Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 5, 2014

CLAIM NO. 201187000

CHERYL RODRIGUEZ PETITIONER

VS. **APPEAL FROM HON. R. SCOTT BORDERS, ADMINISTRATIVE LAW JUDGE**

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
REVERSING AND REMANDING
* * * * * *

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

STIVERS, Member. Cheryl Rodriguez ("Rodriguez") seeks review of the April 11, 2014, Opinion and Order of Hon. R. Scott Borders, Administrative Law Judge ("ALJ") finding she did not sustain a work-related left knee injury and dismissing her claim for income and medical benefits. Rodriguez also appeals from the May 15, 2014, Order overruling her petition for reconsideration.

At the time of the April 26, 2011, injury, Rodriguez was forty-six years old and had been employed by Lexington-Fayette Urban County Government ("LFUCG") since 2001. She testified she is five foot one inch tall and weighs 228 pounds. During her August 22, 2013, deposition, Rodriguez recounted what occurred on April 26, 2011:

> A: That's okay. I had a request – one of the officers was needing a projector and a screen for some demonstration he was doing. So I had gotten the key out of the drawer, walked down the hall, got into the closet there. It was – I don't – the screen was probably taller than I was that I was carrying, and then we have the projector in like a rolling suitcase. So I got it out for him, so it was there, it was ready. While I was walking down the hall, I felt my left knee – it just popped and I could not walk. I was standing in the hallway leaning all my pressure upon against this projector screen. I just couldn't put – I couldn't even put my foot on the floor.
>
> Q: Were you carrying this stuff at the time?
>
> A: I was carrying the projector in my right arm, and I was dragging – no, carrying the screen in my right arm, and dragging the projector suitcase in my left.
>
> Q: You didn't slip or twist; you just felt the pop as you were walking?
>
> A: I just felt the pop. At that point, I couldn't even put my foot on the floor. I could not walk.

Q: You didn’t twist it in any particular way, or step funny, anything like that?

A: Not to my knowledge, no.

Q: So you’re carrying those two things; you felt the pop; you had the pain immediately?

A: Uh-huh (affirmative).

Q: You brace yourself on the – one of the items you were carrying, I guess the –

A: With the projector screen.

Q: -- projector screen, and then what happened?

A: I just stood there, and then one of the lieutenants, who actually worked in my office, was coming off the elevator, and he asked me, he said, “What are you doing?” I said, “I can’t walk. I can’t move.” Well, then he – they got a chair and rolled me back into my office, and kept coming out asking “How are you? How are you?” And I was like, “I’m all right.” He is also an EM —- used to be an EMT. He says, “Come on in here, let me see your knee.”

Q: Who was this?

A: Lieutenant Mike Wright.

Q: Go ahead.

[text omitted]

A: So he’s like, “Well, let me see your knee,” and I said, “Well, all right, we’ll check it out.” He says, “I think your meniscus” – he says, “You’ve got a lump there. You need to get an orthopedic doctor. You need to go to

> the hospital." I said, "Do I have to go now?" I was going to finish my workday. He says, "Well, I don't know." He says, "Call an orthopedist." I said, "Who do I call? I've never seen an orthopedist before," and he told me who I should go see.
>
> Q: Dr. Dome?
>
> A: Yes.

Rodriguez was treated by Dr. David Dome and was last seen by him on October 1, 2012. She introduced Dr. Dome's response to two questions posed in a September 11, 2013, letter.

LFUCG introduced Dr. Dome's treatment records, the September 4, 2013, independent medical examination ("IME") report of Dr. Greg Snider and his October 3, 2013, letter.

The January 14, 2014, benefit review conference memorandum and order reflects the following contested issues: "benefits per KRS 342.730; work-relatedness; unpaid or contested medical expenses; injury as defined by the ACT; and TTD." Rodriguez was the only witness at the February 26, 2014, hearing.

After summarizing the testimony, the ALJ provided, in relevant part, the following findings of facts and conclusions of law:

The first issues for determination are whether the Plaintiff suffered an injury as defined by the Act which encompasses the issue for relatedness/causation of her left knee condition.

KRS 342.0011 (1) defines injury as meaning "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings." The Plaintiff bears the burden of proof and the risk of non-persuasion in each and every element of her case. *Snawder vs. Stice*, 576 SW2d 276 (KY App. 1979), *Jones vs. Newberg*, 890 SW2d 284 (KY 1994).

The Plaintiff testified that on April 26, 2011, she was walking down a hallway carrying a projector and screen when her left knee popped. Ms. Rodriguez testified that she did not stumble, slip, twist, or misstep in any way. She testified that "I just felt the pop." She was specifically asked if she twisted in a particular way, stepped funny, or anything. To which she responded "not to my knowledge, no."

Ms. Rodriguez has submitted medical proof from Dr. Dome. In his questionnaire completed on April 26, 2011 he was asked "since the twisting injury to the left knee she has had continued pain in the left knee. There has been no other history of any intervening trauma to the knee. Therefore, is this a pre-existing dormant condition that was aroused to symptomatic reality by the work injury?" Dr. Dome responded to this question by stating "yes". Dr. Dome was further

asked that despite her continued obesity and arthritis, but for the twisting injury of April 26, 2011, would her symptoms have begun on that date?" To which he likewise responded "yes".

Therefore, it is apparent that Dr. Dome was of the belief that the Plaintiff suffered a twisting injury to her left knee while walking across the floor carrying the equipment and was not told that her knee simply popped while she was walking. Dr. Dome therefore based his opinion on causation on an inaccurate history of the mechanism of injury.

The Defendant/Employer has argued that the Plaintiff was merely walking at work, her knee popped, and she experienced pain. The employer points out that Ms. Rodriguez did not slip, fall, twist, or misstep in anyway due to the task she was performing and that her knee merely popped while she was walking. The Defendant/Employer therefore argues that the Plaintiff's injury was idiopathic in nature and therefore does not arise out of her employment.

It has been long established that "in the course of employment" refers to the time, place, and circumstances of an accident, while "arising out of" refers to the cause or source of the accident. *A K steel Corporation vs. Adkins*, 253 SW3d 59 (KY 2008).

Where an employee sustains an injury at work due to a purely individual cause, i.e. such as an internal weakness, and the work does not contribute independently to the effects of the resulting harmful change, the injury as a matter of law is idiopathic in nature and, therefore, not compensable. *Workman vs. Wesley Manor*

Methodist Home, 462 SW2d 898 (KY 1971). By contrast, an unexplained fall is exactly what its designation purports that which cannot be identified sufficiently with any thoroughness and detail. *Salyers vs. G&P Coal Company*, 467 SW2d 115 (KY 1971) and *Coomes vs. Robertson Lumber Company*, 427 SW2d 809 (KY 1968).

Prof. Larson distinguishes an idiopathic injury from an unexplained fall, noting the former is a result of a purely personal cause and the latter is a result of an unknown cause. Larson's Workers' Compensation Law, Section 9.01 (1). Stated otherwise, the risk in an idiopathic injury sustained is personal to the employee, where's [sic] the risk in unexplained falls is due to a neutral cause.

The Defendant/Employer therefore argues that Plaintiff's injury was purely idiopathic in nature and cites the opinion of Dr. Dome who opines that the Plaintiff's symptoms would have begun regardless of the alleged twisting injury. Further, a review of Dr. Dome's record indicates that he felt it was the Plaintiff's obesity, not the work event that caused the arthritis which is the cause of the Plaintiff's continued complaints.

In *Vacuum Depositing Inc. vs. Devers*, 285 SW3d 730 (KY 2009), the Supreme Court noted that Prof. Larson explains an analysis of whether a workplace injury arose out of employment begins by considering the three categories of risk; 1). Risk distinctly associated with employment; 2.) Risk that are [sic] idiopathic or personal to the worker; and 3.) Risks that are neutral. Prof. Larson points out that this latter group involves an idiopathic

> or personal factor that would have resulted in harm regardless of the employment, such as a pre-existing disease or physical weakness, personal behavior, or personal mortal enemy.
>
> In this specific instance, after careful review of the lay and medical testimony, it is readily apparent that the Plaintiff's injury resulted from her pre-existing arthritic disease that was in existence in her knees due to her morbid obesity and would have occurred whether or not she was at work or not.
>
> The Administrative Law Judge found the Plaintiff to be a very credible witness and believes her when she said that her knee just simply popped and there was no traumatic event that occurred. In addition, Dr. Dome believes that her condition would have developed in spite of her "twisting" injury. The Administrative Law Judge finds that Plaintiff's incident that occurred at work was idiopathic or personal in nature and would have resulted in harm regardless of her employment. Therefore the Administrative Law Judge finds that Plaintiff's injury was idiopathic in nature and is therefore not an injury as defined by the Act.

Rodriguez filed a petition for reconsideration in which she asserted the ALJ had dismissed her claim after finding her injury was idiopathic because her work "provided no input into [her] knee injury." Citing Workman v. Wesley Manor Methodist Home, 462 S.W.2d 898 (Ky. 1971), she asserted she was entitled to a presumption the injury is work-related because it happened at work as she was engaging

in a work activity consisting of walking and pushing a cart. She argued her arthritic condition was dormant and aroused by her work activity. She contended her situation is the same as any back case where an employee bends over while at work injuring the back. She posited in that situation there would be no argument her injury was work-related. Therefore, the ALJ misapplied the law of idiopathic causes. Rodriguez also asserted LFUCG was estopped from claiming this was a non-work-related injury as the claim was accepted as compensable in the Form 111.

Finding the petition for reconsideration to be a re-argument of the merits of the case, the ALJ overruled the petition for reconsideration.

On appeal, Rodrigues argues as follows:

> This matter was preserved by Petition for Reconsideration. The ALJ has dismissed the Plaintiff's claim by finding her injury was idiopathic based on the argument of Defendant that work provided no input into the Plaintiff's knee injury. However, the Plaintiff is entitled to a presumption that the injury is work-related because it happened at work. *Workman v. Wesley Manor Methodist Home*, 462 S.W.2d 898 (Ky. 1971). There was a work activity occurring of walking and pushing a cart.
>
> The arthritic condition was dormant and aroused by walking at work. It was not an active condition. If a Defendant only need prove that a pre-existing dormant condition was the cause of an

> injury at work and should that condition be age related or from some other condition that was not caused by work then any dormant condition aroused into disabling reality would be caused by a 'personal' condition that could have happened anywhere. This holding eviscerates the rule. The conditions mentioned in *Workman* that led to a finding of idiopathic, non-work-related injuries were not dormant conditions. This case is the same as any back case where the person bent over and injured his back while at work. No one would argue that scenario would not be compensable. Therefore the ALJ has misapplied the law of idiopathic causes.
>
> **THE EMPLOYER SHOULD BE ESTOPPED FROM CLIAMING [SIC] THIS INJURY WAS NOT WORK-RELATED**
>
> Further the Defendant should be estopped from claiming that this was not a work-related injury as it accepted it as being one on the form 111.

LFUCG counters that the ALJ did not err in determining Rodriguez's injury was idiopathic and did not arise out of her employment. Alternatively, it contends regardless of the determination of an idiopathic injury, the work event of April 26, 2011, resulted in a temporary injury and Rodriguez's current condition was not proximately caused by work-related factors.[1]

[1] In its brief, LFUCG also addressees Rodriguez's argument regarding the contents of its Form 111 asserting that issue was tried by implied consent and Rodriguez failed to properly preserve it as a contested issue.

Because Rodriguez's injury did not result from an unexplained fall and the evidence compels a finding she sustained a work-related injury as defined by the Act, we reverse and remand.

As the claimant in a workers' compensation proceeding, Rodriguez had the burden of proving each of the essential elements of her cause of action, including causation. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Rodriguez 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 (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).

In the case *sub judice*, the records and questionnaire completed by Dr. Dome do not constitute substantial evidence in support of the ALJ's decision. In

his initial record of April 27, 2011, Dr. Dome noted Rodriguez was morbidly obese and had twisted her left knee at work the day before. She had moderately severe pain which was unresponsive to Advil and pain medication. Rodriguez denied having a previous problem with her left knee. However, she had a prior history of an ACL tear of the right knee. Dr. Dome noted x-rays showed very mild degenerative changes of the patellofemoral joint and some very mild medial compartment narrowing. Rodriguez also had osteochondroma off the lateral tibia metaphysis. He concluded Rodriguez sustained a sprain of the left knee at work and had a probable medial meniscal tear. Dr. Dome provided a prescription and requested Rodriguez remain off work, obtain crutches, and "remain toe-touch weightbearing to minimize her discomfort." He indicated he would evaluate the degree of arthrosis present due to her morbid obesity. Dr. Dome expressed the hope she only had some mild medial compartment overload without internal derangement and restricted weight-bearing and anti-inflammatory medication would resolve her current symptoms. He indicated an MRI was needed to evaluate a possible acute medial meniscal tear.

The MRI of the left knee revealed no meniscal tear and acute ligamentus injury. Present was an osseous contusion along the lateral femoral condyle which could be

the sequalae of a direct impaction or possibly a lateral patella dislocation. There were no other signs of the dislocation. There was large joint effusion and possible partial tear at the distal musculotendinous junction of the vastal medialis.

When Dr. Dome saw Rodriguez on May 11, 2011, she was still on crutches. Rodriguez denied locking or catching but had some giving way due to pain. She denied any parathesia or radicular symptoms. Dr. Dome's impression was early arthritis of the knee. He recommended physical therapy and pre-certification for Euflexxa injections.

On June 1, 2011, he noted she continued to experience pain and the same symptoms previously discussed. He again noted she had early arthritis of the knee. He recommended pre-certification for the injections and continued physical therapy.

On June 29, 2011, Dr. Dome diagnosed degenerative joint disease of the left knee and a lateral meniscal tear of the right knee. Rodriguez was to return for an injection. His September 26, 2011, notes reflect Rodriguez was seen for follow-up for osteoarthritis of the knee. Rodriguez had early arthritis of the left knee. On that date the third and final injection of the left knee was performed.

On October 10, 2011, he noted Rodriguez's left knee was doing better after the injection. Dr. Dome's diagnosis continued to be moderate degenerative change in the left knee. He recommended activity modification and weight loss.

Rodriguez underwent arthroscopic partial menisectomy of the right knee in October 2011. She was not seen again for the left knee condition until June 6, 2012.[2] At that time, Dr. Dome noted she had bilateral knee pain. He stated her left knee injury was work-related and her right knee was not. As x-rays showed mild/moderate bilateral osteoarthritic changes of the knees, his diagnosis was mild/moderate bilateral osteoarthritic changes.

Dr. Dome's July 9, 2012, note reflects complaints of knee pain with no locking, catching, clicking, or giving way. There was some mild swelling. He again diagnosed medial compartment overload associated with obesity and recommended restricting weight-bearing.

Another note of July 9, 2012, indicates Rodriguez returned for a follow-up for a work-related knee injury. She was still having some soreness but was a little bit better. She complained of pain with standing and walking.

[2] Other records of Dr. Dome pertaining to his treatment of the right knee were introduced and are not summarized.

Rodriguez had difficulty with stairs and pain at night; however, her pain was better with sitting. She still had popping but no locking, catching, or giving way. There were no radicular symptoms. Dr. Dome's impression was ongoing symptoms following a work-related knee strain. He recommended physical therapy and that Rodriguez continue using a Volteran gel and sparingly use Tramadol. She was to continue with her work restrictions of no standing greater than five minutes at a time.

Dr. Dome's August 20, 2012, note again reflects a diagnosis of continued degenerative left knee pain. He recommended Rodriguez be taken off work for a brief period so she could complete trial physical therapy.

On September 9, 2012, Dr. Dome again noted Rodriguez continued to voice complaints about left knee pain following a work-related injury. He concluded she had medial compartment overload associated with morbid obesity and that she sustained a work-related injury with "exacerbation of underlying degenerative knee." Dr. Dome stated he strongly cautioned Rodriguez that due to her morbid obesity she was going to have continued knee pain despite his efforts. He was unsure whether there was anything more he could do for her other than to have her try a few more weeks of physical therapy and rest from work.

When Dr. Dome last saw Rodriguez on October 1, 2012, he again noted she continued to complain of pain, popping, and crunching. She had some mild swelling. She had continued symptoms of early degenerative arthritis of the knee and possible medial meniscal tear. Dr. Dome referenced Rodriguez's previous work-related meniscal injury of the right knee. He did not believe he could offer Rodriguez any other form of treatment and concluded she had attained maximum medical improvement ("MMI"). Dr. Dome recommended weight loss and anti-inflammatory medications.

Rodriguez introduced a November 11, 2013, letter containing Dr. Dome's answers to the following questions:

> Since the twisting injury to the left knee she has had continued pain in the left knee. There has been no other history of any intervening trauma to the knee. Therefore, 1) is this a pre-existing dormant condition that was aroused into symptomatic reality by the work injury?
>
> Yes
>
> 2) Despite her continued obesity and arthritis, but for the twisting injury of April 26, 2011 would her symptoms have begun on that date?
>
> Yes
>
> Comments if desired. 4-26-2011[3]

[3] The responses were signed and dated January 9, 2014.

Significantly, Dr. Snider's initial report reflects Rodriguez stated she was carrying a projector in one hand and a projector screen in the other hand when she felt a pop in her left knee. Based on his examination and review of Dr. Dome's medical records, Dr. Snider diagnosed the following:

> 1. Left knee sprain.
>
> 2. Bilateral knee arthritis.
>
> 3. Prior right knee injury.
>
> 4. Status post right knee partial lateral meniscectomy.
>
> 5. Left leg DVT, postop hysterectomy.
>
> 6. Morbid obesity.
>
> In my opinion, Ms. Rodriguez suffered a simple sprain/strain of her left knee in the work injury. There has been no documentation of any more significant anatomic change. She has had intervening events complicating her recovery. These include a prior right knee injury, a subsequent right knee injury and surgery, a total abdominal hysterectomy, and development of postop DVT. In my opinion, her left knee condition reached MMI as of approximately 12/01/11.

Regarding the existence of an impairment pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Snider stated:

> I am unable to identify an anatomic change to the left knee that would

> qualify Ms. Rodriguez for an impairment rating. She has preserved range of motion, findings of preexisting arthritis, and contralateral knee problems. For persistent complaints of left knee pain, one could assess impairment for symptoms 'otherwise unaccounted for.' In my opinion, it is reasonable to assess no more than 1% WPI for these complaints.

In an October 3, 2013, letter addressed to LFUCG's counsel, Dr. Snider stated as follows:

> I received your letter of 09/30/13. My responses to your inquiries are as follows:
>
> In my opinion, there is no <u>objective</u> medical evidence of a harmful change to Ms. Rodriguez's left knee from the 04/26/11 injury. She reports feeling a pop; however, x-rays and MRI revealed only degenerative changes. The 1% whole-person impairment is based solely on her complaint of pain – symptoms 'otherwise unaccounted for' in the 5th Edition of the AMA *Guides*. I agree with Dr. Dome that Ms. Rodriguez's current complaints are from factors other than the 04/26/11 work injury, namely degenerative changes. In my opinion, her current symptoms are not related to the sprain or strain.

The medical records of Dr. Dome as recited herein, consistently reflect a diagnosis of a work-related left knee injury. The first question in the questionnaire completed by Dr. Dome on January 9, 2014, reflects his opinion the event of April 26, 2011, aroused a pre-existing dormant condition into symptomatic reality. Although the ALJ

concluded Dr. Dome's opinion on causation is based on an inaccurate history because he indicated Rodriguez suffered a twisting injury, we find nothing in the record to reflect she provided an inaccurate history. At her deposition, Rodriguez denied sustaining a twisting injury. Rather, she stated she experienced a pop. Rodriguez provided that exact history to Dr. Snider. Nothing in Dr. Dome's records indicates Rodriguez informed him she sustained a twisting injury. Thus, Dr. Dome independently concluded Rodriguez sustained a twisting injury to the left knee on April 26, 2011. The fact Dr. Dome chose to characterize it as a twisting injury is not indicative of Rodriguez providing him an inaccurate history of the mechanism of the injury, as she has consistently described the injury as a pop.

Significantly, in his report and subsequent letter, Dr. Snider expressly stated Rodriguez sustained an injury which he characterized as a sprain/strain of the left knee. His testimony buttresses the opinions of Dr. Dome that Rodriguez sustained a work-related injury.

More importantly, Dr. Dome's answer to the second question cannot be relied upon by the ALJ in support of the determination Rodriguez did not sustain a work-related left knee injury, as the question is poorly worded and confusing. Dr. Dome was asked to disregard Rodriguez's obesity and

arthritis and determine but for the twisting injury of April 26, 2011, would her symptoms have begun on that date. Dr. Dome's response was yes. The first part of the question requires Dr. Dome to disregard obesity and arthritis as the cause of her symptoms. The second part of the question asks if the twisting injury had not occurred, would her symptoms have begun on that date. Dr. Dome's response was yes. Thus, the answer "yes" rules out all causes of Rodriguez's symptoms beginning on April 26, 2011. We believe by writing April 26, 2011, Dr. Dome was indicating Rodriguez's symptoms began on that date as a result of the injury.

We are reinforced in our conclusion by Dr. Dome's consistent and repeated statement within his medical records that Rodriguez sustained a work-related injury. His answer to the first question also firmly establishes Dr. Dome believed Rodriguez had a dormant non-disabling condition which was aroused into reality by the event of April 26, 2011. Dr. Dome's records, his answers to the questionnaire, and the report and letter of Dr. Snider, expressly state Rodriguez sustained at least a sprain/strain injury on April 26, 2011. In KRS 342.0011(1), an "injury" does not require a *permanent* "harmful change in the human organism." "Injury" is defined as follows:

> [A]ny work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.
> KRS 342.0011(1)

The above definition does not require a *permanent* injury. Temporary disabling conditions, as defined in KRS 342.0011(11)(a), are still injuries pursuant to KRS 342.0011(1). In Robertson v. United Parcel Service, 64 S.W.3d 284, 286 (Ky. 2001), the Kentucky Supreme Court stated:

> In other words, the ALJ concluded that the claimant suffered a work-related injury but that its effect was only transient. It resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis. Thus, the claimant was not entitled to income benefits for permanent, partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident.

Since the rendition of Robertson, this Board has consistently held it is possible for an injured worker to establish a temporary injury for which only temporary total disability benefits and temporary medical benefits may be awarded, but not meet his or her burden of proving a permanent harmful change to the human organism for which

permanent benefits are authorized. Further, pursuant to FEI Installation Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007), the ALJ may award future medical benefits despite the lack of a permanent impairment rating after providing sufficient reasons for the award.

Finally, the ALJ erroneously applied the law regarding an unexplained or idiopathic fall in the case *sub judice*. Simply put, there could not be either an unexplained or idiopathic fall since Rodriguez did not fall. She felt a pop in her knee and then leaned on the projector screen she was carrying until a chair was brought to her by a police officer with LFUCG.

The ALJ found Rodriguez to be a very credible witness in concluding her knee popped in the course of moving various items of equipment. Rodriguez's testimony establishes that in the course of moving equipment she experienced a pop. Thus, her testimony and the medical evidence established she sustained an injury as defined by the Act. Consequently, the ALJ erred in determining whether the injury sustained at work was idiopathic or unexplained, as the law relating to an idiopathic versus an unexplained fall is inapplicable.

We are cognizant of the fact we have no fact-finding authority. However, since the ALJ erroneously

applied the law regarding idiopathic or unexplained falls in the case *sub judice* and the medical testimony overwhelmingly establishes Rodriguez sustained a left knee injury, the ALJ's decision finding she did not sustain a work-related injury must be reversed. As previously stated, Dr. Dome's response to question two does not constitute substantial evidence in support of dismissal of Rodriguez's claim. Therefore, the ALJ's finding the injury occurred at work was idiopathic or personal in nature and would have resulted in harm regardless of her employment is clearly erroneous, as it is not supported by any of the medical evidence contained in the record, and is based on erroneous application of the law pertaining to unexplained falls.

The second issue raised on appeal is moot. Therefore, the claim must be reversed and remanded to the ALJ for entry of an award of the appropriate income and medical benefits. We are not expressing an opinion as to whether Rodriguez sustained a temporary or permanent left knee injury. That is for the ALJ to decide. However, even though Dr. Snider retreated from the 1% impairment he assessed pursuant to the AMA Guides in his September 4, 2013, report and opined Rodriguez's current symptoms are not related to the sprain/strain, we believe the ALJ could

reasonably conclude she sustained a work-related injury meriting a permanent impairment rating. Conversely, the ALJ is free to rely upon the subsequent opinion of Dr. Snider that Rodriguez's symptoms are unrelated to the sprain/strain as it resolved, in concluding the injury was temporary.

In addition, regardless of whether the ALJ determines Rodriguez has a permanent impairment, he must also determine the extent to which Rodriguez is entitled to medical benefits as a result of her injury. Should the ALJ determine the injury did not result in permanent impairment, while the ALJ is not obligated to award Rodriguez future medical benefits, the ALJ must analyze her entitlement to future medicals in a manner consistent with applicable case law. *See* Robertson v. United Parcel Service, supra; FEI Installation Inc. v. Williams, supra.

Accordingly, the April 11, 2014, Opinion and Order and the May 15, 2014, Order overruling the petition for reconsideration are **REVERSED**. This clam is **REMANDED** to the ALJ for entry of an award of the appropriate income and medical benefits in conformity with the views expressed herein.

RECHTER, MEMBER, CONCURS.

ALVEY, CHARIMAN, CONCURS IN REUSLT ONLY.

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