OPINION ENTERED: July 23, 2012

CLAIM NO. 201100796

ELECTRICOM RIGHT OF WAY, LLC PETITIONER

VS. **APPEAL FROM HON. GRANT S. ROARK, ALJ, ADMINISTRATIVE LAW JUDGE**

BOBBY TAYLOR
and HON. GRANT S. ROARK,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

BEFORE: ALVEY, Chairman; STIVERS and SMITH, Members.

ALVEY, Chairman. Electricom Right of Way, LLC ("Electricom") seeks review of the Opinion, Order and Award rendered March 26, 2012 by Hon. Grant S. Roark, Administrative Law Judge ("ALJ") awarding Bobby Taylor ("Taylor") temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits based upon a

19% impairment rating enhanced by the three multiplier, and medical benefits for right knee, right shoulder, and neck injuries sustained as a result of a work-related accident occurring June 1, 2009. The ALJ dismissed Taylor's claim for an alleged carpal tunnel condition. Electricom also appeals from the order denying its petition for reconsideration rendered April 17, 2012. We affirm.

On appeal, Electricom argues Taylor failed to produce objective medical findings demonstrating he suffered a cervical injury due to the June 1, 2009, accident. It also argues the ALJ erred in relying on the opinion of Dr. Bilkey, who found Taylor's neck condition causally related to the June 2009 accident, because it was based on "a completely inaccurate and subjective history" provided by Taylor. Electricom also argues Dr. Bilkey did not point to objective evidence of a work-related cervical injury and overlooked the absence of cervical symptoms in the medical records until February 2011. Finally, Electricom argues Dr. Bilkey's conclusions and logic contradict the medical evidence. The only issue on appeal concerns the work-relatedness/causation of Taylor's alleged cervical injury, and therefore we will not discuss in detail his right shoulder and right knee injuries.

Taylor testified by deposition on August 12, 2011, and again at the final hearing held January 26, 2012. Taylor, a resident of Whitley City, Kentucky was born February 17, 1964. He completed the eighth grade and later earned a GED. Taylor testified he worked as a heavy equipment operator for the United States Navy from 1985 to 1989. Taylor's work history includes work as a grocery stocker, construction laborer and tree trimmer/laborer. While working for the United States Navy, Taylor suffered a low back strain requiring bed rest for three days. He also sustained a low back strain in 2003 or 2004 for which he was treated with injections, but his ability to work was not impaired.

Taylor testified he began working for Electricom on February 10, 2007 as a tree trimmer/laborer, and later as foreman. Taylor testified his job required him to climb trees and clear limbs for right-of-ways owned by cable, telephone and electric companies. Taylor described his job as strenuous, requiring heavy lifting since he had to pull a chainsaw with him while he climbed. At the time of the accident, Taylor was working as a foreman at a job site in Paoli, Indiana.

Taylor testified on June 1, 2009, he had climbed a tree approximately 65 to 75 feet in height and tied

himself to it. As he leaned back to retrieve his chainsaw, the tree snapped causing him to fall. His co-workers splinted his right leg and took him to the emergency room. Taylor testified he sought treatment at the hospital primarily for his right leg since he believed it to be either broken or dislocated. He also had shoulder pain. The hospital provided a knee brace, administered injections for pain, and referred him for an MRI. He then went to his family doctor, who referred him to Dr. Nadim Yasser. Dr. Yasser then referred him to Dr. Christian Lattermann. Dr. Lattermann performed right knee surgery in 2009 and right shoulder surgery on August 16, 2010. Prior to the June 1, 2009, accident, Taylor testified he had never experienced any problems with his right leg, right shoulder, neck or hands.

Taylor testified he currently suffers from constant right knee pain and has difficulty walking. He wears a permanent balancing brace which he removes only at home and for sleeping. Taylor testified he has completed treatment and understands Dr. Lattermann has placed him at medical maximum improvement ("MMI") for his right knee. Taylor testified he also has right shoulder pain and cannot lift anything over twenty pounds with his right arm. He suffers from neck pain radiating from the base of his

skull, through his shoulder and down his right arm. He also experiences numbness and tingling on his right ring and middle finger and has sharp pain behind his eye. Taylor testified he has not worked since the June 1, 2009 accident, and feels he cannot return to the job he held with Electricom prior to the fall.

Regarding his alleged neck injury, Taylor testified at his deposition as follows:

> Q: Now as part of your claim Mr. Taylor you said that you also injured your neck. Did you have neck pain the day of the injury?
>
> A: Well the whole thing hurt the day of the injury.
>
> Q: And when you say the whole thing, describe for me what you're pointing out right now?
>
> A: Okay. Basically the pain ran from down in here into here.
>
> Q: Which is - - tell us where you're pointing right here. You're on the right side of your neck?
>
> A: Lower part of my skull on the right side down the right shoulder.
>
> Q: Okay?
>
> A: And like I told Dr. Lattermann, I was working physical therapy and we'd graduated from the 20 pound on to the 25 pound - - which it also happened once before he even looked, you know, done anything to my shoulder and it also happened. But anyways, we'd

> graduated from 20 to 25 pound of weight on the arm and it just got excruciating by the Thursday that I'd went back, and they sent me into my family doctor.
>
> Q: Okay. So this is when you started really treating for your neck?
>
> A: Right.
>
> Q: Okay. And I think that happened around February of this year. Does that sound right to you?
>
> A: It sounds close, yes.
>
> Q: Okay. So before February of this year, or around when you started making these complaints and had this physical therapy increase in weight, did your neck bother you at all?
>
> A: At times, yes it did.
>
> Q: Okay. And did you ever treat specifically for it?
>
> A: No, because I always thought it was part of my shoulder pain.

During the hearing, Taylor again testified regarding his neck pain as follows:

> Q: . . . . Tell us about the neck problem. When did it start? When did you notice it?
>
> A: Well, it - - it came up a time before. It caused me to have a - - like a migraine. And I went and saw my local family doctor over that. I don't know how he wrote it up in his records, you know, but he didn't say whether it was the neck or what, so on. But, anyways, was in physical therapy and we graduated from 20 to 25 pounds of

weight. And then it got to hurting real bad, so they cut it short and went to - - I went home. And by the time, I showed up to therapy the two days later, it was so excruciating, they sent me in to see my family doctor. And all he done was gave me a pain shot. And then that's when they recommended I call Dr. Lattermann and have him have a look at it.

Q: So did you talk to Dr. Lattermann about the complaints you were having with your neck?

A: Yes, and he said there was definitely something there, but he would have to talk to Workman's Comp insurance, I guess you'd say.

Q: To get approval?

A: To get an approval to do - - before he could do anything for it.

Q: So did you ever receive any formal treatment?

A: No, I've not received none.

. . . .

Q: Now, as far as when you - - this - - you said you were having some - - I assume it was traction. You said that you raised the weight from 20 to 25 pounds?

A: Yeah.

Q: Is that when you started noticing some problems?

A: Well, by that Thursday, yeah, I mean, my pain had got so excruciating, by that Thursday when I went in for

> therapy, that's when they sent me in to see my family doctor.
>
> Q: Before that, where was your pain located and with your shoulder?
>
> A: Well, it's always been since - - you know, since I've got injured, it's always been from the base of my neck, right around the skull area down in through my shoulder, and I just thought it was all combined together.
>
> Q: So there's not really a dividing point in your shoulder to say this is my shoulder pain and this is my neck pain?
>
> A: No, not really.
>
> . . . .
>
> Q: Did you ever specifically tell your doctor that you had neck pain?
>
> A: Not until after the thing from the physical therapy.
>
> Q: Okay. And that was roughly the beginning of 2011, correct?
>
> A: Yeah, roughly.
>
> Q: Okay. So you did not seek any specific treatment for the neck itself prior to 2011?
>
> A: No, I just thought it was all combined together - -
>
> MS. DOWNS: (Interrupting) Okay.
>
> A: - - in my shoulder.

Taylor filed the Form 101 on May 25, 2011 alleging right shoulder, right knee and neck injuries, as

well as carpal tunnel syndrome, due to the June 1, 2009, fall. In support of his claim, Taylor filed the medical records of his treating physician, Dr. Lattermann dated June 2009 through October 2011. In a medical note dated June 17, 2009, Dr. Lattermann noted Taylor had fallen out of a tree injuring his right knee and shoulder. He opined recent MRIs revealed lateral collateral ligament ("LCL"), anterior cruciate ligament ("ACL") and posterior cruciate ligament ("PCL") tears and a bony contusion of the tibial plateau. He also noted shoulder pain, for which he treated with an injection. Dr. Lattermann recommended physical therapy and a brace for his right knee. He continued conservative treatment for both Taylor's right knee and shoulder in the form of physical therapy and medication for several months.

On August 31, 2009, Dr. Lattermann stated Taylor had right shoulder impingement and right knee arthrofibrosis. Dr. Lattermann recommended surgery for the right knee, and continuation of non-operative management for the shoulder. On September 23, 2009, Dr. Lattermann performed manipulation under anesthesia, arthroscopy and anterior lysis of adhesions. He also injected Taylor's right shoulder with Renalog and Marcaine.

Taylor was post-operatively diagnosed with right knee stiffness, and status post right knee dislocation three months before with disruption of ACL, PCL and posterolateral corner. Taylor followed up with Dr. Lattermann on a monthly basis and attended physical therapy. On June 1, 2010, Taylor complained of right shoulder pain and right knee pain. Dr. Lattermann noted no improvement of shoulder pain despite two cortisone injections, and subsequently ordered an MRI of his right knee and shoulder. On June 22, 2010, Dr. Lattermann noted the right shoulder MRI revealed infraspinatus partial thickness tear and the right knee MRI revealed a complete disruption of the ACL with chondral abnormality of the lateral femoral tibial compartment. Dr. Lattermann diagnosed chronic ACL tear and right rotator cuff tear. He recommended shoulder surgery and a brace for his ACL. On August 16, 2010, Dr. Lattermann performed a right shoulder arthroscopy with subacromial decompression and biceps tenodesis. Taylor continued follow-up treatment with Dr. Lattermann who ordered physical therapy and medication.

On February 7, 2011 Taylor complained of radiating pain in his right arm involving the median nerve distribution area in his right hand. Dr. Lattermann diagnosed new cervical radiculopathy, right arm and

shoulder involving C5-C7; status post rotator cuff surgery and status post conservative treatment of knee dislocation. Dr. Lattermann gave Taylor a “Medrol dose pak” and stated:

> This is something that is basically developing through the course of therapy and as such may need to be looked at as a consequence of the currently therapy that is he doing. (sic) I would therefore treat this under Worker’s Compensation.

On April 5, 2011, Dr. Lattermann noted cervical neck pain radiating down Taylor’s right arm and into his hand. He also noted a normal EMG, diagnosed cervicalgia and recommended physical therapy. On August 8, 2011, Dr. Lattermann again noted shoulder, knee and neck pain and referred him for a functional capacity exam. On October 25, 2011, Taylor was released from Dr. Lattermann’s care. Dr. Lattermann agreed with the impairment rating assessed by Dr. Prince.

Electricom submitted the medical report regarding the evaluation performed by Dr. J. Rick Lyons dated September 22, 2011. Taylor reported neck, right knee and right shoulder pain at the time of the accident, but did not really notice the shoulder and neck pain until after his knee condition had stabilized. Taylor stated his neck pain became more obvious during his rehabilitation after the shoulder procedure. Dr. Lyons diagnosed right knee

dislocation, right shoulder biceps tear and impingement syndrome, and cervical strain with non-verifiable radiculitis. Dr. Lyons noted Dr. Lattermann had completed care for Taylor's knee and assessed he had reached maximum medical improvement on May 3, 2011. Dr. Lyons recommended no additional procedures for the right knee, but noted Taylor is at risk of developing degenerative changes of the knee and/or meniscal tears which may need future operative intervention. Regarding the right shoulder, Dr. Lyons opined Taylor had reached MMI and needed no additional treatment.

Dr. Lyons opined it would be difficult to relate cervical spine pain with radicular symptoms to the fall. He noted Taylor did not complain of neck symptoms until he was in physical therapy after the shoulder surgery. Dr. Lyons opined Taylor had not reached MMI for the neck and he recommended a cervical spine MRI. He futher noted Taylor possibly has a cervical pathology and recommended home cervical traction, a TENS unit, and physical therapy. He also noted some of Taylor's shoulder complaints may be related to his neck. Dr. Lyons also opined Taylor does not have carpal tunnel syndrome.

Dr. Lyons assessed a 7% impairment rating for Taylor's knee condition and a 1% impairment rating for his

shoulder condition, yielding a combined value of 8% impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Lyons assessed a 5% impairment rating for Taylor's neck condition, but again opined the condition was not work-related and he had not reached MMI. Dr. Lyons opined Taylor could not return to his pre-injury position and restricted him to light duty, predominately sedentary type job, due to his right knee condition. He noted Taylor should be able to self restrict overhead activities.

Electricom also submitted a Medtox Laboratories Report dated June 4, 2009 indicating Taylor's urine, collected on June 1, 2009, had tested positive for marijuana. Electricom submitted a medical report dated September 20, 2011 by Dr. George C. Roberts, professor of pediatrics and pharmacology/toxicology, who opined it was not possible to assess Taylor's potential impairment by marijuana at the time of the accident based upon urine test results. Electricom also submitted a functional capacity evaluation report from PT PROS Physical Therapy and Sports Center dated August 15, 2011 and August 17, 2011.

Taylor submitted the medical report of Dr. Scott Prince dated August 30, 2011. Dr. Prince evaluated Taylor

on August 30, 2011, and noted initial injuries to the right knee and shoulder due to the fall in June 2009, both requiring surgery. Taylor stated after his shoulder surgery in August 2010, he had increased neck and shoulder pain performing an exercise administered during physical therapy. He also had pain radiating into his right arm, with numbness in the second and third fingers. Dr. Prince diagnosed knee dislocation with tibial plateau fracture and ligamentous disruption, right shoulder impingement, status post arthroscopic decompression, sub-acute neck pain, and a history of arm symptoms consistent with radiculopathy. In regard to the knee, Dr. Prince opined Taylor had reached MMI and recommended maintenance treatment, including medication and brace replacement. He also noted Taylor has an increased risk of progressive traumatic arthritis which may require future treatment. In regard to his neck and shoulder, Dr. Prince stated:

> As is typical when there are both shoulder and neck conditions present, there is some overlap in his symptoms. However, his shoulder function has remained stable and the shoulder joint itself is likely at MMI. The specific pathology and etiology of his neck symptoms has not been completely evaluated at present, but was felt to be separate from his shoulder injury.

Pursuant to the AMA Guides, Dr. Prince assessed a 9% impairment rating for Taylor's knee injury and a 2% impairment rating for his shoulder injury, yielding a combined value of 11%. He noted Taylor had not returned to work and imposed the following permanent restrictions for his right knee and shoulder: no standing or walking more than 30 minutues consecutively or 2 hours total per shift; no frequent or sustained work on uneven or irregular surfaces; no squatting, kneeling or crawling; limit stairs to 1 flight rarely with hand-rail use; no ladder work or unprotected heights; no work around hazardous or safety sensitive equipment; no frequent or sustained operation of controls with right leg; and no repetitive or sustained use of right arm for forceful overhead or activities.

Taylor also submitted the medical report of Dr. Warren Bilkey dated April 20, 2011. Dr. Bilkey evaluated Taylor and reviewed medical records, including those from the emergency room, the MRI reports, Dr. Lattermann and physical therapy notes. Dr. Bilkey noted according to the medical history, Taylor had a right knee dislocation, and an injury to his right shoulder and neck as a result of the fall. He noted Dr. Lattermann had placed Taylor at MMI with respect to his knee and shoulder. He also noted Taylor had persistent neck pain complaints, which became

more predominant since the shoulder and knee have been dealt with. Dr. Bilkey noted current symptoms of right knee pain, right shoulder pain, right neck pain radiating into right upper extremity, headaches, and numbness affecting second and third digits. Dr. Bilkey diagnosed right knee contusion injury, knee dislocation with disruption of ACL, PCL, medial collateral ligament ("MCL"), lateral tibial plateau fracture; right shoulder contusion injury, traumatic tendonitis, impingement; and untreated cervical strain. In regard to Taylor's neck, Dr. Bilkey stated:

> Mr. Taylor appears to have injured his neck. He has asymmetric loss of motion of the neck and muscle spasm. He also has considerable amount of muscle spasm affecting the scapular muscles which maybe aggravating both the neck and shoulder. The neck however has not been directly treated.

Dr. Bilkey opined the diagnoses were all due to the June 1, 2009 work injury and found no prior active impairment. He also opined Taylor had reached MMI with regard to his shoulder and knee conditions only, but not his neck. He recommended physical therapy for his neck strain, and home exercises for his knee and shoulder condition. Dr. Bilkey opined Taylor will require future treatment for knee arthritis. Dr. Bilkey assessed a 5% impairment for

Taylor's shoulder condition, a 9% impairment for his knee condition and a 5% impairment for his neck condition, yielding a combined value of 18% pursuant to the AMA Guides. Dr. Bilkey restricted Taylor from lifting over 15 pounds, engage primarily in sit down duty with activities and no climbing. Finally, he noted the above restrictions preclude Taylor from being able to resume usual work duties carried out prior to his injury.

Dr. Bilkey performed a second medical evaluation on December 20, 2011. He noted a greater loss of motion in Taylor's shoulder, resulting in a higher impairment rating of 7%. Dr. Bilkey did not change the impairment ratings regarding the neck or right knee conditions. Therefore, the combined value yielded a 19% impairment rating. Dr. Bilkey opined Taylor had reached MMI for his knee condition on May 3, 2011 and MMI for his shoulder condition on October 25, 2011. Dr. Bilkey noted Taylor had not obtained MMI for his neck condition. In finding Taylor's neck condition causually related to the accident, Dr. Bilkey stated as follows:

> In my opinion, the neck injury is work injury related for the following reasons. Mr. Taylor had complaint of neck pain associated with a very traumatic injury. After all he fell over 50 feet. It is more likely than not that injury to the neck explains

> onging neck symptoms with this amount of trauma. Mr. Taylor had no complaint of neck pain prior to the work injury. This is in spite of his job being very physical. He literally would climb trees free-handed, lifting a chainsaw with him and then using that chainsaw to cut limbs. Finally, neck symptoms have persisted in spite of treatment to the shoulder. The surgery that Mr. Taylor had to the shoulder did appear to improve his lot. In spite of this neck pain has continued to be problematic. Finally, it is noted that Mr. Taylor at this point in time, satisfies criteria for a Cervical DRE Category II impairment. Note the active range of motion measures with Inclinometer. It is for these reasons that the cervical spine condition in my opinion is fully work injury related.

In the Opinion, Order and Award rendered on March 26, 2012, the ALJ awarded TTD benefits and medical benefits for Taylor's right knee, shoulder and neck injuries. The ALJ, relying upon Dr. Bilkey's opinions, awarded PPD benefits based upon a 19% impairment rating. The ALJ increased Taylor's benefits by the three multiplier pursuant to KRS.730(1)(c)1. The ALJ declined to award benefits for his alleged carpal tunnel syndrome. In finding Taylor's neck condition work-related, the ALJ stated as follows:

> As threshold issues, the employer disputes whether plaintiff's alleged neck and carpal tunnel conditions are causally related to the work injury of June 1, 2009. It relies on its experts

> to argue there is no objective evidence of carpal tunnel syndrome and that plaintiff's neck condition is not causally related to the work injury.
>
> Having reviewed the evidence of record, and considering the nature of plaintiff's injury, the Administrative Law Judge is persuaded plaintiff's neck condition is causally related to the work accident of June 1, 2009. In reaching this conclusion, the opinions of Dr. Bilkey and Dr. Latterman[sic] are considered most credible. Dr. Bilkey explained how the nature of the accident and the progression of the plaintiff's symptoms lead him to conclude the condition is work related. It is therefore determined plaintiff's neck condition is work-related.

Electricom filed a petition for reconsideration, making essentially the same arguments as it does on appeal. The ALJ denied its petition for reconsideration by order rendered April 17, 2012, noting Electricom merely re-argued the merits of the case. On appeal, Electricom argues Taylor failed to produce objective medical findings demonstrating he suffered a cervical injury as a result of the June 1, 2009 fall. It argues the ALJ erred in relying upon Dr. Bilkey's opinion on causation and cannot constitute substantial evidence. It asserts Taylor provided Dr. Bilkey an incorrect medical history when he stated he suffered injuries "to his right shoulder and his neck" subsequent to the fall and represented his neck pain

was an ongoing pain problem. It argues Dr. Bilkey overlooked the absence of cervical complaints in the medical records until February 2011, approximately twenty months after the fall. It also disputes Dr. Bilkey's statement Taylor's neck symptoms have persisted in spite of shoulder treatment. Electricom cites to Cepero v. Fabricated Metals Corp. 13 S.W.3d 839 (Ky. 2004), Electricom argues Dr. Bilkey's opinion on causation cannot constitute substantial evidence. Finally, Electricom argues the opinions of Drs. Lyons and Prince are more accurate.

As the claimant in a workers' compensation proceeding, Taylor had the burden of proving each of the essential elements of his cause of action, including work-relatedness/causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Taylor was successful in that burden, the question on appeal is whether substantial evidence of record supports the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Substantial evidence is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

The ALJ, as fact-finder, has the sole discretion to determine the quality, character, and substance of evidence. KRS 342.285; Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, 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. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a different outcome than reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to determining whether the ALJ's findings are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact finder by superimposing its own appraisals as to weight and

credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Electricom's arguments amount to no more than an attempt to have this Board re-weigh the evidence and direct a finding contrary to the ALJ's decision. We may not do so. We believe the ALJ's finding of a causal relationship between Taylor's cervical condition and the June 1, 2009, work accident is supported by substantial evidence.

The ALJ was persuaded by the opinions of Drs. Bilkey and Lattermann in finding Taylor's neck condition causally related to the June 1, 2009 work accident. In his medical report dated April 20, 2011, Dr. Bilkey concluded Taylor suffered a neck injury by noting he had an asymmetric loss of motion of the neck and muscle spasms. He also noted muscle spasms affecting the scapular muscles which may be aggravating the neck and shoulder. He then stated his diagnoses, including untreated cervical strain, were due to the June 1, 2009 work injury. In his second medical report dated December 20, 2011, Dr. Bilkey provided a detailed explanation supporting his finding Taylor's neck condition is causually related to the accident. He noted Taylor had a complaint of neck pain associated with a traumatic injury, caused by falling over fifty feet, and

felt it was more likely than not "that injury to the neck explains onging neck symptoms with this amount of trauma." Dr. Bilkey noted Taylor had no complaint of neck pain prior to the work injury despite his very physical job as a tree trimmer. He also noted Taylor's neck symptoms have persisted in spite of shoulder treatment, including surgery. Dr. Bilkey also noted Taylor satisfied the criteria for a Cervical DRE Category II impairment.

The ALJ also found persuasive the opinions of Taylor's treating physician, Dr. Lattermann. In a medical note dated February 7, 2011, he diagnosed new cervical radiculopathy, right arm and shoulder involving C5-C7. Regarding the neck condition, Dr. Lattermann noted "this is something that is basically developing through the course of therapy and as such may need to be looked at as a consequence of the currently therapy that is he doing. [sic] I would therefore treat this under Worker's Compensation."

We find no merit in Electricom's argument Cepero v. Fabricated Metals Corp., *supra*, precludes Dr. Bilkey's opinion on causation from constituting substantial evidence. Electricom argues Taylor provided a completely inaccurate and subjective history when he stated he suffered injuries "to his right shoulder and his neck"

subsequent to the fall and represented his neck pain was an ongoing pain problem.

Cepero, *supra*, involved not only a complete failure to disclose, but affirmative efforts by the employee to cover up a significant injury to the left knee only two and a half years prior to the alleged work-related injury to the same knee. The prior, non-work-related injury had left Cepero confined to a wheelchair for more than a month. The physician upon whom the ALJ relied in awarding benefits was not informed of this prior history by the employee and had no other apparent means of becoming so informed. Every physician who was adequately informed of this prior history opined Cepero's left knee impairment was not work-related but, instead, was attributable to the non-work-related injury two and a half years previous.

In the case *sub judice*, conflicting evidence existed as to whether Taylor suffered a neck injury as a result of the accident. Electricom merely points to evidence supporting its position. Although medical records indicate no mention of neck complaints until February 2011, Taylor testified he experienced pain from the right base of his skull down into his right shoulder the day of the accident. He testified he did not specifically seek treatment for his neck until February 2011 because he

thought it was part of his shoulder pain. He also testified the neck pain became excruciating after an exercise in physical therapy following his shoulder therapy. Dr. Bilkey noted he reviewed all medical records, including those from Dr. Lattermann, when forming his opinion on causation. Therefore, we do not believe the ALJ erred in finding the neck injury causally related to the work accident. Since his determination is supported by substantial evidence, we affirm.

Accordingly, the March 26, 2012 opinion, order and award and the April 17, 2012 order on reconsideration rendered by Hon. Grant S. Roark, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

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