Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 6, 2016

CLAIM NO. 201402225 & 201378138

CONSOLIDATED HEALTH SYSTEMS/
HIGHLANDS HEALTH SYSTEMS/
HIGHLANDS REGIONAL MEDICAL CENTER PETITIONER

VS. **APPEAL FROM HON. UDELL B. LEVY,**
ADMINISTRATIVE LAW JUDGE

LEMA D. SPARKMAN
and HON. UDELL B. LEVY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

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

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

STIVERS, Member. Consolidated Health Systems/Highlands Health Systems/Highlands Regional Medical Center ("HRMC") seeks review of the November 4, 2015, Opinion, Award, and Order of Hon. Udell Levy, Administrative Law Judge ("ALJ") finding Lema D. Sparkman ("Sparkman") sustained work-

related injuries to both knees and her low back and awarding permanent partial disability ("PPD") benefits and medical benefits.

Sparkman's Form 101 in Claim No. 201402225 alleged on December 29, 2012, she injured both knees and her right wrist when she fell at work while entering the hospital. Sparkman's Form 101 in Claim No. 201378138 alleged on March 13, 2013, she was injured at work when she fell backward out of a chair. In this claim, Sparkman also alleged the injury occurred: "due to heavy lifting, standing, walking, reaching, pushing, pulling, bending, twisting and turning on a cumulative, repetitive and continuous basis for up to 10 to 12 hours during shifts over a thirty-eight year period." Sparkman alleged her hip, lower back, left buttock, left leg, and both knees were injured as a result of the March 2013 fall. The claims were subsequently ordered consolidated.

On appeal, HRMC challenges the ALJ's reliance upon the opinions of Dr. James Owen in finding Sparkman sustained work-related injuries to her knees. In the alternative, HRMC asserts the ALJ erroneously commenced the award of PPD benefits for the cumulative trauma injuries on December 29, 2012, as opposed to February 26, 2015, when Dr. Owen apprised Sparkman she had suffered work-related

cumulative trauma injuries to her knees. HRMC asserts a second alternative argument that substantial evidence supports a finding of an acute trauma to the left knee on December 29, 2012, and a repetitive trauma to the right knee manifesting on February 26, 2015.

Sparkman testified at a May 11, 2015, deposition and the September 2, 2015, hearing. Sparkman, who was sixty years old at the time of her deposition, testified she had worked over thirty-six years as a Licensed Practical Nurse ("LPN") for HRMC.[1] Sparkman testified she is 5'4" and weighs 244 pounds. As an LPN she worked three twelve hour shifts. She attended three patients daily and was required to turn each patient six times during her shift.

Sparkman testified she injured her knees on December 29, 2012, while walking into work when she tripped over a stake in the landscaping and fell. Sparkman explained the nature of the fall:

> Q: Did you land on your knees or did you land on your hands and your knees? How exactly did you, did you wind up on the ground, if you recall?

[1] The Form 104 attached to the Form 101 reveals Sparkman worked for HRMC from July 14, 1975, to March 13, 2013.

> A: I landed on my knees and, you know, you know how you fall, you put your hands out to brace.
>
> Q: And did you land pretty much equally on the left, the left and the right, or did you fall …
>
> A: It was more on the left.
>
> Q: It was more on the left than the right?
>
> A: Uh huh (affirmative).
>
> Q: Do you favor your right knee or did you favor your right knee pretty much just because you'd had prior problems with it?
>
> A: Uh huh (affirmative).
>
> Q: Is it still the worst of your, of your knees …
>
> A: Yes.
>
> Q: … the right? And what, what kind of treatment did you seek for that, if you recall?
>
> A: I went into the emergency room. And then they just x-rayed it and sent me home. And then later it started collecting fluid, and that's when I went to Royalty, and he drew the fluid off.

Sparkman denied having any previous acute injuries to either of her knees. Sparkman had been previously treated by Dr. David Jenkinson for knee problems. She was undergoing treatment of her right knee prior to the injury. Her primary treating physician is Dr.

Jack Kendrick who she has been seeing for approximately two years. Prior to that her primary physician was Dr. Sujatha Reddy. Sparkman began seeing Dr. Chip Salyers, a chiropractor, after the injuries because HRMC designated him as the gatekeeper. Sparkman went to Dr. Robert Royalty, an orthopedic surgeon, who drew fluid from her left knee. She acknowledged experiencing daily right knee problems prior to the December 2012 fall, for which she had been taking Lorcet and Cymbalta. Sparkman estimated she missed approximately two days of work, including the day she fell, as a result of the December 2012 fall.

Sparkman testified she injured her back at work on March 13, 2013, when she fell out of a new chair which had rollers. She denied experiencing back symptoms immediately before her March 2013 fall. However, she acknowledged experiencing prior back problems which she characterized as “muscle strains and stuff.” She believes the injuries to her knees and low back are due to repetitive trauma, which she attributed to constantly walking and lifting on the job. She estimated she lifted patients weighing between 100 and 200 pounds. Another nurse helped her turn and lift the patients.

Sparkman testified her doctors had never told her that her right knee complaints were work-related. Her

doctors had previously told her the right knee was worn out. Dr. Owen was the first doctor to mention her injuries were related to cumulative trauma due to being on her feet twelve hours a day as an LPN. She rates her pain when she arises from sitting at eight or nine on a scale of ten. Sparkman estimated she has taken narcotic medication for her right knee symptoms approximately eight or ten years. She currently sees Dr. Royalty for her knees and back. She has not undergone surgery and is not scheduled for any procedures.

At the hearing, Sparkman testified that as an LPN, she provides total basic care for her patients. This includes administering medications, bathing, and assisting the patients while in or out of bed. She estimated that out of her twelve hour shift she stood and walked on either tile or concrete, eight to ten hours. Sparkman agreed with the job description filed in the record by HRMC, except she believed she lifted greater weights and exerted more force than indicated.[2]

[2] Sparkman's job description filed by HRMC reflects she would stand and walk six to eight hours and sit for two to four hours each shift. Sparkman would bend, squat, reach, lift, carry, push, and pull 1/3 or more of her shift. With her left and right hand she would perform gross motor functions and precise motor functions. She performed gross motor functions with her feet. Under the heading weight lifted/force exerted, Sparkman lifted up to 50 pounds 1/3 or more of her shift.

Sparkman currently has right knee pain whenever she walks. Dr. Royalty continues to treat both knees. Sparkman denied having any left knee problems prior to December 29, 2012. Before the December 2012 fall, Sparkman had never been placed on any work restrictions because of right knee symptoms. She continued to perform her regular job in spite of right knee pain. After she fell in December 2012, there were no changes in her job duties.

Sparkman attributed her low back and knee problems to walking and lifting on the job. She agreed her left knee is less symptomatic than the right. Her primary problem with the left knee is numbness. Walking and standing for any length of time and bending at the waist adversely affect her low back and right knee. Her back symptoms have remained constant since she fell out of the chair in March 2013. She acknowledged having some of the same symptoms in her right knee and back prior to the events of December 2012 and March 2013. She had not received any unfavorable comments about her job performance from HRMC.

The August 14, 2015, Benefit Review Conference Order reflects the parties stipulated Sparkman sustained a work-related knee injury on December 29, 2012, and a work-related back injury on March 13, 2013. However, HRMC

disputed Sparkman's allegation she sustained injuries due to cumulative trauma.

The parties introduced the records of Drs. Salyers, Reddy, and Royalty. Sparkman introduced the Form 107 prepared by Dr. Owen after conducting an independent medical evaluation ("IME") on February 26, 2015. HRMC introduced the May 4, 2015, IME report of Dr. Gregory Snider. HRMC also introduced the report of Dr. Christopher Brigham, who conducted a records review and evaluated the impairment ratings assessed by Dr. Owen pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides").

In his November 4, 2015, decision, the ALJ provided, in relevant part, the following findings of fact and conclusions of law:

> Plaintiff, Lema Sparkman, has three claims for injuries allegedly sustained in the scope of her employment with Highlands Regional Medical Center. First, she alleges she injured both knees and her right wrist when she tripped and fell on December 29, 2012. Ms. Sparkman alleges she fell out of her chair on March 13, 2013, injuring her back. Finally, she alleges she accumulated injuries to her hip, lower back, left buttock, left leg and both knees during her nearly 40 year tenure with the Defendant due to repetitive heavy lifting, standing, walking, reaching, pushing, pulling, bending, twisting and turning.

The Defendant has stipulated that the 12/29/12 and 3/13/13 injuries occurred. Therefore, the first issue to determine is whether Plaintiff sustained an injury due to cumulative trauma as defined by the Act. KRS 342.0011(1) defines “injury” as “any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.” The current version of KRS 342.0011(1) defines an "injury" in terms of a work-related event that proximately causes a harmful change in the human organism, rather than in terms of the harmful change, itself. *Staples, Inc. v. Konvelski*, 56 S.W.3d 412 (Ky. 2001) Kentucky law recognizes that a work injury includes instances where the nature and duration of the work probably aggravated a degenerative disc condition to the degree that it culminated in an active physical impairment sooner than would have been the case had the work been less strenuous. *Haycraft v. Corhart Refractories Co.*, 544 S.W.2d 222 (Ky. 1976).

. . .

Plaintiff alleges she injured her low back from lifting and turning patients on a daily basis. She further believes constant walking on tile and concrete floors contributed to symptoms in both her low back and her knees. However, medical causation is to "be proved to a reasonable medical probability with expert medical testimony…" *Brown-Forman Corp. v. Upchurch,* 127 S.W.3d 615 (Ky. 2004); *Hill v. Sextet Mining Corp.,* 65 S.W.3d 503 (Ky. 2001). When a causal

relationship between trauma and injury is not readily apparent to laymen, the question is one properly within the province of medical experts. *Mengel v. Hawaiian-Tropic Northwest & Central Distributors, Inc.*, 618 S.W.2d 184 (Ky. App. 1981).

Plaintiff reported to Dr. Royalty that she had right medial knee pain for several years before the 12/29/12 work injury. Dr. Reddy's records confirm that Ms. Sparkman sought treatment from that office several times beginning in 2008. X-rays of Ms. Sparkman's knees confirm she has advanced arthritis in both knees. Dr. Owen measured cartilage interval per *AMA Guides* criteria to determine her right knee was 2 mm in the medial compartment and 5 mm lateral while the left knee was 3 mm and 5 mm respectively. Plaintiff sustained no significant trauma to her knees, other than with the fall on 12/29/12. Therefore, I agree with Dr. Owen that accumulating so many hours on her feet over the course of her employment as an LPN for 38 years caused wear and tear on Plaintiff's knees.

Dr. Brigham and Dr. Snider both state the symptoms in Plaintiff's knees are attributed to her morbid obesity. While that may certainly be the case at this time, there is no evidence regarding Plaintiff's weight prior to 2008. Notwithstanding Plaintiff's physical condition over the course of her tenure as an LPN with the Defendant, obesity is not considered either an active or dormant disease/condition that can be "aroused" or "brought into disabling reality" by injury or accident for purposes of determining liability under the Workers Compensation Act. *Kentucky Convalescent Home v. Henry*, 463 S.W.2d 328 (Ky.

1971) I believe the coexistent concerns regarding Plaintiff's weight are genuine. However, the evidence shows Plaintiff's weight enhanced, but was not the proximate cause of, his [sic] low back symptoms. As the Court observed in *Kentucky Convalescent Home v. Henry,* supra:

> We recognize that the consequences of injury to a fat employee may well produce more disability than the same injury would cause in a thin employee. We are unwilling to say, however, that the fatness present in and of itself is a 'dormant, non-disabling disease aroused or brought into disabling reality' as those words are used in the context of the statute which provides when an employer may shift to the Fund part of the liability for the payment of compensation benefits for a compensable injury.

While the evidence shows Plaintiff endured cumulative trauma to her knees due to her work, Dr. Owen never provided an explanation as to how Plaintiff's low back was gradually injured due to wear and tear from her occupation as an LPN. CT evidence suggests Plaintiff has degenerative disc disease in her lumbar spine with disc protrusions at multiple levels. However, she had a prior injury to her low back in the 90's trying to lift a patient who had coded. Ms. Sparkman reported to Dr. Owen that she continued to have symptoms until she subsequently fell out of the rolling chair on 3/13/13. The prior injury contributed to the debilitating condition in Plaintiff's low back; it

> has not been shown she sustained a low back injury due to cumulative trauma.
>
> In summary, Plaintiff sustained an injury to her back when she fell out of the rolling chair on 3/13/13. However, she had an active impairment to her back due to the injury that occurred several years earlier. On the other hand, Plaintiff sustained an injury to her knees due to work-related cumulative trauma from being on her feet so many hours during her tenure as an LPN with the Defendant. These problems were enhanced by her fall on 12/29/12.
>
> I believe Dr. Owen provides the most credible analysis regarding the extent of impairment for Plaintiff's knees based on measured cartilage interval. This is also consistent with the method outlined on page 10 of Dr. Brigham's report. Therefore, Ms. Sparkman's whole person impairment is 8% for her right knee and 3% for her left knee, for a combined impairment of 11%. Dr. Owen and Dr. Brigham agree Plaintiff has 7% whole person impairment to her low back. As Dr. Brigham points out, however, the minimum that can be subtracted for a pre-existing active DRE Lumbar Category II is 5%. I therefore conclude Plaintiff has 2% whole person impairment to her low back.

The ALJ concluded Sparkman did not retain the physical capacity to return to the type of work she performed at the time of the injury and was entitled to enhanced PPD benefits pursuant to KRS 342.730(1)(c)1. Accordingly, he calculated the award for each injury as follows:

$552.13 (Max for 2012) x 11% x 1.0 =
$60.73 x 3.4 = $206.48 per week

$564.52 (Max for 2013) x 2% x .65 =
$7.34 x 3.4 = $24.96 per week

Significantly, the award of income benefits reads as follows:

> 2. Plaintiff shall recover permanent partial disability income benefits from the defendant and/or their carrier at the rate of $206.48 per week beginning December 29, 2012, with said total increasing to $231.44 per week on March 13, 2013 and continuing for 425 weeks thereafter unless terminated pursuant to KRS 342.730(4), except that such weekly benefits shall be suspended during the intervening period TTD was paid, together with interest at 12% per annum on all past due amounts.

HRMC filed a petition for reconsideration asserting the ALJ should have commenced the award of PPD benefits for the cumulative trauma injuries to the knees on February 26, 2015, not December 29, 2012. HRMC also argued the ALJ provided insufficient findings of fact regarding the conflicting opinions of Drs. Brigham and Owen. It argued the ALJ failed to explain why Dr. Owen's opinion concerning causation was more credible than Dr. Brigham's scientifically based opinions. Finally, HRMC asserted the ALJ had made inconsistent findings of fact regarding Sparkman's claim of cumulative trauma. It noted the ALJ relied upon Dr. Owen's opinion in finding Sparkman

sustained cumulative trauma to both knees but did not rely upon his opinion Sparkman sustained a cumulative trauma back injury. Since Dr. Owen's opinion Sparkman sustained a cumulative trauma back injury did not constitute substantial evidence, HRMC argued his opinion she sustained work-related cumulative trauma to her knees could not constitute substantial evidence. Consequently, HRMC requested the opinion be reconsidered. It did not request additional findings of fact.

In the January 19, 2016, Order overruling the petition for reconsideration, the ALJ stated the parties were sufficiently apprised of the basis for his acceptance of Dr. Owen's opinion over Dr. Brigham's. In addition, the opinion provided the "factual basis drawn from the evidence for concluding Sparkman sustained an injury to her knees due to cumulative trauma and rejecting a similar claim related to her low back condition." However, with regard to the commencement date for the award for the injuries to the knees, the ALJ stated as follows:

> On the other hand, Defendant's request for reconsideration and/or clarification of the basis for beginning Plaintiff's award for partial disability to her knees appears appropriate. The evidence indeed shows that everyday wear and tear from her work had a cumulative effect over the years causing symptoms in Plaintiff's

> knees. As Defendant points out, Plaintiff did not know this until she was advised by Dr. Owen in February 2015. I would agree with Defendant that awards for impairment due to cumulative trauma would normally begin when the injury manifests itself, as that term is defined in *Hill v. Sextet Mining Corp.*, 65 S.W.3d 503 (Ky. 2001).

On appeal, HRMC argues substantial evidence does not support a finding of cumulative trauma as the ALJ's finding of a cumulative trauma is based solely on the conclusory opinion of Dr. Owen. It contends Dr. Owen's opinion Sparkman's sustained work-related cumulative trauma to her knees is void of any analysis explaining how the alleged cumulative trauma caused the injuries to Sparkman's knees. Simply attributing a cumulative trauma to standing ten to twelve hours a day does not constitute substantial evidence. It notes Sparkman testified she stood or walked eight to ten hours in a twelve hour day further calling into question Dr. Owen's opinion since it was based on an inaccurate history.

HRMC observes the ALJ did not rely upon Dr. Owen's opinion Sparkman sustained a cumulative trauma low back injury. In doing so, the ALJ concluded Dr. Owen did not provide a sufficient explanation to support a finding of a cumulative trauma back injury. HRMC contends the findings regarding the knees and the back are wholly

inconsistent. In that context, HRMC asserts Dr. Owen's opinions regarding cumulative trauma to the knees and low back are vague. Further, Dr. Owen provided no clear discussion regarding proximate cause and was unable to cite objective medical findings supporting his opinions that daily standing and walking were the cause of Sparkman's complaints. Similarly, Dr. Owen did not cite to objective medical evidence supporting his opinion the intense lifting on the job caused cumulative trauma to Sparkman's low back. HRMC relies upon the opinions of Dr. Brigham that it is more probable Sparkman's knee difficulties are due to her age and morbid obesity rather than her fall or work activities. Dr. Brigham opined that constantly being on her feet is insufficient evidence to support a finding Sparkman sustained cumulative trauma. Therefore, the ALJ's finding of a work-related cumulative trauma should be reversed as not being based on substantial evidence.

Alternatively, HRMC asserts the ALJ erred in commencing PPD benefits for the injuries to the knees on December 29, 2012. Rather, the commencement date for this award should have been February 26, 2015, the date Dr. Owen diagnosed cumulative trauma to the knees. HRMC notes Sparkman testified she was never apprised she suffered from work-related cumulative trauma to both knees until Dr. Owen

did so on February 26, 2015. It contends the date of the cumulative trauma injury is when the disabling reality of the injuries manifests which is the date Sparkman saw Dr. Owen. HRMC observes that after her December 29, 2012, fall, Sparkman continued work and missed no appreciable work until the low back injury in 2013. It contends that in denying the petition for reconsideration the ALJ erroneously stated the date of injury for the cumulative trauma was the date Sparkman fell. HRMC notes the ALJ awarded no benefits as a result of the December 29, 2012, acute injury. HRMC contends since the ALJ found Sparkman sustained cumulative trauma to her knees any alleged pre-existing impairment was a component of the cumulative trauma that had yet to manifest.

HRMC argues impairment can never arise before an injury. It posits that had the ALJ found there was an injury resulting in impairment directly stemming from the December 29, 2012, incident, that date would be the appropriate date to commence payment of PPD benefits. Instead, the ALJ very clearly stated, based on Dr. Owen's opinions, Sparkman sustained a cumulative trauma to her knees over the thirty-eight years she worked as an LPN for HRMC. Thus, the ALJ's finding was equivalent to a finding

that the December 29, 2012, incident caused no permanent impairment, only a temporary exacerbation.

HRMC argues that commencing the award of PPD benefits prior to the date of manifestation is contrary to prevailing law and therefore arbitrary and capricious. Because the ALJ found the impairment stemmed from cumulative trauma, HRMC contends the compensable period begins on February 26, 2015.

As a second alternative argument, HRMC argues as follows:

> It can also be argued that substantial evidence supports a determination that the award of benefits for the right knee should commence as of the date of Dr. Owen's report, but the award for the left knee should commence as of December 29, 2012, the date of the acute injury, since there was no evidence of prior problems with Sparkman's left knee.

HRMC observes Sparkman testified she had no prior problems with her left knee before that date and all symptoms began on that date. Sparkman also testified there is no real injury to her right knee in December 2012 as the left knee took the brunt of the fall. HRMC concedes the condition of her right knee is completely different than the left, as the medical records thoroughly document right knee problems dating back to 2008. Assuming substantial

evidence supports a finding of right knee cumulative trauma, HRMC contends the medical evidence in conjunction with Sparkman's testimony only supports a determination the left knee injury was a product of the December 2012 fall. As such, substantial evidence would only support the conclusion the right knee impairment was the product of cumulative trauma and did not manifest until the date of Dr. Owen's diagnosis on February 26, 2015. Therefore, PPD benefits for the left knee would commence on December 29, 2012, and benefits for the right knee would commence on February 26, 2015.

Sparkman, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her cause of action. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Sparkman was successful in that burden, the question on appeal is whether there is substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson

Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

In his Form 107, Dr. Owen set forth the history of Sparkman's injuries and outlined the treatment she had undergone prior to seeing him. Dr. Owen specifically noted Dr. Royalty's note of November 22, 2013, indicates Sparkman had long-standing right knee pain and left knee swelling for several months without antecedent trauma. Sparkman had sustained an injury seven months ago and developed significant subcutaneous swelling. She was diagnosed with left knee prepatellar bursitis. Sparkman underwent several prepatellar bursal aspirations. Sparkman informed Dr. Owen the swelling in her left knee had improved, but she still complains of "slight achy pain." Dr. Owen also reviewed multiple notes from Dr. Salyers. After performing an examination, Dr. Owen provided the following diagnosis:

> 1. Persistent low back pain with no obvious radicular component associated with dysmetria and muscle spasm in the low back.

> 2. Persistent pain in the left knee associated with prior injury and multiple effusions and aspirations there with ongoing mild limp and slight atrophy of the left thigh.

Dr. Owen believed Sparkman's injuries were the cause of her complaints explaining as follows:

> Within reasonable medical probability, the patient's injury was the cause of his/her complaint. Yes. Any part due to natural aging? No. Any part pre-existing, dormant, non-disabling? Yes. She had clear-cut prior low back problems before the 12/13 injury that was being treated by both narcotic medication through family practice, Kendrick, as well as chiropractic manipulation. She also had prior problems with her knees with prior effusions before the advent of the fall 12/29/12. Both situation [sic] are felt to be due to accumulative trauma.

With respect to the causal relationship, Dr. Owen stated:

> Excessive torsion and torque of the knee on the earlier fall. Excessive torsion and torque of the low back on the one-year fall.
>
> This was also within reasonable medical opinion related to her cumulative trauma of being on her feet 10 to 12 hours per day for 38 years as an LPN.

Pursuant to the AMA Guides, Table 17-5, Sparkman's impairment rating for the knees would be 7%. However, utilizing another method of rating based on cartilage interval and relying upon Table 17-31, he

assessed an 8% impairment rating for the right knee and a 3% impairment rating for the left knee. Dr. Owen also concluded Sparkman did not retain the physical capacity to return to the type of work performed at the time of the injury.

Dr. Owen's opinion Sparkman sustained work-related cumulative trauma injuries to both knees qualifies as substantial evidence sufficient to support the ALJ's finding of work-related cumulative trauma injuries to both knees. While the contrary opinions expressed by Dr. Snider and Dr. Brigham may have been articulated in great detail, such testimony represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (Ky. 2003). The alleged lack of explanation by Dr. Owen in support of his opinion Sparkman sustained cumulative trauma injuries to her knees merely goes to the weight and credibility to be afforded Dr. Owen's opinion which was a matter to be decided exclusively within the ALJ's province as fact-finder. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). This Board has no authority to invade the ALJ's discretion in determining the medical evidence upon which he will rely.

The opinions of Dr. Owen that Sparkman sustained cumulative trauma injuries to her knees is amply buttressed

by Sparkman's testimony that she worked thirty-eight years as an LPN for HRMC standing and walking eight to ten hours a day on concrete or tile, and she performed her job without any medical restrictions or complaints from HRMC. The record is clear that Sparkman had, over time, developed extensive right knee problems prior to December 29, 2012. Based on that fact and Dr. Owen's opinion, the ALJ could reasonably infer Sparkman's right knee problems stemmed from her thirty-eight years of work at HRMC. Similarly, on January 9, 2013, Dr. Royalty noted Sparkman reported minimal pain with the left knee range of motion but there was some superficial swelling to the patellar. In his note of January 23, 2013, Dr. Royalty diagnosed left knee prepatellar bursitis. Obvious from his report is the fact Dr. Owen relied, in part, upon the notes of Dr. Royalty in forming his opinion as to the cause of Sparkman's left knee symptoms. As revealed in his Form 107, Dr. Owen reviewed multiple records from Dr. Royalty. Thus, the finding Sparkman "sustained an injury to her knees due to work-related cumulative trauma from being on her feet so many hours during her tenure as an LPN" and "these problems were enhanced by her fall on December 29, 2012," are supported by Sparkman's testimony and the opinions of Dr. Owen.

We find no merit in HRMC's argument the ALJ erred in relying upon Dr. Owen in finding cumulative trauma injuries to the knees since he rejected his opinion Sparkman also sustained cumulative trauma injury to her low back. As previously pointed out, the ALJ is free to accept the opinion of Dr. Owen in finding Sparkman sustained cumulative trauma work-related injuries to her knees, but reject his opinion Sparkman sustained a cumulative trauma low back injury. Sparkman's testimony in conjunction with Dr. Owen's opinions constitute substantial evidence supporting the ALJ's finding Sparkman sustained work-related cumulative trauma injuries to her knees. Hence, we find no error.

Similarly, we find no merit in HRMC's alternative argument the award of PPD benefits should commence on February 26, 2015, rather than December 29, 2012. Important in resolving this issue is the ALJ's findings that Sparkman's knee problems were enhanced by her December 29, 2012, fall. The Kentucky Supreme Court addressed when liability for income benefits begins in a cumulative trauma injury in American Printing House for the Blind ex rel. Mutual Ins. Corp. of America v. Brown, 142 S.W.3d 145 (Ky. 2004). There, the ALJ determined the claimant's gradual injury and disability became manifest on June 5, 2000.

Mutual Insurance Corporation of America, the carrier at risk on June 5, 2000, asserted the injury did not become manifest until January 11, 2001, when a physician informed the claimant of her work-related gradual injury, a date another insurance carrier provided workers' compensation coverage. The Court explained the significance of the date of manifestation as follows:

> Nonetheless, because gradual injuries often occur imperceptibly, we reaffirmed the principle that a rule of discovery governs the notice and limitations requirements for such injuries. We determined that the obligation to give notice and the period of limitations for a gradual injury are triggered by a worker's knowledge of the harmful change and its cause rather than by the specific incidents of trauma that caused it. Nothing in *Alcan* indicated that liability for an injury begins when the notice and limitations requirements are triggered.
>
> In *Alcan,* the workers knew of their hearing loss and knew it was work-related more than two years before they filed their claims. Although they continued to work and to be exposed to harmful noise thereafter, there was no evidence that part of their disability was attributable to trauma incurred within two years before their claims were filed. We concluded, therefore, that the claims were entirely barred by limitations. The principles that *Alcan* addressed were refined in a number of subsequent cases, including *Hill v. Sextet Mining Corp., supra,* in which we determined that a worker is not

> required to self-diagnose the cause of a harmful change as being a work-related gradual injury for the purpose of giving notice.

Id. at 148.

The Court further determined the ALJ did not err in beginning the award of PPD benefits prior to the date of manifestation, opining as follows:

> It is undisputed that the claimant sustained work-related trauma and that harmful changes from the trauma were symptomatic on June 5, 2000. Therefore, she sustained an injury as defined by KRS 342.0011(1) although Chapter 342's notice and limitations provisions were not triggered until she received a medical diagnosis in January, 2001. *See Hill v. Sextet Mining Corp., supra.* As the Court of Appeals noted, nothing prohibits a worker who thinks she has sustained a work-related gradual injury from reporting it to her employer before the law requires her to do so, and nothing prevents her from reporting an injury that she thinks is work-related before a physician confirms her suspicion.

Id. at 148-149.

Here, we find the ALJ's explanation for commencing the award of PPD benefits for the cumulative trauma injuries to the knees on December 29, 2012, to be in conformity with the logic expressed by the Kentucky Supreme Court in American Printing House for the Blind, supra. In his January 19, 2016, Order, the ALJ noted the evidence established every day wear and tear on Sparkman's knees had

a cumulative effect over the thirty-eight years she worked for HRMC resulting in the symptoms in her knees. The ALJ acknowledged he would agree the award should commence on the date of Dr. Owen's examination, but for the fact Sparkman had problems with both knees immediately after she fell on December 29, 2012. He noted she was taken into the emergency room immediately after her fall complaining of pain and swelling in both knees which was documented by the examining physician. In addition, on January 9, 2013, Dr. Royalty documented Sparkman had new symptoms to her left knee while the symptoms in her right knee, for which he had seen Sparkman over several years, had worsened. The ALJ noted that even though Sparkman may have learned in 2015 her impairment was due to cumulative trauma, her disability began over two years earlier when she fell on her knees at work. Based on the above, we find no error in the ALJ commencing the award of PPD benefits for the injuries to Sparkman's knees on December 29, 2012.

Finally, we find no merit in HRMC's second alternative argument asserting there is no error in commencing the award for the injury to the left knee on December 29, 2012, but the ALJ erroneously awarded PPD benefits for the right knee to commence on December 29, 2012. As set forth in American Printing House for the

Blind, supra, nothing prohibited the ALJ from determining the harmful changes from the trauma to Sparkman's knees became either symptomatic or more symptomatic on December 29, 2012, some twenty-six months before she was seen and diagnosed by Dr. Owen. Since the ALJ's findings are supported by the medical records, he was not required to commence the award of PPD benefits for the right knee injury on February 26, 2015, the date of Dr. Owen's examination and diagnosis. The ALJ's finding of work-related injuries to Sparkman's knees and low back and the amount of PPD benefits awarded for each shall be affirmed.

That said, because KRS 342.285 charges this Board with ensuring the award is in conformity with the law, we vacate paragraph two of the award. In that paragraph, the ALJ began the award of income benefits for the knees on December 29, 2012. However, beginning on March 13, 2013, he added the award for the back injury to the award for the injuries to the knees and directed $231.44 per week shall be paid for 425 weeks. That award is erroneous since HRMC is not required to pay $231.44 per week from March 13, 2013, for 425 weeks. The ALJ should have entered an award of $206.48 per week for 425 weeks for the injuries to the knees and a separate award for the low back injury of $24.96 per week for 425 weeks commencing on March 13, 2013.

Accordingly, those portions of the November 4, 2015, Opinion, Award, and Order and the January 19, 2016, Order ruling on the petition for reconsideration finding Sparkman sustained cumulative trauma injury to both knees and the award of income benefits for the knees beginning on December 29, 2012, are **AFFIRMED**. Since HRMC does not contest the finding of a work-related back injury, the finding of a low back injury occurring on March 13, 2013, and the award of income benefits is **AFFIRMED**. However, the ALJ's award of income benefits for the respective injuries as set out in paragraph two is **VACATED**. This claim is **REMANDED** to an Administrative Law Judge, as designated by the Chief Administrative Law Judge, for entry of an amended award containing separate awards for each injury in conformity with the views expressed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON MARCUS ROLAND
P O BOX 910454
LEXINGTON KY 40591

COUNSEL FOR RESPONDENT:

HON RONNIE M SLONE
P O BOX 909
PRESTONSBURG KY 41653

CHIEF ADMINISTRATIVE LAW JUDGE:

HON ROBERT L SWISHER
657 CHAMBERLIN AVE
FRANKFORT KY 40601