Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 9, 2016

CLAIM NO. 201501137

CHRISTOPHER CURTSINGER PETITIONER

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

FORD MOTOR CO. (LAP)
and HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

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

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

STIVERS, Member. Christopher Curtsinger ("Curtsinger") appeals from the February 8, 2016, Opinion and Order and the March 14, 2016, Order overruling Curtsinger's Petition for Reconsideration of Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"). In the February 8, 2016,

Opinion and Order, the ALJ dismissed Curtsinger's claim for failure to file a timely claim pursuant to KRS 342.185.

On appeal, Curtsinger asserts the ALJ committed reversible error by concluding he failed to prove a work-related injury occurring on April 27, 2015.[1] Curtsinger further asserts the ALJ committed reversible error by failing to award temporary total disability ("TTD") benefits and medical benefits for his temporary injury.

The Form 101 asserts that on April 27, 2015 [sic], Curtsinger injured his left arm and shoulder while in the employ of Ford Motor Co. (LAP) ("Ford") in the following manner: "As a result of repetitive job duties, condition in left upper extremity and shoulder became occupationally disabling."

Curtsinger was deposed on September 29, 2015. He testified regarding an injury to his right shoulder in 2009 while working at Ford:

> Q: Do you remember which job position you were on in 2009?
>
> A: Yeah, I was actually the utility at the Louisville Assembly Plant.
>
> Q: Do you remember which position you were performing when you were injured?
>
> A: Spare tire carrier, yes.

[1] The correct date of the alleged work injury is May 8, 2014.

Q: Just briefly describe to me what happened.

A: The person that was normally assigned to that job, I'm not sure if they were out on medical, but they weren't at work for some time. I think it was probably about two weeks.

And so me [sic] and I think there was two other utilities, we would kind of rotate as to who covered the job each day. So doing that job, you have to pick up a spare tire carrier.

It's a pit job where you're down underneath the rear of the vehicle. Then you have to walk to the vehicle with the spare tire carrier in your left hand. And you have to use a gun-airgun [sic] in your right hand to shoot four bolts into the carrier.

Q: What happened for you to injure your right shoulder?

A: Well, I had been covering the job all day, but I noticed after several hours, I couldn't hardly lift my right arm. I was in a lot of pain with my right shoulder, and so then I notified them that I needed to go to medical.

Q: What did they do for you at medical?

A: They gave me Ibuprofen and sent me back to work.

Q: Did you go back to the spare tire carrier position, though?

A: Yes. And then I had to go back to medical again later on that same day.

Q: What did medical end up doing for you the second time you went?

> A: They decided to not have me go back to that job, and they set up an appointment for me to go see a doctor.

Curtsinger saw Dr. Greg Rennirt who ordered an MRI and performed surgery.

> A: He decided to take an MRI, and he said I had a bone spur growing down off of my collarbone to where when I raised my arm, it was rubbing against my rotator cuff.
>
> Q: Did Doctor Rennirt recommend surgery?
>
> A: Yes.
>
> Q: When did you have that surgery, if you roughly remember?
>
> A: It was sometime in 2009. I can't remember the date.

Curtsinger testified Dr. Rennirt did not impose any permanent work restrictions after the surgery.

Curtsinger testified he also injured his left shoulder at Ford:

> Q: And specifically, what position were you working on when your left shoulder was injured?
>
> A: The wheel carrier hoist position.
>
> Q: That's the position where you had to manually push and pull on the harness?
>
> A: Yes.

> Q: What happened when you were injured, if you can briefly describe that for me?
>
> A: It was similar to the right shoulder. In covering that job every day, it got to a point where I had more and more pain in my shoulder to where I couldn't hardly lift my left arm up to operate the hoist, so I asked to go to medical to be seen in medical.

Dr. Rennirt imposed work restrictions which included no overhead work and no lifting. Dr. Rennirt performed surgery on Curtsinger's left shoulder on October 8, 2011. Curtsinger was off work for a week after this surgery.

Curtsinger described the condition of his left shoulder following a second surgery in 2011 on his left shoulder:

> Q: Did either of those surgeries help with the left shoulder pain you were having?
>
> A: No. He had to go back in for the second surgery, because he said the collarbone that he removed had started to kind of grow back, and it was arthroscopic, the first surgery, and he recommended the second that he do an open incision, so he could go in and actually cut off the collarbone, but it never did alleviate the pain.
>
> Q: Can you describe to me the type of pain that you were having after the two left shoulder surgeries? And what I mean is, was it in the front of your

> shoulder, the back of your shoulder, down your left arm at all?
>
> If you can give me a good idea of how you were feeling at this time?
>
> A: Yeah, it's a constant soreness in the whole shoulder itself, but then there's more of a pain that I feel in the front of the shoulder and around in the back of the shoulder, down around my left shoulder blade. And I have pain that goes down my arm, the front and back of the shoulder.
>
> Q: And I just want to clarify. Is this a description of the pain that you were having back in 2011, or are these things that you are describing that you're going through right now?
>
> A: That would be right now.
>
> Q: Back in 2011, after the first two shoulder surgeries that you had, what type of pain were you having then? Was it similar, or was it different?
>
> A: It was a little different. It was just sore, but anytime I would try to move my arm out away from my body or overhead, it would cause more pain.

Curtsinger testified at the December 14, 2015, hearing and recounted the following concerning what occurred in May 2014:

> A: This was a different job. It's- and I can't- I don't recall the actual part name. But you had to take a part and put it on a fixture, and you have to take adhesive strips and put it in certain spots on this part. And then you take that part off of there and

load it into another fixture, like the previous job, where a robot welds it. But, I went to take that part off of that fixture and got a popping- kind of a pop in my left shoulder when I went to take it off, because it had some adhesive residue built up on the fixture from the shift before. And it just kind of stuck. It didn't give, so I, kind of, had a pop in my shoulder.

Q: Did the pain or pop in your shoulder, did it develop into pain?

A: Yes.

Q: And did it get worse and worse?

A: Yes.

Q: And you reported it to Ford medical or Ford- your supervisor, and then you were seen by the people at Ford medical, is that correct?

A: Yeah, yes.

...

Q: And then you were sent, in April of 2015, to Dr. Smith again to be evaluated for permanent restrictions, is that correct?

A: Yes.

Q: And did Dr. Smith issue permanent restrictions?

A: Yes.

Q: And at- at this point, since April 2015, was this the first time that you have been placed on permanent restrictions?

A: Yes.

> Q: And do you still have those permanent restrictions, as we testify today?
>
> A: Yes.

Until Dr. Smith's permanent restrictions imposed on April 27, 2015, Curtsinger was not working under any restrictions.

Curtsinger was asked to describe how his current left shoulder pain differs from the pain he experienced in 2011.

> A: Before, I just had soreness. Since I had that pop, the pain has gotten worse. It has progressed to where I feel it in my shoulder blade, down my arm. It's much more intense and more of an area than it was before.
>
> ...
>
> A: It was just soreness- just kind of like- it kind of felt like an overworked joint that just got sore.
>
> Q: Before 2014, you were able to perform your regular work activities on the assembly line, without limitations or symptoms?
>
> A: Yes.
>
> Q: You were able to perform your daily activities, without limitations or symptoms?
>
> A: Yes.
>
> Q: And we come to 2014. Now, you have these physical symptoms. How does it affect you at work?

> A: I have pain in my shoulder throughout the day. I try to- I try to keep my hand in my pocket, so I don't accidentally reach for something with my left hand because that really increases in the pain.

Curtsinger testified that from May 2015 to the time of the hearing, he has not missed any work. He testified regarding his understanding of the permanent restrictions Dr. Smith imposed:

> A: I can't move my left arm more than six inches from my waist, and I know there are four or five different weight restrictions, as far as trying to pick something up off the floor to my waist. I don't exactly what those weight limits are, but that's...
>
> Q: What about overhead work?
>
> A: I can't do overhead work.
>
> Q: All right, now let me ask you these questions. This is the first time you've had permanent restrictions. And following the 2011 and 2010 surgeries, you didn't end up having permanent restrictions?
>
> A: Right.

At the time of the hearing, Curtsinger was earning the same wages he earned before the permanent restrictions were imposed.

The May 21, 2010, report of Dr. Rennirt filed in the record reveals the following:

> He's here for his left shoulder. I've seen him in the past for his right shoulder. We did a subacromial decompression in the right. He is now having problems with his left shoulder. The left shoulder has been hurting since December and he says he has a feeling of something snapping in his shoulder. Any time he does over head work, he has pain.
>
> Rennirt's impression is as follows:
>
> I'm concerned he has biceps instability or a SLAP tear. If I palpate his biceps tendon and move his arm, I can feel it moving and snapping. This is the source of the snapping sensation in his shoulder.

The record also contains the Operative Reports dated October 7, 2010, and December 1, 2011, of Dr. Rennirt regarding the surgeries performed on Curtsinger's left shoulder. On October 7, 2010, Curtsinger underwent a subacromial decompression, distal clavicle resection, and debridement of degenerative labral tear. On December 1, 2011, Curtsinger underwent a subacromial decompression, an open resection of the acromioclavicular joint with removal of heterotopic ossification, and debridement of degenerative labral tear.

Attached to the Form 101 is the April 27, 2015, report of Dr. Mark Smith in which he stated as follows:

> It is evident that Mr. Curtsinger still suffers with pain and decreased tolerance for work with his left shoulder. Mr. Curtsinger's initial injury was that of a left rotator cuff strain with the injury to the AC joint for which he has undergone a decompression and AC resection, initially arthroscopically but subsequently open. Mr. Curtsinger has a continued history of left shoulder dysfunction and intolerance requiring him to work with the left arm away from his side. Mr. Curtsinger does not appear, by the history he gave to me or the records, to actually have suffered a recurrent injury on May 8, 2014, rather this was an aggravation of his ongoing left shoulder pain.

Regarding an impairment rating, Dr. Smith opined as follows:

> I believe that Mr. Curtsinger is at maximum medical improvement ["MMI"]. He does suffer with permanent impairment under the AMA Guides to Evaluation of Permanent Impairment, 5th Edition. Based upon loss of motion of the shoulder, from figure 16-40 he has an impairment of 3% impairment of the upper extremity, from 16-43 he has a 2% impairment of the upper extremity, and from 16-46 he has a 3% impairment of the upper extremity. Therefore, he has, based upon loss of range of motion, an 8% impairment of the upper extremity. Based upon his acromioclavicular resection, from table 16-27 there is an additional 10% impairment of the upper extremity. Based upon these impairments, there is an 18% impairment of the upper extremity of 11% whole person impairment.

Also attached to the Form 101 is a May 20, 2015, letter from Dr. Smith in which he states as follows:

> Mr. Curtsinger's entire impairment is related to his subacromial decompression and distal clavicle resection procedure of October 11, 2010. None of his current impairment is related to the incident of May 8, 2014.

The December 2, 2015, report of Dr. Stacie Grossfeld was introduced. After performing an examination, Dr. Grossfeld set forth the following diagnosis: "His diagnosis is a history of an AC joint OA secondary to work-related injury which stemmed back from his initial work injury which was a repetitive use injury from December, 2009." When asked whether the diagnosis is causally related to the alleged April 27, 2015, [sic] injury, Dr. Grossfeld opined as follows:

> The injury stemmed back from his initial complaints of pain that started in December, 2009. He just had a spectrum of problems with his left shoulder, but they all stemmed back from December, 2009. He states that he has really never had any resolution of his pain completely since December of 2009. The injury that he sustained on April 27, 2015 [sic] was just a continuum of his prior chronic left shoulder pain that he had for the last almost six years.

Dr. Grossfeld opined that at the time of the April 27, 2015, [sic] injury, Curtsinger had a pre-existing active condition. She further opined that on April 27, 2015, [sic] Curtsinger had a "temporary exacerbation" of that pre-existing condition. She explained: "[B]ut per what the claimant is telling me, he has never had complete resolution of his shoulder pain." Regarding an impairment rating, Dr. Grossfeld opined as follows: "13% upper extremity; 8% Whole person based AMA Guides 5th Ed. Table 16-3, page 439." When asked if any impairment is causally related to the alleged April 27, 2015, [sic] injury, she opined as follows:

> His impairment stemmed back to his initial work-related injury which is when he started complaining of pain in December, 2009. This impairment is not related to April 27, 2015 [sic]. The April 27, 2015 [sic] was just a continuation of his persistent symptoms that had continued prior.

In the December 8, 2015, Benefit Review Conference ("BRC") Order, the following issues were contested: benefits per KRS 342.730; work-relatedness/causation; injury as defined by the ACT; exclusion for pre-existing disability/impairment; and TTD [handwritten: "duration/rate"]. Under "other" is the following: "extent & duration w/multipliers; statute of

limitations." The parties stipulated Curtsinger received TTD benefits at the rate of $694.30 from October 7, 2010, through February 14, 2011, and from June 27, 2011, through December 11, 2011. Additionally, Ford paid medical expenses in the amount of $5,344.50.

In the February 8, 2016, Opinion and Order, the ALJ set forth the following "Analysis":

> The threshold issue I must address is whether plaintiff's claim is barred by the applicable statute of limitations. If it is, the nature and degree of any disability is legally irrelevant.
>
> The defendant employer argues that plaintiff's claim is barred by KRS 342.185. According to that argument, the limitations period for a workers' compensation injury under KRS 342.185 runs two (2) years from the date of the accident or from the employer's last voluntary payment of income benefits. Claimant suffered an accepted work-related left shoulder injury on December 7, 2009. The claimant received his last voluntary TTD payment on December 11, 2011. The Department of Workers' Claims notified the claimant of the potential period in which to file a claim. (WC-3 correspondence, 12/15/11). Claimant continues to live at the address shown on the DWC notification letter, 395 Willowbrook Drive, Fisherville, Kentucky. No claim was filed within two (2) years of the date of that notification.
>
> The claimant did not file his claim until July 23, 2015. Claimant clearly did not file his claim within two years

of the last TTD payment. If there was a dispute as to whether additional benefits were owed related to his 2009 left shoulder injury, the claimant was obligated to file a claim with the DWC within the time allowed by KRS 342.185. Claimant did not.

Accordingly, defendant employer argues it is entitled to a finding that Mr. Curtsinger's claim is barred by the statute of limitations.

Not surprisingly, the plaintiff has a different perspective. Prior to April of 2010 (it is argued), the Plaintiff never experienced any injuries or symptoms in the left arm or shoulder requiring medical attention. In April of 2010, however, the Plaintiff experienced an injury to his left arm and shoulder while working on the assembly line for the Defendant. The Plaintiff underwent two surgeries performed by Dr. Greg Rennirt to treat this injury, and he was eventually released from Dr. Rennirt's care. Following his surgeries, the Plaintiff was able to resume his regular work activities on the assembly line with no restrictions or limitations. The Plaintiff continued to perform his regular work activities without incident until May of 2014.

It is argued that the repetitious physical demands of the Plaintiff's job are the direct cause of injury to his left shoulder and arm, and as such, his injury clearly meets the definition of "injury" as defined by the act. This is facially a cumulative trauma argument.

The plaintiff goes on to argue that although a review of the medical evidence shows that he experienced a work-related "injury" to the left

shoulder in 2010, plaintiff recovered and was able to resume the full scope of his job duties without restrictions. As such, the repetitious physical demands of the plaintiff's position are directly responsible for the emergence of the subject work-related injury which became occupationally disabling on 4/27/15.

Because the Plaintiff recovered from his 2010 work-related injury and was able to resume his regular work activities without restrictions until 4/27/15, it is posited that the Plaintiff has sustained a new injury. Therefore, the present claim would be within the two-year statute of limitations set out in KRS 342.185. In support of that argument, plaintiff relies on the case of Brummitt v. Southeastern Kentucky Rehabilitiation Industries, 156 S.W.3d 276 (Ky. 2005), wherein the Kentucky Supreme Court has held that when an individual continues to perform the same repetitive activity after a gradual injury manifests, he may sustain subsequent gradual and cumulative injuries.

Then, however, plaintiff argues that in the present case he recovered from his initial 2010 injury, resumed his regular repetitive work activities without restrictions or limitations, and sustained a **new injury** (emphasis provided) on 4/27/15.

Upon return to work following the 2010 injury, the Plaintiff continued to work without incident and without medical restrictions. Furthermore, following the surgeries related to the 2010 injury, the Plaintiff was released from his physician's medical care and did not treat for this injury until he

began to experience additional symptoms in May of 2014.

In May of 2014, the Plaintiff began to experience symptoms that were much more severe in nature than the soreness he associated with the 2010 work-related injury. On 4/27/15, the first time since he was injured in 2010, the Plaintiff was assigned permanent restrictions by Dr. Mark Smith. Given the facts of the case, it is clear that the Plaintiff is asserting that he sustained a new injury on 4/27/15 when he was assigned permanent restrictions by Dr. Smith.

Plaintiff argues that based on the facts outlined above, a finding of a pre-existing active condition would be inappropriate in this case. In order for a pre-existing condition to be considered active, the condition must be both symptomatic and impairment ratable pursuant to the AMA Guides immediately prior to the occurrence of the work-related injury. Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007).

In the present case, the Plaintiff argues he had recovered from his 2010 work injury and resumed his customary work activities without incident until occurrence of the subject work injury. Moreover, the Plaintiff was never assigned any permanent restrictions until after the occurrence of the subject work injury.

In conclusion, plaintiff argues that although he has a history of left shoulder trauma, all of his previous injuries were treated and he was able to return to his customary work activities without restrictions. In fact, he was never provided any

permanent restrictions until the date of the subject work injury on 4/27/15. Therefore, he argues, the statute of limitations was not tolled until he was notified by Dr. Smith that his injuries were the result of his work.

"Cumulative trauma" was recognized by the legislature in an amendment to KRS 342.0011(1) wherein the term "Injury" is defined. In order to determine whether KRS 342.185 bars plaintiff's claim as pled, I must first determine whether the claimant has suffered from often imperceptible, gradual, repeated or recurring work-related mini-trauma events occurring over an extended period of time resulting in in a cumulative trauma injury. In making this determination, I may rely in part on the claimant's own testimony.

In compensation proceedings, a claimant's testimony concerning his condition is competent and has probative value. James v. Elkhorn Piney Coal Mine Co., 127 S.W.2d 823 (Ky. 1939). A worker's testimony is competent evidence of his physical condition. Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48 (Ky., 2000). In such instances, it is well-settled law that a claimant's own testimony may be relied upon by the fact finder in deciding questions involving post-injury physical capacity. Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979); Ruby Construction Company v. Curling, 451 S.W.2d 610 (Ky. 1970).

In the case at hand, the claimed injury consists of alleged cumulative trauma to the left shoulder. Implicit in the finding of a gradual injury is a finding that no single instance of workplace trauma caused an injury of appreciable proportion. Hill v. Sextet

Mining Corp., 65 S.W.3d at 507(Ky. App. 2000). For that reason, where the injury is due to cumulative trauma the date triggering the obligation to give notice is the "manifestation of disability," which is the date a worker first learns he has sustained a gradual injury and knows it is due to his work. Alcan Foil Products, a Division of Alcan Aluminum Corp. v. Huff, 2 S.W.3d 96 (Ky. 1999). Moreover, in claims involving cumulative trauma, a worker is not required to give notice until first informed by a physician that the condition is work related. However, that is not the case here.

Here however, it is undisputed that:

- Claimant suffered a work-related and compensable left shoulder injury in December 2009.

- Claimant underwent left shoulder arthroscopic surgery with distal clavicle resection, decompression and labral tear debridement on October 8, 2011.

- Claimant was notified of the running of the 2-year statute of limitations on December 15, 2011 by the Department of Workers' Claims.

- Dr. Mark Smith evaluated claimant on April 27, 2015 and recommends work restrictions and impairment related to the 2010 left shoulder surgery.

- Dr. Stacie Grossfeld evaluated claimant on December 2, 2015 and recommends impairment related to the 2009 left shoulder injury.

- Dr. Jules Barefoot evaluated claimant on October 30, 2015 and recommended an

impairment rating of 13% WPI attributable 100% to work-relatedness. However, although he comments that it does appear that he sustained an aggravation to his left shoulder in May of 2014, he does not apportion what portions of disability would be attributable to the respective injuries, although he states that Mr. Curtsinger does have ongoing, significant loss of mobility and strength in his left shoulder as well as complaints of persistent pain.

Thus, several facts are self-evident. First, all of the examining physicians attribute some percentage of whole person impairment to plaintiff's left shoulder and relate that impairment to plaintiff's work. The difference among them is when and under what circumstances exactly the plaintiff acquired that impairment.

There is no doubt that a claim for benefits based on the work-related injury to the left shoulder of December, 2009 and resultant surgeries would be barred by the provisions of KRS 342.185. However, at that time, there were no IME's of the plaintiff, and therefore, no impairment ratings awarded by any physician. While we know from the plaintiff's testimony that his pain was never completely alleviated through surgery, he returned to work without restrictions until his apparent "exacerbation" of a previous injury in May of 2014 and his subsequent examination by Dr. Mark Smith with the attendant imposition of permanent restrictions.

In the instant claim, both Dr. Smith and Dr. Grossfeld attributed plaintiff's left shoulder problems to the work-related injury to the left

shoulder of December, 2009 and resultant surgeries. Dr. Barefoot makes no attribution other than to say the condition is “work-related”.

Of persuasive value to me are the medical notes of the treating surgeon, Dr. Rinnert and his associate Dr. Harreld.

Dr. Harreld saw Mr. Curtsinger on June 17, 2014 for ongoing complaints of pain to the left shoulder. Dr. Harreld’s diagnoses on that date were 1) Status post left shoulder distal clavicle excision x two and 2) left shoulder myofascial pain and periscapular muscle spasm. In other words, this was maintenance of problems resultant from Mr. Curtsinger’s surgeries of 2010 and 2011.

Dr. Rennirt saw Mr. Curtsinger on August 18, 2014, primarily to go over the results of the FCE performed by Julie A. Smither, PT of KORT. At this time, Mr. Curtsinger was released to work with the permanent restriction that he work within the limits of the FCE, which I have outlined previously in this opinion.

Thus, as late as August 18, 2014, just 8 months prior to the IME of Dr. Smith that assigned him a WPI of 11%, of which the entire impairment was related to Mr. Curtsinger’s subacromial decompression and distal clavicle resection procedure of October 11, 2010, the treating surgeons found no ongoing permanent injury, but rather a failure to fully recover from the surgery attendant to the December, 2009 work injury.

Dr. Barefoot’s IME report fails to rebut any of those opinions and in fact

> fails completely to ascribe any permanent disability directly to any injury, cumulative or otherwise, subsequent to December, 2009.
>
> The burden of proof in a Workers' Compensation claim is on the claimant (Plaintiff herein) to prove each and every essential element of his claim. Snawder v. Stice 576 S.W.2d 276 (Ky. App. 1978). One of those essential elements is the timeliness of the filing of the claim and the jurisdiction thereby granted to the tribunal to consider the claim. Here, the defendant employer timely asserted a statute of limitations defense.
>
> Although the plaintiff's complaints of ongoing left shoulder pain are compelling, I cannot grant relief where I do not have the legal authority to grant that relief. Unfortunately, I believe that I do not have the legal authority to grant relief because the plaintiff's claim is barred by the provisions of KRS 342.185.

The ALJ entered the following Findings of Fact and Conclusions of Law:

> 3. The plaintiff, Christopher Curtsinger suffered a work-related and compensable left shoulder injury in December 2009.
>
> 4. The plaintiff underwent left shoulder arthroscopic surgery with distal clavicle resection, decompression and labral tear debridement on October 8, 2011.
>
> 5. The plaintiff was notified of the running of the 2-year statute of limitations as to his December, 2009

injury on December 15, 2011 by the Department of Workers' Claims.

6. Dr. Mark Smith evaluated the plaintiff on April 27, 2015 and recommends work restrictions and impairment of 11% WPI related to the 2010 left shoulder surgery that resulted from the December, 2009 left shoulder injury. In making this finding, I rely on the medical report of Dr. Mark Smith, which I find to be persuasive.

7. Dr. Stacie Grossfeld evaluated the plaintiff on December 2, 2015 and recommended an 8% impairment related to the 2009 work related injury to the left shoulder. In making this finding, I rely on the medical report of Dr. Stacie Grossfeld, which I find to be persuasive.

8. Dr. Jules Barefoot evaluated the plaintiff on October 30, 2015 and assigned an impairment rating of 13% WPI attributable 100% to work-relatedness [sic]. However, although he comments that it does appear that plaintiff sustained an aggravation to his left shoulder in May of 2014, Dr. Barefoot does not apportion what percentages of disability would be attributable to the respective injuries, although he states that Mr. Curtsinger does have ongoing, significant loss of mobility and strength in his left shoulder as well as complaints of persistent pain.

9. The report of Dr. Barefoot does not meet the standards of Brown-Forman Corp. v. Upchurch, 127 S.W.3d 615, 621 (Ky. 2004), to wit; "Medical causation must be proved to a reasonable medical probability with expert medical testimony… ." or Mengel v. Hawaiian-

> Tropic, 618 S.W.2d 184 (Ky., App. 1981), to wit; " Any injury not readily apparent to a layman must be supported by medical testimony." Further, as he does not opine within reasonable medical probability that Mr. Curtsinger suffered additional impairment in excess of, and in addition to that caused by the December, 2009 work injury, his opinion does not meet the criteria articulated in Brummitt v. Southeastern Kentucky Rehabilitiation [sic] Industries, 156 S.W.3d 276 (Ky. 2005).
>
> 10. Mr. Curtsinger's testimony as to his ongoing physical problems is compelling, but not decisive with regard to the etiology of his claimed cumulative trauma without supporting medical testimony. Medical causation must be proven by a medical opinion within "reasonable medical probability." Lexington Cartage Company v. Williams, 407 S.W.2d 395 (Ky., 1966).
>
> 11. Therefore, the preponderance of the evidence mandates a finding that Mr. Curtsinger's claim is in fact based on an exacerbation of his original December, 2009 injury to the left shoulder and consequential surgeries in 2010 and 2011. As he failed to timely file a workers compensation claim with regard to that injury, this claim is barred by the provisions of KRS 342.185.

Curtsinger filed a petition for reconsideration on February 23, 2016, asserting the ALJ erred by not finding he sustained a new injury. Alternatively, Curtsinger argued if his current symptoms are an

exacerbation of the 2009 injury, he is entitled to TTD benefits and medical benefits.

In the March 14, 2016, Order overruling Curtsinger's Petition for Reconsideration, the ALJ stated as follows:

> Plaintiff argues that there is error patently appearing on the face of the Opinion & Order of February 8, 2016 because the undersigned did not find that the plaintiff had suffered a new and separate injury in 2014 that became occupationally disabling on October 27, 2016.
>
> Unfortunately, on the basis of the medical evidence in the record, which I discussed thoroughly, I did not find that to be the case. Instead, I relied on the medical opinions of Dr. Grossfeld and Dr. Smith, which I found to be the most persuasive medical evidence in the record. On the basis of those opinions, Mr. Curtsinger's claim is barred by the statute of limitations.
>
> Thus, Plaintiff's allegation of error patently appearing on the face of the Opinion & Order is a disagreement with my interpretation of the medical evidence in the record, which is not within the scope of my review under the provisions of KRS 342.281. Francis v. Glenmore Distilleries, 718 S.W.2d 953 (Ky. App. 1986).
>
> Further, the same time bar that constrains me from considering a permanent award also bars his claim for TTD.

> Defendant's petition for reconsideration, having failed to point out error patently appearing on the face of the Opinion & Order of February 8, 2016 is therefore **DENIED** and **DISMISSED**.
>
> In the instant claim, both Dr. Smith and Dr. Grossfeld attributed plaintiff's left shoulder problems to the work-related injury to the left shoulder of December, 2009 and resultant surgeries. Dr. Barefoot makes no attribution other than to say the condition is "work-related".

Curtsinger first argues the ALJ committed reversible error by concluding he failed to prove that he suffered a work-related injury separate from his previous injury.

As the claimant in a workers' compensation proceeding, Curtsinger had the burden of proving each of the essential elements of his cause of action, including injury as defined by the Workers' Compensation Act. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Curtsinger was unsuccessful in his 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 that which 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 based on the evidence 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 sole authority to judge 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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 which otherwise could have been drawn from the record. Whittaker v. Rowland, supra. 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, supra.

We note the ALJ dismissed Curtsinger's claim as being time barred by KRS 342.185 and relied upon Drs. Smith and Grossfeld in support of this determination. However, a review of their medical reports supports a dismissal of Curtsinger's claim for income benefits for failure to prove causation. Both Drs. Smith and Grossfeld attribute Curtsinger's current symptoms and impairment to, as stated by the ALJ in the February 8, 2016, Opinion and Order, "an exacerbation of his original December, 2009 injury to the left shoulder and consequential surgeries in 2010 and 2011." Their opinions comprise substantial evidence in support only of the ALJ's dismissal of Curtsinger's claim for income benefits; however, the ALJ's dismissal pursuant to KRS 342.185 is error, as Curtsinger was asserting a claim for an exacerbation of a previous condition.

Curtsinger also argues on appeal that the ALJ erred by failing to award TTD and medical benefits. Curtsinger's argument of entitlement to TTD benefits is rendered irrelevant because Curtsinger testified he had not missed any work and worked regular-duty up until Dr. Smith imposed permanent restrictions on April 27, 2015. Further, on April 27, 2015, Dr. Smith opined Curtsinger had reached MMI; thus, rendering the issue of his entitlement to TTD benefits moot.

That said, Curtsinger is entitled to a determination regarding his entitlement to medical benefits, including future medical benefits. As the ALJ determined Curtsinger sustained "an exacerbation of his original December, 2009 injury to the left shoulder and consequential surgeries in 2010 and 2011," Curtsinger is entitled to a determination of his entitlement to medical benefits. The fact that Curtsinger did not file a Form 101 for the 2009 left shoulder injury is irrelevant. The issue in this claim is solely one of whether Curtsinger sustained an exacerbation of a preexisting condition and the extent of the exacerbation. Regardless of whether the preexisting condition is work-related, the exacerbation can still be found compensable. *See* Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. 2007). Here, both physicians relied upon by

the ALJ opined Curtsinger sustained an exacerbation of a preexisting condition; therefore, a determination of Curtsinger’s entitlement to medical benefits is required.

We vacate the ALJ’s dismissal of Curtsinger’s claim as it applies to his entitlement to medical benefits. On remand, the ALJ must make a determination as to Curtsinger's entitlement to medical benefits for this exacerbation, including future medical benefits.

Accordingly, to the extent the ALJ dismissed Curtsinger's claim for income benefits and did not award TTD benefits, the February 8, 2016, Opinion and Order and the March 14, 2016, overruling Curtsinger's Petition for Reconsideration are **AFFIRMED**. We **VACATE** the dismissal of Curtsinger’s claim as it applies to his entitlement to medical benefits. This claim is **REMANDED** to the ALJ for a determination of Curtsinger's entitlement to medical benefits, including future medical benefits, for the "exacerbation of his original December, 2009 injury to the left shoulder and consequential surgeries in 2010 and 2011."

ALL CONCUR.

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