Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 24, 2014

CLAIM NO. 200395433

DANA CORPORATION PETITIONER

VS. **APPEAL FROM HON. J. GREGORY ALLEN, ADMINISTRATIVE LAW JUDGE**

MARTIN ROBERTS
and HON. J. GREGORY ALLEN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Dana Corporation seeks review of the May 14, 2014, Opinion, Order & Award of Hon. J. Gregory Allen, Administrative Law Judge ("ALJ") entered on reopening finding Martin Roberts' ("Roberts") motion to reopen was not barred by KRS 342.125(3) and Roberts to be permanently totally disabled. Dana Corporation also appeals from the

June 6, 2014, Order overruling its petition for reconsideration.

On appeal, Dana Corporation argues Roberts' motion to reopen for increased income benefits due to a change of disability is barred by the four-year statute of limitations contained in KRS 342.125(3).

The injury giving rise to this claim occurred on September 24, 2001. The Form 110, settlement agreement approved by Hon. Shelia Lowther, Administrative Law Judge, on February 5, 2004, describes the occurrence of the injury as follows: "lower back pain/climbing on/servicing equipment, lower back pain from servicing a machine." The Form 110 lists the nature of the injury as "lower back pain/disc bulge – spinal fusion done." The Form 110 indicates a two level fusion was performed by Dr. David Rouben who assessed a 23% permanent impairment rating. Roberts did not waive his right to future medical benefits or right to reopen. The total settlement amount was $44,693.00.

On February 11, 2011, Roberts filed a motion to reopen seeking temporary total disability ("TTD") benefits and payment for medical treatment. The motion in part provided the history of his medical treatment and the fact Dr. Rouben had performed bilateral neural decompression on

July 30, 2003. Roberts asserted that on April 10, 2010, he began to experience intermittent back pain which had increased over the last few months.[1] Because of his symptoms, Dr. Rouben recommended a lumbar MRI. Roberts provided the results of the lumbar MRI and represented that on May 12, 2010, after reviewing the recent MRI, Dr. Rouben recommended L2-L3 facet blocks which were performed by Dr. David Linkous on June 15, 2010. On July 7, 2010, Dr. Rouben recommended "extending Roberts' fusion up one level through a posterior TLIF approach to the L2-L3 level." On August 30, 2010, Dr. Rouben recommended surgery and restricted Roberts from walking. On October 15, 2010, Dr. Rouben again recommended surgery. Roberts asserted on November 8, 2010, Dr. Rouben noted the October 27, 2010, lumbar MRI showed thickening of the facet joint at the disc space segment above Roberts' fusion at the L2-3 level. Dr. Rouben noted the L2-3 disc levels were the source of his discomfort and pain. Roberts stated KRS 342.125(4) necessitates the filing of a prospective motion to reopen to preserve his right to TTD benefits should Dana Corporation fail to voluntarily pay benefits while he was restricted from work. Thus, he was prospectively filing

[1] During his April 4, 2011, deposition, Roberts testified he last worked for Dana Corporation on July 6, 2010.

the motion to reopen to preserve his right to TTD benefits for all periods he is restricted from work. Roberts attached the medical records of Dr. Rouben, Norton Audubon Hospital, and the Department of Workers' Claims.

On February 11, 2011, Dana Corporation filed a response and objection to the motion. On March 9, 2011, Hon. J. Landon Overfield, Chief Administrative Law Judge, concluded Roberts had set forth a *prima facie* case for reopening and sustained his motion to reopen to the extent the claim would be assigned to an Administrative Law Judge for further adjudication. Thereafter, the claim was assigned to Hon. Lawrence F. Smith, Administrative Law Judge ("ALJ Smith").

The parties introduced proof after which a July 19, 2011, hearing was conducted by ALJ Smith. On September 19, 2011, ALJ Smith rendered an Opinion, Order, and Award finding the procedure recommended by Dr. Rouben was reasonable, necessary, and work-related. Consequently, Dana Corporation was responsible for the payment of medical expenses relating to the treatment which included fusion surgery recommended by Dr. Rouben. Dana Corporation was also responsible for the payment of TTD benefits from the date of surgery until Roberts was determined to have reached maximum medical improvement ("MMI").

Roberts filed a petition for reconsideration and on September 17, 2011, ALJ Smith entered an order amending the order in part as requested by Roberts but overruling the remaining portion of his petition for reconsideration.[2] No appeal was taken from ALJ's Smith's decision.

On April 10, 2013, Dana Corporation filed a motion and affidavit to terminate TTD benefits. It represented that on November 24, 2011, Roberts underwent extensive surgery. Dana Corporation stated Dr. Ellen Ballard conducted an independent medical examination ("IME") on February 13, 2013, and concluded Roberts had reached MMI after the November 2011 surgery on November 1, 2012.

Roberts filed a response to the motion to terminate TTD benefits arguing Dr. Rouben was still treating him and believed he may attain MMI on May 16, 2013, Roberts' next appointment.

On May 23, 2013, Roberts filed a "Motion to Reopen for Increased Impairment, Changed and Worsening of Condition, and Total Occupational Disability." In his motion, Roberts provided a chronology of his medical treatment by Dr. Rouben. Roberts alleged there had been a

[2] In the November 17, 2011, Order, ALJ Smith corrected a typographical error in the opinion.

change or worsening of his condition since the settlement agreement as Dr. Rouben had since performed lumbar fusion surgery in 2011. Roberts noted that in 2003 Dr. Rouben assessed a 23% whole person impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Roberts maintained that pursuant to the AMA Guides he now falls within DRE Category V which requires a minimum 25% whole person impairment. Roberts asserted he is now unable to return to any type of work as a result of the injury.

On April 29, 2013, Dana Corporation filed a response to the motion to reopen for increased impairment asserting in part Roberts' motion was barred by KRS 342.125(3).

On May 6, 2013, the claim was reassigned to Hon. Alison Emerson Jones, Administrative Law Judge ("ALJ Jones").

On June 13, 2013, ALJ Jones entered an order sustaining Dana Corporation's motion to terminate TTD benefits effective June 13, 2013. ALJ Jones also overruled Dana Corporation's motion to dismiss and sustained Robert's motion to reopen for increased impairment to the extent she would set a proof schedule. In that same order she set a proof schedule.

During the course of the proof taking, the claim was reassigned to the ALJ. Following introduction of the evidence, the ALJ conducted a hearing and entered the Opinion, Order, and Award which is the subject of this appeal. The ALJ first determined Roberts' motion to reopen alleging total occupational disability was not barred by the statute of limitations reasoning as follows:

> **Statute of limitations on motion to reopen to allege worsening of permanent disability:** Obviously, the threshold issue in this case is whether the plaintiff's motion to reopen to allege a worsening of permanent disability is barred by the four-year statute of limitations set forth in KRS 342.125 (3). That section reads as follows,
>
> > (3) Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2.,or for reducing a permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.
>
> This statute has been interpreted

by our Supreme Court in the case of Hall v. Hospitality Resources, Inc., 276 S.W.3d 775 (Ky. 2008) as meaning that the 4 year statute of limitations on reopening for worsening of permanent disability is tolled by any previously issued order by an ALJ granting or denying TTD benefits and that such an order acts to restart the 4 year period to file a motion to reopen for worsening of condition or occupation disability.

In the case at bar, the plaintiff clearly moved to reinstate TTD benefits and compel payment of the surgery recommended by Dr. Rouben well outside of the 4 year period from the date of the original settlement agreement. However, ALJ Smith found the surgery compensable, ordered the defendant to pay for same and ordered the defendant to reinstate TTD benefits from the date of surgery until such time as plaintiff achieved MMI. Therefore, the plaintiff's 4 year time period in which to reopen to allege worsening of permanent disability was re –started. The plaintiff's motion was filed on April 17, 2013, within 4 years after the ALJ's order of September 19, 2011.

Defendant argues that the holding in Hall is not binding to the facts in the case at bar as the motion to reopen there was made within the four year period after the original opinion while the motion in the case at bar was made will after the expiration of that period.

However, in the case at bar, the initial Order of ALJ Smith reopening the claim and awarding TTD and medical benefits in the form of a proposed surgery acted to "restart" the four year period in which to move to reopen

> for any reason. The ALJ does not read Hall as being so limited to defeat the plaintiff's motion herein.
>
> Therefore, the plaintiff's motion to reopen to allege increased impairment, changed and worsening condition and total occupational disability is timely filed.

As previously noted, the ALJ concluded there had been a worsening of Roberts' condition and he is now totally occupationally disabled. Dana Corporation filed a petition for reconsideration again arguing, as it does on appeal, Roberts' motion is barred by KRS 342.125(3) and Hall v. Hospitality Resources, Inc., 276 S.W.3d 775 (Ky. 2008) is not applicable in this case. Roberts also filed a petition for reconsideration.

On June 16, 2014, the ALJ entered an order overruling Dana Corporation's petition for reconsideration as it had not cited patent error appearing on the face of the Opinion, Order, and Award.[3]

On appeal, Dana Corporation argues Roberts filed his motion to reopen seeking additional TTD benefits on February 1, 2011, which was six years after the prior settlement was approved on September 5, 2004. Dana

[3] Another Order was entered on June 16, 2014, pursuant to Roberts' petition for reconsideration correcting a typographical error in the May 14, 2014, Opinion, Order, and Award.

Corporation concedes Roberts' motion for TTD benefits and medical benefits was not subject to the statute of limitations and was properly filed. However, it argues the subsequent motion alleging a worsening of impairment and seeking to be determined totally occupationally disabled was filed more than four years after the date of settlement. Consequently, it is barred by the provisions of KRS 342.125(3).

Dana Corporation also argues Hall v. Hospitality Resources, Inc., supra, is not applicable as the facts in that case are different from the facts in the case *sub judice*. It notes that in Hall, the motion to reopen was filed within four years of the date the settlement was approved. Here, Roberts filed a motion to reopen almost seven years after approval of the original settlement. Thus, it argues Hall does not control. Dana Corporation argues KRS 342.125(3) cannot be interpreted to permit a reopening for an increase in impairment or a worsening of condition when no motion has been filed within four years of the prior award.

Dana Corporation observes the Supreme Court determined in Radco Asbestos Specialist, Inc. v. Lyons, 295 S.W.3d 75 (Ky. 2009) a motion seeking TTD benefits may be filed at any time during the period of the award which

includes the period during which the claimant is only entitled to continuing medical benefits. Thus, a claimant is able to file a motion to reopen at any time after a prior settlement. Consequently, under the ALJ's interpretation a denial or grant of TTD benefits pursuant to a motion filed four years after a prior settlement or award permits a subsequent motion to reopen seeking either increased PPD benefits or permanent total disability benefits due to an alleged worsened condition or impairment. Dana Corporation insists this interpretation would completely eviscerate the four year statute of limitations set forth in KRS 342.730(3). It concludes by arguing as follows:

> At a minimum, it must be interpreted to preclude the filing of a motion to reopen based on the grounds set forth in KRS 342.125(1)(a-d) where no prior motion seeking to reopen under those grounds been filed within four (4) years of an original award or order granting or denying benefits.

As noted by Dana Corporation, the facts in Hall v. Hospitality Resources, Inc., supra, differ substantially from the facts in the case *sub judice*. Hall suffered a work-related low back and cervical spine injury on April 9, 1995. On July 22, 1997, the claim was settled with the parties agreeing income benefits would be based on a 60%

permanent partial disability. Hall continued to receive treatment and in December 2007 underwent an additional cervical procedure involving fusion at two cervical disc levels. Due to the surgery, on January 10, 2001, Hall filed a motion to reinstate TTD benefits which was sustained by the CALJ on February 14, 2001. The CALJ ordered Hall's TTD benefits reinstated beginning December 7, 2001, and continuing until she reached MMI. Because Hall had difficulty recovering and had not reached MMI, she continued to receive TTD benefits for over seventeen months. The Supreme Court noted that if calculated from the date of the original award, the four year statute of limitations expired on July 22, 2001, six months following entry of the order awarding TTD benefits and almost eleven months before Hall reached MMI. The Supreme Court also noted as follows:

> After gathering medical opinions necessary to show both a "change of medical condition" and "occupational disability," Hall filed a motion to reopen on November 7, 2003, seeking an increase in her disability award. The motion was filed within two years and nine months of the February 14, 2001, order granting benefits, but more than four years from the "original award" of July 22, 1997.

Id. at 778.

Following the introduction of proof, the ALJ to whom the claim was assigned entered an award finding Hall had shown a change in her medical condition and occupational disability to the extent she was permanently totally disabled.[4] This Board reversed holding the four year statute of limitations was to be calculated from the date of the original award and the matter was not automatically reopened for consideration of total disability benefits by virtue of the motion seeking TTD benefits. Thus, the motion to reopen was not timely filed. The Court of Appeals affirmed. The Supreme Court reversed holding as follows:

> It is now apparent that these previous interpretations of KRS 342.125(3), by the Court of Appeals and this Court, have put claimants such as Hall in the untenable position of attempting to avoid their holdings by (1) filing premature motions to reopen, even though the claimant *has not reached MMI* and thus *cannot realistically determine and apprise the tribunal of the required degree of change,* [footnote omitted] or (2) being forced to forego promised benefits by allowing the statute of limitation to expire while actively receiving medical treatment *designed to achieve the MMI* necessary for such a motion, where MMI (and thus the existence of objective medical, disability and occupational evidence) *occurs* post-limitation

[4] The CALJ had already determined Hall's motion to reopen alleging a change of disability was timely filed.

period. Surely workers' compensation cases for injured claimants should be decided on "their merits rather than on the basis of gamesmanship." [cite omitted] Thus, we are compelled by the patent absurdity of this result to question our earlier analysis of the legislature's intent regarding the statutory language at issue.

. . .

Given our further analysis, the conclusion that an "order granting or denying benefits" was tended to encompass an order granting benefits *different* than an original award or settlement is compelling. Thus, the reference in KRS 342.125(3) to the "the original award or order granting or denying benefits," must necessarily refer not only to the original award, but to any *subsequent* order granting or denying benefits. Any contrary interpretation leads to absurd results, as well as a violation of the clear spirit of the Kentucky Workers' Compensation Act. [cite omitted] ("We refuse to afford an interpretation to the statute that would create irrational distinctions yielding absurd results that would serve to undermine the purpose of the Workers' Compensation Act."). "We have often said that statutes will not be given [such a] reading where to do so would lead to an absurd or unreasonable conclusion." [cites omitted]

The Appellant's motion, therefore, was clearly filed within the four year period of the statute of limitations contained in KRS 342.125(3), as the motion to reopen filed on November 7, 2003, was within four years from the February 14, 2001, order *granting benefits.* [footnote omitted] An order

denying a motion to reopen under the *prima facie* principles of *Hodges* and *Stambaugh,* on the other hand, would not constitute an *order granting or denying benefits,* as a denial of a motion to reopen for failure to make a *prima facie* showing does not deal with benefits, but rather whether or not there are grounds to reopen and take proof akin to a motion to re-docket. *Cf., Hodges, 182 S.W.3d at 500; see also Stambaugh, 488 S.W.2d at 681*.

In contrast, it has been suggested that if KRS 342.125(3) is interpreted to mean that a subsequent order granting or denying TTD benefits would renew the four year period allowed for reopening, then the four year period would effectually be nullified by the filing of successive frivolous motions *ad infinitum.* We do not succumb to this argument. Nor do we agree that a medical fee dispute encompasses benefits, as benefits relate only to "income" benefits. *Cf.,* KRS 342.730.

In the case of motions to reopen to increase or decrease monetary benefits filed within the limitation period set out in KRS 342.125(3), it is unrealistic to even suggest that one could file motions to reopen every four years for the purpose of preventing the four year period of limitation from ever ending, as the motion to reopen must make a *prima facie* showing of sufficient grounds for an award under the standard of *Hodges* and *Stambaugh*.

. . .

With regard to motions for TTD benefits, this could not be the case, as KRS 342.125(3) refers to a motion seeking TTD benefits *during the period of the award,* which for anything less

> **than a total disability award, cannot exceed 425 weeks (8.17 years) or 520 weeks (10 years), depending on the disability rating for which the award was made. KRS 342.730(1)(d).**

Id. at 785-786. (emphasis added).

Approximately nine months later, in Radco Asbestos Specialists, Inc. v. Lyons, supra, the Supreme Court reversed its stated position in the last paragraph cited above holding as follows:

> We affirm. As used in KRS 342.125(3), the period of "an award" includes the period of any medical and income benefits awarded. The claimant's award included both income and future medical benefits. His motion to reopen seeking TTD was timely because although the period of partial disability benefits had expired, the period of medical benefits had not expired.

Id. at 76.

> . . .
>
> Although KRS 342.730(1) provides income benefits for periods of 425 or 520 weeks, KRS 342.020(1) entitles an injured worker to medical benefits "during disability," a period that extends for so long as an injury causes impairment as defined by the AMA *Guides to the Evaluation of Permanent Impairment.* [footnote omitted] Thus, a worker whose injury produces a worsening of impairment may reopen in order to seek TTD, regardless of whether the previous impairment rose to the level that warranted permanent income benefits or whether the period of any previously-awarded income benefits has expired. Despite the

> employer's assertion, this presents no conflict with KRS 342.730(4), which terminates a worker's entitlement to *all* income benefits, including TTD, upon a worker's eligibility for old-age social security retirement.

Id. at 78.

We can find no support for Dana Corporation's argument that Hall v. Hospitality Resources Inc., supra, mandates that in order to extend the four year statute of limitations in KRS 342.125(3), a motion seeking TTD benefits must be filed within four years of the original award or settlement. In Hall, supra, the Supreme Court stated that if calculated from the date of the original award, the four year statute of limitations expired on June 22, 2000, six months following entry of the order awarding TTD benefits and eleven months before Hall reached MMI. It then noted that after gathering the necessary medical proof showing a change of medical condition and occupational disability, Hall filed a motion to reopen seeking an increase in her award of disability benefits within two years and nine months from the Order granting benefits but more than four years from the "original award" of July 22, 1997. Id. at 778. The Supreme Court later stated that as a practical matter it took many months to put together experts and expert reports making the appropriate

medical/legal comparison between the prior permanent disability and a permanent total disability as well as the other documentation required by the regulations. Id. at 781. After noting this can only occur after the attainment of MMI, it observed MMI occurred eleven months after the alleged expiration of the limitations. Id.

The only statement within the opinion which could conceivably be supportive of Dana Corporation's position is the statement on pages 778 and 779 wherein the Supreme Court noted Hall's motion to reopen seeking TTD benefits was clearly filed within four years of the original settlement approved on July 22, 1997. However, the Supreme Court did not attribute any significance to this fact. Rather, it noted if the limitation was intended to mean four years from the "original decision" it is fair to assume the legislature would not have added the additional language of "or order granting or denying benefits." Id. at 785. Significantly, the Supreme Court then added "the conclusion that an order granting or denying benefits was tended to encompass an order granting benefits different than the original award or settlement is compelling." Therefore, the language in KRS 342.125(3), "the original award or granting or denying benefits," refers not only to the original award order but to any subsequent order

granting or denying benefits. Id. In all of its discussion, the Supreme Court did not directly or by implication state in order to extend the four year statute of limitations a motion seeking TTD benefits must be filed within four years from the original award or settlement. Rather, the Supreme Court stated, the motion seeking additional permanent income benefits must be filed within four years of the order granting or denying benefits, which included the original award or settlement and any subsequent order granting or denying benefits. There is no pronouncement that a motion to reopen seeking additional TTD benefits must be filed within four years of the original award or settlement in order to create a new four year period within which a motion to reopen seeking permanent income benefits must be filed. We conclude the Supreme Court expressly rejected the premise a motion to reopen should have been filed within four years of the original award or settlement by stating it is "unrealistic to even suggest that one could file motions to reopen every four years for the purpose of preventing the four year period of limitations from ever ending." Id. at 786.

The Supreme Court's reasoning on pages 783 through 786 places more significance on the claimant attaining MMI than on the motion seeking TTD benefits

having been filed within four years of the original order approving the settlement. Further, had the Supreme Court intended its holding to hinge upon the fact Hall's motion to reopen seeking TTD benefits was filed within four years of the original settlement being approved it would have so stated. It did not. Rather, the Supreme Court emphasized throughout its opinion that a motion to reopen must be filed within four years of the original award or settlement or any subsequent order granting or denying benefits. We are fully cognizant of Dana Corporation's policy argument, but we believe the Supreme Court's holding in Hall, supra, does not direct that the four year statute of limitations can only be extended upon the filing of a motion seeking TTD benefits within four years of the order approving the original settlement or the award.

Accordingly, the May 14, 2014, Opinion, Order & Award and the June 16, 2014, Order on Defendant's Petition for Reconsideration are **AFFIRMED**.

RECHTER, MEMBER, CONCURS.

ALVEY, CHAIRMAN, DISSENTS AND FILES A SEPARATE OPINION.

CHAIRMAN, ALVEY. I respectfully dissent. While noting the Kentucky Supreme Court's very divided decision in Hall v. Hospitality Resources, Inc., 226 S.W.3d (Ky. 2008), the

facts of the case *sub judice* are radically different. In Hall, the claimant sustained an injury in 1995. A settlement agreement was approved by an ALJ on July 22, 1997. On January 10, 2001, within four years of the approval of the settlement agreement, Hall moved to reopen her claim for additional TTD benefits. After subsequent treatment, it was determined her condition had worsened, and she was found entitled to increased benefits. Here, Roberts sustained an injury on September 24, 2001. A settlement agreement was approved on February 5, 2004. Roberts filed a motion to reopen on February 11, 2011, more than seven years after the claim was settled.

As pointed out in Whittaker v. Reeder, 30 S.W.3d 138 (Ky. 2000) and Robertson v. United Parcel Service, 64 S.W.3d 284, 287 (Ky. 2001), workers' compensation is a creature of statute. It is well established where a statute is unambiguous, it must be applied as written according to its plain meaning. Hall v. Hospitality Resources, Inc., supra; Griffin v. City of Bowling Green, 458 S.W.2d 456, 457 (Ky. 1970).

KRS 342.730(3) states as follows:

> Except for reopening solely for determination of the compensability of medical expenses, fraud, or conforming the award as set forth in KRS 342.730(1)(c)2., or for reducing a

> permanent total disability award when an employee returns to work, or seeking temporary total disability benefits during the period of an award, no claim shall be reopened more than four (4) years following the date of the original award or order granting or denying benefits, and no party may file a motion to reopen within one (1) year of any previous motion to reopen by the same party.

Although acknowledging the holding in Hall, supra, such application to the facts in the case *sub judice* produces an absurd result contrary to the clear statutory language, and I submit the intent of KRS 342.125(3). In Hall, the reopening was initiated during the four year window following the settlement of the claim. Here, the reopening was not initiated until more than seven years after the reopening. The overriding intent of the statutory changes implemented by the legislature in 1996 was to limit, rather than expand benefits. The dissent in Hall, supra sets out the legislative intent and history which will not be recited here.

Contrary to the limitation contained in KRS 342.125(3), the majority would construe Hall, supra to allow for reopenings for increase in PPD benefits, or permanent total disability benefits in perpetuity. The statutory language clearly limits reopenings for an increase in benefits to be filed within a four year time period. A

reasonable interpretation may be that a reopening for TTD benefits filed within the four year window, with a subsequent finding of permanent worsening is appropriate. However, nothing contained in the statute would allow for such a finding in a claim reopened seven years after the approval of the settlement. The four year timeframe serves as a statute of limitations to restrict rather than expand such action. The majority's decision ignores the clear statutory language, and holds for naught the restrictive language contained in KRS 342.125(3).

The majority in Hall, supra, infers approved settlement agreements do not equate to opinions or orders. This is contrary to KRS 342.265(1). Likewise this is contrary to Jude v. Cubbage, 251 S.W.2d 584 (Ky. 1952), as reiterated in, Richey v. Perry Arnold, Inc., 391 S.W.3d 705 (Ky. 2012), where the Kentucky Supreme Court clearly stated a settlement carries the effect of an order or award.

While KRS 343.125(3) allows for reopenings for additional TTD benefits, such does not revive the four year statute of limitations contained in that provision. In this case, clearly Roberts could move for additional TTD benefits, but is precluded from establishing a worsening of condition for either PPD benefits, or a finding of permanent total disability. I would reverse the ALJ's decision and

limit the reopening for a finding of only an appropriate period of TTD benefits.

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