Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 25, 2015

CLAIM NO. 201363775

CENTRAL KENTUCKY SHEET METAL, INC. PETITIONER

VS. **APPEAL FROM HON. STEPHANIE L. KINNEY, ADMINISTRATIVE LAW JUDGE**

TROY DAVIS and
HON. STEPHANIE L. KINNEY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING
* * * * * *

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

ALVEY, Chairman. Central Kentucky Sheet Metal, Inc. ("Central Kentucky") appeals from the Opinion, Award and Order rendered July 27, 2015 by Hon. Stephanie L. Kinney, Administrative Law Judge ("ALJ"), awarding Troy Davis ("Davis") temporary total disability ("TTD"), permanent partial disability ("PPD") benefits and medical benefits

for injuries to the thoracic spine, burn injuries to the right upper extremity and for a psychiatric condition occasioned by a work accident on October 9, 2013. Central Kentucky also appeals from the September 4, 2015 order on reconsideration.

On appeal, Central Kentucky argues the ALJ erred in relying upon the impairment rating assessed by Dr. James Owen for the thoracic spine condition because Davis had not yet reached maximum medical improvement ("MMI"). Central Kentucky likewise argues the ALJ erred in relying upon the impairment rating assessed by Dr. Timothy Allen for the psychiatric injury because he opined Davis had not reached MMI. Finally, Central Kentucky argues the ALJ erred in enhancing the award of PPD benefits by the three-multiplier contained in KRS 342.730(1)(c)1. We affirm that portion of the ALJ's decision finding Davis sustained a work injury, and the award of medical benefits. However, we vacate the portion of the ALJ's decision awarding PPD benefits since it is not supported by the evidence. For the same reasons, we also vacate the ALJ's enhancement of the award of PPD benefits pursuant to KRS 342.730(1)(c)1, and the award of TTD benefits. We remand for additional determinations as set forth below.

Davis filed a Form 101 on May 29, 2014 alleging on October 9, 2013 he crawled through a ceiling access panel to repair a vent pipe when acid dripped on his arm, burning his skin, and causing him to fall at which time he injured his back. As a result of the accident, he alleged injuries to his right upper extremity, his back, and development of post-traumatic stress disorder. Davis is a journeyman plumber, and is a high school graduate. In addition to working as a plumber, which he was doing on the date of the accident, Davis has worked in construction and served in a construction battalion in the Navy. He has also worked as an order selector at a warehouse facility.

Davis testified by deposition on September 3, 2014, and again on April 10, 2015. He also testified at the hearing held June 1, 2015. Davis was born on August 4, 1973 and resides in Lexington, Kentucky. On November 1, 2010, he began working for Central Kentucky, a mechanical company which provides plumbing and HVAC services. As a journeyman plumber for Central Kentucky, Davis worked with cast iron pipe which he installed or replaced.

Davis and Lewis Dowell ("Dowell"), a co-worker, were sent by Central Kentucky to the Bourbon County Hospital in Paris, Kentucky to work on a vent pipe located in the kitchen of that facility on Wednesday, October 9,

2013. The pipe was located in the ceiling which Davis could only reach through a sixteen inch by sixteen inch access panel. Using a stepladder, Davis entered the access panel by twisting himself into position. When he entered the vent space, he noticed a liquid was dripping from the vent pipe. He later learned the liquid was sulfuric acid which had been applied by hospital personnel who had failed to either clean up the acid or to warn him of its use. He testified no one from Central Kentucky was aware of the use of this chemical, and it had no control over the work area. Some of the liquid dripped onto his right upper extremity and was very hot. He noticed his sleeve was melting, and his skin was bubbling. He rapidly exited through the access panel, at which time he experienced scrapes, and believes he injured his upper back between his shoulder blades, from which he continues to experience pain.

After exiting the access panel, he applied baking soda to the burn site and was immediately taken to the facility emergency room. There, his wounds were cleaned, he showered with dishwashing detergent, a tetanus shot was administered, and gauze was applied. He was taken off work for two days, and he returned to the emergency room on at least two more occasions.

Davis subsequently developed pain in his upper back between his shoulder blades which he attributed to the rapid exit from the vent. He subsequently sought treatment at St. Joseph Hospital East in Lexington where his wounds were treated with Silvadene which he stated assisted greatly in the healing process. He was also given pain medication and a muscle relaxer for complaints of upper back pain which he first noticed a couple of days after the incident. He stated he also developed nightmares, which he still experiences, although the frequency has diminished.

Davis reported to work on Monday after being off the two days, and two additional days for the weekend. He was able to work only part of the day at what he described as light duty. He again reported to work on Tuesday, but was sent home. He was terminated by Central Kentucky on October 31, 2013. Since his termination, Davis attempted to work as a driver for Uber on two occasions, but was unable to continue due to back pain, and the fact the car he was using was repossessed. He also attempted to work for a company in Lexington providing residential plumbing and repair services, but was terminated from that position.

Davis was referred to Dr. James Owen for treatment by his attorney. Dr. Owen saw Davis for treatment three times in November and December 2013, and

once in August 2014. Dr. Owen prescribed Neurontin and requested an MRI of the upper back which was denied. He quit taking the medication in late 2014 or early 2015 because he could not afford it. He stated he would like to return to Dr. Owen for treatment, but cannot afford it. He currently takes over-the-counter Advil for his pain. He stated his scars are mostly healed, but he continues to experience upper back pain, and he has nightmares three times per week.

Dowell testified by deposition on July 9, 2015. He is a helper/laborer for Central Kentucky, and assists licensed plumbers to whom he is assigned. On October 9, 2013 he was working with Davis. They began the day with a service call in Cynthiana, Kentucky, and were subsequently dispatched to repair the leak at the Bourbon County Hospital in Paris. He stated the access to the pipe was through a ceiling access panel, which Davis reached by using a stepladder. He stated Davis entered the access panel and had reached approximately mid-chest level. He stated Davis exited “urgently” and “swiftly”. After exiting the access panel, Davis put baking soda on his arm, then washed it off and went to the emergency room. He then drove Davis home to Lexington which was thirty to forty-five minutes away. Davis did not complain of back pain to

him either at the time of the incident, or on the drive to his house, however he did complain about the burn.

In support of the claim, Davis filed records from St. Joseph East's emergency room. The record from October 16, 2013 discusses wound care. The October 21, 2013 record notes Davis' complaints of thoracic pain and a burn which occurred seven days prior.

Davis filed the Form 107-I of Dr. Owen dated August 8, 2014. Dr. Owen recited the facts surrounding the accident. He stated Davis injured his mid-back when he was jerking to exit the access panel. Dr. Owen diagnosed Davis with persistent thoracic pain with pain-related depression. He also diagnosed Davis as status post burns from sulfuric acid on the right shoulder, and the dorsum of the right hand with "mild cosmetic effect". Dr. Owen stated these diagnoses were caused by the work incident, and he opined Davis needed additional treatment for the mid-back complaints. He assessed an 8% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), although he stressed Davis had not reached MMI. Of this rating, he stated 7% was due to the thoracic complaints, and 1% due to the scarring from the acid burns.

Davis also filed treatment records of Dr. Owen from November and December 2013. Those records outline treatment from November 4, 2013 through December 15, 2013, and reflect Davis had persistent mid-back pain which Dr. Owen attributed to an injury sustained by the rapid exit and twisting from the access panel due to pain from the acid burn on his arm.

Dr. Owen testified by deposition on October 2, 2014. He recommended a thoracic MRI when he first saw Davis on November 4, 2013. X-rays taken October 16, 2013 revealed thoracic dextroscoliosis, but no acute findings. By August 8, 2014, Davis' acid burns had healed, and he expected no additional problems. He opined Davis had not reached MMI for the thoracic complaints. Although admittedly premature, he assessed a 7% impairment rating for the thoracic complaints, which he stated was not permanent. He assessed a 1% impairment rating for the scarring, which is not disputed. He stated the scarring would not interfere with Davis' ability to perform manual labor.

Central Kentucky filed the report of Dr. Daniel D. Primm, Jr., an orthopedic surgeon, who examined Davis on September 10, 2014. He noted Davis had treated at the emergency rooms at Bourbon County Hospital, St. Joseph

East, and, at his attorney's request, by Dr. Owen. After examining Davis and reviewing records, Dr. Primm diagnosed Davis with superficial burns, and a thoracic strain. He noted subjective tenderness in the thoracic spine, but found no objective signs of a thoracic injury. He detected no radicular symptoms. Dr. Primm recommended a short course of physical therapy for the thoracic complaints, and anticipated Davis would reach MMI in eight to twelve weeks. He stated Davis would have no permanent restrictions, and had not sustained a permanent injury. He saw no need for the MRI recommended by Dr. Owen.

In a supplemental report dated October 6, 2014, Dr. Primm again stated Davis had not sustained a permanent injury to his thoracic spine, and therefore warrants no permanent work restrictions, and is capable of gainful employment. He stated Davis could return to his job as a plumber.

Central Kentucky filed the September 8, 2014 report of Dr. Allen who evaluated Davis on August 27, 2014. Dr. Allen recited the history of injury. He administered numerous psychological tests. He diagnosed Davis with "somatic symptom disorder with predominant pain, persistent, mild, rule out paranoid personality disorder." He noted Davis had not sought psychiatric treatment, and

had not reached MMI. Dr. Allen opined Davis would benefit from medication and pain management therapy which could address his chronic pain and anxiety symptoms. Despite opining Davis had not reached MMI, he assessed a 10% impairment rating pursuant to the AMA Guides, Second Edition, of which he attributed half, or 5%, to the work injury. Dr. Allen stated, "It is difficult to definitively predict the amount of benefit he may get from treatment, his improvement thus far without treatment is a positive predictor of improvement."

Davis also filed an OSHA report which was prepared subsequent to an inspection based upon a complaint by Davis against the hospital. Since this report concerns activities and an inspection of Bourbon County Hospital, and not Central Kentucky, it will not be discussed further.

In a decision rendered July 27, 2015, the ALJ made the following summary of Dr. Owen's report:

> Dr. Owen diagnosed persistent thoracic spine pain, pain related depression, sulfuric acid burns to the right shoulder, and status post burns with mild cosmetic effect. Dr. Owen indicated Plaintiff's October 9, 2013 work injury was the cause of his complaints. Dr. Owen did not feel Plaintiff had an active impairment at the time of his work injury. Dr. Owen assessed 7% impairment for Plaintiff's thoracic spine, pursuant to DRE Category II. **However, Dr. Owen did not**

> **feel Plaintiff was at maximum medical improvement and indicated Plaintiff required additional treatment, including appropriate pain management and psychiatric treatment.** Dr. Owen assessed 1% impairment for Plaintiff's burn scars. Dr. Owen did not feel Plaintiff retained the physical capacity to return to his customary work. Dr. Owen indicated Plaintiff should avoid twisting, turning, crawling, and lifting more than twenty (20) pounds. (Emphasis added).

The ALJ summarized the relevant portion of Dr. Owen's deposition testimony as follows:

> **Dr. Owen did not feel Plaintiff had met maximum medical improvement for his thoracic injury**, and acknowledged that pursuant to the AMA Guides an impairment rating was premature and impermanent. Dr. Owen nevertheless assessed 7% impairment for Plaintiff's thoracic pain and 1% impairment for cosmetic disfiguration due to the sulfuric acid burns. (Emphasis added).

The ALJ summarized the pertinent part of Dr. Allen's report as follows:

> Dr. Allen diagnosed persistent, mild somatic symptom disorder with predominant pain and chronic back pain, with a note to rule out paranoid personality disorder. **Dr. Allen did not feel Plaintiff was at maximum medical improvement for his psychiatric symptoms.** Dr. Allen assessed 5% whole person impairment related to the October 9, 2013 work injury, pursuant to the 2nd Ed. AMA Guides. **However, Dr. Allen felt Plaintiff's psychiatric impairment rating could be reduced to 2.5% with appropriate treatment.** Dr.

> Allen recommended medication, pain management therapy, psychotherapy, and a follow up evaluation in six (6) months. (Emphasis added).

Despite this summary of the evidence, the ALJ determined Davis had reached MMI based upon Dr. Owen's August 8, 2014 report. She specifically found as follows concerning Davis' entitlement to TTD benefits:

> No temporary total disability benefits were paid in this claim. Plaintiff was initially restricted from working by physicians at St. Joseph East. **Dr. Owen continued to restrict Plaintiff from working, and did not place Plaintiff at maximum medical improvement until August 8, 2014. This ALJ believes Dr. Owen is in the best position to ascertain when Plaintiff reached maximum medial improvement because Dr. Owen saw Plaintiff on numerous occasions throughout Plaintiff's course of treatment.** Plaintiff is awarded temporary total disability benefits from October 9, 2013 through August 8, 2014 at the rate of $526.07/week. Plaintiff received unemployment benefits from December 14, 2013 through June 17, 2014 at the rate of $415/week. The Defendant is entitled to a credit of unemployment benefits paid during any period of overlapping TTD benefits pursuant to KRS 342.730 (5). (Emphasis added).

The ALJ awarded TTD benefits at the rate of $526.07 per week from October 9, 2013 through August 8, 2014. She awarded PPD benefits based upon a 13% impairment consisting of the 7% assessed by Dr. Owen for the thoracic

condition, 1% assessed by Dr. Owen for the scarring, and 5% assessed by Dr. Allen for the psychiatric condition. She enhanced the award of PPD benefits pursuant to the three-multiplier contained in KRS 342.730(1)(c)1, and awarded medical benefits. The ALJ also determined Central Kentucky was entitled to credit for unemployment benefits paid during any overlapping period of TTD benefits awarded pursuant to KRS 342.730(5).

Davis filed a petition for reconsideration, arguing the ALJ erred in awarding PPD benefits at the rate of $68.39 per week. He stated the correct PPD rate, if the three-multiplier is applied, would be $205.17 per week. Central Kentucky filed a petition for reconsideration arguing the ALJ erred in relying upon the impairment ratings assessed by Drs. Allen and Owen, because Davis had not reached MMI. It argued reliance upon those ratings is not in accordance with the AMA Guides, and the ALJ could not rely upon them in determining PPD benefits. Likewise, Central Kentucky argued the ALJ could not enhance the award of PPD benefits pursuant to KRS 324.730(1)(c)1 because Davis had not reached MMI.

In her order on reconsideration, the ALJ amended the award of PPD benefits to $205.17 per week. Regarding

the issues raised in Central Kentucky's petition for reconsideration, she found as follows:

> On August 8, 2014, Dr. Owen assessed 7% impairment for Plaintiff's thoracic spine, despite indicating Plaintiff was not at maximum medical improvement because pain management was indicated. Dr. Primm saw Plaintiff on September 10, 2014 and felt Plaintiff would be at maximum medical improvement eight (8) to twelve (12) weeks after his evaluation and after Plaintiff underwent physical therapy.
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> This injury occurred on October 9, 2013, and the evaluating and treating physicians diagnosed a thoracic strain. The ALJ believes Plaintiff's thoracic strain reached maximum medical improvement on August 8, 2014, almost one (1) year after the work injury. **The ALJ notes Plaintiff remained symptomatic, and pain management was recommended. However, just because additional treatment was recommended consisting of pain management, does not mean Plaintiff is not at maximum medical improvement. Maximum medical improvement is a condition or state that is well established and unlikely to change substantially in the next year. Over time, there may be some change, but further recovery or deterioration is not anticipated. This ALJ finds that Plaintiff's treatment plateaued at the time of Dr. Owen's evaluation on August 8, 2014.**
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> Dr. Allen indicated Plaintiff was not at maximum medical improvement, but went on to assess a permanent impairment rating. **Before permanent impairment can be addressed a claimant must be placed at maximum medical improvement. Therefore, Dr. Allen's**

> **opinions that Plaintiff was not at maximum medical improvement contradicts the impairment rating he assessed.**
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> It is of importance to note that neither party moved to place this claim in abeyance, or designated maximum medical improvement as a specific issue to be reserved by this ALJ. Based upon the evidence as a whole, this ALJ finds Plaintiff retains a 7% impairment for his thoracic spine and 5% for his psychological condition. (Emphasis added).

It is acknowledged an ALJ has wide ranging discretion in reaching his or her decision. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). It is further acknowledged KRS 342.285 designates the ALJ as the finder of fact, and is granted the sole discretion in determining the quality, character, and substance of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Likewise, the ALJ, as fact-finder, may choose whom and what to believe and, in doing so, 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 party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977); Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977).

However, such discretion is not unfettered. In reaching a determination, the ALJ must also provide findings sufficient to inform the parties of the basis for the decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

The ALJ did not err in finding Davis sustained a work injury and in awarding medical benefits. However, the findings Davis had reached MMI, the termination of TTD benefits and the award of PPD benefits are not supported by the record, and are hereby vacated. As noted above, the medical evidence from Drs. Owen and Allen, and to a lesser degree Dr. Primm, clearly establishes Davis has not yet reached MMI. Therefore, the ALJ's determination Davis had reached MMI is not supported by substantial evidence. The ALJ misstated in her decision that Dr. Owen opined Davis had reached MMI on August 8, 2014. The ALJ's finding on this issue is clearly contradicted by Dr. Owen's Form 107-I report, his deposition testimony, and her own summary of the evidence. The ALJ's finding Davis had reached MMI in the order on reconsideration is equally flawed, and is also inconsistent with the evidence.

Drs. Allen, Primm and Owen all agree Davis requires additional treatment. Likewise, Dr. Primm specifically stated Davis would not reach MMI until he completed an eight to twelve week physical therapy program. Since no physician found Davis had reached MMI, it was improper for the ALJ to do so.

In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206, 210 (Ky. 2003), the Kentucky Supreme Court explained the assessment of impairment ratings and the proper interpretation of the AMA Guides are medical questions solely within the province of medical experts. *See also* KRS 342.0011(11)(a), (35) and (36); KRS 342.730(1)(b); and Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149 (Ky. App. 2006). For that reason, an ALJ is not authorized to arrive at an impairment rating by independently interpreting the AMA Guides. George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). Rather, the proper interpretation of the AMA Guides and assessment of an impairment rating pursuant to the AMA Guides are medical questions reserved only to medical witnesses. Kentucky River Enterprises v. Elkins, supra; Lanter v. Kentucky State Police, 171 S.W.3d 45, 52 (Ky. 2005). This is equally true when determining when an individual has reached MMI, which is also a medical

question. The ALJ's determination Davis had reached MMI is not supported by any evidence, much less substantial medical evidence. Therefore, her determination Davis reached MMI on August 8, 2014 is hereby vacated.

Because Davis had clearly not reached MMI at the time the ALJ rendered her decision, no impairment rating could properly be assessed pursuant to the AMA Guides. Since an award of PPD benefits is predicated upon an impairment rating assessed pursuant to the AMA Guides, such award was premature. Therefore, the award of PPD benefits is hereby vacated. On remand, the ALJ may make a determination regarding PPD benefits once Davis has reached MMI, and an impairment rating, if any, has been assessed pursuant to the AMA Guides. Any award of PPD benefits must be made in accordance with the appropriate standard, and supported by substantial evidence.

Because we determine the ALJ erred in finding Davis reached MMI on August 8, 2014, we must also vacate the award of TTD benefits. This Board does not take the position Davis is not entitled to an award of TTD benefits. To the contrary, that is a determination which must be made by the ALJ. The concern is because the ALJ's determination regarding PPD benefits has been vacated, Davis may well be

entitled to an award of TTD benefits in addition to those awarded in the ALJ's decision.

"Temporary total disability" is defined as the condition of an employee who has not reached MMI from an injury and has not reached a level of improvement permitting a return to employment. KRS 342.0011(11)(a). This definition has been determined by our courts to be a codification of the principles originally espoused in W.L. Harper Construction Company v. Baker, 858 S.W.2d 202, 205 (Ky. App. 1993), wherein the Court of Appeals stated generally:

> TTD is payable until the medical evidence establishes the recovery process, including any treatment reasonably rendered in an effort to improve the claimant's condition, is over, or the underlying condition has stabilized such that the claimant is capable of returning to his job, or some other employment, of which he is capable, which is available in the local labor market. Moreover, . . . the question presented is one of fact no matter how TTD is defined.

Both prongs of the test in W.L. Harper Const. Co., Inc. v. Baker, supra, must be satisfied before TTD benefits may be awarded. In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Court further explained, "[i]t would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but

not the type that is customary or that he was performing at the time of his injury." In other words, where a claimant has not reached MMI, TTD benefits are payable until such time as the claimant's level of improvement permits a return to the type of work he was customarily performing at the time of the traumatic event.

In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed until MMI is achieved, an employee is entitled to a continuation of TTD benefits so long as he remains disabled from his customary work or the work he was performing at the time of the injury. The Court stated as follows:

> In order to be entitled to temporary total disability benefits, the claimant must not have reached maximum medical improvement **and** not have improved enough to return to work.
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> . . . .
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> The second prong of KRS 342.0011(11)(a) operates to deny eligibility to TTD to individuals who, though not at maximum medical improvement, have improved enough following an injury that they can return to work despite not yet being fully recovered. In Central Kentucky Steel v. Wise, [footnote omitted] the statutory phrase 'return to employment' was interpreted to mean a return to the type of work which is customary for the injured employee or that which the employee had been performing prior to being injured. (Emphasis added)

Id. at 580-581.

In Double L Const., Inc. v. Mitchell, 182 S.W.3d 509, 513-514 (Ky. 2005), the Supreme Court elaborated as follows:

> As defined by KRS 342.0011(11)(a), there are two requirements for TTD: 1.) that the worker must not have reached MMI; and 2.) that the worker must not have reached a level of improvement that would permit a return to employment.
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> . . . .
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> Central Kentucky Steel v. Wise, supra, stands for the principle that if a worker has not reached MMI, a release to perform minimal work rather than 'the type that is customary or that he was performing at the time of his injury' does not constitute 'a level of improvement that would permit a return to employment' for the purposes of KRS 342.0011(11)(a). 19 S.W.3d at 659.

This test was reinforced by the recent holding by the Kentucky Supreme Court in Livingood v. Transfreight, LLC, 467 S.W.3d 249 (Ky. 2015). On remand, the ALJ must determine whether Davis is entitled to TTD benefits. If so, she must make a determination of the appropriate time period for the award of such benefits. The ALJ must also make a determination of when Davis has reached MMI, and such opinion must be supported by the medical evidence.

We additionally vacate the ALJ's application of the three multiplier pursuant to KRS 342.730(1)(c)1. Since Davis has not reached MMI, it is unknown whether this enhancement may be applicable to any PPD benefits to which he may be entitled. The ALJ may only make this determination based upon the medical evidence at the time Davis reaches MMI. If the ALJ determines Davis is entitled to an award of TTD benefits, she may provide an offset credit pursuant to KRS 342.730(5) as she did in her decision.

To be perfectly clear, this Board directs no particular result, and the ALJ may award TTD benefits and PPD benefits as appropriate which is supported by the evidence. Likewise, the ALJ must engage in the appropriate analysis as outlined above when considering whether Davis is entitled to an award of TTD benefits. Since it is clear the ALJ's award of benefits was premature, and Davis has not reached MMI, we vacate all of the ALJ's determinations except for the finding Davis sustained work injuries and is entitled to medical benefits. The ALJ may conduct any additional proceedings necessary to determine Davis' entitlement to TTD benefits, PPD benefits, and to reach a final determination on the merits.

Accordingly, the ALJ's decision rendered July 27, 2015 and the September 4, 2015 order on reconsideration by Hon. Stephanie L. Kinney, Administrative Law Judge, are **AFFIRMED IN PART and VACATED IN PART**. This claim is **REMANDED** for additional proceedings and a decision in conformity with the views expressed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON GUILLERMO A CARLOS
HON JUSTIN U KURAMOTO
444 WEST SECOND STREET
LEXINGTON, KY 40507

COUNSEL FOR RESPONDENT:

HON THERESA GILBERT
163 WEST SHORT ST, STE 555
LEXINGTON, KY 40507

ADMINISTRATIVE LAW JUDGE:

HON STEPHANIE L KINNEY
PREVENTION PARK
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601