Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 29, 2016

CLAIM NO. 201401921

CUMBERLAND RIVER COAL CO. PETITIONER

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

PHILLIP PRESTON EVANS
and HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Cumberland River Coal Company ("Cumberland River") appeals from the July 21, 2005, Opinion, Award, and Order and the August 26, 2015, Order on Petition for Reconsideration of Hon. Steven Bolton, Administrative Law Judge ("ALJ"). The ALJ found Phillip Preston Evans ("Evans") sustained work-related cumulative trauma injuries to his neck, low back, and knees and awarded permanent

partial disability ("PPD") benefits enhanced by the three multiplier and medical benefits.

On appeal, Cumberland River asserts the ALJ's finding Evans has a 27% impairment rating and is unable to return to his pre-injury work is erroneous based upon the evidence in the record.

The Form 101 alleges Evans sustained the cumulative trauma injuries on July 18, 2014.

Evans' February 23, 2015, deposition was introduced and he testified at the March 24, 2015, hearing. Evans, now 59 years old has a work history of working solely as an underground coal miner for 38 or 39 ½ years. He worked for Cumberland River or its predecessor Scotia Mining, Inc. for 34 years. Evans last worked on Friday, July 18, 2014. When he reported to work on Monday, July 21, 2014, Cumberland River advised him and the other employees it was shutting down the mine. Evans testified the closure was a surprise as the employees were previously advised by Cumberland River the mine would continue to operate.

In the last ten years of his employment with Cumberland River, Evans worked as a face man. This required him to take care of the belts to ensure they were running at all times. He was charged with aligning,

changing, and cleaning the belts. He was also required to put rock dust on the belts. Evans testified that working on the belts required him to be a contortionist as he was constantly on his knees turning and twisting his back and neck. He estimated he lifted items weighing forty pounds, such as timbers and bags of rock dust, up to items weighing eighty-four pounds, such as structures. Evans was also required to constantly bend and twist at the waist and use his arms and hands.

Prior to working as a face man, Evans had worked eighteen years as a roof bolter. The roof bolter job also required him to constantly bend and twist at the waist and use his arms and hands. He was also constantly moving his neck. Evans estimated the roof bolter job entailed regularly lifting between forty and fifty pounds.

Evans testified he missed no work for health reasons prior to the mine closure. He worked approximately fifty to sixty hours each week. Just before the mine closure, he worked ten hours a day, six days a week.

Evans testified he had been treated by Dr. April Hall at Mountain Comprehensive Health Corporation ("MCHC") for back and neck problems approximately four months before the mine closed. In the course of her treatment, Dr. Hall

referred Evans to Dr. Sujata Gutti who conducted “nerve tests.” An MRI and a CAT scan were also ordered.

Evans testified he began experiencing neck and back symptoms in 2010, and his symptoms began to worsen in 2013. He is unable to turn his neck without experiencing pain and a popping sensation. His neck is stiff and when he lays on his right side it pops and cracks. He also experiences numbness in his right arm when he lays on his right side. He cannot sit or stand any length of time without experiencing back pain. Evans provided an example of being unable to stand long enough to fry an egg without experiencing back pain. He regularly flexes both knees to alleviate the pain.

Even though Evans had informed Cumberland River he was going to retire before the mine closure, he continued to work until the closure. Since he had such a good work record Cumberland River worked around his physical problems. Evans believed that at the end of his employment he was unable to perform the face man job to his satisfaction. He did not take any narcotics for his problems while working for Cumberland River but instead began taking Ibuprofen when his symptoms increased. Evans testified he has lost flexibility in his neck, back, and knees. He admitted he did not file a report of injury.

Evans relied primarily upon the Form 107-I completed by Dr. Robert Hoskins and his supplemental report. Cumberland River relied upon the report of Dr. Gregory Snider. Both parties introduced the records from MCHC.

In the Opinion, Award, and Order, the ALJ provided, in relevant part, the following Analysis and Findings of Fact and Conclusions of Law:

> **ANALYSIS**
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> As to the issues of work-relatedness/causation, injury as defined by the ACT, and exclusion for preexisting disability/impairment, I must first determine whether the claimant has suffered from often imperceptible, gradual, repeated or recurring work-related mini-trauma events occurring over an extended period of time resulting in in a cumulative trauma injury.
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> Mr. Evans testified at length about his employment history with almost 39 years of underground mining, much of that with the Defendant/Employer or its predecessors. The claimant in a worker's compensation case bears the burden of proof and risk of non-persuasion as to each and every element of the claim, including work relatedness. *See* Snawder v. Stice, 576 S.W.2d 276 (Ky. App., 1963). Pursuant to KRS 342.0011, an injury must be work-related and be the **"proximate cause"** producing a harmful change in the human organism in order to be compensable. (Emphasis ours).
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> . . .

Here, the employer argues that Mr. Evans never missed a day of work due to injury and I should consider that of persuasive significance in finding him to be essentially unaffected by cumulative trauma. However, the facts of the case are much more complex than that.

First is Mr. Evans own testimony, which is unchallenged by any contrary lay testimony. He testified at length concerning the extreme twisting and frequent contorting of his body to perform his functions as a roof bolter and belt tender. Prior to July 18, 2014, the last day he worked, he had been employed as an underground coal miner for thirty-nine and a half years. Evans was employed by the defendant for thirty-four years, and operated a roof bolter for eighteen of those years. During the last ten years he worked, Evans was a belt tender. He worked in coal heights ranging from thirty inches to twelve feet, but usually worked in coal around fifty inches high. Because the mine top was low most of the time, Evans had to bend his neck, waist and knees while working.

To perform the job of roof bolter, Evans was either stooped or on his knees, continuously flexing and extending his arms and hands as he operated the controls of the machine that drilled holes in the mine roof, and as he installed glue cartridges, bolts and plates. For safety reasons, Evans also had to flex his neck repetitively in order to see that the top was secure prior to drilling each hole. In order to handle the drill steel, push in the glue cartridges and assemble the bolts and plate prior to torquing, Evans was constantly twisting his spine at the waist. In addition to putting up bolts, during each of the

ten to fifteen intervals per shift when the bolting machine changed places, Evans had to handle lengths of tensioned cable weighing around sixty pounds. At other times, he handled forty to fifty pounds routinely.

As a belt tender, it was Evans' job to service and maintain the belts, shovel spilled coal, spread rock dust, repair and replace damaged machinery components, and perform belt splices. To do the job, according to Evans, "You about had to be a contortionist". He had to kneel often to shovel loose coal and to throw it back onto the belt, while also twisting at the waist. To travel the belts, Evans operated a piece of machinery that required him to keep his neck inclined to one side to see where he was going. Each shift, he lifted fifty bags of rock dust weighing forty pounds each and poured them into a rock dusting machine. He also frequently handled pieces of belt structure weighing at least eighty-five pounds (top) and sixty pounds (bottom), as well as roof support timbers weighing thirty to forty pounds each.

The Defendant/Employer argues that Mr. Evans did not complain of any injury until after he was laid off. That is not exactly accurate. Reference is made in the record to a back injury he had in 2012, for which no records are preserved. Mr. Evans testified that he had a couple of weeks of treatment including physical therapy, then it did not incapacitate him further. However, he also said that for several years he has had increasing discomfort in his neck, back and knees that he treated with ibuprofen. He testified that the employer has made accommodation for him over the past few years by allowing him

to work at his own pace and capability on a given day.

The medical record bears him out. I noted that on May 1, 2014, a MRI of the lumbar spine without contrast was performed by Dr. Robert Darrell Buck, M.D., Radiologist that showed moderate to severe degenerative disc disease at L1-L2, L2-L3, L4-L5 and L5-S1. Dr. Buck compared the May 1, 2014 MRI to an August 24, 2012 MRI of the same segments of the lumbar spine and found significant deterioration of the affected segments in the latter image.

The medical records of Mountain Comprehensive Health Corporation show that when Mr. Evans went to Dr. Hall on April 9, 2014, he had complaints of both low back and neck pain. This was 3+ months prior to the mine closing of July 21, 2014.

Dr. Hall diagnosed at that time cervicalgia, arthropathy, and low back pain. These problems were followed on 5/22/2014 and 8/26/2014, both pre and post mine-closing.

X-rays of Mr. Evans' knees showed mild degenerative changes on 4/23/2014. X-rays taken of the cervical spine by Dr. Philip A. Marino, M.D., Radiologist on 4/29/2014 were read by him as showing cervical spondylosis with degenerative disc disease at C6-C7. X-rays taken of the lumbar spine by Dr. Marino on 4/9/2014 were read by him as showing lumbar spondylosis.

Dr. Hall referred Mr. Evans to a neurologist, Dr. Sujata Gutti, M.D., when he complained of upper extremity symptoms. He first saw Dr. Gutti for a consultation on June 17, 2014 a month before he knew of the mine closing. Dr. Gutti performed thorough neurological

and musculoskeletal examinations. She diagnosed bilateral arm and hand paresthesia, which she attributed to bilateral carpal tunnel syndrome with "some diabetic neuropathy and also ... some component of cervical radiculopathy; "cervicalgia with arm radicular symptoms with some component of cervical myelopathy"; "diabetic polyneuropathy"; and "cervical spondylosis with myelopathy." On July 1, 2014, Dr. Gutti ordered cervical MRI studies that showed spinal stenosis, "moderate DJD," "moderate annular bulge at C5-6 with moderate osteophytes," "severe DJD," "moderate central herniation," "moderate to large osteophytes," and "spinal stenosis" at C6-7. Dr. Gutti conducted EMG/NCV studies of Evans' upper extremities that were consistent with diabetic polyneuropathy, bilateral cervical radiculopathy, right carpal tunnel syndrome and ulnar neuritis. She did not examine the lumbar spine.

Dr. Robert C. Hoskins, M.D. performed an IME at the request of plaintiff's counsel. Dr. Hoskins testified by means of a Form 107-I report dated October 8, 2014, attached to Evans' Form 101, and a supplemental report in the form of a letter to plaintiff's counsel dated March 16, 2015, filed in rebuttal.

Dr. Hoskins testified that Mr. Evans had impairments of sixteen percent to his cervical spine; eight percent to his lumbar spine; and impairments of two percent each to his left and right knees, a combined whole person impairment (WPI) of twenty-seven percent. Dr. Hoskins attributed Evans' impairments to cumulative effects of the work activity he performed as an underground coal miner, as detailed in

the "Description of Functional Requirements of Work Activity" form completed by Evans, and referenced in section K of, and attached to, Dr. Hoskins' Form 107-I report, filed along with Evans' Form 101. Dr. Hoskins stated Evans did not retain the physical capacity to return to the type of work performed at the time of his cumulative trauma injuries, the last day of his employment by the defendant. He also restricted Evans from physical activities that have been more particularly described and enumerated herein above.

Dr. Gregory T. Snider, M.D. testified by a narrative report dated February 25, 2015. He is the Defendant/Employer's IME physician. Dr. Snider assessed Evans no cervical spine impairment, but "reserve[d] the right to revise this assessment, as appropriate, if additional records are made available."

Dr. Snider admitted he had not reviewed the report of the upper extremity electrodiagnostic testing conducted by Dr. Gutti, as well as other records of Evans' treatment. Dr. Snider assessed a seven (7%) percent impairment to Evans' lumbar spine, but attributed five (5%) percent of the rating to a 2012 back injury, one (1%) percent to work activity, and one (1%) percent to "obesity, age and other factors."

Dr. Snider concluded Evans' knees were not impaired because his examination of them was "benign," there was no "radiographic abnormality," and "no evidence of mechanical instability," although he did note there was "mild crepitus" of the knees.

Regarding work status, Dr. Snider found Evans would have “some limitations” due to the condition of his right hand, which had been injured in 1975, and due to “obesity, deconditioning, diabetic neuropathy and CWP,” but imposed no restrictions due to cumulative trauma.

While I have the highest respect for Dr. Snider, and indeed have relied on his opinion in numerous cases, I believe that in this case he was a victim of too little information. The fact that Dr. Snider had not reviewed significant portions of Evans’ past and current medical data, including the records of Evans’ 2012 lumbar spine treatment and the report of his 2012 lumbar MRI studies, Dr. Gutti’s office notes and electrodiagnostic study reports, and the report of the MRI studies of Evans’ cervical spine made on July 3, 2014, significantly eroded the relevance of his opinion to the facts of the case. Dr. Hoskins [sic] supplemental report was effective in rebutting Dr. Snider’s opinion, which did not seem in many parts to rest on the facts in the record.

For instance, he ascribed substantially the same rating to Mr. Evans’ lumbar spine as did Dr. Hoskins, but then opined that 5% of the total 7% was due to a 2012 low back injury about which he had no information (at least that appeared in the record). The only evidence that I saw was that it was relatively minimal and resolved after about two weeks of PT. That came from the plaintiff. The only other evidence reflecting on that event was Dr. Buck’s comparison of a 2012 MRI of the plaintiff’s lumbar spine (not in the record) with the results of a 2014 MRI of the same sections, which according to Dr. Buck’s reading/ comparison

showed a significant deterioration in two years. A medical opinion that has been corrupted by inaccurate or incomplete information is not substantial evidence which could support an award of benefits to a claimant. Cepera v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky., 2004) [sic].

For these reasons, I find the medical opinion of Dr. Robert C. Hoskins, M.D., to be the most complete, concise, compelling and persuasive medical evidence in the record concerning the mediacl [sic] issues presented in this claim.

Thus, as to the issues first presented…the threshold issues of work-relatedness/causation, injury as defined by the ACT, and exclusion for preexisting disability/impairment, I find that the claimant has suffered from often imperceptible, gradual, repeated or recurring work-related mini-trauma events occurring over an extended period of time resulting in in [sic] a work-related cumulative trauma injury.

Based on the medical testimony of Dr. Robert C. Hoskins, M.D., which I find to be persuasive and upon which I rely, I find that as the direct and proximate result of that cumulative trauma, Mr. Evans has suffered a 27% whole person impairment (WPI).

Further, I find that Mr. Evans does not retain the physical capacity to return to the type of work that he performed at the time of the date of trhe [sic] injury. In making this finding, I rely on the medical testimony of Dr. Hoskins (assigned permanent restrictions) and the expert vocational testimony of Dr. Ralph M. Crystal, Ph.D., I find to be persuasive.

. . .

Mr. Evans is therefore entitled to an award of permanent partial disability based on a 27% disability rating with the application of a "3" multiplier. KRS 342.730 (1) (c) 1.

In the case at hand, the injury consists of cumulative trauma to the cervical and lumbar spines, as well as the bilateral knees, implicit in the finding of a gradual injury is a finding no single instance of workplace trauma caused an injury of appreciable proportion. Hill v. Sextet Mining Corp., 65 S.W.3d at 507(Ky. App. 2000). For that reason, the date triggering the obligation to give notice is the "manifestation of disability," which is the date a worker first learns he has sustained a gradual injury and knows it is due to his work. Alcan Foil Products, a Division of Alcan Aluminum Corp. v. Huff, 2 S.W.3d 96 (Ky. 1999). Moreover, in claims involving cumulative trauma, a worker is not required to give notice until first informed by a physician that the condition is work related. *Id.* In this case, that date is June 23, 2014, the date upon which Dr. April Hall, D.O. advised him he was disabled from coal mine [sic] and other employment by his impairing conditions.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

1. Stipulations between the parties as set out herein above.

2. Findings of fact and conclusions of law as rendered and set out by the undersigned ALJ in the foregoing Analysis.

3. The plaintiff suffered cumulative trauma as the direct and proximate

result of often imperceptible, gradual, repeated or recurring work-related mini-trauma events occurring over an extended period of time that arose out of and in the course of his employment with the defendant/employer, Cumberland River Coal Co. KRS 342.0011(1).

4. In making this finding, I rely on the medical opinion of Dr. Robert C. Hoskins, M.D., by which I am persuaded and the history given under oath by the claimant, Phillip Evans.

5. I find the cumulative trauma suffered by the plaintiff to be an 'injury' as defined by the Act. KRS 342.0011(1).

6. I do not find that the plaintiff's work related cumulative trauma consists in any part of the effects of the natural aging process of a prior, active pre-existing disease or condition. To the extent that any such pre-existing condition did exist, I find that it was aroused into disabling reality by the cumulative trauma suffered by the claimant. In making this finding, I rely on the opinion of Dr. Hoskins as well as the opinion of Dr. Buck, the radiologist, by which I am persuaded.

7. I find claimant's date of injury to be July 18, 2014, the last date of his active employment with the employer.

8. I find the plaintiff, Phillip Evans, to be entitled to an award of permanent partial disability benefits (PPD), calculated as follows: $1,4000.00 (AWW) x 66 2/3 = $576.80 (employee max.) x .27% = $155.74 x 1.35 (grid factor) = $210.24 x 3.4 (multiplier) = $714.83 per week. KRS 342.0011(11)(b); KRS 342.730(1)(b); KRS 342.730(1)(c)1.

> 9. The plaintiff was not temporarily, totally disabled. KRS 342.0011(11)(a).
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> 10. The plaintiff is entitled to future medical benefits for the cure and relief from the effects of his cumulative trauma. KRS 342.020.

Cumberland River filed a petition for reconsideration rearguing its position and requesting the ALJ to reverse his decision and find the report of Dr. Snider more credible. Finding Cumberland River failed to identify a patent error, by order dated August 26, 2015, the ALJ denied the petition for reconsideration.

In support of its argument, Cumberland River emphasizes Evans worked every shift he was scheduled to work and worked eleven hours a day, six days a week until he was laid off due to economic reasons. It notes that during this time, Evans continued to perform the same job he performed the last ten years. Cumberland River contends the records of MCHC establish Evans sustained a low back injury in 2012 but he continued to work. MCHC's February 24, 2014, record indicates Evans was seen for problems related to his diabetes, and no mention was made of any musculoskeletal complaints. Cumberland River observes the subsequent records of MCHC reveal Evans complained of neck and back pain; however, there were no restrictions placed on his work activities and the treating physicians did not

prescribe medication for musculoskeletal problems. It also notes on all subsequent visits there were no complaints of symptoms in all of the affected anatomic regions. Cumberland River maintains the records of MCHC establish Evans was seen for problems other than musculoskeletal complaints, and on all those occasions, there was no mention of musculoskeletal complaints. Thus, it argues Evans' "actions speak louder than words."

Cumberland River attacks the ALJ's determination Evans sustained a work-related cervical problem, noting on April 9, 2014, he did not complain of any neck pain or problems. It asserts Evans did not follow up for any neck problems up until the time of the mine closure. Further, it notes Evans voiced no cervical complaints at the time of or shortly after the layoff. Thus, Cumberland River asserts it is not credible to rely upon the opinions of Dr. Hoskins as to the alleged cervical injury. It concludes by arguing as follows:

> Here, the objective evidence does not establish a cervical impairment. The only evidence that establishes cervical impairment is the IME report of Dr. Hoskins. Respondent did not complain of cervical pain, except for the one visit prior to the lay off [sic]. Dr. Hall referred Respondent to Dr. Gutti for a work-up. Upon receipt of Dr. Gutti's report, Dr. Hall did not make a diagnosis relative to

> Respondent's cervical spine nor did she provide any treatment or place any restrictions on Respondent's activities. Respondent continue [sic] to perform his usual work up until the lay off [sic]. Since the lay off [sic], Respondent has not received any documented treatment for his alleged cervical spine injuries. As noted by Dr. Hoskins at the time of his evaluation, Respondent stated that his primary complaints [sic] was to his low back. In order to qualify as an injury under the Act, Respondent must have objective evidence. This case compels a finding that Respondent does not have objective evidence of cervical complaints. More specifically, objective evidence of cervical complaints which limited Respondent's work and/or ability to perform his usual coal mine employment.
>
> WHEREFORE, the Petitioner respectfully submits that the evidence in this case compels a finding consistent with Dr. Snider's finding that Respondent does not have a cervical spine impairment related to the Respondent's alleged cumulative trauma. That Respondent is not disabled from performing his pre-injury position and in fact was performing his pre-injury position, full-time and full-duty until he was laid off.

Based on the above, we discern Cumberland River raises as errors the ALJ's determinations Evans sustained a cumulative trauma cervical injury and he is precluded from performing his pre-injury job justifying enhancement of the award by the three multiplier.

Evans introduced the Form 107-I of Dr. Robert Hoskins dated October 13, 2014. Within the Form 107-I Dr. Hoskins provided the results of his physical examination. Dr. Hoskins noted the results of x-rays on April 23, 2014, of the knees reveal "mild degenerative changes." A May 1, 2014, MRI of the lumbar spine revealed: "1) degenerative disc and facet joint disease moderate to severe; 2) L1-2 and L2-3 annular bulging; 3) L4-5 and L5-S1 central disc herniations." The July 3, 2014, MRI of the cervical spine revealed: "1) C5-6 and C6-7 canal stenosis; 2) C6-7 central disc herniation; 3) C6-7 degenerative joint disease severe; and 4) C3-4, C4-5, and C5-6 annular bulging." The July 1, 2014, EMG/NCV study revealed in relevant part: "1) bilateral mid cervical radiculopathy; 2) sensorimotor diabetic polyneuropathy; 3) right median neuropathy at wrist moderate; and 4) ulnar neuritis. Dr. Hoskins provided the following diagnoses:

1. C6-7 central disc herniation
2. Bilateral mid cervical radiculopathy- electrophysiologically verified
3. Multilevel cervical disc bulging and degenerative joint disease
4. C5-6 & C6-7 canal stenosis
5. Cervical sprain/strain
6. L4-5 & L5-S1 central disc herniations
7. Multilevel lumbar degenerative disc & facet joint disease
8. L1-2 & L2-3 annular bulging

9. Lumbosacral sprain/strain
10. Right lumbosacral radiculitis
11. Bilateral tibiofemoral & patellofemoral arthritis
12. Right median neuropathy at wrist-electrophysiologically verified
13. Sensorimotor diabetic polyneuropathy

Dr. Hoskins opined that within a reasonable degree of medical probability, Evans' injuries are the cause of his complaints. Under "explanation of causal relationship," Dr. Hoskins opined as follows:

> Within a reasonable degree of medical probability, Mr. Evans' spinal and knee impairments are secondary to occupational cumulative trauma sustained over his long history of employment in the coal-mining industry.

Dr. Hoskins assessed a 27% impairment rating comprised of the following: 16% (DRE Category III) for the cervical spine; 8% (DRE category II) for the lumbar spine; 2% for the left knee; and 2% for the right knee. Evans had no active impairment prior to the injury. He opined Evans does not retain the physical capacity to return to the type of work he performed at the time of injury. Dr. Hoskins assessed several restrictions, including no lifting greater than twenty pounds, no lifting greater than 10 pounds below waist level, no overhead lifting, and no heavy pushing, pulling, or carrying.

Also in the record is the March 16, 2015, report of Dr. Hoskins in which he commented on Dr. Gregory Snider's February 25, 2015, report and impairment rating. Dr. Hoskins opined, in part, as follows: "Dr. Snider did not fulfill the criteria set out in the Guides required to deliver a reliable opinion on the issue of apportionment of causation."

Dr. Hoskins noted that in assessing no impairment rating for the cervical spine, Dr. Snider admitted he had not reviewed the report concerning the July 1, 2014, EMG/NCV of Evans' upper extremities conducted by Dr. Gutti which were consistent with cervical radiculopathy. Consequently, Dr. Snider reserved the right to amend his impairment rating. Based on the positive electrodiagnostic test results and significant signs of radiculopathy elicited during the physical examination, Dr. Hoskins concluded Evans was entitled to a rating within DRE Cervical Category III of 15% to 18% pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). An impairment rating within this range is to be assessed when a neurological examination discloses significant sign of dermatomal pain and/or sensory loss or reflex loss or muscle strength loss or atrophy. In the course of his

examination of Evans, Dr. Hoskins detected abnormal findings of cervical muscle guarding, loss of cervical range of motion, grip strength loss, paraspinal muscle tenderness and diminished sensation in both upper extremities. Thus, the clinical and diagnostic findings were sufficient to support the Category III cervical impairment assessed pursuant to the AMA Guides.

With respect to Dr. Snider's finding Evans' knee examination was benign, although Evans had no radiographic abnormalities or mechanical instability, Dr. Hoskins noted Dr. Snider failed to consult Table 17-31 of the AMA Guides and evaluate Evans' knees for arthritis. Table 17-31 allows assessment of a 2% to 5% impairment rating even when the cartilage intervals are normal, if there is trauma to the knee joint, complaints of joint pain, and crepitus on physical examination. As a result, he assessed a 2% impairment to each knee due to cumulative trauma, pain, and crepitus.

Dr. Snider noted the lumbar MRI performed on May 1, 2014, ordered by Dr. Hall when compared to an August 24, 2012, MRI revealed mild to moderate bulges at L1-2 and L2-3 and moderate central herniations at L4-5 and L5-S1. All of those findings were said to be slightly larger or worse than the previous study. As a result, Dr. Snider observed

Dr. Hall's May 22, 2014, note indicates Evans had a neurology appointment. Dr. Snider assessed a 7% impairment rating of the lumbar spine of which he attributed 5% to a June 2012 work injury, 1% to the work-related exposure, and 1% to obesity, age, and other factors. Thus, there is no question Evans sustained a cumulative trauma low back injury.

Also of significance is the report of MCHC which demonstrates that when Evans was seen on April 9, 2014, his neck and back pain had worsened. That report lists cervicalgia and low back pain among many of Evans' chronic problems. Although subsequent records do not indicate Evans uniformly complained of neck, back, and knee problems on all occasions, there is a notation that the symptoms in one or more of the alleged problem areas had worsened. The April 23, 2014, and May 22, 2014, reports continue to list cervicalgia and low back pain as chronic problems. The August 26, 2014, report indicates on that date Evans had a worsening of his low back pain and cervicalgia.

The July 1, 2014, report of Dr. Gutti relied upon by Dr. Hoskins is also in the record which was accurately summarized by Dr. Hoskins.

Evans, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential

elements of his cause of action, including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Evans 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).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to determine all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). 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). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

The opinions of Dr. Hoskins, the records of MCHC, and Evans' testimony constitute substantial evidence supporting the ALJ's determination Evans sustained work-related cumulative trauma injuries to his neck, low back, and knees. Cumberland River's challenge to the finding of a cumulative trauma cervical injury has no merit as the evidence amply supports the ALJ's determination Evans sustained a work-related cumulative trauma neck injury as well as cumulative trauma injuries to the low back and both knees.

In both the Form 107-I and his supplement, Dr. Hoskins clearly identified the objective medical evidence supporting his diagnosis of a work-related cumulative

trauma cervical injury. Similarly, he also provided the objective medical evidence in support of his finding Evans sustained cumulative trauma injuries to the lumbar region and both knees. We note Cumberland River does not assert the impairment ratings assessed by Dr. Hoskins are not in conformity with the AMA Guides. Rather, it asserts Dr. Hoskins' opinions are not credible since Evans did not miss any work up until and including his last day of work on July 18, 2014. Implicit within the ALJ's analysis is his belief that Evans' testimony he continued to work with pain in his neck, low back, and knees was credible. Evans' testimony firmly establishes cumulative trauma injuries to the alleged body parts while working for Cumberland River were within the realm of probability as his employment with Cumberland River, for well over the majority of the time he worked in underground coal mines, entailed strenuous manual labor. Evans' testimony in conjunction with Dr. Hoskins' opinions and the records of MCHC amply support the ALJ's determination Evans sustained cumulative trauma injuries to his neck, low back, and both knees.

With respect to all issues before him, the ALJ determines the weight and credibility to be afforded the testimony. This function is exclusively within the ALJ's province as fact-finder, and this Board has no authority to

disturb the ALJ's authority. Since Evans' testimony, the records of MCHC, Dr. Hoskins' opinions, and portions of Dr. Snider's report constitute substantial evidence supporting the ALJ's determination Evans sustained work-related cumulative trauma injuries meriting a 27% impairment rating, we are without authority to disturb the ALJ's decision. Special Fund v. Francis, supra.

Similarly, the ALJ's determination Evans does not retain the physical capacity to return to the type of work he performed at the time of injury must also be affirmed as Dr. Hoskins' opinions constitute substantial evidence in support of the ALJ's decision. Since the ALJ found Evans' testimony credible, his testimony constitutes substantial evidence supporting enhancement by the three multiplier is appropriate. *See* Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000); Carte v. Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000); Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979).

In making this determination, the ALJ also relied upon the vocational testimony of Dr. Ralph Crystal. In his report of March 9, 2015, based upon the assessments from Dr. Hoskins, Dr. Crystal opined Evans was able to perform a range of light duty work with the ability to alternate positions, limit postural activities, and limit the use of

his right hand. Evans qualified for non-repetitive manufacturing, clerical, cashier, service, sales, and clerk work activities. Dr. Crystal's opinion, based on the restrictions of Dr. Hoskins, demonstrates Evans does not possess the capacity to return to the job which he was performing on July 18, 2014, the last day of his actual employment with Cumberland River. Since the opinions of Dr. Hoskins and Dr. Crystal constitute substantial evidence, the ALJ's finding Evans does not retain the physical capacity to return to the type of work he performed at the time of the injury and is entitled to enhanced benefits pursuant to KRS 342.730(1)(c)1 must also be affirmed.

Accordingly, the July 21, 2015, Opinion, Award, and Order and the August 26, 2015, Order ruling on the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON DENISE DAVIDSON
P O DRAWER 986
HAZARD KY 41702

COUNSEL FOR RESPONDENT:

HON SHERRY BRASHEAR
P O BOX 1626
HARLAN KY 40831

ADMINISTRATIVE LAW JUDGE:

HON STEVEN BOLTON
657 CHAMBERLIN AVE
FRANKFORT KY 40601