Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 24, 2015

CLAIM NO. 201274236

CONTINENTAL MILLS, INC. PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

CHRISTY M. BOWMAN
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

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

RECHTER, Member. Continental Mills, Inc. appeals from the October 20, 2014 Opinion and Order and the November 17, 2014 Opinion and Order on Reconsideration of Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). The ALJ awarded Christy M. Bowman ("Bowman") temporary total disability benefits, permanent total disability benefits, and medical

benefits. On appeal, Continental Mills challenges the sufficiency of the ALJ's analysis regarding permanent total disability benefits. For the reasons set forth herein, we affirm.

Bowman is a 46-year old woman who lives in Nortonville, Kentucky. She is a high school graduate, and also completed at least three semesters of community college. For twelve years, Bowman worked as a part-time clerk in the Nortonville City Hall, which involved the distribution and collection of water bills and city taxes. She also operated her own floral shop for about a year, during which time she handled the accounts for the business. She is experienced using a computer.

Bowman had worked for Continental Mills for less than two months when she was injured on June 14, 2012. In her position as an operator, she worked with different machines and hand tools to change augers. She was lifting an auger, which weighed about 22 pounds, from a vertical shoulder on a cart. Because there was product on her gloves, Bowman was unable to firmly grasp the auger and was pulled over the cart.

Bowman immediately felt a pull in her right shoulder and pain in her neck. She first received physical therapy, then was referred to the company doctor on June 19,

2012. She later visited the emergency room. Eventually, Bowman came under the care of Dr. William Schooley, a neurosurgeon.

Dr. Schooley performed an anterior cervical discectomy and fusion at C6-7 on November 4, 2013. He later opined Bowman sustained an 18% permanent impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides") due to her work-related injury and subsequent surgery. Dr. Schooley does not believe she can return to her pre-injury work, and restricted her from lifting over 50 pounds occasionally or 10-20 pounds repetitively, bending, stooping, reaching, twisting, climbing, and lifting overhead. In a questionnaire dated August 19, 2014, Dr. Schooley responded "no" to the following question: "Can [Bowman] be expected to sustain work on a daily basis (8 hours per day 5 days a week) for extended period of time in your opinion?" He also indicated her condition is not expected to improve.

Continental Mills submitted the medical report of Dr. Robert Weiss. In his January 28, 2014 report, Dr. Weiss opined Bowman reached maximum medical improvement as of the date of his physical examination. Referencing the AMA Guides, he assessed a 10% whole person impairment due to

Bowman's work injury, and recommended restrictions against lifting overhead and repetitive hyperflexion or hyperextension of her neck. He offered no further treatment recommendations for Bowman.

Continental Mills also filed the vocational report of Dr. Luca Conte dated June 12, 2014. Dr. Conte reviewed Bowman's medical treatment and conducted numerous tests. He opined Bowman is capable of returning to full-time work in the competitive labor market. In reaching this conclusion, he relied upon her education, which includes college-level coursework, and her lengthy prior experience in sedentary jobs performing secretarial and clerical work.

The ALJ concluded Bowman suffered injuries to her neck and right shoulder as a result of the June 14, 2012 accident. He determined she is permanently totally disabled, explaining:

> I again make the factual determination that the lay testimony of Mrs. Bowman, as covered above, is very credible and convincing. I also make the factual determination that the medical evidence from Dr. Schooley, the plaintiff's treating neurosurgeon, as covered above, was very persuasive and compelling. Dr. Schooley has an excellent professional reputation as a neurosurgeon. I make the factual determination that Dr. Schooley's medical opinion that under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, the plaintiff

> will sustain as a result of her work-related cervical injury an 18% permanent impairment to the body as a whole is very compelling and persuasive. I also make the determination that Dr. Schooley's medical evidence that the plaintiff cannot perform her old job and has stringent physical restrictions, as covered in great detail in Dr. Schooley's August 19, 2014 medical report, is very persuasive and compelling.
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> "'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 . . . ." Kentucky Revised Statutes (KRS) 342.0011. To determine if an injured employee is permanently totally disabled, an ALJ must consider what impact the employee's post-injury physical, emotional, and intellectual state has on the employee's ability "to find work consistently under normal employment conditions . . . . [and] to work dependably[.]" *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48, 51 (Ky. 2000). In making that determination,
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> > "the ALJ must necessarily consider the worker's medical condition . . . [however,] the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured."

Id. at 52. (Internal citations omitted.) See also, *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979).

Based upon the credible and convincing lay testimony of Mrs. Bowman, which is covered above, and the persuasive and compelling medical evidence from Dr. Schooley, her treating neurosurgeon, which is covered above, I make the determination that Mrs. Bowman will have a serious permanent impairment to the body as a whole as a result of the work-related injuries to her neck which she sustained on June 14, 2012. The parties stipulated that Mrs. Bowman last worked on approximately August 3, 2012, which is over two years ago. Mrs. Bowman is now 45 years of age and is a middle-aged individual. I make the determination that if she went out into the highly competitive job market and attempted to find regular gainful employment, she would have serious difficulties in obtaining regular gainful employment. I make the determination under the credible and convincing testimony of Mrs. Bowman and the persuasive and medical evidence from her treating neurosurgeon, Dr. Schooley, that she is not physically able to work at any regular gainful employment. In making this determination, I rely upon the credible, convincing, compelling and persuasive evidence from the plaintiff and Dr. Schooley and also the decision of the Kentucky Supreme Court in *Hush v. Abrams*, 584 S.W.2d 48 (Ky.1979). I make the factual determination that Mrs. Bowman had a good work history showing a good work ethic, but that she will not be able to return to any regular gainful employment in the highly competitive job market. Based upon all of the above factors, I make the determination that Mrs. Bowman cannot find work consistently under regular work

> circumstances and work dependably. I, therefore, make the determination that she is permanently and totally disabled effective from and after August 19, 2014, at which time Dr. Schooley found that she reached maximum medical improvement.

Continental Mills petitioned for reconsideration, requesting additional findings of fact. It argued the ALJ failed to consider Bowman's significant work history performing sedentary, clerical jobs in determining she is permanently totally disabled. In the November 17, 2014 Opinion and Order on Reconsideration, the ALJ entered the following additional findings of fact:

> Mrs. Bowman testified that she was not physically able to return to her job for the defendant, which required lifting over 50 pounds. She also testified that she cannot return to work at any of her prior jobs. She testified that Dr. Tackett, her treating physician, has prescribed for her prescription medications for the relief of her painful symptoms. She testified that she still has the same symptoms as she did before her neck surgery. She further testified that she has deep aching down her right shoulder and arm and numbness in her right shoulder and arm. In making the determination that Mrs. Bowman is permanently and totally disabled, I weighed those factors in reaching the ultimate conclusion.
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> The plaintiff filed medical reports from Dr. William Schooley, her treating neurosurgeon. The plaintiff's attorney wrote to Dr. Schooley on August 14, 2014, stating that Mrs. Bowman is in

need of an evaluation and impairment rating as a result of her June 14, 2012 injuries to her neck and shoulder. Dr. Schooley responded to that request by stating that under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mrs. Bowman will sustain an 18% permanent impairment to the body as a whole and Dr. Schooley relied on Table 15-5, Category III. Dr. Schooley also responded to the request by the plaintiff's attorney as to whether as a result of her neck injury Mrs. Bowman retains the physical capacity to perform her prior job as a line operator, requiring lifting over 50 pounds, bending, stooping, reaching, twisting, climbing and overhead lifting. Dr. Schooley responded by stating that Mrs. Bowman cannot perform her old job. In his report dated August 19, 2014, Dr. Schooley stated that he was the plaintiff's treating physician from August 9, 2013 to the present and noted his treatment as including diagnostic testing, hospitalizations, surgery and medications. Dr. Schooley stated that in his opinion Mrs. Bowman has the following limitations: Standing – limited to 15 minutes without interruption; Sitting – limited to 15 minutes without interruption; Walking – limited to 2 blocks distance without stopping for rest and Lifting – limited to 2 pounds from floor to waist level. In addition, Dr. Schooley stated that Mrs. Bowman cannot be expected to complete an 8-hour workday under the following conditions: Engaging in light work required lifting 10-20 pounds repetitively. Also the ability to push/pull and use leg control is required as is a great deal of walking and/or standing. Engaging in sedentary work involves lifting up to 10 pounds repetitively. A certain amount of walking and standing is often necessary.

Also, the plaintiff cannot be expected to sustain work on a daily basis (8 hours per day 5 days a week) for extended periods of time and that this condition is not expected to improve. Dr. Schooley noted that he last saw Mrs. Bowman on August 19, 2014.

In making the determination that Mrs. Bowman is permanently and totally disabled, I weighed those factors in reaching the ultimate conclusion.

I saw and heard the plaintiff Mrs. Bowman testify at length at the Final Hearing. I sat a short distance from her and carefully observed her facial expressions during her testimony, carefully listened to her voice tones during her testimony and carefully observed her body language during her testimony. She was a very stoic lady. I am the only decision maker who actually saw and heard her testify. I make the factual determination that she was a credible and convincing lay witness and that her testimony rang true.

In making the determination that the plaintiff Mrs. Bowman is permanently and totally disabled, I weighed all of the above factors in reaching the ultimate conclusion.

Mrs. Bowman is now 45 years of age and is a middle-aged individual. The parties agreed that she last worked on approximately August 3, 2012, which is well over two years ago. The parties agreed that she has no specialized or vocational training.

Dr. Schooley, the plaintiff's neurosurgeon who performed her neck surgery, has an excellent professional reputation as a neurosurgeon. It is

> highly important to note that Dr. Schooley placed upon Mrs. Bowman very stringent physical restrictions, limiting her sitting to 15 minutes without interruption, limiting her standing to 15 minutes without interruption, limiting her lifting to 2 pounds from floor to waist level, limiting her engaging in light work requiring lifting of 10-20 pounds repetitively, limiting her ability to push/pull and use leg control, and stating that she cannot be expected to sustain work on a daily basis for extended periods of time and that her condition is not expected to improve.
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> In making the determination that Mrs. Bowman is permanently and totally disabled, I weighed all of those factors in reaching the ultimate conclusion.
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> In making the determination that if Mrs. Bowman went out into the job market and attempted to find regular gainful employment, even sedentary employment, she would have serious difficulties in obtaining regular gainful employment, I weighed all of those factors in reaching the ultimate conclusion based upon the credible and convincing testimony of Mrs. Bowman, as covered in detail above, and the persuasive and compelling medical evidence from her treating neurosurgeon, and I reached the ultimate conclusion that she is physically unable to work at any regular gainful employment and cannot find work consistently under regular work circumstances and work dependably and that she is, therefore, permanently and totally disabled.

On appeal, Continental Mills argues the ALJ's analysis is insufficient, and requests the claim be remanded

for further fact-finding. A worker is permanently totally disabled when, due to an injury, he "has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury." KRS 342.00(11)(c). Continental Mills correctly emphasizes the ALJ, in making a determination whether an employee is permanently totally disabled, must consider such factors as the employee's post-injury physical, emotional, intellectual and vocational status, and how those factors interact. Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48, 51 (Ky. 2000). Continental Mills asserts the ALJ failed to take into account Bowman's significant experience performing sedentary, clerical work in determining she is permanently totally disabled.

Reading the Opinion and Order together with the Opinion and Order on Reconsideration, we learn the ALJ found Bowman's testimony credible, including her belief she is unable to reliably work due to her ongoing pain. The ALJ also cited Dr. Schooley's opinion that Bowman is physically incapable of reliably working a full work-week, and that her condition is unlikely to improve. Thus, we conclude the ALJ satisfactorily articulated his consideration of Bowman's post-injury physical status.

The ALJ more thoroughly analyzed Bowman's vocational status in the Opinion and Order on Reconsideration. He noted Dr. Schooley restricted Bowman from lifting 10 to 20 pounds repetitively and added, "Engaging in sedentary work involves lifting up to 10 pounds repetitively." The ALJ again emphasized Dr. Schooley's opinion Bowman "cannot be expected to sustain work on a daily basis (8 hours a day 5 days a week) for extended periods of time and that this condition is not expected to improve." Additionally, the ALJ noted Bowman has not worked in over two years.

The ALJ is required to provide a sufficient basis to support his determination and to permit meaningful appellate review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988). The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). In this case, we conclude the ALJ has satisfied this minimum requirement.

In its petition for reconsideration, Continental Mills requested the ALJ to consider how Bowman's work history and acquired skills affects the disability analysis.

The ALJ essentially responded he was most persuaded by the opinions of Dr. Schooley and Bowman that she will be unable to reliably work a full work-week due to her injury. In fact, he repeated this testimony twice in the Opinion and Order on Reconsideration. As fact-finder, KRS 342.285 grants an ALJ the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Therefore, he is entitled to rely upon this proof in rendering his decision. While the ALJ might have more thoroughly discussed Bowman's experience as a clerk and as a small business-owner, he is not required to set forth the minute details of his reasoning. We conclude the ALJ has sufficiently identified the evidence he found most persuasive, and has adequately apprised the parties of the basis of his decision.

For the foregoing reasons, the October 20, 2014 Opinion and Order and the November 17, 2014 Opinion and Order on Reconsideration of Hon. William J. Rudloff, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON CHRISTION HUTSON
POX 995
PADUCAH, KY 42002

COUNSEL FOR RESPONDENT:

HON JAMES CHIP ADAMS
PO BOX 655
HOPKINSVILLE, KY 42241

ADMINISTRATIVE LAW JUDGE:

HON. WILLIAM J. RUDLOFF
PREVENTION PARK
657 CHAMBERLIN AVE
FRANKFORT, KY 40601