

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: March 14, 2014

CLAIM NO. 201089621

DELENA TIPTON

PETITIONER

VS.

APPEAL FROM HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE

TRANE COMMERCIAL SYSTEMS
and HON. THOMAS G. POLITES,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
AND ORDER

* * * * *

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

ALVEY, Chairman. Delena Tipton ("Tipton") seeks review of the October 7, 2013 opinion rendered by Hon. Thomas G. Polites, Administrative Law Judge ("ALJ") awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and future medical benefits against Trane Commercial Systems ("Trane").

Tipton also appeals from the November 25, 2013 order overruling her petition for reconsideration.

On appeal, Tipton argues the ALJ erred in not awarding TTD benefits from March 23, 2011, when she returned to light duty work, through July 7, 2011 when she reached maximum medical improvement ("MMI"). She also argues the ALJ erred in failing to enhance her award of PPD benefits by the three multiplier contained in KRS 342.730(1)(c)1. Because we determine the ALJ committed no error, and conducted the appropriate analysis pursuant to Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003), we affirm.

It is undisputed Tipton sustained a right knee injury while working for Trane, where she has worked since 1990. The parties stipulated to the date of the work accident, the period of time Tipton missed work, the fact she was paid TTD benefits for the entire period of time she missed work due to her injury, and she is entitled to PPD benefits based upon the 3% impairment rating assessed by Dr. Wallace Huff, her treating orthopedic surgeon, pursuant to the American Medical Association Guides to the Evaluation of Permanent Impairment, 5th Edition.

Tipton filed a Form 101 on February 25, 2013 alleging she injured her right knee on May 5, 2010, when she fell at work. The date was later amended to reflect

the injury actually occurred on May 6, 2010. Tipton supported the claim with the record from Bluegrass Orthopaedics and Hand Care dated May 10, 2010, reflecting the history of the fall at work which resulted in a non-displaced fracture of the right patella, and outlined the activities from which she was restricted at that time.

Tipton subsequently testified by deposition on April 19, 2013, and at the hearing held August 8, 2013. Tipton, a resident of Lawrenceburg, Kentucky, is a high school graduate with some college coursework consisting of secretarial training, although she did not receive a degree. She is also certified as a forklift operator through Trane.

She testified Trane manufactures air conditioning units. She began working there in 1990. Her job for the five years prior to the accident consisted of assembling and testing controls for those units. Since returning to light duty work in March 2011, she has worked as a circuit board assembler which is not as physically demanding as her previous position, but is in the same labor grade, or pay classification. She has had at least one pay increase since returning to work. Regarding her current pay with Trane, Tipton testified as follows:

A. I can tell you what I make an hour, I mean ...

Q. Do you feel that you're making less now?

A. No.

Trane filed Tipton's tax records from 2009 through 2012, reflecting higher earnings in 2012.

On May 6, 2010, Tipton connected wires to a unit for testing. As she turned, a ground wire had wrapped around her leg causing her to fall onto her right knee. Her job at the time of the accident consisted of lifting, moving, bending, squatting, and crawling. When she returned to work in March 2011, her job was far less physically demanding, and she sat all day. Currently, her job requires some standing and occasional climbing. She also testified she works some overtime. She continues to experience some pain and discomfort in her right knee, and her current medical treatment includes the application of Voltaren gel, injections and occasional use of anti-inflammatory medication.

Tipton filed copies of Dr. Huff's treatment visits from May 10, 2010 through February 25, 2013. Those records document her return to work, physical therapy, Euflexxa injections, and restrictions. Trane also filed

return to work slips from Dr. Huff outlining her restrictions.

A benefit review conference ("BRC") was held on January 9, 2013. The BRC order and memorandum reflects the parties stipulated Tipton was entitled to PPD benefits based upon a 3% impairment rating. The parties also stipulated TTD benefits were paid from May 6, 2010 until Tipton returned to work on March 22, 2011. Significantly, the parties stipulated Tipton had returned to work at a wage equal to, or greater than her average weekly wage which was later stipulated as \$949.97.

The ALJ rendered his decision on October 17, 2013, awarding TTD benefits through Tipton's return to work on March 22, 2011. He based the award of PPD benefits on the stipulated 3% impairment rating, and found both the three and two multipliers pursuant to KRS 342.730(1)(c)1 and 2 applicable. The ALJ explained the basis for his determination as follows:

Having reviewed and considered the entirety of the evidence on this issue, the ALJ concludes that when the release and restrictions assessed by Dr. Huff restricting plaintiff from performing work requiring constant climbing and bending are considered in light of the plaintiff's testimony that she cannot perform her pre-injury job, her testimony that the job requires a lot of bending and squatting, and the job

description attached to the Form 111 filed by the employer which indicates that plaintiff's pre-injury work requires constant stooping and bending as well as frequent squatting, the ALJ concludes that plaintiff does not retain the physical capacity to return to the type of work she performed at the time of her injury and as such, she qualifies for the three multiplier contained in KRS 342.730(1)(c)1.

While Dr. Huff's July 24, 2013 work status form is not entirely clear as to what his recommendations are, as he does indicate that she can return to the occupation which she performed at the time of her injury, the form also indicates that plaintiff has limitations in bending and climbing as the form states "patient is able to: bend/climb" in the "frequent" category only, which is "34 - 66%" of the time but that she cannot engage in activities that require "constant" bending or climbing, which the form indicates is "67 - 100%" of the time. Plaintiff testified on page 13 of her hearing transcript that when she returned to her pre-injury job for one day, the work aggravated her knee condition as the job required "a lot of bending, squatting. My knees swelled up." The job description filed by the employer as an attachment to the Form 111 states the plaintiff's pre-injury job as an assembler/controls operator requires, among other things, "stooping/bending on a constant(ly), 67-100% basis." Given this evidence, the ALJ concludes that plaintiff's testimony and the job description filed by the employer are in accord that plaintiff's pre-injury job requires bending in the constant range, 67 to 100% of the time, which by the terms of Dr. Huff's July 24, 2013 work status

form, plaintiff is restricted from performing in her current condition due to her work injury, and as such, Dr. Huff's restrictions and the job description support the plaintiff's testimony that she cannot physically return to the job she performed [sic] time of her injury. As such, the ALJ concludes that plaintiff qualifies for application of the three multiplier contained in KRS 342.730(1)(C)1. The ALJ understands that Dr. Huff did check the box on the work status form indicating the plaintiff could return to work in the occupation which she regularly performed at the time of injury, but the ALJ believes that this general statement or opinion is qualified by the specific restrictions listed in the remainder of the form regarding bending and climbing. As such, the ALJ is more persuaded by the specific restrictions indicated in the work status form rather than the general release to return to the work performed at the time of injury.

However, as directed by the Supreme Court in Fawbush v. Gwinn, 103 S.W.3d 5 (Ky. 2003), the analysis regarding the applicability of the multipliers in KRS 342.730 must also take into consideration the two multiplier contained in KRS 342.730(1)(c)2. The parties stipulated that plaintiff returned to work at a wage equal to or greater than her average weekly wage at the time of her injury and this stipulation triggers the application of KRS 342.730(1)(c)2, which allows enhancement of permanent partial disability benefits by the two multiplier for a claimant who returns to work at the same or greater wage if that employment at the same or greater wage then ceases for a reason related to the work injury. As such, given that

both KRS 342.730(1)(c)1 and KRS 342.730(1)(c)2 apply, a Fawbush analysis is necessary to determine which of the multipliers is most appropriate. In making this determination the ALJ is required to determine whether the claimant can continue to earn the same or greater level of wages for the indefinite future. As applied to this claim, the ALJ first notes that plaintiff's current job in which she is earning greater wages is sit down work which the plaintiff has no physical difficulty in performing despite her ongoing symptoms in her injured knee. The ALJ also notes plaintiff has been employed with the employer for approximately 22 years which is evidence of a stable employment relationship and she is a member of a union which provides some degree of job protection for the plaintiff. In addition, the employer seems to have been cooperative in providing plaintiff the opportunity to perform less physically demanding work that is consistent with plaintiff's ongoing symptoms and restrictions. Further, plaintiff testified she attended two years of college although she did not obtain a degree which demonstrates the plaintiff has the intellectual capacity to perform work other than factory or manual labor and that she is suited for vocational rehabilitation from a cognitive standpoint. Also, the wage records reflect the plaintiff has been able to earn more in the year 2012 than in the years 2009, 2010 and 2011. Lastly, it should be remembered that Dr. Huff placed minimal restrictions on plaintiff's functional activity and only restricted her from constant bending and climbing and the ALJ infers from these minor restrictions the plaintiff has the physical ability to

perform a wide range of jobs and in fact, nearly the entire range of jobs she would have been able to perform prior to her injury.

Having reviewed and considered all of the above factors, the ALJ concludes that plaintiff is likely to be able to continue to earn the same or greater for wage into the indefinite future and therefore the ALJ determines that the application of the two multiplier is more appropriate on the facts of this claim and as such, plaintiffs[sic] permanent partial disability benefits based upon a 3% impairment rating shall be enhanced by the factor contained in KRS 342.730(1)(c)2 and should plaintiff's employment at the same or greater wage cease, for a reason related to her injury, the weekly benefit for permanent partial disability shall be two times the amount otherwise payable for any period of cessation of that employment.

Regarding Tipton's entitlement to TTD benefits, the ALJ found as follows:

The plaintiff has raised TTD as to duration as a contested issue and argues that she should be entitled to payment of TTD benefits during the period that she was released to light duty work by Dr. Huff and in fact performed light duty sit-down work for the employer from March 23, 2011 through July 7, 2011 during which time she earned her pre-injury hourly wage, but did not perform any overtime work. Plaintiff asserts that she had never performed the light duty job prior to her work injury and that the wage records reflect that she made "much less during this period of light duty since she was not working hardly any

overtime." The employer responds by arguing that an award of TTD for the period is inappropriate given the plaintiff was actually employed, she earned her normal pre-injury hourly pay, the work that she did was not minimal employment as defined in Central Kentucky Steel v. Wise, 19 S.W.3d 657 (Ky. 2000) and the work she performed building circuit boards is an essential component of the employer's end product of industrial air-conditioner units.

Whether plaintiff is entitled to TTD for the argued period is controlled by KRS 342.0011(11)(a) which defines TTD as: "the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment." In Central Kentucky Steel, supra, the Supreme Court further explained: "it would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work, but not the type that is customary or that he was performing at the time of his injury." Also, in Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed until MMI is achieved, an employee is entitled to TTD benefits so long as he remains disabled from his customary work or the work he was performing at the time of the injury.

Analyzing the facts of the instant claim in light of the above precepts, the ALJ concludes plaintiff had not reached MMI during the contested period as she was on significant restrictions from Dr. Huff, was treating with Dr. Huff during this period with Euflexxa injections, and she was not released to full duty work until July 7, 2011 as

indicated in his treatment note of that date. Based on Dr. Huff's treatment records, the ALJ concludes the plaintiff did not reach MMI until July 7, 2011. Given this finding, plaintiff would be entitled to TTD for the contested period unless she had returned to her preinjury work or customary, non-minimal, work.

Having reviewed and considered the testimony regarding the nature of plaintiff's circuit board building work that she performed while on sit-down restrictions from Dr. Huff, the ALJ concludes that the work plaintiff performed during this time was not minimal work, but is the type of work that plaintiff performed for the employer, that is, manual labor dealing with circuit boards in a factory or manufacturing setting and therefore plaintiff is not entitled to payment of TTD benefits for the argued period. Plaintiff testified that her pre-injury job involved testing circuit boards that were ultimately incorporated in the industrial air condition[sic] units the employer manufactures. When she returned to work following her injury and a period of TTD, she was placed in a job building the circuit boards she previously was testing. While the testing job required her to bend, squat and stoop repeatedly, the board building job allowed her to sit throughout the work day. While the plaintiff was not performing the exact same job she did prior to her injury, the job she was performing on light duty building circuit boards was very similar in nature to the work she performed at the time of injury as well as the factory work she performed for the employer for almost 20 years prior. It should also be noted that plaintiff actually bid on the sit-down work as a

permanent job and she continues to perform it to this day. In addition, plaintiff earned her same hourly rate of pay, if not a greater hourly rate of pay, for the work that she performed during this time. Given that the sit-down work was a legitimate job for the employer, performed as a routine and necessary component to the overall process of production of industrial air-conditioners which is the end product of the employer's business, and given that plaintiff continues to perform this job currently, the ALJ concludes that plaintiff's performance of the sit-down work precludes an award of TTD for this period of time as the ALJ believes the work she performed during this time was sufficiently similar or reasonably similar to her pre-injury work to be considered customary work.

The ALJ has reviewed prior cases where TTD was awarded to a claimant for a period in which they had returned to what was determined to be non-customary or minimal work, but the ALJ concludes that facts of this claim are significantly different. For example, in Arnold v. Nesco Resources, WCB No. 2011-68484, TTD was ordered by the Worker's Compensation Board for a period of time the plaintiff had returned to work on modified duty in which he spent much of his time "simply sitting in an empty room with absolutely nothing to do." The ALJ believes the facts in Arnold and the facts in the instant claim are distinctly different and therefore a different result is warranted. Plaintiff herein has continued to perform the circuit board building job she performed on light duty even though she is now only under the minimal restrictions of no constant bending and

climbing and the ALJ concludes based on this fact as well as the other findings above that the circuit board building work is customary employment and therefore TTD for the requested period is inappropriate.

Tipton filed a petition for reconsideration arguing the ALJ erred in failing to award the three multiplier pursuant to KRS 342.730(1)(c)1. She also argued the ALJ erred in considering her tax returns for 2009 through 2012. Tipton additionally argued the ALJ erred in refusing to award TTD benefits through the date she reached MMI in July 2011. Trane filed a petition for reconsideration arguing the weekly PPD benefits should be \$10.41 per week rather than the \$12.34 per week reflected in ALJ's decision. In an order issued November 25, 2012, the ALJ granted Trane's petition for reconsideration, and denied Tipton's petition.

As the claimant in a workers' compensation proceeding, Tipton had the burden of proving each of the essential elements of her cause of action, including entitlement to enhanced income benefits. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since she was unsuccessful, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling

evidence" is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

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).

We first address Tipton's argument regarding application of the appropriate multiplier. In Fawbush v. Gwinn, supra, the Supreme Court held:

Although the employer maintains that paragraph (c)2 modifies the application of paragraph (c)1 and, therefore, takes precedence, we note that the legislature did not preface paragraph (c)2 with the word "however" or otherwise indicate that one provision takes precedence over the other. We conclude, therefore, that an ALJ is authorized to determine which provision is more appropriate on the facts. If the evidence indicates that a worker is unlikely to be able to continue earning a wage that equals or exceeds the wage at the time of injury for the indefinite future, the application of paragraph (c)1 is appropriate.

Here, the ALJ based the decision to apply paragraph (c)1 upon a finding

of a permanent alteration in the claimant's ability to earn money due to his injury. The claimant's lack of the physical capacity to return to the type of work that he performed for Fawbush was undisputed. Furthermore, although he was able to earn more money than at the time of his injury, his unrebutted testimony indicated that the post-injury work was done out of necessity, was outside his medical restrictions, and was possible only when he took more narcotic pain medication than prescribed. It is apparent, therefore, that he was not likely to be able to maintain the employment indefinitely. Under those circumstances, we are convinced that the decision to apply paragraph (c)1 was reasonable.

Id. at 12.

Thus, where KRS 342.730(1)(c)1 and (1)(c)2 are both applicable, the ALJ is charged with determining which provision is more appropriate. As part of that analysis, the ALJ must determine whether the injured employee is likely to continue earning a wage which equals or exceeds his or her wages at the time of the injury for the indefinite future. In Adkins v. Pike County Board of Education, 141 S.W.3d 387, 390 (Ky. App. 2004), the Court of Appeals defined the criteria to be used by the ALJ in determining which multiplier was more appropriate stating as follows:

The Board in this case, while it was correct in remanding the case for a further finding, incorrectly stated

that upon remand the ALJ was to determine whether Adkins could continue to perform his current job as opposed to whether he could continue to earn a wage that equals or exceeds his pre-injury wages.

These two determinations, though ostensibly equivalent in this case, are quite different in their long-term ramifications. Between two similarly situated claimants not returning to the same type of work, if one gets a job fitting his restrictions and paying the same wage, but unexpectedly ending after only a year, and the other does not, then it is likely that, under a determination such as that ordered by the Board, only the second would receive benefits based on a multiplier of three. If, however, the ALJ makes a determination under the *Fawbush* standard as to the "permanent alteration in the claimant's ability to earn money due to his injury," then it is likely both claimants would be treated the same.

If every claimant's current job was certain to continue until retirement and to remain at the same or greater wage, then determining that a claimant could continue to perform that current job would be the same as determining that he could continue to earn a wage that equals or exceeds his pre-injury wages. However, jobs in Kentucky, an employment-at-will state, can and do discontinue at times for various reasons, and wages may or may not remain the same upon the acquisition of a new job. Thus, in determining whether a claimant can continue to earn an equal or greater wage, the ALJ must consider a broad range of factors, only one of which is the ability to perform the current job.

Therefore, we remand this case to the ALJ for a finding of fact as to Adkins' ability to earn a wage that equals or exceeds his wage at the time of the injury for the indefinite future. If it is unlikely that Adkins is able to earn such a wage indefinitely, then application of Section c(1) is appropriate.

The Supreme Court in Adams v. NHC Healthcare, 199 S.W.3d 163, 168, 169 (Ky. 2006) concurred with the holding in Adkins, supra, stating as follows:

The court explained subsequently in Adkins v. Pike County Board of Education, 141 S.W.3d 387 (Ky. App. 2004), that the *Fawbush* analysis includes a broad range of factors, only one of which is the ability to perform the current job. The standard for the decision is whether the injury has permanently altered the worker's ability to earn an income. The application of KRS 342.730(1)(c)1 is appropriate if an individual returns to work at the same or a greater wage but is unlikely to be able to continue for the indefinite future to do work from which to earn such a wage.

Unlike the situations in *Fawbush*, *supra*, and *Adkins*, *supra*, the claimant continued to work as a nursing assistant for several months after his injury but quit before his claim was heard. He asserted that he could no longer work. Having found the claimant to be only partially disabled, the ALJ's task was to determine whether his injury permanently deprived him of the ability to do work in which he could earn a wage that equaled or exceeded his wage when he was injured. The

claimant asserts that it did and that he was entitled to a triple benefit under KRS 342.730(1)(c)1.

Here, the ALJ determined both the two and three multipliers are applicable. He then conducted an analysis pursuant to Fawbush, supra, and provided a detailed explanation for his determination the two multiplier was more appropriate. The ALJ specifically determined Tipton would be able to continue to earn a wage equaling or exceeding her average weekly wage at the time of the injury for the indefinite future by finding she would be able to continue working at her current employment. The ALJ based this finding on the fact Tipton had worked for Trane since 1990, and although she was not performing all of her former duties, her current job provides a necessary service. Thus, the ALJ considered Tipton's ability to perform her current job and adequately set forth his analysis as to why he determined she would be able to continue to earn a wage that equals or exceeds her pre-injury wages.

In resolving the issue of whether Tipton could continue earning a wage which equals or exceeds her pre-injury wages, the ALJ applied the criteria set down by the Court of Appeals in Adkins, supra, and adopted by the Supreme Court in Adams, supra.

The ALJ provided a detailed analysis setting forth a clear and adequate basis for his determination. Thus, we find no error in the ALJ's determination of which multiplier was more appropriate. Based upon this determination, he awarded TTD benefits until Tipton returned to employment at Trane which he found necessary, and reasonably related to her pre-injury job. Substantial evidence supports the ALJ's decision concerning enhancement of Tipton's income benefits, and his determination was in accordance with the correct applicable law as set forth above, therefore his decision will not be disturbed.

We next review Tipton's argument regarding application of the appropriate period of TTD benefits. It is undisputed she received such benefits, voluntarily paid by Trane, until her return to work on March 22, 2011. Tipton argues she is entitled to additional TTD benefits until she was assessed as having reached MMI in July, 2011. Essentially, she argues entitlement to both TTD benefits and the wages she actually earned. We cannot say the outcome arrived at by the ALJ in finding Tipton entitled to TTD benefits only through March 22, 2011, is so unreasonable based upon the evidence it must be reversed as a matter of law.

KRS 342.0011(11)(a) defines TTD as follows:

[T]he condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment.

The above definition has been determined by our courts to be a codification of the principles originally espoused in W.L. Harper Const. Co., Inc. v. Baker, 858 S.W.2d 202, 205 (Ky. App. 1993), wherein the Court of Appeals stated:

TTD is payable until the medical evidence establishes the recovery process, including any treatment reasonably rendered in an effort to improve the claimant's condition, is over, or the underlying condition has stabilized such that the claimant is capable of returning to his job, or some other employment, of which he is capable, which is available in the local labor market. Moreover, ... the question presented is one of fact no matter how TTD is defined.

In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Supreme Court further explained, "[i]t would not be reasonable to terminate the benefits of an employee when she is released to perform minimal work but not the type that is customary or that she was performing at the time of his injury." In other words, where a claimant has not reached MMI, TTD benefits are payable until such time as the claimant's level of improvement

permits a return to the type of work he or she was customarily performing at the time of the traumatic event. In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed until MMI is achieved, an employee is entitled to a continuation of TTD benefits so long as he remains disabled from his customary work or the work he was performing at the time of the injury. The Court in Helms, supra, stated:

In order to be entitled to temporary total disability benefits, the claimant must not have reached maximum medical improvement and not have improved enough to return to work.

Id. at 580-581.

Here the ALJ provided a detailed analysis of the job to which Tipton returned in March 2011. He determined the job was a necessary one which Tipton continues to perform. He concluded the work was not minimal, but was the type of work Tipton had performed prior to her injury. He determined building circuit boards was similar to the testing she had performed previously. Specifically, the ALJ determined the job was a necessary part of Trane's business, she continues to perform the same job, and the job was sufficiently or reasonably similar to the work performed prior to the injury. Therefore, she was not

entitled to TTD benefits from March 23, 2011 through July 7, 2011. The ALJ distinguished Tipton's claim from Arnold v. Nesco Resources, WCB No. 2011-68484, where TTD was awarded where the injured workers' modified or light duty consisted of "simply sitting in an empty room with absolutely nothing to do." Because we determine the ALJ performed an appropriate analysis and considered all appropriate factors, his award of TTD benefits is supported by substantial evidence, and a contrary result is not compelled.

Finally, Tipton requested an oral argument be held. After having reviewed the record, **IT IS HEREBY ORDERED AND ADJUDGED** an oral argument is unnecessary in arriving at a decision, and therefore the request is **DENIED**.

Accordingly, the October 7, 2013 opinion and award, and the November 25, 2013 order overruling Tipton's petition for reconsideration, rendered by Hon. Thomas G. Polites, Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

MICHAEL W. ALVEY, CHAIRMAN
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