

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: December 11, 2015

CLAIM NO. 201400240 & 201400239

CONSOL OF KENTUCKY, INC.

PETITIONER

VS.

APPEAL FROM HON. WILLIAM RUDLOFF,
ADMINISTRATIVE LAW JUDGE

DONALD MULLINS
UNINSURED EMPLOYERS' FUND
ZURICH INSURANCE
and HON. WILLIAM RUDLOFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, AND REMANDING

* * * * *

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

STIVERS, Member. Consol of Kentucky, Inc. ("Consol")
appeals from the May 29, 2015, Opinion and Order and the
July 20, 2015, Opinion and Order on Reconsideration of Hon.
William J. Rudloff, Administrative Law Judge ("ALJ"). The
ALJ awarded Donald Mullins ("Mullins") temporary total

disability ("TTD") benefits, permanent total disability ("PTD") benefits, and medical benefits. The ALJ dismissed Mullins' claim for income benefits for his alleged hearing loss.

On appeal, Consol sets forth eight arguments, three of which are combined in one argument. Consol's arguments are as follows:

- The ALJ erred by failing to dismiss the claims as time barred.
- The ALJ erred by failing to make a specific finding regarding the date of manifestation for the alleged injuries/hearing loss.
- The ALJ erred by finding the petitioner liable for the claimant's disability, failing to issue sufficient findings regarding the claimant's non-work related back injury and, alternatively, failing to make sufficient findings regarding apportionment of liability.
- The ALJ erred by relying upon medical opinions that were offered before the claimant was found to have reached maximum medical improvement and that were based upon an incomplete medical history.
- The ALJ erred by awarding future medical benefits for the alleged neck injury.
- The ALJ erred in his finding regarding insurance coverage and by dismissing the UEF as a party.

Paramount to this appeal is the ALJ's determination that Mullins' "last Kentucky exposure date was August 7, 2006." The ALJ further determined "the extraterritorial coverage contained in KRS 342.670 does not apply." *Therefore, the only compensable injury, if any, for which Kentucky has jurisdiction, is that which was sustained in Kentucky through August 7, 2006.* Stated another way, any injury or further exacerbation of an injury sustained after August 7, 2006 while working exclusively in West Virginia is not compensable.

The Form 101 filed February 3, 2014, alleges on September 29, 2013, Mullins sustained injuries to his back, neck, and knees while in the employ of "Consol Energy, Inc." in the following manner: "Plaintiff has sustained cumulative trauma injuries as the result of his repetitive/daily use of vibratory equipment in the course of his 37-year mining career." The Form 104 indicates Mullins was employed by "Consol Energy" from April 26, 1993, through September 29, 2013.

Mullins also filed a Form 103 alleging he became disabled due to work-related hearing loss on September 29, 2013.

In the Form 111 Notice of Claim Denial, Consol noted that it was improperly named "Consol Energy, Inc."

By order dated March 28, 2014, the ALJ consolidated both claims.

On April 3, 2014, Consol filed a "Motion to Amend Pleadings to Reflect Proper Name of Defendant and to Correct Last Date of Exposure in Kentucky." In this Motion, Consol asserted as follows:

1. The Plaintiff, Donald Mullins ("Mullins") was an employee of Consol of Kentucky, Inc. a subsidiary of Consol Energy, Inc. from April 26, 1993 through October 1, 2013, when he retired. Mullins was never an employee of Consol Energy, Inc.

2. Mullins worked for Consol of Kentucky, Inc. in the Commonwealth of Kentucky from April 26, 1993 through August 7, 2006, when he was transferred to work for Consol of Kentucky, Inc. at its surface mining operation in Naugatuck, Mingo County, West Virginia. Mullins continuously worked for Consol of Kentucky, Inc. in West Virginia from August 8, 2006 through October 1, 2013.

3. On the date of Mullins' last work within the Commonwealth of Kentucky, Consol of Kentucky, Inc. was self-insured through Consol Energy, Inc.'s approved self-insurance program for workers' compensation benefits in Kentucky.

4. As a result of the foregoing, the pleadings should be amended to name Consol of Kentucky, Inc. in the caption and on all future pleadings as Mullins' proper and correct employer.

5. As a result of the foregoing, Consol Energy, Inc. should be

substituted as the proper and correct insurance carrier for Consol of Kentucky, Inc. in this matter on Mullins' last date of exposure in Kentucky, that being August 7, 2006, at which time Consol Energy, Inc. was self-insured for itself and its subsidiaries.

6. As a result of the foregoing, Mullins' initial filings should be modified and/or revised to reflect that his last date of exposure within the Commonwealth of Kentucky was on August 7, 2006.

On April 18, 2014, the ALJ entered an Order bifurcating the claim to resolve the threshold issues of coverage/jurisdiction, statute of limitations, notice, causation, work-relatedness, and entitlement to medical treatment and income benefits.

The July 8, 2014, Benefit Review Conference ("BRC") order lists the following contested issues: work-relatedness/causation; notice; benefits per KRS 342.730 [handwritten: ".7305"]; "injury" as defined by the Act; limitations; pre-existing active. Under "other" is the following:

statute of limitations; last date of exposure in KY; extraterritorial coverage; last date of exposure; manifestation date; Southern KY. v. Campbell application proper rating under AMA Guides; permanent total disability; insurance coverage.

In the July 8, 2014, BRC order, the parties stipulated Mullins' last day of exposure was September 29, 2013, in West Virginia.

Mullins was deposed on May 5, 2014, and testified he first started working for Consol on April 26, 1993, as an oiler/greaser and then moved to heavy equipment operator. Mullins stopped working in Kentucky on August 7, 2006, after which he moved to West Virginia where he worked exclusively.

Mullins provided the following testimony regarding back surgery performed by Dr. James Bean:

Q: Now, my understanding is that you've recently had some sort of surgery. Is that right?

A: That's correct.

Q: When was your surgery?

A: February the 14th of this year.

Q: And who did your surgery?

A: Dr. James Bean.

Q: Had he treated you when you fell out of the tree?

A: No, sir.

Q: Had you ever seen him before?

A: I had seen him before years ago for neck problems that I'd had.

Q: Okay. When was that?

A: I have no idea. It's been years ago. I was working for Consol.

Q: Did you have any kind of accident that led you to go see him?

A: I don't know, I just started having pain in my neck. And, you know, I don't know if it was from jarring in that truck or what; but I started having pains in my neck, real bad pains.

...

Q: Alright. Now, what kind of surgery did Dr. Bean perform on you?

A: Done low back surgery. He went in on both sides of my spine and trimmed off the disc.

Q: And you say that was in February of 2014?

A: That's correct.

At the August 22, 2014, hearing, Mullins testified concerning his change of employment from Kentucky to West Virginia:

Q: Okay. Let me ask you, Mr. Mullins, you have testified here today that you last worked in Kentucky in 2006, correct?

A: Best of my knowledge.

Q: Okay.

A: I don't know the exact date.

Q: And I think we filed records that you moved August 1st of 2006. If those

are what records indicate, would you agree with that?

A: I would. Yes, I would agree with that.

Q: At that time, why were you moved to West Virginia, what's your understanding?

A: That's where the job located to, relocated to.

Q: They were shutting down the operation you were at in Kentucky?

A: That's correct.

Q: Okay. So there was not going to be any work there at the Wiley- I think they called it the Wiley Strip Mine in Kentucky.

A: They were- well, they still had property permitted but they moved to West Virginia.

Q: And so I think you actually moved from the Wiley Strip Mine in Kentucky to what they then also called the Wiley Strop Mine in West Virginia-

A: That's correct.

Q: - is that right?

A: That's correct.

...

Q: Did you consider your job in West Virginia to be a permanent job?

A: At the- at the time at the last, I did.

Mullins testified that he ultimately retired from Consol because of the constant pain.

Concerning his fall off a ladder, Mullins testified:

Q: Let's talk about this fall that you had in May of 2013. What were you doing when you fell?

A: I was working on a tree house that-that I use to- to hunt deer out of. And I was going to place a piece of plywood from the outside and I fell off of a- I fell off of a ladder.

Q: Now, when you say a tree house, is this kind of like a tree stand that they call it-

A: This has got-

Q: - or it's bigger than that?

A: It's bigger. It's enclosed.

Q: So you kind of made yourself like a child's tree house up in a tree where you kind of-

A: Well, it-

Q: - would get a good vantage point?

A: Right. It was on- it wasn't in a tree, it was on like legs.

Q: I see.

A: You know, it was like eight and a half foot off the ground.

Q: Okay. So you had it up on like stilts kind of?

A: Right. Exactly right.

Q: And you think it was about eight and a half feet off the ground?

A: That's correct.

Q: And so you were trying to fix a piece of plywood on the outside for the enclosure of it?

A: Right.

Q: And did you fall off the ladder that you used to get up there?

A: Off the ladder.

Q: Okay. Now, was that a ladder that you were using just to repair it, or is that the ladder that you would normally use to climb up into it?

A: It's got a trap-door in the bottom of it and I've got a permanent ladder fixed that you go up through the floor to get in it, in the tree house. This was a- a different ladder that I was using.

Q: Okay. So you were using a work ladder of some sort?

A: Right.

Q: Okay. Was it a leaning ladder or was it the kind that fold out?

A: It was a leaning ladder.

Q: Made of wood, metal?

A: Aluminum.

Q: And when you fell, you fell from the eight and a half feet height?

A: Probably higher than that because I was up- I was up more than from the bottom of the tree house. That's where the eight a half foot height is. That's to the bottom of the tree house.

Q: And you just fell to the ground?

A: That's correct.

Q: And what kind of ground is that underneath it? I assume there's no concrete under there?

A: No, it was dirt.

Q: Dirt and grass?

A: Right.

Q: How did you land when you fell, Mr. Mullins?

A: I landed on my right side.

Q: Now, when you say you landed on your right side, are you just saying you kind of fell sideways and the whole right side of your body hit?

A: The whole- my- this right side is what hit the ground.

Q: Okay. You're kind of indicating your rib area. I know-

A: Yes.

Q: -I know you said you broke some ribs.

A: I did.

Q: Okay. So your head didn't hit the ground?

A: No.

Q: I assume your hip may have hit the ground, though?

A: I assume it did, I don't know. But the- the ribs is [sic] what took the blunt because that's what was [sic] broke.

...

Q: How did you get out of there?

A: The rescue squad come [sic] and got me.

...

Q: So they came and transported you to the hospital?

A: No, they transported me to the helicopter.

Q: Okay. And you were airlifted out to what, UK?

A: That's correct.

Q: Were you inpatient at all at UK?

A: I think I stayed one night.

Q: Did you have to have any surgery-

A: No.

Q: -from that fall?

A: No.

Q: But you were off work for two months?

A: That's correct.

...

Q: When you went back to work, you weren't on any restrictions?

A: No.

...

Q: Okay. You went back to full duty work, correct?

A: Exactly.

Q: And prior to this fall in May of 2013, you were working full duty?

A: That's correct.

Q: All right. So you were never on any light duty-

A: No.

Q: -prior to your retirement at any time in your working career for Consol of Kentucky?

A: No.

At the April 25, 2015, hearing Mullins explained why he used the September 29, 2013, date in the Forms 101 and 103:

Q: Mr. Mullins, I just want to make sure I understand. In your application for Workers' Comp benefits you used the date September 29th, 2013. That was the day you retired?

A: That is correct.

Q: And at that time you were working over in West Virginia; is that correct?

A: That is correct.

Q: All right. So there was nothing that specifically happened to you on September 29th of 2013?

A: No.

Q: All right. You just had your 20 years in and you cashed in?

A: That is correct.

Regarding his last day of work for Consol in Kentucky, Mullins testified:

Q: Your last day of work in Kentucky was August 7th, 2006?

A: That sounds correct. I'm not definite on the date. I know I worked the last seven years in West Virginia and the 13 before was in Kentucky.

Q: Did you have any problems when you left Kentucky working from a physical standpoint?

A: I had been- I'd say I had been hurting probably for the last 10 years, something like that.

Craig Campbell ("Campbell"), Manager of Human Resources for Consol, was deposed on June 23, 2014. At the time of the deposition, Consol did not have any offices or operations within Kentucky. After March 2010, Consol ceased maintaining offices and employees in Kentucky. Campbell testified that Mullins was hired by Consol on April 26, 1993, at Jones Fork in Knott County, Kentucky. Mullins was transferred to West Virginia on August 8, 2006,

and all of his work after that date was performed in West Virginia.

Attached to the Form 101 is a medical report of Dr. Dale Williams dated December 17, 2013. The report reads, in its entirety, as follows:

FINDINGS UPON EXAMINATION: Neck pain. Mild to moderate degeneration throughout cervical spine. Low back pain with severe degeneration throughout lumbar spine. Radiculitis into left lower extremity.

DIAGNOSIS: Cervicalgia with mild to moderate degeneration C3-C7 and Hypolordosis. Lumbalgia with severe degeneration L2-L5 and Hypolordosis. Extreme osteophytic changes on anterior bodies all involved with severe radiculitis into left lower extremity.

IN YOUR MEDICAL OPINION, HAS THE PATIENT'S PREVIOUS EMPLOYMENT CAUSED OR CONTRIBUTED TO THE AFOREMENTIONED CONDITION(S)? If so, please explain:

Mr. Mullins is a 35 plus year old coal mining veteran. He has wide spread degenerative changes throughout both cervical and lumbar spine which is consistent with an accumulative degenerative situation. His work history is also consistent as a contributor to his condition. The occupational hazard of the mining industry/heavy equipment operator is obviously damaging to the human body.

HAVE ALL OF THESE OPINIONS BEEN WITHIN THE REALM OF REASONABLE MEDICAL PROBABILITY? Yes, to the best of my professional ability.

Form 107-I completed by Dr. Dr. Jeffrey Uzzle on March 16, 2014 was introduced. After examining Mullins, Dr. Uzzle diagnosed:

Recent lumbar L4-5 microdiscectomy surgery approximately 1 month ago to treat left lower extremity radiculopathy associated with an L4-5 disc injury. It appears he developed new onset right S1 radiculopathy from or since this recent back surgery. He is still in active rehabilitation and follow-up postoperatively. He has not yet started physical therapy but anticipates he will soon. He is therefore not at maximum medical improvement related to his lower back problem.

He has chronic cervical sprain strain.

Chronic mild left shoulder impingement.

Regarding causation, Dr. Uzzle opined as follows:

Cumulative Trauma Injury affecting the back, neck and knees. I have reviewed the work history of the client Donald Gene Mullins. I have conducted a clinical evaluation of Donald Gene Mullins. It is my opinion that the series of mini traumas which has been experienced by this individual in the course of his work life has been brought into a disabling reality by his last work with the Defendant/Employer. The traumas were excessive forces which were placed on the musculoskeletal system as well as the joints, the disc in the spinal column, as well as the associated ligaments, fibers, and other structures that supports the joints in the spine. These have been developing

over years of exposure; however, [sic] were largely not symptomatic until his last employment. This was a dormant non-disabling condition aroused into disabling reality by cumulative trauma.

Dr. Uzzle opined Mullins had not attained maximum medical improvement ("MMI").

Consol introduced the June 19, 2014, medical report of Dr. David Muffly. After examining Mullins, Dr. Muffly provided the following assessment:

Lumbar disc herniation at L4-5 with recent lumbar discectomy. In my opinion this was made worse after his fall from the ladder in May 2013. He has a normal cervical examination with mild degenerative change at C6-7. There are no knee symptoms.

After noting Mullins underwent surgery performed by Dr. Bean, Dr. Muffly opined as follows:

1. Are the claimant's alleged symptoms of the back, neck and knees the result of cumulative trauma causally related to his work as a heavy equipment operator?

The lumbar disc herniation requiring discectomy is related to the fall of May 2013 in my opinion. Prior to that he had symptoms of lumbar osteoarthritis which was appropriate for his age. He's had temporary cervical treatment 10 years ago with resolution. He does not complain of knee pain.

I do not detect cumulative trauma related to his work as a heavy equipment operator.

2. Has the patient incurred as a result of the alleged cumulative trauma injury permanent, harmful change in his human condition, evidenced by objective medical findings?

I do not detect impairment related to cumulative trauma.

...

7. Has the claimant reached maximum medical improvement? If so, what is the impairment under the 5th Edition of the AMA Guides?

He is at maximum medical improvement. There is 10% impairment to the lumbar spine Category DRE III. There is 0% impairment to the cervical spine.

8. Did any part of the impairment pre-exist the alleged injury? If so, how much and what is the cause?

The 10% lumbar impairment is related, in my opinion, to the L4-5 disc herniation with exacerbation of his chronic low back pain by the fall from May 2013.

9. Does the condition caused by the work related injury necessitate work restrictions/limitations, either temporary or permanent? If so, what limitations and for how long?

He has retired. There is no sign of cumulative trauma disorder. He does not need restrictions related to cumulative trauma disorder.

In a second medical report dated March 30, 2015.

In this report, Dr. Muffly opined as follows:

1. Does it remain your opinion that the Claimant's low back symptoms are attributable to a lumbar disc herniation that was caused by a non-work related fall in May 2013?

The low back symptoms were made worse, in my opinion, by injury in May 2013 when he fell from a ladder. After this fall he had increased painful symptoms and change on his lumbar MRI that was subsequently treated with surgery.

2. Does it remain your opinion that the Claimant did not sustain cumulative trauma injury to his neck, low back, left shoulder, or knees as a result of his employment with Consol of Kentucky?

I do not detect cumulative trauma disorder to his neck, low back or bilateral shoulders or bilateral knees related to his employment. His degenerative changes in the cervical and lumbar spine are not excessive beyond what is expected in similar age matched males.

3. Do you find any basis to assign permanent impairment, work restrictions, or recommend any medical treatment for this Claimant for work related cumulative trauma injuries?

There is no impairment related to cumulative trauma.

...

5. Regardless of your opinion regarding the cause of any symptoms expressed by Mr. Mullins, would he qualify for any degree of permanent impairment under the AMA Guides, 5th Edition, for his low back, neck, left shoulder, or knees?

He has 10% impairment Category DRE III lumbar. There is 0% impairment Category DRE I cervical spine. There is 0% impairment to the knees. There is 0% impairment to the shoulders.

The Medical Questionnaire completed by Dr. Bean on December 10, 2014, reads as follows:

1. Dr. Bean, do you have any basis to causally relate the condition for which you treated Mr. Mullins to his employment with Consol of Kentucky? [Dr. Bean checked "no"]

2. Dr. Bean, do you agree that Mr. Mullins had reached a state of maximum medical improvement from the 2/14/14 operation when you last saw him and released him to return as needed on 5/12/14? [Dr. Bean checked "yes"]

3. Have your responses been given in terms of reasonable medical probability and/or certainty? [Dr. Bean checked "yes"]

Attached to the Form 103 is the December 17, 2013, report from Beltone Hearing Care Center which reads, in part, as follows:

The above named patient was seen in our office on [handwritten: 12/17/13] for a Audiological evaluation. Mr. [handwritten: Mullins] has worked in the mining industry for [handwritten: 37] years. He states that he is having hearing difficulty in the following situations [handwritten: conversations, background noise].

Audiometric results show a [handwritten: moderate to severe (illegible)] loss. Speech

discrimination was [handwritten: 80%]
in the right [handwritten: 75%] in the
left and [handwritten: 80%] binaurally.

My recommendations for this patient
would be [handwritten: two Beltone
aids]. Thank you for your referral of
this patient.

In the Form 108-HL University Evaluation report
of Dr. Raleigh Jones and Dr. Lindsay Walker dated May 23,
2014, regarding causation, they opined as follows:

1. Do audiograms and other testing
establish a pattern of hearing loss
compatible with that caused by
hazardous noise exposure in the
workplace? [checked "yes"]

2. Within reasonable medical
probability, is plaintiff's hearing
loss related to repetitive exposure to
hazardous noise over an extended period
of employment? [checked "yes"]

3. Within reasonable medical
probability, is plaintiff's hearing
loss due to a single incident of
trauma? [checked "no"]

Attached to the Form 108 is the May 20, 2014,
report by Dr. Jones which reads as follows:

Mr. Mullins is 55-years-old and he
is here for a Workman's Compensation
Evaluation of his hearing loss. He last
worked in September 2013. He was a
heavy equipment operator for almost his
entire career. He worked in a surface
mine for about 30 years. He worked some
construction for a couple of years. He
was an underground coal miner for about
5 years. He would occasionally wear
hearing protection, but not very often.

His history of significant non-occupational noise exposure is minimal. He was never in the military. He does have a family history of hearing loss in his grandparents at an elderly age. He has no history of ear infection, ear trauma or ear surgery. He has never worn hearing aids. He has had a subjective hearing loss for at least the last 10 years or so. He does have intermittent bilateral tinnitus.

On examination today his external canals and TMs are normal.

His hearing test does show a sloping high frequency sensorineural hearing loss consistent with noise exposure, but fortunately at this point it is fairly mild. Using 5th Edition AMA Guidelines he has a 0.6% hearing impairment, which translates to a 0% impairment of the whole person. I do think his hearing loss is enough to at least consider wearing hearing aids, but it is most important that he understands that hearing protection is really important if he is going to be exposed to any further noise in the future.

In the September 24, 2014, Interlocutory Opinion and Order, the ALJ provided, in relevant part, the following findings of fact and conclusions of law:

Injury as defined by the Act; work-relatedness/causation; Southern Kentucky v. Campbell application.

. . .

I saw and heard Mr. Mullins testify at the Hearings. I carefully observed his facial expressions during his testimony, carefully listened to

his voice tones during his testimony and carefully observed his body language during his testimony. I sat few feet from Mr. Mullins during his testimony and am the only decision maker who actually saw and heard him testify. I make the factual determination that he was a credible and convincing lay witness and that his testimony rang true.

I make the determination that the medical evidence from Dr. Williams the plaintiff's treating chiropractor, as covered above, and the medical evidence from Dr. Uzzle, the examining physician, as covered above, was very persuasive and compelling. Both of these medical witnesses stated that in their opinion the cause of Mr. Mullins' physical complaints about his back and neck are the result of cumulative trauma sustained over his long work history in the coal mining industry. Dr. Uzzle stated that in his opinion the series of mini traumas experienced by Mr. Mullins in the course of his work life was brought into disabling reality by his work for Consol of Kentucky, Inc., in that plaintiff's dormant non-disabling condition was aroused into disabling reality by said cumulative trauma.

. . .

B. Statute of limitations; last date of exposure in Kentucky; last date of exposure; extraterritorial coverage.

I make the determination that the recent decision of the Kentucky Court of Appeals in *Consol of Kentucky, Inc. v. Goodgame*, 2014 WL 2154091, ___ S.W.3d ___ (Ky. App.), is directly on point with the factual situation in the case at bar. There, the plaintiff

worked exclusively in Consol's Kentucky operation from 1992 until approximately July 31, 2009. In 2009, Consol closed its Kentucky operation and Goodgame transferred to Consol's operation in Virginia, beginning his work there on August 1, 2009. Mr. Goodgame left his employment with Consol on January 19, 2010. On January 17, 2012, he filed a Form 101 listing an injury date of January 19, 2010. He alleged cumulative trauma injuries to his spine and his upper and lower extremities and supported his claim with the medical report of Dr. Hoskins, who stated that the plaintiff's physical ailments caused him to leave Consol's employment and were the result of cumulative trauma associated with his physical job demands from his 35 years of labor in the mining industry. Judge Miller entered an Opinion and Order dismissing Mr. Goodgame's claim. However, on appeal, the Workers' Compensation Board affirmed in part relating to the extraterritorial coverage issue and vacated in part on the statute of limitations issue, remanding the case to Judge Miller for further proceedings. On appeal, the Court of Appeals held that with respect to the plaintiff's cumulative trauma claim, which led him to cease working on January 19, 2010, Kentucky did not have jurisdiction, since the Judge correctly determined that the plaintiff's place of employment on January 18, 2010 was principally localized in Virginia. However, the Court of Appeals stated that Dr. Hoskins' medical report appeared to be the first diagnosis of a work-related cumulative trauma injury and on remand the Judge had to determine if the plaintiff filed his Form 101 within 2 years from the date he received a diagnosis of a work-related cumulative trauma injury. The

Court of Appeals, therefore, affirmed the Opinion of the Workers' Compensation Board.

In the case at bar, I make the determination that the plaintiff's last Kentucky exposure date was August 7, 2006 and that his last employment date was September 29, 2013. **I further make the determination that the extraterritorial coverage contained in KRS 342.670 does not apply in the case at bar. (emphasis added)**

C. Notice; statute of limitations; manifestation date.

KRS 342.185(1) provides that no proceeding under the Workers' Compensation Act shall be maintained unless a notice of the accident shall have been given to the employer as soon as practicable after the happening thereof, and unless the plaintiff's application shall have been made within 2 years after the date of the accident.

I make the factual determination that the first notice the plaintiff Mr. Mullins had that he had sustained cumulative trauma injuries to his neck and back was when his treating chiropractor, Dr. Williams, gave him that diagnosis on December 17, 2013. The record shows that Mr. Mullins' attorney gave written notice to Consol that Mr. Mullins had been informed by his physician that he suffered from work-related cumulative trauma as a result of his employment with the defendant, which letter was dated January 17, 2014. The record shows that Mr. Mullins filed his Form 101 on February 3, 2014, well within the 2-year period prescribed by KRS 342.185(1).

The record shows that the plaintiff's first notice that he had work-related hearing loss was on December 17, 2013, when he had an audiological evaluation at Beltone Hearing Care Center. By letter dated January 17, 2014, his attorney notified Consol that Mr. Mullins had been informed by a physician that he suffered from hearing loss as a result of his employment with the defendant. The record further shows that on February 3, 2014 plaintiff timely filed his Form 103 claiming occupational hearing loss.

. . .

D. Pre-existing active.

The correct standard regarding a carve-out for a pre-existing active condition is set forth by the Court of Appeals in *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky.App.2007). In *Finley, supra*, the Court instructed in order for a pre-existing condition to be characterized as active, it must be both *symptomatic* and *impairment ratable* pursuant to the AMA Guides immediately prior to the occurrence of the work-related injury. The burden of proving the existence of a pre-existing active condition is on the employer. *Finley v. DBM Technologies, supra*.

Based upon the credible and convincing sworn testimony of the plaintiff Mullins, as covered above, and the persuasive and compelling medical evidence from Dr. Uzzle, as covered in detail above, I make the determination that the plaintiff did not have any pre-existing active impairment or occupational disability prior to his work-related cumulative trauma. I further make the factual

determination that the defendant has not met the burden of proving the existence of pre-existing active impairment or occupational disability on the part of the plaintiff.

E. Benefits per KRS 342.730 and .7305; permanent total disability.

KRS 342.0011(11)(a) defines "temporary total disability" to mean the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment.

. . .

Based upon the credible and convincing lay testimony of Mr. Mullins, as covered above, and the persuasive and compelling medical evidence from Dr. Uzzle, as covered above, I make the determination that Mr. Mullins has not reached maximum medical improvement from his work-related cumulative trauma and has not reached a level of improvement that would permit a return to employment. I further make the determination that Mr. Mullins is entitled to recover from his employer weekly temporary total disability benefits beginning on the date of his back surgery by Dr. Bean, February 14, 2014, and continuing so long as Mr. Mullins remains disabled from his customary work or the work he was performing at the time of his injuries and until he has reached maximum medical improvement from his work injuries.

F. Medical benefits.

. . .

Based upon the credible and convincing testimony of Mr. Mullins, as covered above, and the persuasive and compelling medical evidence from Dr. Uzzle, as covered above, as well as the university evaluation report from Dr. Jones and Dr. Walker, as covered above, I make the determination that Mr. Mullins is entitled to recover from the defendant for his work-related medical bills and expenses for treatment of his work-related cumulative trauma to his back and neck, including his back surgery on February 14, 2014, and also his work-related hearing loss, both past and future.

G. Proper rating under AMA Guides; insurance coverage.

The determination of the proper rating for the plaintiff under the AMA Guides, Fifth Edition, is reserved until he reaches maximum medical improvement, and will be determined in the final Opinion and Order. In addition, the issue of insurance coverage is reserved for determination in the final Opinion and Order.

Consol and Zurich Insurance ("Zurich") filed petitions for reconsiderations, which the ALJ overruled by order dated November 7, 2014.

In the May 29, 2015, Opinion and Order, the ALJ again noted Mullins last Kentucky exposure was August 7, 2006 and the last date of employment was September 29, 2013. Except for deleting his summary of Muffly's second report the ALJ adopted the summary of the evidence in the

September 2014 interlocutory decision. The ALJ utilized much of the language in the September 2014 interlocutory decision, therefore we will delete it from the following summaries:

A. Injury as defined by the Act; work-relatedness/causation; Southern Kentucky v. Campbell application.

After discussing Haycraft v. Carhart Refractories, 544, S.W.2d 222 (Ky. 1976), Southern Kentucky Concrete Contractors, Inc. v. Campbell, 662 S.W.2d 221 (Ky. App. 1983), McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2001), and a 2006 Board opinion, the ALJ provided, in relevant part, the following:

Based upon the persuasive, compelling and reliable medical evidence from Dr. Uzzle, as covered in detail above, I make the determination that the case of *Southern Kentucky Concrete Contractors, Inc. v. Campbell*, 662 S.W.2d 221 (Ky.App.1983) is not on point with the factual situation in the case at bar. In making that determination, I rely upon the Opinion of the Workers' Compensation Board in Claim No. 2013-01961, James River Coal Company v. Rodney Bolen, dated February 13, 2015, originally decided by Judge Polites. In that case, Judge Polites made the determination that Mr. Bolen suffered cumulative trauma to his back which slowly evolved over years to the point where it arrived at a level of disabling reality, that the plaintiff had no active impairment prior to his injury, that any repetitive work activities that the plaintiff engaged

in prior to his work for the defendant caused the plaintiff to develop a dormant non-disabling condition that was not active prior to his employment with the defendant and which only became disabling during and as a result of the plaintiff's employment with the defendant. I make the determination that that is exactly the situation in the case at bar.

B. Statute of limitations; last date of exposure in Kentucky; last date of exposure; extraterritorial coverage.

The ALJ again utilized the same language contained in the September 2014 interlocutory decision. Significantly the following language is again present:

In the case at bar, I make the determination that the plaintiff's last Kentucky exposure date was August 7, 2006 and that his last employment date was September 29, 2013. I further make the determination that the extraterritorial coverage contained in KRS 342.670 does not apply in the case at bar.

Under the headings of "C. Notice; statute of limitations; manifestation date and D. Pre-existing active," the ALJ utilized the same language in his September 2014 interlocutory decision.

E. Benefits per KRS 342.730 and .7305; permanent total disability.

. . .

Based upon the credible and convincing lay testimony of Mr. Mullins, as covered above, and the

persuasive, compelling and reliable medical evidence from Dr. Uzzle, as covered above, I make the determination that Mr. Mullins is entitled to recover from his employer weekly temporary total disability benefits beginning on the date of his back surgery by Dr. Bean, February 14, 2014, and continuing until Mr. Mullins reached maximum medical improvement on May 12, 2014, as per Dr. Muffly's second report.

. . .

Mr. Mullins is now 58 years of age. He worked in the coal mining industry for 37 years and was employed by Consol for 20 years. He had a very good work history showing a very good work ethic. His work in the coal mines was demanding physical labor. The parties stipulated that Mr. Mullins last worked back on September 29, 2013. I make the determination that if he could return to work at his customary coal mining job he would do so. Mr. Mullins is now an older worker in the highly competitive job market. I make the determination that if he went out into the highly competitive job market he would have an extremely difficult time finding any regular or customary work.

. . .

In this case, I considered the serious nature of the plaintiff's work-related injuries to his back, as documented by Dr. Williams and Dr. Uzzle, his high school diploma many years ago, and his credible and convincing lay testimony, as covered above. I make the determination that even after Dr. Bean's February, 2014 back surgery, Mr. Mullins still has pain in his low back, neck and left

leg. He has had injections and has taken prescription pain medication. I make the determination that his activities of daily living are limited and that walking causes pain. I make the determination that he retired from Consol because of his painful back symptoms. Based upon all of the above factors, I reach the legal conclusion that Mr. Mullins is permanent and totally disabled beginning on May 12, 2014, when he reached maximum medical improvement.

F. Medical benefits.

Based upon the credible and convincing testimony of Mr. Mullins, as covered above, and the persuasive and compelling medical evidence from Dr. Uzzle, as covered above, as well as the university evaluation report from Dr. Jones and Dr. Walker, as covered above, I make the determination that Mr. Mullins is entitled to recover from the defendant for his work-related medical bills and expenses for treatment of his work-related cumulative trauma to his back and neck, including his back surgery on February 14, 2014, and also his work-related hearing loss, both past and future.

G. Proper rating under AMA Guides.

I accept the medical evidence from Dr. Muffly in his second report, in which he states that the plaintiff reached maximum medical improvement on May 12, 2014. I further accept Dr. Muffly's opinion that under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Mullins will sustain a 10% permanent impairment to the body as a whole, but I also accept the medical opinion of Dr. Uzzle that the plaintiff sustained a series

of mini traumas to his back during the course of his work life, which were brought into disabling reality by his last work with the defendant. I accept Dr. Uzzle's opinion that the plaintiff had a dormant non-disabling condition of his back which was aroused into disabling reality by cumulative trauma during his employment with the defendant.

H. Insurance coverage.

I have carefully read the Briefs filed by the parties on the issue of insurance coverage. I make the determination that the policy of insurance issued by Zurich to Consol expressly excluded coverage for coal mining operations. I further make the determination that Zurich did not insure Consol's locations in Kentucky and that Zurich, therefore, does not have liability for the plaintiff's work-related injuries. In making that determination, I specifically rely upon the evidence filed by Zurich and also the opinion of the former Court of Appeals of Kentucky in *Old Republic Insurance Company v. Begley*, 314 S.W.2d 552 (Ky.1958).

Consol filed a petition for reconsideration which the ALJ overruled in the July 20, 2015, Opinion and Order on Reconsideration. The ALJ provided the same summary of evidence and utilized the same language contained in the previous opinions. This order contains additional language and citations, which except for the following, we will not summarize:

. . .

The recent decision of the Kentucky Supreme Court in *City of Ashland v. Stumbo*, 2015 WL 2340403 (Ky.) applies to the case at bar. There, the court ruled that the judge is required to undertake the five-step analysis in order to determine whether the plaintiff is totally disabled. (1) Based upon the evidence reviewed hereinabove, I make the determination that Mr. Mullins sustained work-related injuries to his neck and back as covered in the persuasive, compelling and reliable medical evidence from Dr. Williams and Dr. Uzzle hereinabove. (2) I next make the determination, pursuant to the medical evidence from Dr. Muffly, that the plaintiff is at maximum medical improvement and under the AMA Guides, Fifth Edition, will have a 10% permanent impairment to the body as a whole due to his lumbar spine injuries. (3) I next make the determination that the plaintiff has a permanent disability, as proven by the persuasive, compelling and reliable medical evidence from both Dr. Williams and Dr. Uzzle. Dr. Williams, the treating chiropractor, stated that the plaintiff's previous employment caused or contributed to his painful conditions in his back and neck. Dr. Uzzle stated that that Mr. Mullins had suffered a series of mini-traumas during the course of his work life, which were brought into disabling reality by his last work with the defendant employer, and that Mr. Mullins does not retain the physical capacity to return to the type of work which he performed at the time of his injuries. (4) I next make the determination that Mr. Mullins is unable to perform any type of work, basing that determination upon the persuasive, compelling and reliable medical evidence from both Dr. Williams

and Dr. Uzzle, as summarized above. I also rely upon Mr. Mullins' testimony that his activities of daily living are limited and that walking causes pain, that he retired because of his painful symptoms, and that he is receiving Social Security disability benefits. Based upon all of the above factors, I reach the legal conclusion that Mr. Mullins is permanently totally disabled. Mr. Mullins is now 58 years old. He worked in the coal mining industry for 37 years. His work for Consol was the last 20 years. He had a very good work history, showing a very good work ethic. His work in the coal mines was demanding physical labor. The parties stipulated that he last worked back on September 29, 2013. I make the determination that if he could return to work, he would do so. He is now an older worker in the highly competitive job market. I make the determination that if he went out into the highly competitive job market, based upon his present condition, his age, his debilitating physical impairment and obvious occupational disability, he will have an extremely difficult, and probably impossible, time in finding any regular gainful employment. Relying upon the decision of the Kentucky Supreme Court in *Hush v. Abrams*, 584 S.W.2d 48 (Ky.1979), I again repeat the legal conclusion that the plaintiff is permanently totally disabled. (5) I make the determination that Mr. Mullins' total disability is the result of his cumulative trauma work injuries to his back while employed by the defendant Consol. As the concurring opinion in the *Stumbo* case stated, each case clearly requires an individualized determination of what a worker can and cannot do, and the plaintiff can certainly know as a fact if he is in pain, and he well knows

when it hurts to perform certain physical activities. As the concurring opinion further stated, the plaintiff is entitled to tell and the court will give credence and weight to his testimony. The concurring opinion in *Stumbo* further stated that a finding of permanent total disability does not require that the plaintiff be homebound.

I make the determination that the Uninsured Employers' Fund should be dismissed in this case and the original Opinion and Order is amended to so state.

. . .

We find no merit in Consol's first argument that Mullins' claim is time-barred pursuant to Manalapan Mining Co., Inc. v. Lunsford, 204 S.W.3d 601 (Ky. 2006).

The ALJ's analysis in both the September 24, 2014, Interlocutory Opinion and Order and the May 29, 2015, Opinion and Order on this issue is correct and needs little elaboration. While the record indicates Mullins ceased working for Consol in Kentucky on August 7, 2006, the ALJ determined Mullins was informed his cumulative trauma, including his hearing loss, was work-related on December 17, 2013. Pursuant to Consol of Kentucky, Inc. v. Goodgame, 2014-SC-000305-WC, rendered September 24, 2015, Designated To Be Published, as Mullins' filed both his Form 101 and Form 103 within two years of December 17, 2013, his

claims were timely filed. In Consol of Kentucky, Inc. v. Goodgame, supra, the Kentucky Supreme Court held:

In cumulative trauma claims, this Court has determined that, for statute of limitations purposes, the date of accident, which triggers the running of the statute of limitations, is the date a claimant is informed of a work-related cumulative trauma injury. To be consistent with the legislative intent as directly expressed in KRS 342.316(4)(a) and KRS 342.185(2), the repose aspect of KRS 342.185(1) must also begin to run on the date the statute of limitations begins to run - the date a claimant is informed of a work-related cumulative trauma injury.

Second, in *Lunsford*, the majority tied the limitations and repose periods to the last date worked or the date of last exposure to the trauma. We have long held that "[w]orkers' compensation is a creature of statute, and the remedies and procedures described therein are exclusive." *Williams v. E. Coal Corp.*, 952 S.W.2d 696, 698 (Ky. 1997). There is no "date of last exposure" or "date last worked" language in KRS 342.185(1). As the majority noted in *Cos/ow*, the legislature has amended KRS 342 numerous times. *Id.* at 614. However, it has not added the aforementioned language to KRS 342.185(1).

Finally, KRS 446.080 states that 101 statutes of this state shall be liberally construed with a view to promote their objects and carry out the intent of the legislature" We have long held that KRS Chapter 342 should be construed so as to effectuate its beneficent purposes, *i.e.* to

compensate injured workers for the effects of their injuries. See *Bartley v. Bartley*, 274 S.W.2d 48, 49 (Ky. 1954). The majority opinion in *Lunsford* does exactly the opposite by setting a different method for determining the triggering date for the statute of limitations and the period of repose.

In summary, KRS 342.185(1) acts as both a statute of limitations and a statute of repose. For single traumatic event injuries the running of both periods begins on the date of accident. For cumulative trauma injuries the running of both periods begins on the date the injured employee is advised that he has suffered a work-related cumulative trauma injury. Therefore, this claim must be remanded to the ALJ so that she can determine when Goodgame was advised that he suffers from a work-related cumulative trauma injury. She must then determine if Goodgame filed his claim within two years of that date. To the extent *Lunsford* holds to the contrary, it is hereby overruled.

Slip Op. at 9-10.

We also disagree with Consol's assertion the ALJ erred by failing to make a specific finding regarding the date of manifestation for the alleged injuries and hearing loss.

In the May 29, 2015, Opinion and Order- under the section heading "Notice; statute of limitations; manifestation date"- the ALJ determined Mullins was first given notice on December 17, 2013, that he had sustained

cumulative trauma injuries to his neck and back. Additionally, the ALJ found Mullins' attorney gave Consol written notice on January 17, 2014, "that Mr. Mullins had been informed by his physician that he suffered from work-related cumulative trauma as a result of his employment with the defendant." With respect to Mullins' hearing loss, the ALJ determined "[t]he record shows that the plaintiff's first notice that he had work-related hearing loss was on December 17, 2013, when he had an audiological evaluation at Beltone Hearing Care Center." While the ALJ did not specifically state December 17, 2013, is the date of manifestation, we can infer from the language the ALJ utilized, including the title of the section heading, that the ALJ determined December 17, 2013, to be the date of manifestation for Mullins' cumulative trauma injury and hearing loss.

Consol's third argument is comprised of three sub-arguments. Consol's primary argument appears to be the following:

The Petition respectfully submits that since the Claimant was found to have been rendered permanently totally disabled as a result of his work activities for the Petitioner, it can necessarily not be held liable for permanent total disability benefits in Kentucky given the undisputed fact that the Claimant went on to work over seven

years after the last date of covered employment in Kentucky.

We vacate the ALJ's determination Mullins is permanently totally disabled and the award of PTD benefits for different reasons.

The record indicates that on August 7, 2006, Mullins was relocated to West Virginia where he worked until he retired on September 29, 2013. Yet, in the May 29, 2015, Opinion and Order and the July 20, 2015, Opinion and Order on Reconsideration, the ALJ failed to specify the extent of Mullins' disability, if any, attributable to the time he worked in Kentucky and the medical evidence in support of his any such disability. In other words, while the ALJ deemed Mullins permanently totally disabled, he failed to specify that his determination is based solely on Mullins' condition, which it must be, at the time he stopped working in Kentucky. In fact, much of the ALJ's analysis in the May 29, 2015, decision, concerning whether Mullins is permanently totally disabled focuses on Mullins' current physical state without any analysis of his condition at the time he ceased his employment in Kentucky. This is particularly important in light of the opinions offered by Dr. Uzzle upon which the ALJ relied. Dr. Uzzle opined that while Mullins' symptoms were developing over

years of exposure, they were "largely not symptomatic until his last employment." (emphasis added). This language naturally begs the question - Is the "last employment" noted by Dr. Uzzle referencing Mullins' work for Consol in West Virginia?

Dr. Williams' medical opinions, upon which the ALJ also relied, do not specifically address the extent of Mullins' disability at the time he ceased his working in Kentucky. Rather, Dr. Williams' opinions refer vaguely to Mullins' "work history" as being a "contributor to his condition."

We again emphasize the ALJ determined "extraterritorial coverage contained in KRS 342.670 does not apply." Thus, to constitute a compensable injury in Kentucky, Mullins must prove he was injured on or before August 7, 2006, the last day he worked in Kentucky and the impairment rating specifically attributable to the injury in Kentucky. Significantly, neither Dr. Williams nor Dr. Uzzle offered a permanent impairment rating. KRS 342.0011(11)(c) mandates as follows:

(11)(c) "Permanent total disability" means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury...

The statute requires that a finding of permanent total disability must be supported by a permanent impairment rating. However, Mullins submitted no medical evidence of a permanent impairment rating. The only impairment rating in the record was offered by Dr. Muffly who opined in both *reports there is no impairment related to cumulative trauma*. Rather, Dr. Muffly assessed a 10% impairment rating due to the L4-5 disc herniation with exacerbation of his chronic low back pain by the fall at home in May 2013. In his March 30, 2015, report, Dr. Muffly specifically noted that after this fall Mullins had increased painful symptoms as evidenced by the lumbar MRI which was subsequently treated by surgery performed by Dr. Bean. Dr. Muffly's opinion that the impairment rating is attributable to low back problems exacerbated by the 2013 fall is supported by the December 10, 2014, questionnaire completed by Dr. Bean. In answering the first question, Dr. Bean acknowledged he had no basis to causally relate the condition for which he treated Mullins to his employment at Consol.

We are cognizant of the fact that in his May 2015 decision, the ALJ stated he accepted Dr. Muffly's 10% impairment rating. The ALJ stated he was also persuaded by the opinion of Dr. Uzzle that Mullins had a dormant non-

disabling condition which was aroused by the cumulative trauma during his employment with Consol. However, Dr. Uzzle did not causally relate the need for the surgery to the cumulative trauma injury. In the same vein, the ALJ did not provide any findings of fact causally connecting the impairment rating to Mullins' cumulative trauma.

We stop short of remanding the claim to the ALJ with directions to dismiss Mullins' claim for income benefits. On remand, if the ALJ again finds Mullins sustained a cumulative trauma injury on or before August 7, 2006, his last date of employment, we believe the ALJ should be given the opportunity to determine whether Dr. Muffly's 10% impairment rating or any portion thereof, is somehow attributable to the cumulative trauma injury which Mullins may have sustained. Given the opinions of Drs. Muffly and Bean and the difference in time between August 7, 2006, and the date of surgery, establishing a causal connection between the cumulative trauma injury in Kentucky and all or any portion of the 10% impairment will be a very difficult task.

Consol's fourth argument is moot.

Consol's fifth argument is the ALJ erred by awarding future medical benefits for Mullins' alleged neck injury because no medical evidence was submitted regarding

the significance of the alleged neck injury after entry of the September 24, 2014, Interlocutory Opinion and Order. We vacate the award of past and future medical benefits for different reasons and remand for additional findings.

The fact that Mullins' medical evidence was submitted before the September 24, 2014, Interlocutory Opinion and Order is irrelevant. Additionally, a permanent impairment rating is unnecessary in order for future medical benefits to be awarded. FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007). However, there is no medical evidence specifically addressing the cumulative trauma Mullins allegedly sustained and the extent of his disability, if any, attributable to his employment in Kentucky. In his December 17, 2013, medical report, Dr. Williams opined only that Mullins' "work history" contributed to his condition. Dr. Uzzle, in the March 16, 2014, Form 107-I opined that Mullins' condition was "not symptomatic until his last employment. This was a dormant non-disabling condition aroused into disabling reality by cumulative trauma." All the opinions fail to justify an award of medical benefits for an injury resulting from Mullins' employment in Kentucky, as they utterly fail to specify the extent of his injury and resultant disability, if any, sustained during his employment in Kentucky.

On remand, the ALJ must cite medical evidence that addresses the extent and duration of Mullins' neck injury and resultant disability, if any, which is attributable to Mullins' employment in Kentucky before medical benefits can be awarded. Given the record, this is a difficult task. If this medical evidence cannot be located in the record, an award of medical benefits is not warranted.

Consol next argues the ALJ erred by finding Zurich does not insure locations in Kentucky and, therefore, does not have liability for Mullins' work-related injuries. In the May 29, 2015, Opinion and Order, the ALJ determined as follows:

I have carefully read the Briefs filed by the parties on the issue of insurance coverage. I make the determination that the policy of insurance issued by Zurich to Consol expressly excluded coverage for coal mining operations. I further make the determination that Zurich did not insure Consol's locations in Kentucky and that Zurich, therefore, does not have liability for the plaintiff's work-related injuries. In making that determination, I specifically rely upon the evidence filed by Zurich and also the opinion of the former Court of Appeals of Kentucky in Old Republic Insurance Company v. Begley, 314 S.W.2d 552 (Ky. 1958).

As this is purely an issue of fact, we are bound to defer to the ALJ's findings unless they are erroneous as a matter of law. Here, Mullins testified he last worked in Kentucky on August 7, 2006. The record contains the July 24, 2014, "Notice of Filing Certification of Coverage" by Zurich which asserts as follows: "This reflects Commissioner Lovan's certification that on 8/7/06, the date Plaintiff testified he last worked in Kentucky, Consol of Kentucky was self-insured." Attached is "Certificate of Coverage" which states as follows:

RE: Donald Mullins v. Consol of
Kentucky, Inc.

COMMONWEALTH OF KENTUCKY

COUNTY OF FRANKLIN

I, Dwight T. Lovan, of the Department of Workers' Claims of the Commonwealth of Kentucky, do hereby certify the records of the Department of Workers' Claims reflect the above-referenced employer was authorized to pay directly the compensation provided for in KRS Chapter 342 and is obligated for compensation to its employees for work-related injuries or occupational disease incurred on August 7, 2006. The Department's records further reflect that a policy of insurance, policy number WC937721104, was reported by Zurich American Insurance Company to be in effect on November 5, 2007, for a location of Consol Energy, Inc. named Consol of Kentucky, Inc.

The certification was signed by "Dwight T. Lovan, Commissioner, Department of Workers' Claims."

The above-cited certification constitutes substantial evidence in support of the ALJ's determination Consol was not insured by Zurich at the time Mullins stopped working in Kentucky. This determination will not be disturbed.

Finally, we vacate the award of TTD benefits and remand for additional findings. As enumerated above, the ALJ has failed to cite medical evidence in the record which addresses the extent of Mullins' injury and disability at the time he stopped working in Kentucky. The May 29, 2015, Opinion and Order awards Mullins TTD benefits from February 14, 2014, the date of his surgery performed by Dr. Bean, through May 12, 2014, the date Dr. Bean opined he had reached MMI. There is simply no evidence cited by the ALJ linking the surgery to Mullins' work in Kentucky for Consol, a necessary connection in light of the fact the surgery took place eight years after Mullins ceased working in Kentucky on August 7, 2006. This is critical in light of Dr. Uzzle's opinions, as expressed in the March 16, 2014, report, that Mullins' symptoms were not symptomatic until "his last employment," and Dr. Bean's opinion, as expressed in the December 10, 2014, Medical Questionnaire,

stating he has no basis to causally relate the condition for which he treated Mullins to his employment with Consol. On remand, the ALJ must cite the specific evidence linking the surgery conducted by Dr. Bean and any award of TTD benefits following the surgery to Mullins' employment for Consol *in Kentucky* in order for said award of TTD benefits to be pertinent in this Kentucky claim.

Accordingly, relative to the issues Mullins' claim is time barred, the date of manifestation of injury, and insurance coverage, the May 29, 2015, Opinion and Order and the July 20, 2015, Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge, are **AFFIRMED**. The May 29, 2015, Opinion and Order and the July 20, 2015, Opinion and Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge, are **VACATED** regarding the determination of permanent total disability and an award of PTD benefits. The awards of TTD benefits and medical benefits are also **VACATED**. This claim is **REMANDED** to the Chief Administrative Law Judge for assignment to an ALJ for additional findings and entry of a decision consistent with the views expressed herein.

ALL CONCUR.

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