

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: August 15, 2013

CLAIM NO. 201201278

CORNETTE'S LLC

PETITIONER

VS.

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

EVAN DELOACH  
and HON. WILLIAM J. RUDLOFF,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION  
VACATING AND REMANDING

\* \* \* \* \*

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

**STIVERS, Member.** Cornette's LLC ("Cornette's") seeks review of the March 1, 2013, opinion and order of Hon. William J. Rudloff, Administrative Law Judge ("ALJ") finding Evan DeLoach ("DeLoach") sustained a work-related cumulative trauma back injury on May 24, 2011, and awarding permanent total disability ("PTD") benefits and medical benefits.

Cornette's also appeals from the April 8, 2013, order overruling its petition for reconsideration.

DeLoach, born December 3, 1987, is a high school graduate. He testified at a November 16, 2012, deposition and the February 28, 2013, hearing. Before his employment with Cornette's, he worked at Lake Barkley State Park as a linen truck driver picking up and delivering laundry. As part of his job he pushed a cart gathering dirty laundry. Before working at the park, he worked at McDonald's where he testified he "learned almost everything" but primarily closed at night.<sup>1</sup> Before working for McDonald's, DeLoach was employed by Study Master, a college bookstore, placing books on the shelves using the Dewey Decimal System. He also worked a short period for his grandfather setting, cutting, and stripping tobacco. DeLoach began working for Cornette's in 2009 as a delivery driver which entailed delivering office supplies, furniture, and copiers.

DeLoach's Form 101 alleges as follows:

[H]e became injured in the course and scope of working for [Cornette's] from his first day of work sometime in 2009 (plaintiff does not remember the exact date of first employment) to last day of work or about May 24<sup>th</sup> 2011.

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<sup>1</sup> His work history reflects he also worked for Subway as a "sandwich artist, cashier, and a closer at night."

He alleged a low back injury with radiculopathy into the left leg and foot. Notice of the injury was given by telling the co-owner, Bobbi, sometime in March 2011 that his back was hurting, and after being seen by Pain Associates of Northern Tennessee, by providing Bobbi a copy of a paper from the clinic.

The February 12, 2013, benefit review conference ("BRC") order reflects the parties stipulated an employment relationship existed at the time of the injury, the average weekly wage, and DeLoach had an educational level of high school graduate. The parties also stipulated:

Plaintiff sustained a work-related injury or injuries on or about 5-24-11. (alleged) cumulative trauma.

The contested issues were as follows: benefit per KRS 342.730; work-relatedness/causation; notice; unpaid or contested medical expenses; credit for unemployment; and TTD.

DeLoach was treated by his family physician Dr. Stuart J. Harris, Dr. Wayne J. Naimoli, Dr. Sirinibasan Periyanyagam, and Pain Associates of North Tennessee. At the request of Cornette's, Dr. Thomas O'Brien, an orthopedic surgeon, performed an independent medical evaluation ("IME") on December 5, 2012.

On appeal, Cornette's challenges the ALJ's opinion and order on two grounds. It argues the ALJ erred in finding DeLoach sustained a cumulative trauma injury and in finding him totally occupationally disabled. Relative to those two issues, in the March 1, 2013, opinion and order, the ALJ concluded as follows:

**A. Work-relatedness/causation.**

KRS 342.0011(1) defines "injury" to mean 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. KRS 342.0011(33) defines "objective medical findings" to mean information gained through direct observation and testing of the patient applying objective or standardized methods.

I saw and heard the plaintiff testify at the hearing and found him to be a credible and convincing witness. Based upon the totality of the evidence, including the plaintiff's testimony and the medical records of Dr. Periyamayagam, the treating physician, I make the factual determination that Mr. DeLoach sustained repetitive motion injuries or cumulative trauma to his back due to his work at the defendant's plant, which became disabling on or about May 24, 2011.

. . . .

**C. Benefit per KRS 342.730; temporary total disability.**

In rendering a decision, KRS 342.285 grants the Administrative Law Judge as fact-finder the sole discretion to determine the quality, character, and substance of evidence. *AK Steel Corp. v. Adkins*, 253 S.W.3d 59 (Ky. 2008). In this case, I find persuasive the medical reports of Dr. Periyamayagam regarding the plaintiff's cumulative back trauma, and I also find persuasive the medical report of Dr. O'Brien, who found that and gave the opinion that the plaintiff will sustain a 5% permanent impairment to the body as a whole under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

"'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, "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).

In the present case, I considered the severity of the plaintiff's work injuries, his age, his work history, his education and the testimony of the plaintiff and the specific opinions of Dr. Periyamayagam and Dr. O'Brien. Based on all of those factors, I make the factual determination that the plaintiff cannot find work consistently under regular work circumstances and work dependably. I, therefore, make the factual determination that he is permanently and totally disabled.

In its petition for reconsideration, Cornette's made the same argument it now makes on appeal. Cornette's also requested the ALJ enter findings in conformity with the proof in the record and determine DeLoach did not meet his burden of proving a cumulative trauma injury and that he is totally disabled due to the injury.

By order dated April 8, 2013, the ALJ overruled the petition for reconsideration stating he had discussed all the contested issues raised by the parties in the BRC order.

The thrust of Cornette's first argument is DeLoach's testimony and Dr. Periyamayagam's treatment notes do not support a finding of a cumulative trauma injury. It

asserts the converse is true, as Dr. Periyamayagam's notes do not reference a work injury and DeLoach testified there was a singular distinct incident which was the "proximate cause of his subjective pain." Cornette's asserts DeLoach specifically identified the exact moment when he believed he was injured.

Cornette's second argument is that even though the ALJ stated his decision was based upon the severity of DeLoach's work injury, his age, his work history, and his education, the ALJ did not "elaborate on any of these factors with any substantial evidence that legitimizes them as deciding factors."

Cornette's contends the impairment rating assessed pursuant to the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") is not evidence of the type of injury which would result in a complete and permanent inability to perform any type of work. It argues the work injury had a minimal permanent impact on DeLoach's ability to perform all of his daily activities. Further, none of the physicians provided any physical restrictions, and Dr. Stuart Harris, DeLoach's family physician, provided an unrestricted work release on June 6, 2011. In addition, Dr. O'Brien stated DeLoach did not require any "activity

restrictions" and once he was weaned of his narcotic addiction would be able to work.

Cornette's argues the ALJ did not explain why DeLoach's young age is a factor in determining he is permanently totally occupationally disabled. Cornette's also argues DeLoach's previous work did not involve physically demanding work, and there is no indication DeLoach is physically precluded from performing any of his previous employment. Cornette's requests "dismissal of the cumulative trauma award." Alternatively, it requests the matter be remanded to the ALJ with directions to enter an award of permanent partial disability ("PPD") benefits based on a 5% impairment rating.

DeLoach, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since DeLoach was successful in that burden, the question on appeal is whether there was 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). 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).

A cumulative trauma injury must be distinguished from an acute trauma injury where a single traumatic event causes the injury. In Randall Co./Randall Div. of Textron, Inc. v. Pendland, 770 S.W.2d 687, 688 (Ky. App. 1989), the Kentucky Court of Appeals adopted a rule of discovery with regard to cumulative trauma injury holding the date of injury is "when the disabling reality of the injuries becomes manifest." (emphasis added). In Special Fund v. Clark, 998 S.W.2d 487, 490 (Ky. 1999), the Supreme Court defined a cumulative trauma injury as follows:

Our opinion in *Alcan Foil Products v. Huff* explained that in *Randall Co. v. Pendland* it had been recognized that because of the manner in which a gradual injury develops, the worker will not be aware that an injury has been sustained until it manifests itself in the form of physically and/or occupationally disabling symptoms. We noted that, unlike the case with KRS 342.316 which controls claims for occupational disease, the period of limitations set forth in KRS 342.185 is not tolled by continued employment after the worker becomes aware that a work-related gradual injury has been sustained. We pointed out that the notice requirement also arises with the manifestation of disability and that one of the purposes of the notice requirement is to give the employer an opportunity to take measures to minimize the worker's impairment and, hence, its liability. In view of the foregoing, we construed the meaning of the term "manifestation of disability," as it was used in *Randall Co. v. Pendland*, as referring to physically and/or occupationally disabling symptoms which lead the worker to discover that a work-related injury has been sustained.

In other words, a cumulative trauma injury manifests when "a worker discovers that a physically disabling injury has been sustained [and] knows it is caused by work." Alcan Foil Products v. Huff, 2 S.W.3d 96, 101 (Ky. 1999). A worker is not required to self-diagnose the cause of a harmful change as being a work-related cumulative trauma injury. See American Printing House for the Blind v.

Brown, 142 S.W.3d 145 (Ky. 2004). Rather, a physician must diagnose the condition and its work-relatedness.

In cumulative trauma claims, the date upon which the obligation to give notice is triggered by the date of manifestation. Special Fund v. Clark, supra. Pursuant to KRS 342.185(1), a claimant has two years "after the date of accident" or following the suspension of payment of income benefits to file a claim. The Court of Appeals, in the case of Randall Co./Randall Div. of Textron, Inc. v. Pendland, supra, stated as follows regarding the clocking of the statute of limitations in the case of a cumulative trauma claim:

We therefore conclude that in cases where the injury is the result of many mini-traumas, the date for giving notice and the date for clocking a statute of limitations begins when the disabling reality of the injuries becomes manifest.

Id. at 688

However, the holding of Pendland, supra, is tempered by the holding of Manalapan Mining Co., Inc. v. Lunsford, 204 S.W.3d 601, 605 (Ky. 2006) in which the Kentucky Supreme Court determined the two-year period in KRS 342.185(1) operates as both a period of limitations and repose for gradual injuries and "such a claim may expire

before the worker is aware of the injury." Here the statute is not an issue.

Substantial evidence does not support the ALJ's factual determination DeLoach "sustained repetitive motion injuries or cumulative trauma to his back." Rather, the evidence establishes DeLoach did not experience a cumulative trauma injury and there was no manifestation of disability as defined in Special Fund v. Clark, supra. The evidence firmly establishes any work injury was due to acute trauma. During his November 16, 2012, deposition, DeLoach described the acute trauma injury:

Q: Now, was there any specific injuries that you remember while working with Cornett's [sic]?

A: Yes.

Q: Can you tell me a little bit more about that, like, when it happened, what happened?

A: A lot of heavy paper days. There was furniture days.

Q: So it gets - what I'm taking from what you're saying is that there were multiple times when there would be heavy lifting that, you know, may or may not have contributed or hurt your back, or the other injuries that you're complaining of?

A: Well, there was - there was a lot of times I was - I was really sore and thought I would nev-- never get better and a few days would go by and I'd be -

I would feel like I was getting better and keep going to work and doing everything like I was.

Q: So, it was one of those things where you get pretty wore down, understandably, and then kind of be able to rest a little bit and come back usually?

A: Yes, sir.

Q: So at what point did it get beyond this and you felt like you needed to seek out medical treatment for it or might need to take some time off work?

A: I was packing a - a - a huge Canon copier and we had to pack it up 15 steps and my supervisor made me go up, I - I went up the steps backwards and just had an awful pain in my lower back like it ripped or popped or something. I didn't think I was going to make it up the steps, but we still pushed it one by one to the top.

Q: And you said that day you just felt a pain in your lower back?

A: Yes, sir. It shot all the way down my leg -

Q: Okay.

A: -- up my spine.

DeLoach testified he told his supervisor, Roger Mammoth ("Mammoth") about the injury. However, DeLoach testified that during his meeting with Mammoth and the boss, which occurred after he received a termination letter, Mammoth "lied about that." He testified that the

day the incident occurred he also told Bobbi, the owner, he thought he hurt himself.<sup>2</sup> DeLoach was unable to recall the date the injury occurred.

At the February 20, 2013, hearing, DeLoach provided more specific testimony regarding the injury he sustained. He testified on the day he was injured, he and the general manager, Mammoth, were delivering a copier which weighed around 400 pounds to "Cal-Maine" located in Todd County. He explained after they got the copier out of the van and rolled it into the hallway they were required to go up fifteen steps with the copier. Mammoth made him go up the stairs backwards which meant he was bent over as he was going up backwards. DeLoach's specific explanation is as follows:

Q: Yeah. So tell us about that. Had you gotten it out of the van?

A: Yes, we got it out of the van. And there was a lift at the door. We got it through the door, and we went through another hallway, and then there was 15 steps. We had to go up the 15 steps and  
- -

Q: Were you on the low end or high end of that?

A: The boss made me go up backwards.

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<sup>2</sup> Although the deposition transcript incorrectly reflects the owner's name is Bobby, and DeLoach did not provide her last name, other records indicate the owner to whom he spoke was Bobbi Dassow, a co-owner.

Q: All right. So you were bending over and going backwards up these steps. How much do you think that copier weighed?

A: They said it was close to 400 pounds. It was one of the biggest ones we've had.

Q: Well how in the world could two people carry 400 pounds up 15 steps? It must not have weighed that much.

A: Well I guess they thought we could pick up 200 apiece.

Q: Well you don't know how much it weighed though.

A: No sir.

Q: You're just going on what somebody told you?

A: Yes.

Q: All right. Well your best estimate was it weighed 400 pounds?

A: That's what our supervisor or general manager said; that this is one of the biggest ones that they make.

Q: And who was that, the general manager?

A: It was Roger.

Q: The guy who was with you when this happened?

A: Yes.

Q: So what happened? You were carrying it up the steps, so what happened? You say you got hurt, so what happened?

A: I was carrying it up the steps. The steps was so short and my feet, I wear a size 11-1/2 shoe. And when I was bent over, my toes would hit the bottom of the machine. And I'd have to take one leg and go out from under it and stand on one leg, and go up to the next step and then pull up another one on one leg. And that's when I heard, just sort of like a sound, and just horrible pain. I had to set it down on a step. And then I left my general manager holding it, and he was telling me to hurry up, that he can't hold it much longer.

Q: And what did you tell him?

A: I told him, I said I hurt my back, I did something to it.

Q: Do you remember the date of that?

A: I cannot remember the precise date.

DeLoach was asked about the documents obtained from Cornette's, introduced as Exhibit 1 to the hearing transcript, which reflect he may have been injured on January 11, 2011, while working with Nathan Wilson. After considering the information in the documents, DeLoach was still unable to provide an injury date. One of the documents comprising Exhibit 1 is a page with handwritten notations, under the heading "Evan." The document reflects as follows: 1-11-11 "hurt back - carrying 85 cases of paper and copy machine," "Nathan Wilson with copier" "Bill Rush paper (Ft. Campbell)." "Told Roger 1-11-11." "Told Bobbi 1-

13-11." "Frank called with worker's comp. 1/18/11." "1-19-11 (Bill Rush) - Evan said nothing about hurting his back nor did he look like he hurt it!" "1-19-11 (Nathan) writing up statement."

Also included as a part of Exhibit 1 is a handwritten note bearing the date 5/20/11 referencing a call received from DeLoach. The note indicates DeLoach wanted to return to work. There is only one notation regarding an alleged work injury. The notation reveals DeLoach indicated he was not trying to come after Cornette's, that his injury was from a pre-existing condition and his insurance was rejecting his bills "because of pre-existing." In addition, there is another page which appears to be a handwritten account from Nathan Wilson describing the event occurring on January 11, 2011. Wilson indicates he was with DeLoach delivering a copier to the Second Baptist Church. He acknowledged DeLoach said his back was hurting due to moving the copier. No other documents regarding a report of an injury were introduced.

Clearly, DeLoach's testimony refutes the presence of a cumulative trauma injury. Rather, his testimony establishes the work injury he may have sustained was an acute trauma injury which occurred in the course of delivering a copier.

Further, we are unable to determine how the ALJ concluded the injury became disabling on or about May 24, 2011. Clearly, May 24, 2011, cannot be the manifestation date as the records reveal no physician advised DeLoach on that date he had sustained an injury and that the injury was work-related. Dr. Periyamayagam's records do not constitute substantial evidence of a cumulative trauma injury. Dr. Periyamayagam's October 18, 2012, note reflects DeLoach was working at Cornette's, "and used to pack and move heavy equipment" and he did not have a specific injury. Dr. Periyamayagam did not express the opinion DeLoach sustained a cumulative trauma injury while working for Cornette's. Similarly, Dr. Periyamayagam's October 30, 2012, note reflects an impression of "bulging at L5-S1" and "left lumbar radiculopathy" and again makes no reference to any type of injury, work-related or otherwise. Dr. Periyamayagam's records do not substantiate the existence of a work-related cumulative trauma injury.

Moreover, DeLoach did not testify he had been advised he had sustained a work-related cumulative trauma injury. Thus, there is no factual basis for the ALJ's determination DeLoach suffered a repetitive motion or cumulative trauma injury to his back which became disabling on or about May 24, 2011. The only significance we can

find to May 24, 2011, is the parties' stipulation DeLoach last worked for Cornette's on May 24, 2011. However, three of the documents comprising Exhibit 1 to the hearing testimony reveal DeLoach was not working for Cornette's on May 24, 2011. Further, the medical records of DeLoach's physicians make no reference to May 24, 2011.

Although not referenced by the ALJ, Dr. Naimoli's September 17, 2012, and November 16, 2012, records reflect in March 2011 DeLoach "was lifting and pulling 400 pounds up stairs." He noted during this process, DeLoach "hurt his back with pain going down left leg." DeLoach reported back pain to his manager but no report was filed. Interestingly, the March 31, 2011, record of Pain Associates of North Tennessee reveals DeLoach was a new patient and provided a history on that date of complaints of left hip, mid-back, and leg pain which started in 2009.

Thus, the ALJ erred in determining that "based upon the totality of the evidence," including DeLoach's testimony and Dr. Periyanyagam's medical records, DeLoach sustained a cumulative trauma back injury which became disabling on or about May 24, 2011. More importantly, although the ALJ indicated the injury became disabling, he never made a specific finding as to when there was a

manifestation of disability as defined by Special Fund v. Clark, supra.

In summary, we find nothing in the record which supports a finding of a cumulative trauma injury which manifested on May 24, 2011. The record reveals DeLoach was not advised on May 24, 2011, he had sustained an injury and the injury was work-related. The medical records are completely silent regarding a diagnosis of a cumulative trauma injury. Dr. Periyamayagam's records, upon which the ALJ relied, are completely silent regarding a diagnosis of a cumulative trauma injury which manifested on May 24, 2011. DeLoach's testimony clearly establishes he did not sustain a cumulative trauma injury. Therefore, the ALJ's determination DeLoach sustained a cumulative trauma back injury which became disabling on or about May 24, 2011, and the award of PTD and medical benefits must be vacated.

On remand, we believe the ALJ is permitted to determine whether DeLoach sustained a specific acute trauma injury while working for Cornette's. Both parties elicited testimony from DeLoach regarding specific injuries which occurred while he was moving a copier. DeLoach's testimony reveals he may have been injured when he and the general manager were delivering a 400 pound copier. Exhibit 1 introduced at the hearing contains documents generated by

Cornette's indicating DeLoach may have been injured on January 11, 2011, as there are notations regarding a potential injury on that date. Further, Dr. Naimoli's records indicate DeLoach may have been injured in March 2011 while lifting and pulling 400 pounds up the stairs. Therefore, although the Form 101 alleged a cumulative trauma injury, we believe the issue of whether DeLoach sustained a specific injury was tried by consent of the parties. As previously noted, DeLoach testified during his deposition and at the hearing he was injured on a specific date while moving a copier. Further, in his argument to the ALJ at the hearing, DeLoach argued, without objection, as follows:

MR. HAWES: . . .

But for argument sake, I think it's a cumulative case. I think that's obvious. But for argument sake, let's call it a specific injury. And we've got uncontroverted testimony that it happened on a specific date and the injury was witnessed by a supervisor. So when it happened becomes sort of immaterial at that point. But like I say, we probably would have had an injury date if the defendant had done what they were supposed to do.

Maybe this does work best as a specific injury case. We have uncontroverted testimony of the lifting incident with a dramatic increase in symptoms, and went off work after that, and was told he couldn't come back

without 100%, and was fired. All we're missing is the specific date.

And it looks like from the whole record here, what sketchy records they did keep on Mr. DeLoach [sic], shows that there were probably two injuries, if you want to get specific about it. One on 01/11/11, whatever that exhibit says, its' [sic] hen scratched all over the record that he had an injury on that date. And that's not the same, it's not described as the Cal-Maine incident. So there's probably two specific dramatic events if it's an injury case. And if you've got to have a date, then just go with the one they wrote down there, which they didn't turn into DWC.

Therefore, the claim will be remanded to the ALJ for a determination of whether DeLoach sustained a work-related acute trauma injury while in the course of his employment with Cornette's.

We would be remiss in not discussing DeLoach's November 16, 2012, affidavit. In his affidavit, DeLoach states his job involved man-handling large commercial copy machines, loading and unloading them, and then carrying them up and down stairs. He asserts this was a "very heavy labor job" and he hurt his back many times. Eventually his back "got so bad" he went to a pain clinic in Clarksville, Tennessee on his own and learned he had something wrong with his back which might need surgery.

Since then he has seen Dr. Naimoli, a Hopkinsville neurologist, who recommended he see Dr. Periyamayagam who recommended back surgery. He indicated he received a letter from Michael Burman terminating his employment at Cornette's.

We point out the ALJ did not rely upon this document. With respect to DeLoach's assertion the pain had worsened to the extent he went to a pain clinic in Clarksville, Tennessee and learned he had something wrong with his back, the "New Patient Pain Visit" form of Pain Associates of North Tennessee reflects he was being seen for left hip, mid back, and leg pain which started in 2009. The only other document in the record generated by Pain Associates of North Tennessee is dated June 7, 2011, and it indicates DeLoach is waiting on a neurosurgery evaluation which is in progress. There is a notation "straighten out misunderstanding about work." DeLoach's affidavit does not state he was advised he sustained a gradual injury which was work-related. More importantly, the record contains no medical testimony establishing DeLoach sustained a work-related cumulative trauma injury. Significantly, DeLoach did not testify he was advised he sustained a cumulative trauma injury. Rather, his testimony is entirely consistent with a specific trauma injury.

Further, we find the ALJ did not provide the basis for his determination DeLoach is totally occupationally disabled. In making the determination DeLoach was totally disabled, the ALJ made the general statement he relied upon the severity of the injury, DeLoach's age, his work history, his education, and his testimony as well as the opinions of Drs. Periyamayagam and O'Brien. Leaving aside the fact Dr. Periyamayagam did not diagnose an injury of any type, a review of his records reveals he indicated surgery was necessary but did not impose any physical restrictions nor provide any limitations on DeLoach's ability to work. In short, aside from stating DeLoach needed surgery, Dr. Periyamayagam's records contain no opinions.

In his brief, DeLoach cites to a portion of Dr. Periyamayagam's history contained in his October 18, 2012, record; however, we interpret that as being a summarization of the history DeLoach provided. Except for the recommendation of surgery, the portions relied upon by DeLoach are not Dr. Periyamayagam's opinions. Dr. Periyamayagam offered no opinions concerning physical restrictions and DeLoach's physical capacity to perform any type of labor. Thus, we are unable to conclude what

opinions of Dr. Periyamayagam the ALJ relied upon in determining DeLoach is permanently totally disabled.

Dr. O'Brien, upon whom the ALJ also relied, believed DeLoach's physical symptoms were attributable to lumbar degenerative disc condition which is advanced for someone of his young age. He acknowledged DeLoach had symptoms in the lower extremity consistent with nerve root impingement. Dr. O'Brien concluded the April 11, 2011, MRI revealed objective findings of a progressive degenerative condition which had been ongoing for years prior to the onset of his symptoms in early 2011. He believed DeLoach had reached a point in the progression when he started having pain. In spite of all these problems, Dr. O'Brien testified once DeLoach was weaned from the narcotic medication "cold turkey," he would be able to work. Dr. O'Brien's December 5, 2012, report is consistent with his testimony as he expressed the opinion, regardless of the causation issue, DeLoach did not require any active restrictions. He believed DeLoach would benefit from correct lifting techniques and body mechanics but was safe to pursue unrestricted activities including work without risk of causing harm or injury to himself and others. Thus, we are unable to discern the opinions of Dr. O'Brien

upon which the ALJ relied in determining DeLoach is permanently totally disabled.

Given the ALJ's reference to the opinions of Drs. Periyamayagam and O'Brien without identifying the specific opinions or providing further explanation for his reliance on these doctors' opinions, their opinions do not constitute substantial evidence in support of the ALJ's determination DeLoach is totally occupationally disabled.

Finally, although the ALJ indicated he considered DeLoach's testimony, the seriousness of his injuries as well as his age, work history, education, and testimony, he did not elaborate further on how these factors cause DeLoach to be permanently totally disabled. As the ALJ cannot rely upon the opinions of Drs. Periyamayagam and O'Brien without further explanation, we conclude the mere citation to DeLoach's testimony does not sufficiently identify the portions of his testimony upon which he relied. We note the summary of DeLoach's testimony in the opinion and order is scant at best.

As pointed out by Cornette's, DeLoach's injury merited only a 5% impairment rating. DeLoach's age certainly cuts against the determination he is totally occupationally disabled. In addition, DeLoach's testimony does not indicate he is incapable of performing his

previous job at Lake Barkley Resort, McDonald's, Subway, or Study Master. DeLoach indicated those jobs did not involve heavy work. Moreover, although DeLoach testified Drs. Periyamayagam and Naimoli imposed restrictions, which he could not remember, there are no restrictions contained within the records of Drs. Periyamayagam and Naimoli. Similarly, the ALJ did not explain how DeLoach's educational level factored into his decision.

This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. 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). However, the ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982).

In summary, the ALJ did not identify substantial evidence in the record which supports his finding of permanent total disability. Dr. Periyamayagam's opinions do not support the ALJ's decision, and Dr. O'Brien's opinions are contrary to the ALJ's conclusion DeLoach is totally occupationally disabled. Similarly, the mere reference to the various factors and DeLoach's testimony without further explanation and citation to specific testimony does not provide a sufficient basis for the ALJ's decision.

Accordingly, the ALJ's determination DeLoach sustained a cumulative trauma injury while working for Cornette's which became disabling on May 24, 2011, and the award of PTD benefits as set forth in the March 1, 2013, opinion and order, and the April 8, 2013, order ruling on Cornett's petition for reconsideration are **VACATED**. This claim is **REMANDED** for additional findings of fact and rendition of an amended opinion consistent with the views expressed herein. The ALJ shall specifically address whether DeLoach sustained an acute trauma injury and provided timely notice of the injury. In his opinion, the ALJ shall cite to the specific evidence upon which he relied, in the form of findings of fact, so as to advise the parties and this Board of the basis for his decision.

Further, should the ALJ determine DeLoach sustained a work-related injury and provided timely notice of the injury, he shall then revisit the issue of DeLoach's occupational disability in accordance with the views expressed herein.

ALL CONCUR.

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