 14, 2013, opinion, award, and order of Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") awarding temporary total disability ("TTD") benefits but dismissing his claim for permanent income and medical benefits against Employer's Solutions Staffing Group III, Inc. ("Employer's

Solutions”). Shewmaker also appeals from the November 21, 2013, order modifying the award of TTD benefits but overruling the remainder of his petition for reconsideration.

On October 11, 2011, Shewmaker had been assigned to work for Crowley Co. in Gulfport, Mississippi, working as a heavy equipment operator on a road construction project. On October 11, 2011, in the course of operating a bobcat while working on I-10, a concrete truck owned by Bayou Concrete hit the bobcat Shewmaker was operating. He did not see the concrete truck prior to the time it hit the bobcat. Shewmaker testified that as a result of the collision he blacked out. When he came to, he experienced stiffness in his back, neck, legs, and arms. He finished the shift that day and went to the Garden Park Emergency Room. When he returned to Kentucky he was treated for two months at Progressive Medical. As part of the treatment, an MRI was performed on December 14, 2011. On December 19, 2011, Shewmaker saw Dr. Ronald Flynn at Knopp and Flynn Chiropractic Center, whom he continues to see.[1] Dr. Flynn referred him to Dr. John Harpring whom he saw on March 21, 2012. Dr. Harpring recommended surgery.

[1] Shewmaker had been treated by Dr. Flynn prior to the work injury.

There is no dispute that prior to the injury, Shewmaker had been treated for neck, shoulder, and knee pain. In October 2009, Shewmaker was operating a diesel truck when a deer ran out into the road causing him to swerve and hit a tree. As part of the treatment for that injury, an MRI was performed in November 2009 which revealed a herniation at C5-C6 and a bulge at C4-C5. Shewmaker was treated by Dr. Witold Wilk and Dr. Flynn for the problems stemming from the October 2009 automobile accident. In 2011, prior to the subject work injury, Shewmaker was injured while working for Employer's Solutions when he jumped on a trailer which resulted in a stiff neck. Dr. Flynn adjusted his neck and he had no further problems. Shewmaker testified that from the last time he saw Dr. Flynn until October 11, 2011, he had no problems with his neck or back. Shewmaker desires to undergo the cervical surgery recommended by Dr. Harpring. He explained he has pain from his neck into his arms, tingling in his lower back, and numbness in his hands and feet.

The September 4, 2012, Benefit Review Conference Order and Memorandum reflects the following contested issues: "benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical

expenses; injury as defined by the ACT; credit for off-setting benefits; exclusion for pre-existing disability/impairment; TTD; and vocational rehabilitation."

In concluding Shewmaker suffered a temporary cervical strain or sprain from which he ultimately recovered and was not entitled to permanent income and medical benefits, the ALJ provided the following analysis:

> Based on the evidence taken as a whole, I believe that the dispositive issues here are work-relatedness, causation, injury as defined by the Act and exclusion for a pre-existing disability/impairment.
>
> Reasonable inferences that may be drawn from the evidence include the fact that Mr. Shewmaker had a number of significant problems prior to the work related accident of October 10, 2010.
>
> An April 27, 2010 x-ray of the thoracic spine revealed no evidence of a fracture, but did reveal mild irregularity of the endplates of the of [sic] the [sic] lower thoracic spine, which may be due to Scheuermann's disease, a congenital condition.
>
> Mr. Shewmaker had a positive drug screen dated October 25, 2010 indicating the presence of cocaine in his system, an indicator of drug abuse. This led to his termination from Dr. Wilk's treatment.
>
> Mr. Shewmaker also had a MRI of his cervical spine done on November 11, 2009, post MVA of October 2, 2009. That MRI revealed mild to moderate left side foraminal encroachment at C3-C4, and at C5-C6 a right paracentral disc

herniation with moderate right-sided, neural, foraminal encroachment related to disc material extending into the right neural foramen.

Mr. Shewmaker's medical records disclose active complaints and treatment of his neck problems leading right up to the work-related accident of October 10, 2011. They also reveal that he was unable to afford certain treatments and medications prior to that accident because his 10/2/2009 event was a single vehicle event caused by avoiding a deer. Although it appears to have been work-related, he made no claim for benefits.

The same is true of a [sic] August, 2011 work-related injury suffered while pulling himself up on a trailer, for which he also made no claim.

Mr. Shewmaker relies on the IME of Dr. Craig Roberts, M.D., who assigns a 16% whole person impairment which he apportions to the cervical spine and low back. However, other than plaintiff's subjective complaints, there is little evidence in the record of any injury to the lower back at all.

On August 27, 2011, Mr. Shewmaker was treated by Dr. Flynn, D.C. for neck pain and shoulder pain caused by pulling himself up onto a trailer. No mention was made of his lower back.

Dr. Ballard found no evidence of low back pain or any condition that might cause it. In fact, she found no permanent impairment at all arising out of the October 10, 2011 work related accident.

Dr. Sexton opined that Mr. Shewmaker did not sustain an injury in the 10/10/2011 incident and explained at

> length why he disagreed with the opinion of Dr. Roberts.
>
> I find that I am compelled to find the opinion of Dr. Sexton most compelling and persuasive with regard to the plaintiff's claim of a permanent injury sustained through the mechanism of the October 10, 2011 work related incident. Although I respect Dr. Roberts, in this case, I was not persuaded that his analysis of the plaintiff's medical condition was correct.
>
> Dr. Roberts gave no explanation of the fact that the MRI's of November 11, 2009 and December 14, 2011 are almost identical and show no radiological evidence of an acute change that could be attributed to the October 10, 2011 accident.
>
> I do believe that the plaintiff suffered a cervical strain or sprain, from which he ultimately recovered as diagnosed by the Garden Park Medical Center. I also believe that he was temporarily totally disabled from October 11, 2011 through February 27, 2012 and that the medical expenditures made on his behalf by the employer were reasonable and necessary.
>
> Based upon the surveillance reports of John Allen, I believe that the plaintiff has substantially recovered from the temporary symptoms incurred from the incident of October 10, 2011 and by opinion of Dr. Ballard dated February 27, 2012 (which appears to have been relied upon by most participants herein), he had reached MMI consisting of full recovery on that date.

The ALJ's findings of fact and conclusions of law mirror the above analysis. Relying upon the opinions of Dr.

Robert F. Sexton, Jr., the ALJ concluded Shewmaker failed to establish he had a permanent disability as a result of the work-related incident of October 11, 2011, and Shewmaker had no permanent impairment pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides").

Relying on Dr. Flynn's records and the opinions of Drs. Sexton, Peter Kirsch, and Ellen Ballard, the ALJ found Shewmaker had an "active and ratable pre-existing condition on October 10, 2011." The ALJ found Shewmaker was temporarily totally disabled from October 11, 2011 until February 27, 2012, and was entitled to TTD benefits for that period of time at the rate of $721.97 per week.

The ALJ dismissed Shewmaker's claim for permanent partial disability benefits and awarded TTD benefits from the date of injury through February 27, 2012, with Employer's Solutions granted a credit for the TTD payments it had made from October 22, 2011, through March 1, 2012.

Shewmaker filed a petition for reconsideration asserting the ALJ erred in finding he attained maximum medical improvement ("MMI") as of February 27, 2012. He asserted Dr. Harpring did not see him until March 19, 2012, and at that time recommended surgery based upon the results of the MRI performed on December 14, 2011. Consequently,

Shewmaker argued he could not have attained MMI on February 27, 2012, and the ALJ erred in so finding and in not specifically addressing whether the surgery suggested by Dr. Harpring was reasonable, necessary, and related to the work-injury in light of the MRI findings. Further, Shewmaker asserted the ALJ erred "in not awarding impairment and in finding that the Claimant suffered only a temporary injury pursuant to Robertson v. United Parcel Service, 64 S.W.3rd 284 (Ky, 2001) [sic]." Although Shewmaker requested the ALJ enter new and additional findings of fact, he did not identify the subject to be addressed in the findings of fact.

In the November 21, 2013, order the ALJ stated he did not recall Dr. Harpring expressing an opinion as to MMI. The ALJ noted Dr. Harpring saw Shewmaker on one occasion and recommended surgery which Shewmaker rejected. Noting there was a dearth of opinions as to the date of MMI, the ALJ stated he relied upon the supplemental medical report of Dr. Ellen Ballard as to the date of MMI. However, the ALJ noted there was a typographical error in the award as Dr. Ballard concluded MMI had been reached on January 18, 2012, not February 27, 2012. Concluding the remainder of Shewmaker's petition for reconsideration was a re-argument of the facts, the ALJ denied Shewmaker's petition for reconsideration. In

addition, the ALJ treated Employer's Solutions response and objection to the petition for reconsideration as contesting the award of TTD benefits. Concluding the record supported the award of TTD benefits from October 12, 2011, until Shewmaker reached MMI, the ALJ denied Employer's Solutions request for relief. Although denying both petitions for reconsideration, the ALJ amended the award as follows:

> 1) The fourth and fifth literary paragraphs of page 33 of the Opinion, Award and Order of August 14, 2013 are hereby amended and corrected to read as follows:
>
> > I do believe that the plaintiff suffered a cervical strain or sprain, from which he ultimately recovered as diagnosed by the Garden Park Medical Center. I also believe that he was temporarily totally disabled from October 11, 2011 through January 18, 2012 and that the medical expenditures made on his behalf by the employer were reasonable and necessary.
> >
> > Based upon the surveillance reports of John Allen, I believe that the plaintiff has substantially recovered from the temporary symptoms incurred from the incident of October 10, 2011 and by opinion of Dr. Ballard dated February 27, 2012 (which appears to have been relied upon by most participants herein), he had reached MMI

> consisting of full recovery on January 18, 2012.

. . .

5) Numbered paragraph 2 of the Award and Order of August 14, 2013 is hereby amended and corrected to read as follows:

> Plaintiff is awarded temporary total disability payments at the rate of $721.97 per week from October 11, 2011 through January 18, 2012. The Defendant/Employer shall be entitled to a credit against any TTD payments owed in an amount equal to TTD payments from October 22, 2011 through March 1, 2012.[2]

On appeal, Shewmaker asserts there is no dispute he was slammed by a cement truck and was treated in Mississippi. He acknowledges he was treated by Knopp & Flynn Chiropractic Center in 2009 as a result of the automobile accident and in August 2011 prior to the work injury. Shewmaker argues that in spite of his previous problems he continued to perform heavy manual labor dispute. Shewmaker maintains he never had any lower back problems prior to this injury. He notes Dr. Flynn stated the treatment he rendered to Shewmaker in December 2011 was a result of a new and distinct work-related injury. In addition, he observes Dr. Craig Roberts, who performed an

independent medical examination ("IME"), expressed the opinion Shewmaker had a pre-existing condition even though he had been symptom free and assigned an active impairment. However, Dr. Roberts also opined the October 11, 2011, work injury caused an injury necessitating cervical fusion be performed within the next three years.

Shewmaker argues that based on his testimony and the opinions of Drs. Flynn and Roberts the ALJ should have found he suffered a work-related injury and the requested cervical fusion is reasonable, necessary and related to the October 11, 2011, work injury. Shewmaker also contends the ALJ should have awarded TTD benefits from the date of the injury until he attained MMI after the surgery, with all other issues reserved. He argues the ALJ erroneously disregarded Dr. Harpring's opinion that a cervical discectomy and fusion should be performed. Shewmaker posits Dr. Harpring did not see him until March 19, 2012, and recommended surgery based on the MRI performed on December 14, 2011. Therefore, the ALJ's finding regarding MMI is erroneous. Further, Shewmaker argues the ALJ did not address the issue of whether the recommended surgery was reasonable, necessary, and related to the work injury.

[2] In the order the ALJ also amended three findings of fact.

Shewmaker posits this was the main issue the ALJ was asked to address.

Shewmaker takes issue with the ALJ's statement in his November 21, 2013, order that he did not recall Dr. Harpring expressing an opinion as to MMI. Shewmaker contends that in taking Shewmaker off work, Dr. Harpring was expressing an opinion as to whether he had reached MMI. Further, he asserts the ALJ erroneously concluded Shewmaker rejected Dr. Harpring's recommendation of surgery, since he testified at his deposition and the hearing that all medical treatment was cut off after he saw Dr. Harpring and he desired to undergo the surgery. Shewmaker maintains this misunderstanding taints the ALJ's whole opinion. Though the record establishes prior documented medical problems in the cervical spine, Shewmaker argues the work-related injury aggravated a pre-existing partially dormant condition into disabling reality necessitating cervical fusion. Shewmaker contends the ALJ was requested to award interlocutory relief authorizing the surgery recommended by Dr. Harpring and an award of TTD benefits until he reached MMI after the surgery. Thus, Shewmaker argues the ALJ's erroneous statement constitutes substantial error, and the decision should be reversed and the claim remanded with instructions

to review the medical evidence in light of this misstatement.

As the claimant in a workers' compensation proceeding, Shewmaker had the burden of proving each of the essential elements of his cause of action. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Shewmaker was unsuccessful in that burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

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 that would have supported 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).

The October 29, 2012, deposition of Dr. Sexton, board certified in pain management and neurological surgery, was introduced. When Dr. Sexton saw Shewmaker in August 2012, he noted the records of Dr. Wilk reflect Shewmaker had significant symptoms during most of 2009 and

2010. He testified Dr. Wilk's records contained a report regarding a cervical MRI which revealed a disc herniation and cervical spondylosis of C3-C6. In addition, the August 27, 2011, record of Knopp and Flynn Chiropractic Center reveals severe right-sided neck pain that radiated into the upper back and shoulder. At that time, it was noted Shewmaker had experienced varying degrees of pain since the automobile accident of 2009. Those records reveal Shewmaker's symptoms continued from the time of the 2009 automobile accident "through 2011 prior to this incident." Dr. Sexton believed Shewmaker had pre-existing neck and back conditions prior to October 10, 2011. He testified Shewmaker had a disc herniation in the neck, cervical spondylosis at multiple levels, and chronic pain syndrome which had been treated with opioids. Consequently, Shewmaker had an "active disease" prior to October 10, 2011. He concluded the MRI scans of November 11, 2009, and December 14, 2011, were "basically identical." They revealed Shewmaker had disc osteophyte complex at C3-4, disc osteophyte complex at C4-5 with neuroforaminal stenosis and facet degeneration, and a herniated disc with neuroforaminal stenosis at C5-6. In addition, the December 2011 MRI film revealed no radiologic evidence of an acute change which could be attributed to the October 2011

incident. There was no nerve compression or radiculopathy in the cervical. Dr. Sexton found no muscle wasting or atrophy.

Similarly, there was no clinical evidence of radiculopathy or nerve compression in the lumbar region. Dr. Sexton's examination revealed no abnormality of the lumbar spine. Consequently, Dr. Sexton found no physiological explanation for Shewmaker's subjective complaints.

Dr. Sexton disagreed with Dr. Harpring's recommendation of surgery because he found no need for cervical spine surgery. He also believed Dr. Roberts' history that Shewmaker's previous problems had resolved fairly quickly was incorrect. Dr. Sexton pointed out the records of Dr. Wilk and Knopp and Flynn Chiropractic Center reveal persistent symptoms until shortly before October 10, 2011. Dr. Sexton concluded the C5-6 herniation was not caused or worsened by the October 10, 2011, incident. He disagreed with Dr. Roberts' impairment rating but acknowledged Shewmaker had a 5% to 8% impairment pursuant to the AMA Guides for the cervical condition which was caused by the 2009 automobile accident. Dr. Sexton attributed no additional impairment rating to the October 10, 2011, incident. Further, there was no impairment of

the lumbar spine since Dr. Sexton found no abnormality of the lumbar spine. Consequently, Dr. Sexton stated Shewmaker fell within DRE Lumbar Category I of the AMA Guides and as such had no impairment rating. He did not believe the 2011 injury had rendered Shewmaker incapable of working nor did it result in the need to impose permanent restrictions. Dr. Sexton conceded he was not familiar with Shewmaker's physical condition between August 29, 2011, and the date of injury, nor was he aware of any prior restrictions imposed by a doctor. However, he believed the objective findings on physical examination were incompatible with Shewmaker's subjective complaints and Shewmaker was malingering.

Similarly, Dr. Sexton's August 8, 2012, report mirrors his deposition testimony. Dr. Sexton diagnosed the following:

> Regarding Mr. Shewmaker's complaints relative to his neck, arms, back and legs, the following diagnoses are documented:
>
> A. S/P Torn ACL 4-2-07
>
> B. Cervical spondylosis C3-C6
>
> - C3-4 disc osteophyte complex without neuroforaminal narrowing.
> - C4-5 disc osteophyte complex; facet degeneration; neuroforaminal stenosis.

- C5-6 HNP right; neuroforaminal stenosis.

C. Mild supraspinatus tendonopathy, right shoulder.

D. Malingering (see DSM-IV Code V65.2, page 739)

E. Antisocial Personality Disorder (307.7)

None of the above diagnoses were related to the October 2011 work injury. As to whether Shewmaker sustained an injury, Dr. Sexton expressed the following opinion:

> Based upon the definition of "injury," which was articulated in the above question, it is my opinion that Mr. Shewmaker did not sustain an injury, supported by objective medical findings in the incident of 10 October 2011. The objective medical data that support this opinion include the following:
>
> A. The cervical spine MRI of 11-11-09 and 12-14-11 were identical. The former was prior and the latter subsequent to the claimed work injury.
>
> B. The truck wreck of 2009 required considerable treatment prior to becoming quiescent.
>
> C. Mr. Shewmaker's symptoms of 'numbness' of both hands and both feet are non-organic in every aspect.
>
> D. Mr. Shewmaker's examination does not document any evidence of radiculopathy or neuropathy.
>
> E. There is dyssociation between his subjective and his objective findings to a large degree.

Dr. Sexton provided the reasoning for his conclusion the surgery proposed by Dr. Harpring was not reasonable, necessary, and related to the October 10, 2011, incident.

Dr. Sexton believed Shewmaker had pre-existing cervical spondylosis which was an active condition prior to the work injury of October 2011, and merited a 5% to 8% impairment rating based on the AMA Guides. Concerning the lumbar spine, Shewmaker demonstrated no demonstrable impairment either prior or subsequent to the October 2011 work injury. Thus, Shewmaker did not qualify for a permanent impairment rating based on the AMA Guides.

Dr. Sexton believed the prescribed medications were not reasonable, medically appropriate, or related to the work injury of October 10, 2011. Similarly, Dr. Sexton stated there was "no objective indices documented" indicating a need for visits to a doctor as a result of the October 10, 2011, work injury.

The January 18, 2012, report of Dr. Ballard reveals she conducted an IME on that same date. At that time, Shewmaker presented with a history of back and neck pain. Upon examination, Dr. Ballard believed Shewmaker presented no objective findings. Dr. Ballard concluded Shewmaker had not reached MMI and any further treatment

recommendations would depend on a review of the "actual films." Although Dr. Ballard indicated it was not appropriate to assess an impairment rating at that time, she imposed a temporary lifting restriction of twenty-five pounds. In an addendum contained within the report, Dr. Ballard stated her review of the additional records forwarded to her on January 25, 2012, clearly indicated Shewmaker had previous neck problems. She noted he sought treatment for his neck in August 2011. It was Dr. Ballard's opinion Shewmaker's current condition is not due to the work injury but due to a pre-existing active condition.

In a February 15, 2012, letter, Dr. Ballard stated Shewmaker had attained MMI as of January 18, 2012. Since there was no evidence of any new findings she believed Shewmaker was at "pre-injury status." Shewmaker did not require any further treatment or medications for his work injury. Dr. Ballard believed Shewmaker did not have a permanent impairment based on the AMA Guides as a result of the October 2011 injury. However, he may have an impairment of the cervical spine due to the previous automobile accident. Dr. Ballard assessed no physical restrictions.

In a February 27, 2012, letter Dr. Ballard clarified her previous letter by stating Shewmaker was "at [MMI] for his work-related injury, and this includes his cervical, thoracic, and lumbar spine."

The Kentucky Supreme Court held in Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), a claimant may submit evidence of a temporary injury for which temporary income and medical benefits may be awarded, yet fail in the burden to prove a permanent harmful change to the human organism for which permanent benefits are appropriate. The claimant, in Robertson, failed to prove more than a temporary harmful change as a result of the work injury. Thus, the court ruled the claimant was not entitled to income benefits or future medical expenses, but was limited to being compensated for only those medical expenses incurred in treating the temporary symptoms that resulted from the work-related incident.

Contrary to Shewmaker's assertions, the opinions of Drs. Sexton and Ballard constitute substantial evidence upon which the ALJ was free to rely in reaching a decision on the merits. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940) (citing American Rolling Mill Co. v. Pack et al., 128 S.W. 2d 187, 190 (Ky. App. 1939). Moreover, in line with Robertson, we believe the ALJ could

reasonably conclude from that evidence that the injury of October 10, 2011, produced only temporary harmful changes that were transient in duration, and that fully resolved at the time Shewmaker was seen by Drs. Sexton and Ballard, returning him to his pre-injury baseline state of health, resulting in no permanent impairment or disability or the need for future medical treatment.

While Shewmaker is correct that the contrary opinions espoused by Dr. Roberts and to a certain extent Dr. Flynn could have been relied upon by the ALJ to support a different outcome in his favor, in light of the remaining record, the views articulated by those physicians represent nothing more that conflicting evidence compelling no particular result. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (Ky. 2003). As previously stated, where the evidence with regard to an issue preserved for determination is conflicting, the ALJ, as fact-finder, is vested with the discretion to pick and choose whom and what to believe. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Consequently, we find no error.

Further, the ALJ did not err in relying on Dr. Harpring's records. Dr. Harpring's record contains the hand-written patient health history dated March 19, 2012 which had been filled out by Shewmaker. This one page

document contains no opinion or statement from Dr. Harpring relating Shewmaker's problems to the October 10, 2011, injury. The March 21, 2012, report signed by Kristin Huckleberry ARNP ("Huckleberry"), provided the following "Diagnosis and Recommendation,": "[c]hronic posterior neck pain with numbness and tingling in both hands with an MRI showing disc rupture on the right at C5-6." Huckleberry indicated she had discussed with Shewmaker the options of undergoing epidural injection versus undergoing an anterior cervical discectomy fusion at C5-6. She indicated since the numbness and tingling had progressively gotten worse Shewmaker would like to undergo surgery. Huckleberry noted she had explained the procedure to Shewmaker along with Dr. Harpring's role in the procedure and the risk factors associated with anesthesia and surgery which she listed. Since Shewmaker understood all these risks and would like to proceed with the surgery she would set him up to see one of the physicians from Leatherman Spine Center who would assist during the surgery.

Dr. Harpring's signature is contained on a note dated March 21, 2012, wherein he indicated Shewmaker was seen in the office on that date and was unable to return to work until June 4, 2012. Dr. Harpring indicated Shewmaker was being scheduled for surgery.

Dr. Harpring's records do not link the need for cervical spine surgery to the injury of October 10, 2011. Clearly, the ALJ incorrectly stated Shewmaker did not desire to undergo the surgery. However, we believe the records of Dr. Harpring do not provide a causal connection between Shewmaker's injury of October 10, 2011, and the need for the proposed cervical surgery.

In short, the opinions of Drs. Sexton and Ballard constitute substantial evidence supporting the ALJ's decision that Shewmaker merely sustained a temporary injury which did not require further medical treatment. Therefore, we find no error in the ALJ's decision. Further, we find Dr. Ballard's opinion concerning the date of MMI constitutes substantial evidence supporting the ALJ's decision as to when Shewmaker attained MMI and the award of TTD benefits. Conversely, the ALJ was not required to rely on Dr. Harpring's records as he does not link the need for Shewmaker to remain off work to the effects of the October 10, 2011, injury. Because the outcome selected by the ALJ is supported by the record, we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

That said, we note the opinion, award, and order does not provide for an award of medical benefits. In

paragraph twelve of his findings of fact and conclusions of law in the August 14, 2013, opinion, award, and order, the ALJ specifically stated he found the chiropractic services of Dr. Flynn were medically reasonable and necessary for the cure and relief of Shewmaker's symptoms from his initial consultation after October 10, 2011, until he reached MMI. Although he amended paragraph twelve in the November 21, 2013, order, he did not alter the provision pertaining to reasonable and necessary medical treatment. Since the opinion, award, and order does not contain the appropriate award of medical benefits the claim will be remanded to the ALJ for entry of an award of those medical benefits.

Accordingly, the August 14, 2013, opinion, award, and order and the November 21, 2013, order ruling on the petition for reconsideration determining Shewmaker sustained a temporary sprain or strain which resolved and is not entitled to permanent income and medical benefits are **AFFIRMED**. However, the claim is **REMANDED** to the ALJ for entry of an amended opinion, award, and order awarding medical benefits in conformity with the ALJ's findings of fact.

ALL CONCUR.

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