Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: April 10, 2015

CLAIM NO. 201097727

DONNA THOMAS, ADMINISTRATRIX OF THE
ESTATE OF EDDIE RAY THOMAS, JR., DECEASED PETITIONER

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

EDDIE'S SERVICE CENTER
and HON. STEVEN BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Donna Thomas, Administratrix of the Estate of Eddie Ray Thomas, Jr., Deceased, ("Donna") appeals from the July 29, 2014, Amended Opinion and Order on Remand and the October 30, 2014, Order on Petition for Reconsideration of Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"). In the July 29, 2014, Amended Opinion and Order on Remand,

the ALJ determined Eddie Ray Thomas, Jr. (“Thomas”) did not suffer a work-related injury while in the employ of Eddie's Service Center ("Eddie's") and dismissed Plaintiff's claim for death benefits pursuant to KRS 342.750.

On appeal, Donna puts forth five arguments. First, she asserts the ALJ committed errors of fact and law. Second, she contends the ALJ again failed to apply the proper standard to the circumstances of this heart attack claim. Third, she argues the ALJ failed to find that both experts agreed Thomas suffered a work-related heart attack. Fourth, she maintains the ALJ's finding Thomas’ heart attack was not work-related is not supported by substantial evidence. Finally, she contends the ALJ erroneously found a pre-existing active condition.

The Form 101 alleges on January 21, 2010, Thomas suffered a fatal heart attack while working for Eddie’s due to the following event:

> He was operating a tow truck, picking up a broken down vehicle, exerted himself pulling a chain, climbed up and down a ravine near the vehicle and then collapsed and died at the scene. The physical exertion on that day combined with the mental stress of the removal of gas tanks at the gas station the day before resulted in a heart attack.

In the November 18, 2013, Opinion and Order, the ALJ determined Thomas did not suffer a work-related injury

on January 21, 2010, and was suffering from ischemic heart disease that was a "pre-existing, present and active condition." The ALJ denied and dismissed Donna Thomas' claim for death benefits.

In an Opinion entered April 18, 2014, this Board vacated and remanded the claim to the ALJ. We adopt our summary of the facts:

> . . .
>
> Mrs. Thomas filed a Form 101 on October 14, 2011, alleging Thomas died from a heart attack on January 21, 2010 which she claims resulted from the following:
>
> He was operating a tow truck, picking up a broken down vehicle, exerted himself pulling a chain, climbed up and down a ravine near the vehicle and then collapsed and died at the scene. The physical exertion on that day combined with the mental stress of the removal of gas tanks at the gas station the day before resulted in the heart attack.
>
> Thomas was 45 years old at the time of his death. He began working for ESC in 1980, and had been the manager and tow truck operator there for over twenty years. The service station was owned by his father, Eddie Ray Thomas, Sr.
>
> In support of the claim, Mrs. Thomas filed an undated report of Dr. Rodney Handshoe, of the Pikeville Medical Center, who stated as follows: Sudden death is most commonly caused by a ventricular tachyarrhythmia induced by ischemia or myocardial infarction.

. . .

> It is my medical opinion that current medical knowledge would suggest that intense physical stress and emotional stress can indeed precipitate cardiovascular events such as sudden cardiac death in those individuals with underlying cardiac disease. The events surrounding Mr. Thomas's death could have played a role in this regard.

Mrs. Thomas testified by deposition on December 13, 2011. She is a resident of Morehead, Kentucky. She and Thomas were married on April 1, 1989, and she resided with him until his death. She is an LPN. She stated Thomas was diagnosed with hypertension in 2002, for which he took medication. She monitored his blood pressure, and stated if he did not take his medication, he developed headaches.

Mrs. Thomas stated on January 20, 2010, Thomas was advised by the Environmental Protection Agency ("EPA") the service station fuel tanks would be involuntarily removed the following day. Thomas was concerned about loss of income for ESC due to inability to sell fuel, which in turn would negatively affect his earnings. Mrs. Thomas stopped by the service station at approximately 3:30 p.m. on January 21, 2010, and the EPA was in fact in the process of removing the fuel tanks. She stated Thomas was very upset, and she advised him to calm down. She noted he was very pale. Thomas came home around 7:00 p.m., and was still upset. He was flushed and sweating. He refused to eat supper because he was so upset, and went for a walk instead. After he returned from his walk, he and Mrs. Thomas watched television until he received a

call from the Kentucky State Police to retrieve a vehicle with his wrecker.

Samuel Bailey ("Bailey") testified by deposition on April 13, 2012. Thomas had responded to the scene of the accident to retrieve a vehicle owned by Bailey's son which had been involved in an accident. Bailey stated the vehicle was in a culvert approximately four feet below road level. Thomas made three or four attempts to retrieve the vehicle, but was unable to do so without causing significant additional damage. Thomas advised Bailey and his son he needed to call for a larger wrecker. At that time, Thomas appeared to be breathing hard. He unhooked the wrecker, and then assisted with flagging traffic while waiting for the larger wrecker. His breathing returned to normal, but he complained of heartburn or indigestion. Thomas returned to his wrecker to call his father to check on the status of the larger wrecker. When he exited the wrecker, Thomas made a noise and collapsed. Bailey administered CPR, and his son called 911 which dispatched an ambulance.

Mrs. Thomas filed records from the St. Claire Regional Medical Center in Morehead, Kentucky. She also filed records from the Morehead Clinic, Dr. Laura T. Ellis, and an additional report from Dr. Handshoe. The records from St. Claire Regional Medical Center outline treatment administered to Thomas at the hospital, including attempts to revive him. Those records note Thomas was found unresponsive in the middle of the road, and there was one defibrillation attempt.

The records from Morehead Clinic outline medical treatment from 1998 through December 2009, primarily for

treatment of hypertension and anxiety. On December 10, 2009, Thomas complained of right shoulder pain of three weeks duration. His blood pressure was noted to be 155/98 at that time.

Dr. Ellis performed a CDL examination of Thomas on August 29, 2008. At that time she noted he had hypertension which was under control.

Mrs. Thomas filed an additional letter from Dr. Handshoe dated May 3, 2012. After reviewing Mr. Bailey's deposition, he stated as follows:

The symptoms that Mr. Thomas experienced immediately prior to his sudden death are typical for an acute myocardial infarction . . . It is my opinion based on reasonable medical probability that the physical exertion immediately preceding Mr. Thomas's symptoms triggered plaque rupture and precipitated the heart attack and sudden death.

ESC filed the October 22, 2007 office note of Dr. Shelly Rogers who noted Thomas had previously been diagnosed with high blood pressure. She diagnosed hypertension and anxiety. She stated, "Patient reports that he has been anxious for nearly 30 years and gets so nervous he vomits on a somewhat daily basis due to his nerves."

ESC also filed the March 8, 2002 office note of Dr. Stephen Damron who diagnosed severe uncontrolled hypertension. In reference to Thomas, Dr. Damron stated, "He does occasionally have problems with a temper at work due to some stressors, there, but this last episode was with him waking up."

ESC filed the report of Dr. Hal Roseman, a cardiologist in Nashville, Tennessee. Dr. Roseman outlined Thomas' dealings with the EPA, and responding to the scene of an accident. He noted Thomas had several cardiovascular risk factors including hyperlipidemia, hypertension, family history of premature coronary artery disease, and probable genetic disposition. Specifically, Dr. Roseman stated the following:

> Without benefit of an autopsy it will never be known with certainty what caused Mr. Thomas' sudden death. The indigestion symptoms decedent experienced prior to death could have been due to GERD (gastro-esophageal reflux) rather than Angina, and merely coincidental.
>
> . . .
>
> There is no definite proof Thomas suffered a heart attack.
>
> . . .
>
> In conclusion, it is my professional opinion as a cardiologist that relating Mr. Thomas' death to a cardiac etiology and to his employment is tentative at best. Even if one assumes Mr. Thomas was experiencing unstable angina just before his death, it is doubtful that the exertional activities of Mr. Thomas' work on January 21, 2010 was sufficient to cause his death. Furthermore, the exact factors, which precipitate acutely a ruptured plaque are unknown; certainly exertion is an insufficient factor in effecting that process.

Dr. Roseman disagreed with Dr. Handshoe's opinions. He specifically stated, "The event of the fatal

> arrhythmia that caused the unfortunate death of Mr. Thomas could have occurred at any time and was merely coincidental that it took place while he was at work."
>
> A Benefit Review Conference ("BRC") was held on March 8, 2013. The BRC order and memorandum reflects the parties preserved as issues work-relatedness/causation, benefits per KRS 342.750, entitlement to death benefits, and a Daubert objection to Dr. Handshoe's reports. A formal hearing was waived.

We quoted the relevant portion of the ALJ's opinion as follows:

> The burden of proof and the risk of non-persuasion as to the elements of a workers compensation claim lie with the claimant. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky. 1977); *Kentland Elkhorn Coal Co. v. Johnson*, 549 S.W.2d 308 (Ky. App. 1977).
>
> KRS 342.750 provides for the payment of benefits "If the injury causes death…". Thus, the threshold issue presented for decision is work relatedness/causation. Plaintiff's decedent, Eddie Thomas, Jr., died of an apparent heart attack while engaged in work-related duties. The burden of proof on the Plaintiff is therefore that, not only was the death of plaintiff's decedent caused by a heart attack, but that the heart attack arose out of and in the course of plaintiff's employment.
>
> Facially, plaintiff's case is compelling. The plaintiff's decedent was going through a period of highly stressful events relating to the business. Although he was technically an

employee of the business with no formal ownership interest, it is clear from the surrounding circumstances that he was the primary operator of the business and the likely successor in ownership upon the retirement or death of his father.

Also compelling are the circumstances surrounding his death. In the abbreviated version of events, it would seem that an obvious conclusion could be drawn from a sequence of events that included high stress over the feared loss of the business due to the removal of gas tanks by the EPA, the nature and character of the plaintiff's decedent who was apparently a worrier anyway, followed by an unusually demanding physical effort to recover a truck that had gone off the roadway and was stuck under the lip of a culvert.

I have carefully reviewed the testimony of Donna Thomas and Samuel Bailey, who are the primary late [sic] witnesses to the circumstances surrounding the death of Eddie Thomas, Jr.

Mrs. Thomas, being a trained nurse, was acutely aware of her husband's medical condition. When Dr. Stephen Damron diagnosed Mr. Thomas with significant uncontrolled hypertension and high blood pressure in 2002, Mrs. Thomas was instrumental in monitoring his blood pressure and medications so that he was able to keep his blood pressure under control as noted in a number of medical notes in the record.

Unfortunately, in spite of his family history of heart related problems, Mr. Thomas did not engage in any form of regular exercise. Also of significance in the medical history of Mr. Thomas is his emotional makeup. When

seen by Dr. Shelley Rogers in 2007, his blood pressure was noted at 158/92. However, Dr. Rogers also noted that Mr. Thomas was taking Toprol XL and had home blood pressures running in the low 140/80 range.

By history, Mr. Thomas had 30 years of anxiety on a "nearly daily basis." Dr. Rogers continued Mr. Thomas on Valium 5 mg due to these anxiety problems.

Although she was able to describe the events leading up to Mr. Thomas [sic] death, Mrs. Thomas was not present at the wreck site where her husband died. She cannot describe those events, nor is there any physician that saw him contemporaneously.

The only eyewitness to Mr. Thomas' death was Samuel Bailey, father of the young man whose truck had been wrecked when he drove it off the road and got stuck under the culvert. Mr. Bailey detected no unusual problems in Mr. Thomas [sic] demeanor when he arrived on scene. The truck was stuck in a culvert with its roof approximately 4 feet below the paved surface of the road. As Mr. Bailey observed, Mr. Thomas made four attempts to hook chains to the truck for an extraction. Mr. Bailey accompanied Mr. Thomas on 3 of the 4 attempts.

Apparently it took more than one attempt to hook chains to the truck because as Mr. Thomas attempted to raise the truck, the positioning of the chains would cause the truck to move into the structure of the culvert, thereby creating a danger that the truck would be seriously damaged as it was extracted from its resting place. Thus, Mr. Thomas would adjust the location of the lifting chains in order to avoid damage to the

vehicle as he raised it. He made the first placement himself. Mr. Bailey helped him on the other 3.

Mr. Bailey described the bank as being straight up and down. Mr. Thomas had climbed up and down it several times. At that point, Mr. Thomas was breathing hard, but seemingly recovered after a period of time.

The decision was made to call in a larger wrecker. Mr. Thomas unhooked his chain and moved the wrecker forward, leaving the flashing lights on. They flagged traffic for a period of time as they awaited the other wrecker.

Mr. Thomas made a comment that he had indigestion and that he was going to his truck to call his dad on the radio to see when it would arrive. He was in the truck for “four or five minutes”. Mr. Thomas got out of the truck. Then he made a noise, clutched his chest, leaned against the truck and collapsed.

Mr. Bailey checked for a heartbeat, felt a “hard beat and then just practically nothing.” He recognized that Mr. Thomas was having a heart attack, so instructed his son to call 911, while he administered “rescue breathing” and CPR.

Unfortunately, that is all we know about the death of Mr. Thomas, because no autopsy was performed to determine the cause of death. Even if Mr. Thomas did die of a heart attack, we have no positive way of knowing from the lay testimony whether the work related events precipitated the event, or it could have happened at any time due to Mr. Thomas[sic] long history of extreme anxiety, hypertension and high blood pressure, his genetic history and his lack of regular exercise.

Thus, lay testimony, while important, is not conclusive. Although the description of events and the symptoms described might lead a lay witness to conclude that Mr. Thomas had a heart attack and died as the direct result of his work-related exertion, there is no direct medical evidence to that effect until we get to the expert opinions of doctors Handshoe and Roseman. When the cause of a condition is not readily apparent to a lay person, medical testimony supporting causation is required. *Mengel v. Hawaiian Tropic NE & Central Distribution, Inc.*, 618 S.W.2d 184 (Ky. App. 1981).

Dr. Handshoe issued two written medical opinions by way of letters prepared at the request of counsel for the plaintiff.

In the first opinion letter, Dr. Handshoe opined that current medical knowledge would suggest that intense physical stress and emotional stress can indeed precipitate cardiovascular events such as sudden cardiac death in those individuals with underlying cardiac disease. The events surrounding Mr. Thomas' death "could have played a role in this regard." This opinion failed to meet the requirement that medical causation must be established by a medical opinion within "reasonable medical probability". *Lexington Cartage Co. v. Williams*, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work related causation is insufficient. *Pierce v. Kentucky Galvanizing Co.*, 606 S.W.2d 165 (Ky. App. 1980).

It was at this point that ALJ Justice issued an order (3/7/2012) bifurcating the case on the motion of Defendant to disqualify Dr. Handshoe's medical opinion pursuant to the

authority of *Daubert v. Merrell Dow Pharmacy*, 509 US 570 (1993) and *City of Owensboro v. Adams*, 136 S.W.3d 446 (Ky. 2004). In response, the Plaintiff had Dr. Handshoe read the deposition of Samuel Bailey.

Dr. Handshoe wrote a second opinion letter after having read the deposition of Samuel Barber (*sic* Bailey), the eyewitness to the "sudden death of Mr. Thomas". In that letter, Dr. Handshoe synopsizes Mr. Barber's[sic] testimony as being "…Mr. Thomas developed onset of chest pain followed quickly by sudden death after a prolonged period of very intense physical activity associated with trying to extricate a wrecked vehicle." Based upon that description, Dr. Handshoe observed that the symptoms that Mr. Thomas experienced immediately prior to his sudden death are typical for an acute myocardial infarction. After defining the physical mechanism of myocardial infarction, Dr. Handshoe opined based upon a reasonable medical probability that the physical exertion immediately preceding Mr. Thomas's symptoms triggered plaque rupture and precipitated his heart attack and sudden death.

Unfortunately, there is a problem with Dr. Handshoe's medical opinion. First, his characterization of Mr. Bailey's deposed testimony is not completely accurate.

The "intense physical activity" was primarily limited to climbing up and down a steep bank. When Mr. Bailey arrived on the scene, he ascribed nothing out of the ordinary to Mr. Thomas. He was "…just normal…ready to do his job." There is no testimony that the actual placement and adjustment of the chains was difficult. Mr. Thomas

only took the chains down to the stranded vehicle once and ultimately left them for the next wrecker to use. It was “hard work”, but three of the four attempts to properly place the chains were aided by Mr. Bailey, who described no distress expressed by Mr. Thomas from that effort. The last time Mr. Thomas climbed the bank, Mr. Bailey characterized him as “winded” and “tired” from the effort. He was “out of breath”. But Mr. Bailey stated that he was “winded” too because it was a hard trip up and down there.

Dr. Handshoe also fails to make any comment on the time frames of the incident. Mr. Bailey and Mr. Thomas came up “winded” after the fourth try to raise the truck. Mr. Thomas opined that a larger truck was needed and called his dad. The KSP left. Then, according to Mr. Bailey, they “flagged traffic” for 5-10 minutes, during which each recovered his breathing and they had a normal conversation. There was no sign of extreme distress, but Mr. Thomas complained that he had eaten something that gave him “heartburn”. Thereafter, Mr. Thomas said he was going to call his dad and check on the status of the other wrecker. He went to his truck and was gone for another 5 or so minutes. When he came back, he grasped his chest and fell to the ground. Thus, there was a minimum 10-15 minute lapse of time between the last exertion and the fatal event.

Based upon those facts, Dr. Handshoe opined that the symptoms described by Mr. Bailey were consistent with acute myocardial infarction. He goes on to opine that within a reasonable medical probability the physical exertion immediately preceding Mr. Thomas’ Symptoms [sic] triggered

plaque rupture and precipitated his heart attack and sudden death.

As mentioned earlier herein, the Defendant Employer made a formal objection to Dr. Handshoe's testimony based on the holdings in *Daubert v. Merrell Dow Pharmacy*, 509 US 570 (1993) and *City of Owensboro v. Adams*, 136 S.W.3d 446 (Ky. 2004). Dr. Handshoe may undoubtedly be a well-qualified cardiologist. Unfortunately, I am unable to determine that from the bare-bones medical reports that he prepared for filing in this record. Other than the decedents [sic] medical examination report for his CDL in August 2008, there is no specific mention of pre-mortem medical records reviewed. There is no discussion of the decedents [sic] personal or family medical history, nor is there any mention of his previous medical problems.

In his brief discussion of Mr. Bailey's deposition, Dr. Hann she [sic] failed to demonstrate an accurate grasp of the activities and timeframe is related to Thomas [sic] work activity on the night in question. Nor do his letters contain sufficient reasoning or information to allow me to determine whether the opinions are medically valid. Consequently his opinion of causation is not reliable.

By way of contrast, the medical opinion of Dr. Roseman is exhaustive, cites with specificity the evidence reviewed by him, makes concise and specific references to a synopsis of the case history complete with results of previous medical tests, and analyzes the events of January 21, 2010 thoroughly.

Dr. Roseman relates a complete clinical history of the decedent prior

to the events of January 21 and, citing to a number of medical treatises on the subject of causation in sudden cardiac death gives as his professional opinion, based upon a reasonable degree of medical certainty, that Eddie Ray Thomas, Jr. more likely than not died of a fatal arrhythmia related to his underlying coronary artery disease. Noting Mr. Thomas' sole complaint, Dr. Roseman stated that prior to his death, Mr. Thomas was experiencing indigestion-like discomfort that, if related to the event, probably represented angina preceding his death. He explained that the angina represents a symptom of the imbalance of the oxygen demand and supply to the heart.

It does not represent a structural change in the artery to the heart. On page 17 of his medical report, Dr. Roseman offers a six paragraph refutation of Dr. Handshoe's theory of the cause of Mr. Thomas' death.

Dr. Roseman went on to opine that the event of the fatal arrhythmia that caused the unfortunate death of Mr. Thomas could've occurred at any time and it was merely coincidental that it took place while he was at work. He went on to state that the underlying conditions of Mr. Thomas [sic] coronary artery disease were most likely present for many years, which made him vulnerable to a fatal arrhythmia. There was nothing intrinsic about his work that contributed to his coronary artery disease or his fatal arrhythmia. The arrhythmia was merely a sign or symptom, albeit fatal in this situation, of Mr. Thomas's underlying cardiac condition.

With regret, I have to note that the opinion of Dr. Roseman is simply more comprehensive, complete, compelling

> and persuasive as to the cause of death of Eddie Ray Thomas, Junior. I am sensitive to the family's loss, but compelled to recognize that under Kentucky workers compensation law, the fact that a heart attack or other cardiac event occurs while at work does not in and of itself establish causation. *Roberts v. Estep*, 845 S.W.2d 544 (Ky. 1993), *Campbell v. Haulers, Inc.*, 320 S.W.3d 707 (Ky. App. 2010). See also *Armco Steel Corp. v. Lyons,* 561 S.W.2d 676 (Ky. App. 1978).
>
> For the foregoing reasons, I am compelled to conclude that the Plaintiff has failed to bear her burden of proof.

We also adopt our statement of the law applicable to heart attack cases as set forth in the April 18, 2014, opinion:

> In those claims regarding heart attacks, or cardiac events, merely accepting the opinion of one medical expert over another is insufficient. In a long line of cases beginning with Hudson v. Owens, 439 S.W.2d 465 (Ky. 1969), Kentucky Courts have consistently held medical evidence, while relevant and material, is not solely determinative in heart attack claims, but are merely an element of the totality of the circumstances which an ALJ must consider when determining whether the event was coincidental to or caused by the work. *See* Moore v. Square D. Company, 518 S.W.2d 781 (Ky. 1974). In Armco Steel Corp. v. Lyons, 561 S.W.2d 676 (Ky. App. 1978), the Kentucky Court of Appeals held Moore, supra, does not stand for the proposition a heart attack is work-related merely because it occurs at work. Claimants are required to prove a work-connected cause from the

totality of the circumstances. The Court of Appeals specifically stated the following:

> Workers must be compensated for injuries and diseases caused by the work they perform. This is a legitimate cost to the employer and his product or service. But, there must be proof of causation by the work, and more proof is required than having a job and being on the employer's premises when the heart attack occurs.

In Estep, supra, the Kentucky Supreme Court reiterated a heart attack is not compensable merely because it occurred at work. The Court further stated medical evidence is not solely determinative, but must be considered as part of the totality of the circumstance. This was reiterated in Campbell v. Hauler's Inc., 320 S.W.3d 707 (Ky. App. 2010).

In Thomas Earl Lee v. H.E. Neuman Co., 2000 SC-1037-WC (rendered August 23, 2001 and designated not to be published), the Kentucky Supreme Court succinctly summarized the law as it pertains to heart attack. The court stated:

> A heart attack is not viewed as being compensable simply because it occurs at work and is not viewed as being noncompensable simply because the worker suffers from pre-existing arteriosclerotic heart disease. What is required is that work must in some way

contribute to causing it. Inland Steel Co. v. Johnson, Ky., 439 S.W.2d 562 (1969); Terry v. Associated Stone, Ky., 334 S.W.2d 926 (1960); Armco Steel Corp v. Lyons. Ky. App., [561] S.W.2d 676 (1978). Uncontradicted medical evidence is generally viewed as being dispositive of the matter to which it speaks, although it may be disregarded if the fact-finder gives a sufficient explanation for doing so. Com. v. Workers' Compensation Board [of Kentucky, 697 S.W.2d 540 (Ky. App. 1985)] For example, an ALJ may disregard an uncontradicted medical opinion with regard to causation where the opinion is based, not upon matter of which the physician has actual knowledge, but upon an inaccurate medical history that was given by the claimant. Osborne v. Pepsi-Cola, Ky., 816 S.W.2d 643 (1991). Furthermore, special rules apply with regard to the legal cause of a heart attack, with the result that even uncontradicted medical evidence is not dispositive of its legal cause. Hence, dispite [sic] the refusal of medical experts to testify that a heart attack that occurs after physical exertion at work is attributable to the work, the totality of the circumstances may support a finding that it is. Moore v. Square D Co., Ky., 518 S.W.2d 781 (1974). Likewise, even where medical evidence supports a claim that a heart

> attack is work-related, it is but part of the totality of the circumstances upon which a finding of legal causation is to be made. Hudson v. Owens, Ky., 439 S.W.2d 565 (1969).
>
> Lee v. Newman, slip opinion, pp. 8-9.

The ALJ provided the following analysis in the July 29, 2014, Amended Opinion and Order on Remand:

> The burden of proof and the risk of non-persuasion as to the elements of a workers compensation claim lie with the claimant. *Caudill v. Maloney's Discount Stores*, 560 S.W.2d 15 (Ky. 1977); *Kentland Elkhorn Coal Co. v. Johnson*, 549 S.W.2d 308 (Ky. App. 1977).
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> KRS 342.750 provides for the payment of benefits "If the injury causes death…". Thus, the threshold issue presented for decision is work relatedness/causation. Plaintiff's decedent, Eddie Thomas, Jr., died of an apparent heart attack while engaged in work-related duties. The burden of proof on the Plaintiff is therefore that, not only was the death of plaintiff's decedent caused by a heart attack, but that the heart attack arose out of and in the course of plaintiff's employment.
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> Facially, plaintiff's case is compelling. The plaintiff's decedent was going through a period of highly stressful events relating to the business. Although he was technically an employee of the business with no formal ownership interest, it is clear from the surrounding circumstances that

he was the primary operator of the business and the likely successor in ownership upon the retirement or death of his father.

Also compelling are the circumstances surrounding his death. In the abbreviated version of events, it would seem that an obvious conclusion could be drawn from a sequence of events that included high stress over the feared loss of the business due to the removal of gas tanks by the EPA, the nature and character of the plaintiff’s decedent who was apparently a worrier anyway, followed by an unusually demanding physical effort to recover a truck that had gone off the roadway and was stuck under the lip of a culvert.

I have carefully reviewed the testimony of Donna Thomas and Samuel Bailey, who are the primary late witnesses to the circumstances surrounding the death of Eddie Thomas, Jr.

Mrs. Thomas, being a trained nurse, was acutely aware of her husband’s medical condition. When Dr. Stephen Damron diagnosed Mr. Thomas with significant uncontrolled hypertension and high blood pressure in 2002, Mrs. Thomas was instrumental in monitoring his blood pressure and medications so that he was able to keep his blood pressure under control as noted in a number of medical notes in the record.

Unfortunately, in spite of his family history of heart related problems, Mr. Thomas did not engage in any form of regular exercise. Also of significance in the medical history of Mr. Thomas is his emotional makeup.

When seen by Dr. Shelley Rogers in 2007, his blood pressure was noted at 158/92. However, Dr. Rogers also noted that Mr. Thomas was taking Toprol XL and had home blood pressures running in the low 140/80 range.

By history, Mr. Thomas had 30 years of anxiety on a “nearly daily basis.” Dr. Rogers continued Mr. Thomas on Valium 5 mg due to these anxiety problems.

Although she was able to describe the events leading up to Mr. Thomas death, Mrs. Thomas was not present at the wreck site where her husband died. She cannot describe those events, nor is there any physician that saw him contemporaneously.

The only eyewitness to Mr. Thomas’ death was Samuel Bailey, father of the young man whose truck had been wrecked when he drove it off the road and got stuck under the culvert. Mr. Bailey detected no unusual problems in Mr. Thomas demeanor when he arrived on scene. The truck was stuck in a culvert with its roof approximately 4 feet below the paved surface of the road. As Mr. Bailey observed, Mr. Thomas made four attempts to hook chains to the truck for an extraction. Mr. Bailey accompanied Mr. Thomas on 3 of the 4 attempts.

Apparently it took more than one attempt to hook chains to the truck because as Mr. Thomas attempted to raise the truck, the positioning of the chains would cause the truck to move into the structure of the culvert, thereby creating a danger that the truck would be seriously damaged as it was extracted from its resting place. Thus, Mr. Thomas would adjust the

location of the lifting chains in order to avoid damage to the vehicle as he raised it. He made the first placement himself. Mr. Bailey helped him on the other 3.

Mr. Bailey described the bank as being straight up and down. Mr. Thomas had climbed up and down it several times. At that point, Mr. Thomas was breathing hard, but seemingly recovered after a period of time.

The decision was made to call in a larger wrecker. Mr. Thomas unhooked his chain and moved the wrecker forward, leaving the flashing lights on. They flagged traffic for a period of time as they awaited the other wrecker.

Mr. Thomas made a comment that he had indigestion and that he was going to his truck to call his dad on the radio to see when it would arrive. He was in the truck for “four or five minutes”. Mr. Thomas got out of the truck. Then he made a noise, clutched his chest, leaned against the truck and collapsed.

Mr. Bailey checked for a heartbeat, felt a “hard beat and then just practically nothing.” He recognized that Mr. Thomas was having a heart attack, so instructed his son to call 911, while he administered “rescue breathing” and CPR.

Unfortunately, that is all we know about the death of Mr. Thomas, because no autopsy was performed to determine the cause of death. Even if Mr. Thomas did die of a heart attack, we have no positive way of knowing from the lay testimony whether the work related events precipitated the event, or it could have happened at any time due to

Mr. Thomas long history of extreme anxiety, hypertension and high blood pressure, his genetic history and his lack of regular exercise.

Looking at the lay testimony, Ms. Thomas, a trained nurse, gave a history her husband's family history of heart disease, lack of conditioning and 2002 diagnosis of significant, uncontrolled hypertension and high blood pressure, which had to be treated with medication.

Ms. Thomas also testified that her deceased husband had 30 years of anxiety on a near daily basis. The record showed that Mr. Thomas was a constant worrier. In the hours just before his death, Ms. Thomas described an emotional crisis caused by EPA findings at the workplace owned by Mr. Thomas' father that he apparently expected to inherit. In a perfectly understandable emotional panic, he was extremely worried about the ability to continue operating, costs of remediation and penalties for environmental violations.

The problem here is that these worries were not directly connected to his work. He worked for his father as manager of the business. From a purely legal standpoint, if the place were shut down, Mr. Thomas had only to find new employment. While one sympathizes with him as he observes the potential loss of his financial future, what he had, as characterized by definition, was a "mere expectancy". Based on his history, as related by his wife, he was frequently in a state of anxiety, which couldn't have been good for his blood pressure.

The point here is that given Ms. Thomas' history of her husband's longstanding health problems, combined with his family history, from a lay standpoint, a heart attack could conceivably happened at any time. More importantly, it might have come at any time from a myriad of causes.

Ms. Thomas was not present at the wreck site where Mr. Thomas collapsed, so the only lay evidence in the record is that of Mr. Samuel Bailey.

As I noted, Mr. Bailey was a stranger to Mr. Thomas. He was present only because it was his son's truck that was stuck in the culvert. Mr. Bailey described Mr. Thomas climbing up and down a steep bank four times, but he himself assisted on three trips to attach the chains to the truck. Further, Mr. Bailey and Mr. Thomas directed traffic for a period of time during which Mr. Thomas seemed to be okay to Mr. Bailey. By Mr. Bailey's observation of the episode that led to Mr. Thomas' death, it came after a significant period of relative inactivity on his part. It definitely did not take place at the time Mr. Thomas was engaged in the most difficult exertion.

The lay testimony, while important, is inconclusive. It must be weighed in conjunction with the available medical evidence. *Mengel v. Hawaiian Tropic NE &Central Distribution, Inc.*, 618 S.W.2d 184 (Ky. App. 1981).

Dr. Handshoe issued two written medical opinions by way of letters prepared at the request of counsel for the plaintiff.

In the first opinion letter, Dr. Handshoe opined that current medical knowledge would suggest that intense physical stress and emotional stress can indeed precipitate cardiovascular events such as sudden cardiac death in those individuals with underlying cardiac disease. The events surrounding Mr. Thomas' death "could have played a role in this regard." This opinion failed to meet the requirement that medical causation must be established by a medical opinion within "reasonable medical probability". *Lexington Cartage Co. v. Williams*, 407 S.W.2d 395 (Ky. 1966). The mere possibility of work related causation is insufficient. *Pierce v. Kentucky Galvanizing Co.*, 606 S.W.2d 165 (Ky. App. 1980).

It was at this point that ALJ Justice issued an order (3/7/2012) bifurcating the case on the motion of Defendant to disqualify Dr. Handshoe's medical opinion pursuant to the authority of *Daubert v. Merrell Dow Pharmacy*, 509 US 570 (1993) and *City of Owensboro v. Adams*, 136 S.W.3d 446 (Ky. 2004). In response, the Plaintiff had Dr. Handshoe read the deposition of Samuel Bailey.

Dr. Handshoe wrote a second opinion letter after having read the deposition of Samuel Barber (*sic* Bailey), the eyewitness to the "sudden death of Mr. Thomas". In that letter, Dr. Handshoe synopsizes Mr. Barber's testimony as being "…Mr. Thomas developed onset of chest pain followed quickly by sudden death after a prolonged period of very intense physical activity associated with trying to extricate a wrecked vehicle." Based upon that description, Dr. Handshoe observed that the

symptoms that Mr. Thomas experienced immediately prior to his sudden death are typical for an acute myocardial infarction. After defining the physical mechanism of myocardial infarction, Dr. Handshoe opined based upon a reasonable medical probability that the physical exertion immediately preceding Mr. Thomas's symptoms triggered plaque rupture and precipitated his heart attack and sudden death.

Unfortunately, there is a problem with Dr. Handshoe's medical opinion. First, his characterization of Mr. Bailey's deposed testimony is not completely accurate.

The "intense physical activity" was primarily limited to climbing up and down a steep bank. When Mr. Bailey arrived on the scene, he ascribed nothing out of the ordinary to Mr. Thomas. He was "…just normal…ready to do his job." There is no testimony that the actual placement and adjustment of the chains was difficult. Mr. Thomas only took the chains down to the stranded vehicle once and ultimately left them for the next wrecker to use. It was "hard work", but three of the four attempts to properly place the chains were aided by Mr. Bailey, who described no distress expressed by Mr. Thomas from that effort. The last time Mr. Thomas climbed the bank, Mr. Bailey characterized him as "winded" and "tired" from the effort. He was "out of breath". But Mr. Bailey stated that he was "winded" too because it was a hard trip up and down there.

Dr. Handshoe also fails to make any comment on the time frames of the incident. Mr. Bailey and Mr. Thomas

came up “winded” after the fourth try to raise the truck. Mr. Thomas opined that a larger truck was needed and called his dad. The KSP left. Then, according to Mr. Bailey, they “flagged traffic” for 5-10 minutes, during which each recovered his breathing and they had a normal conversation. There was no sign of extreme distress, but Mr. Thomas complained that he had eaten something that gave him “heartburn”. Thereafter, Mr. Thomas said he was going to call his dad and check on the status of the other wrecker. He went to his truck and was gone for another 5 or so minutes. When he came back, he grasped his chest and fell to the ground. Thus, there was a minimum 10-15 minute lapse of time between the last exertion and the fatal event.

Based upon those facts, Dr. Handshoe opined that the symptoms described by Mr. Bailey were consistent with acute myocardial infarction. He goes on to opine that within a reasonable medical probability the physical exertion immediately preceding Mr. Thomas’ Symptoms triggered plaque rupture and precipitated his heart attack and sudden death.

As mentioned earlier herein, the Defendant Employer made a formal objection to Dr. Handshoe’s testimony based on the holdings in *Daubert v. Merrell Dow Pharmacy*, 509 US 570 (1993) and *City of Owensboro v. Adams*, 136 S.W.3d 446 (Ky. 2004). Dr. Handshoe may undoubtedly be a well-qualified cardiologist. Unfortunately, I am unable to determine that from the bare-bones medical reports that he prepared for filing in this record. Other than the decedents [sic] medical examination

report for his CDL in August 2008, there is no specific mention of pre-mortem medical records reviewed. There is no discussion of the decedents [sic] personal or family medical history, nor is there any mention of his previous medical problems.

In his brief discussion of Mr. Bailey's deposition, Dr. Hann she failed to demonstrate an accurate grasp of the activities and timeframe is related to Thomas work activity on the night in question. Nor do his letters contain sufficient reasoning or information to allow me to determine whether the opinions are medically valid. Consequently his opinion of causation is not reliable.

By way of contrast, the medical opinion of Dr. Roseman is exhaustive, cites with specificity the evidence reviewed by him, makes concise and specific references to a synopsis of the case history complete with results of previous medical tests, and analyzes the events of January 21, 2010 thoroughly.

Dr. Roseman relates a complete clinical history of the decedent prior to the events of January 21 and, citing to a number of medical treatises on the subject of causation in sudden cardiac death gives as his professional opinion, based upon a reasonable degree of medical certainty, that Eddie Ray Thomas, Jr. more likely than not died of a fatal arrhythmia related to his underlying coronary artery disease. Noting Mr. Thomas' sole complaint, Dr. Roseman stated that prior to his death, Mr. Thomas was experiencing indigestion-like discomfort that, if related to the event, probably represented angina preceding his

death. He explained that the angina represents a symptom of the imbalance of the oxygen demand and supply to the heart. It does not represent a structural change in the artery to the heart. On page 17 of his medical report, Dr. Roseman offers a six paragraph refutation of Dr. Handshoe's theory of the cause of Mr. Thomas' death.

Dr. Roseman went on to opine that the event of the fatal arrhythmia that caused the unfortunate death of Mr. Thomas could've occurred at any time and it was merely coincidental that it took place while he was at work. He went on to state that the underlying conditions of Mr. Thomas coronary artery disease were most likely present for many years, which made him vulnerable to a fatal arrhythmia. There was nothing intrinsic about his work that contributed to his coronary artery disease or his fatal arrhythmia. The arrhythmia was merely a sign or symptom, albeit fatal in this situation, of Mr. Thomas's underlying cardiac condition.

With regret, I have to note that the opinion of Dr. Roseman is simply more comprehensive, complete, compelling and persuasive as to the cause of death of Eddie Ray Thomas, Junior. I am sensitive to the family's loss, but compelled to recognize that under Kentucky workers compensation law, the fact that a heart attack or other cardiac event occurs while at work does not in and of itself establish causation. *Roberts v. Estep*, 845 S.W.2d 544 (Ky. 1993), *Campbell v. Haulers, Inc.*, 320 S.W.3d 707 (Ky. App. 2010). See also *Armco Steel Corp. v. Lyons,* 561 S.W.2d 676 (Ky. App. 1978).

> For the foregoing reasons, I am compelled to conclude that the Plaintiff has failed to bear her burden of proof.

Donna filed a petition for reconsideration which was denied by order dated October 30, 2014.

Kentucky law holds that when the party with the burden of proof before the ALJ is unsuccessful, the sole issue on appeal is whether the evidence compels a different conclusion. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). There the court said:

> The claimant bears the burden of proof and risk of persuasion before the board. If he succeeds in his burden and an adverse party appeals to the circuit court, the question before the court is whether the decision of the board is supported by substantial evidence. On the other hand, if the claimant is unsuccessful before the board, and he himself appeals to the circuit court, the question before the court is whether the evidence was so overwhelming, upon consideration of the entire record, as to have compelled a finding in his favor.

Wolf Creek Collieries at 735.

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). So long as any evidence of substance supports the ALJ's opinion, it cannot be said the

evidence compels a different result. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). For an unsuccessful claimant, this is a great hurdle to overcome. In Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986) the Supreme Court said:

> If the fact-finder finds against the person with the burden of proof, his burden on appeal is infinitely greater. It is of no avail in such a case to show that there was some evidence of substance which would have justified a finding in his favor. He must show that the evidence was such that the finding against him was unreasonable because the finding cannot be labeled "clearly erroneous" if it reasonably could have been made. Thus, we have simply defined the term "clearly erroneous" in cases where the finding is against the person with the burden of proof. We hold that a finding which can reasonably be made is, perforce, not clearly erroneous. A finding which is unreasonable under the evidence presented is "clearly erroneous" and, perforce, would "compel" a different finding.

Donna's first argument on appeal is that the ALJ misunderstood Thomas' stressors. She argues "[t]he only testimony both lay and medical was that Eddie's stressors were ALL work related." She contends the ALJ erred by stating the cardiac event could have happened at any time.

We note Donna failed to allege these factual errors in her petition for reconsideration and did not

request additional findings concerning these alleged deficiencies. Thus, these alleged errors cannot be raised on appeal for the first time.

In the July 29, 2014, Amended Opinion and Order on Remand, the ALJ concluded Thomas' "worries were not directly connected to his work." However, in so concluding the ALJ did not rule out Thomas' work-related anxiety. In both the "Summary of the Evidence" and "Analysis," the ALJ described Thomas' work-related stressors, particularly on the day of his death. Whether the ALJ believed "some" or "all" of Thomas' stressors were work-related is a matter of discretion.

Significantly, in his September 4, 2012, report, Dr. Hal Roseman opined "the anxiety experienced by Mr. Thomas, a chronic issue, does not appear to be related to his occupation, but appears to be intrinsic to Mr. Thomas' personality." In addition, a medical note by Dr. Shelly Rogers dated October 22, 2007, states as follows:

> He reports that he is very anxious and gets anxious on a nearly daily basis. He reports he gets so nervous that he vomits nearly daily. He has had these issues for 30 years and questions if there is something that he could do or take whenever he gets anxious. He has been on Valium in the past which he cuts a 5 mg tablet into fourths and this has worked very well.

Finally, the March 18, 2002, medical record of Dr. Stephen Damron states, in part, as follows:

> 38-year-old white male with no primary care physician presents with the urging of his family after last Saturday night having an episode of severe vertex headache, dizziness, seeing spots and emesis times one and a feeling of chills and clamminess. His blood pressure noted by his wife was 240/130. He is currently on no antihypertensives. Off and on, his blood pressure seems to fluctuate appreciably over the last few days. He does occasionally have problems with a temper at work due to some stressors there, ***but this last episode was with him waking up***. (emphasis added).

The above-cited medical evidence supports a finding that not all of Thomas' anxiety and stressors were work-related. Thus, the ALJ had an accurate understanding of the complicated nature of Thomas' anxiety and stressors. Further, any perceived misunderstanding the ALJ might have had on this issue should have been addressed in Donna’s petition for reconsideration.

Similarly, any error in the ALJ's finding that Thomas' heart attack "could conceivably [sic] happened at any time" should have been addressed in her petition for reconsideration and additional findings requested. After an examination of the lay and medical testimony, the ALJ had

the discretion to interpret the evidence in this manner. Thus, we find no merit in Donna’s first argument.

We note that in his September 4, 2012, report, Dr. Roseman opined: "The Event of the fatal arrhythmia that caused the unfortunate death of Mr. Thomas could have occurred at any time and was merely coincidental that it took place while he was at work." Therefore, the ALJ's determination that Thomas' heart attack could have happened at any time is supported by substantial evidence. This determination by the ALJ cannot be disturbed, particularly since Donna did not raise any misunderstanding of the evidence on the part of the ALJ in her petition for reconsideration.

Donna’s second argument is the ALJ failed to apply the proper standard of the totality of circumstances in deciding this claim. We disagree.

Even though the decision mirrors the November 18, 2013, Opinion and Order, we believe the ALJ demonstrated a correct understanding of the applicable law and provided a thorough analysis in resolving the issue of causation.

In our Opinion vacating and remanding, we noted the ALJ "admirably outlined the pertinent evidence" in his November 18, 2013, Opinion and Order. We also stated "the ALJ specifically noted in this claim he was required to

base his determination solely upon the medical testimony based upon the holding in Mengel v. Hawaiian Tropic NE & Central Distribution, Inc., 618 S.W. 2d 184 (Ky. App. 1981)." We concluded the ALJ erred by "limiting his determination solely to the medical opinions." Upon further review of the ALJ's November 18, 2013, Opinion and Order and the December 20, 2013, "Order Overruling Petition for Reconsideration," and in an effort to self-correct, we note the ALJ did not specifically note he was required to base his determination solely upon the medical testimony based upon the holding in Mengel v. Hawaiian Tropic NE & Central Distribution, Inc., 618 S.W.2d 184 (Ky. App. 1981).

The ALJ spent the first three pages of the "Analysis" section in his initial decision discussing the lay testimony in the record. The ALJ then concluded as follows:

> ***Thus, lay testimony, while important, is not conclusive.*** Although the description of events and the symptoms described might lead a lay witness to conclude that Mr. Thomas had a heart attack and died as the direct result of his work-related exertion, there is no direct medical evidence to that effect until we get to the expert opinions of doctors Handshoe and Roseman. When the cause of a condition is not readily apparent to a lay person, medical testimony supporting causation is required. *Mengel v. Hawaiian Tropic NE & Central Distribution*, Inc., 618

> S.W.2d 184 (Ky. App. 1981). (emphasis added).

After reaching the above conclusion, the ALJ reviewed the medical evidence and concluded Dr. Roseman's opinions were more credible than Dr. Rodney Handshoe's.

Our second review of the ALJ's November 18, 2013, Opinion and Order and the December 20, 2013, Order Overruling Petition for Reconsideration reveals the ALJ had a proper understanding of the relevant case law concerning causation in heart attack claims.

In the July 29, 2014, Amended Opinion and Order on Remand, the ALJ clarified his November 18, 2013, Opinion and Order stating as follows:

> I first apologize for not making my views as clear as I should have. I most emphatically did not intend to imply that I was required to base my determination solely on the medical testimony. Prior to citing the authority of Mengel v. Hawaiian Tropic NE and Central Distribution, Inc., 618 S.W.2d 184 (Ky. App. 1981), at pages 18-20, I tried to carefully and accurately summarize the lay testimony of the only two lay witnesses who testified in the case, Ms. Donna Thomas (decedent's surviving spouse) and Mr. Samuel Bailey. In my opinion, neither lay witness provided evidence that would compel or persuade me to make a factual finding that Mr. Thomas died of a heart attack causally connected to his work. My citation to Mengel (supra) was thus due to my legal conclusion that the lay evidence did not support

> Plaintiff's claim that Mr. Thomas' death was work-related. It therefore follows that if the lay testimony is not persuasive, one must rely on the medical evidence (the authority for which I cited Mengel). I did consider **all** of the evidence and weighed it together, but of course lay testimony is by its nature different from expert testimony. (emphasis in original).

In light of the additional explanation offered by the ALJ in the July 29, 2014, Amended Opinion and Order, we conclude the ALJ, without question, considered all the evidence in resolving the issue of causation as required by Mengel v. Hawaiian Tropic NE & Central Distribution, Inc., supra. The July 29, 2014, Amended Opinion and Order amply reveals the ALJ considered the totality of the evidence in both his "Summary of the Evidence" and "Analysis" sections. After determining the lay testimony was inconclusive, a determination clearly within the ALJ's discretion, the ALJ concluded the medical evidence established Thomas' heart attack was not work-related. Since the ALJ applied the proper legal standard, the Board has no authority to disturb his decision.

In her third argument, Donna asserts the opinions of Dr. Hal Roseman "compel a finding of a heart event caused by Eddie's work." We disagree.

In Dr. Roseman’s September 4, 2012, report, he offered the following commentary regarding causation:

> It is my professional opinion, based upon a reasonable degree of medical certainty, that Eddie Ray Thomas, Jr., more likely than not died of a fatal arrhythmia related to his underlying coronary artery disease. Prior to his death, Mr. Thomas was experiencing indigestion-like discomfort that, if related to the event, probably represented angina preceding his death.
>
> ...
>
> It is my professional opinion, based upon a reasonable degree of medical certainty, that the indigestion-like discomfort Eddie Ray Thomas, Jr. was experiencing prior to his death represented angina, chest discomfort known conventionally to be the result of ischemia of the right coronary artery.
>
> ...
>
> In conclusion, it is my professional opinion as a cardiologist that relating Mr. Thomas' death to a cardiac etiology and to his employment is tentative at best. Even if one assumes that Mr. Thomas was experiencing unstable angina just before his death, it is doubtful that the exertional activities of Mr. Thomas' work on January 21, 2010 was sufficient to cause his death. Furthermore, the exact factors which precipitate acutely a ruptured plaque are unknown; certainly exertion is an insufficient factor in effecting the process.

After critiquing Dr. Handshoe's opinions, Dr. Roseman opined as follows:

> The event of the fatal arrhythmia that caused the unfortunate death of Mr. Thomas could have occurred at any time and was merely coincidental that it took place while he was at work. The underlying conditions of his coronary artery disease most likely were present for many years, which made Mr. Thomas vulnerable to a fatal arrhythmia. There is nothing intrinsic about his work that contributed to his coronary artery disease or his fatal arrhythmia. The arrhythmia was merely a sign or symptom, albeit fatal in this situation, of Mr. Thomas' underlying cardiac condition.

After considering all testimony in the record- both lay and medical- the ALJ ultimately was persuaded by Dr. Roseman’s opinions regarding causation. The ALJ is required, in heart attack cases, to consider the lay and medical evidence. However, once he has done so, the ALJ has the discretion to determine the evidence upon which he will ultimately rely. Here, the ALJ believed the lay testimony was inconclusive. He then determined Dr. Handshoe's opinions on causation were not credible, only after detailing the rationale for this determination. Dr. Roseman's opinions on causation constitute substantial evidence in support of the ALJ's determination Thomas’ death on January 21, 2010, was not work-related.

Donna’s fourth argument- e.g. the ALJ's finding of a non-work-related heart event is not supported by substantial evidence- has been addressed. The opinions of Dr. Roseman comprise substantial evidence in support of the ALJ's determination regarding causation.

Finally, Donna argues the ALJ's statement that Eddie "suffered symptoms of ischemic heart disease symptoms of ischemic heart disease that was a pre-existing, present and active condition" was erroneous. We agree in part. The ALJ’s finding merely emphasizes the fact Thomas had ongoing cardiac problems on the date of his death. Even though the ALJ was not required to make such a finding, his finding merely emphasized Thomas’ ongoing cardiac problems prior to and on the date of his death. This finding was superfluous and at most, constitutes harmless error.

Once again, we turn to the medical opinions of Dr. Roseman. The following notes by Dr. Roseman in the September 4, 2012, report are significant:

> Mr. Thomas was exposed to several cardiovascular risk factors: hyperlipidemia, hypertension, and family history of premature coronary artery disease and probably genetic predisposition. Mr. Thomas was first noted to have dyslipidemia in March of 2002 and re-evaluated in October of 2007. He was never treated with medications.

> [cholesterol chart omitted]
>
> Mr. Thomas [sic] blood pressure was first recognized as needing treatment in 2002; he was first placed on a diuretic, which was followed by ACE-inhibitor (stopped because of cough) and later a beta blocker. From July 20, 1998 to December 10, 2009, he gained approximately 17 pounds. According to the log of his office BP measurements, his blood pressure was marginally controlled.
>
> [blood pressure chart omitted]

In the "medical history" section of his report, Dr. Roseman noted Thomas' hypertension, anxiety disorder, dyslipidemia, and family history. Regarding family history, Dr. Roseman noted the following:

> According to Dr. Damron, there is family history of premature coronary artery disease: Mother was diagnosed as having coronary heart disease, requiring a stent in her 50s. Father had a cardiac catherization followed by a stent in June of 2008. (DT Depo, p.18-19).

As outlined above, in the September 4, 2012, report, Dr. Roseman opined that "the underlying conditions of his coronary artery disease most likely were present for many years, which made Mr. Thomas vulnerable to a fatal arrhythmia."

A review of the medical records of Dr. Rogers and Dr. Stephen Damron filed in the record corroborate that Thomas suffered from high blood pressure, anxiety, and a family history of cardiovascular disease.

Notably, even the opinions of Dr. Handshoe, while equivocal as to Thomas' cardiac condition prior to January 21, 2010, corroborate the existence of a pre-existing or underlying cardiac disease.

In the first letter, undated, of Dr. Handshoe, he noted Thomas had a history of hypertension. Dr. Handshoe also noted that an August 29, 2008, "medical examination report for commercial driver fitness" does not suggest the presence of "any other cardiovascular disease." However, in the concluding paragraph of this letter, Dr. Handshoe stated as follows:

> It is my medical opinion that current medical knowledge would suggest that intense physical stress and emotional stress can indeed precipitate cardiovascular events such as sudden cardiac disease ***with individuals with underlying cardiac disease***. (emphasis added).

Dr. Handshoe's May 3, 2012, letter also suggests the existence of a pre-existing condition as Dr. Handshoe opined as follows:

> The symptoms that Mr. Thomas experienced immediately prior to his death are typical for an acute myocardial infarction. Myocardial infarction most commonly results when there is ***rupture of a preexisting artherosclerotic plaque*** resulting in formation of a blood clot that completely occludes an artery. (emphasis added).

Without question the record is replete with medical opinions establishing Thomas suffered from multiple cardiovascular risk factors pre-dating his death on January 21, 2010. From this evidence, the ALJ has the discretion to presume Thomas was suffering from a *symptomatic* pre-existing heart condition. Nonetheless, this Board finds the ALJ's determination of a pre-existing active heart condition to be no more than harmless error.

The ALJ has visited this case twice. It is clear the ALJ again considered both the lay and medical evidence in great detail. The ALJ concluded the event of January 21, 2010, was not work-related. Pursuant to the discretion afforded him under the law, the ALJ relied upon Dr. Roseman’s opinions which constitute substantial evidence supporting his decision. Compounding the difficulty and complexity of this case is the fact that an autopsy was not performed; therefore, neither the lay witnesses, the

medical witnesses, the ALJ, nor this Board know the exact cause of Thomas' death.

The ALJ determined Thomas' death was not work-related. Since his analysis and determination was in accordance with the applicable law and is supported by substantial evidence, we are without authority to disturb his decision.

The July 29, 2014, Amended Opinion and Order on Remand and the October 30, 2014, Order on Petition for Reconsideration are hereby **AFFIRMED**.

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