

OPINION ENTERED: May 3, 2013

CLAIM NO. 201187705

FACILITY MANAGEMENT SERVICES
(TURNER CORP. SPECIAL PROJECT-
1000 SO. LIMESTONE LEXINGTON KY)

PETITIONER

VS.

APPEAL FROM HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE

JOHN MICHAEL BROWN
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

STIVERS, Member. Facility Management Services ("Facility") seeks review of the December 3, 2012, opinion, award, and order rendered by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ") finding John Michael Brown ("Brown") totally occupationally disabled and awarding temporary total disability ("TTD") benefits, permanent total disability

("PTD") benefits, and medical benefits. The ALJ also ordered Brown undergo a vocational rehabilitation evaluation. Facility also appeals from the January 4, 2013, order ruling on its petition for reconsideration.

On appeal, Facility challenges the ALJ's determination Brown is totally occupationally disabled arguing the ALJ should have awarded permanent partial disability ("PPD") benefits.

There is no question Brown sustained serious injuries on May 1, 2011, when, on a ladder, in the course of cleaning a window at the University of Kentucky Medical Center ("UK"), he fell approximately twenty-five feet and landed with both feet on a marble floor. Brown was taken to UK and treated for his injuries. Brown was later treated by Dr. Carroll Witten with Norton Advanced Orthopaedics. Dr. Witten's diagnosis is as follows:

1. Fracture lateral malleolus right ankle
2. Crush injury to the right ankle and foot secondary to the fall from a height.
3. Fracture of the first and second cuneiform with injury to Chopart's joint in the left midfoot
4. Crush injury to the left foot and ankle secondary to his fall.
5. He also was unable to walk secondary to the pain in both feet.¹

¹ See Dr. Witten's March 30, 2012, letter.

Since the injury Brown has walked with the aid of "cam boots" and crutches. The October 9, 2012, benefit review conference ("BRC") order reflects TTD benefits were paid from May 2, 2011, through May 2, 2012. Concerning the permanent impairment rating, Brown introduced the independent medical examination ("IME") report of Dr. Warren Bilkey in which he assessed a 39% impairment rating. Facility introduced the IME report of Dr. Keith W. Myrick, a podiatric surgeon, reflecting he agreed with Dr. Bilkey's impairment rating. Brown's work history reveals he has only performed work involving manual labor.

In the December 3, 2012, opinion, award, and order, the ALJ entered the following findings and conclusions:

Brown argues that his work injury has rendered him permanently totally disabled. The Defendant argues that Brown suffers from permanent partial disability, but is entitled to the 3.0 multiplier for lacking the physical capacity to return to preinjury work.

"Permanent total disability" is defined, in pertinent part, as "the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury" KRS 342.0011(11)(c) "Work" is defined as "providing services to another in return for remuneration on a regular and

sustained basis in a competitive economy." KRS 342.0011(34).

The determination of a total disability award remains within the broad authority of the ALJ. *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000). The factors which the ALJ may consider in making this determination include the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of work under normal employment conditions. *Id.* at 51. The statutory definition does not require that a worker be rendered homebound by his injury, but does mandate consideration of whether he will be able to work reliably and whether his physical restrictions will interfere with his vocational capabilities. *Id.* In making his or her assessment, the ALJ may rely on both the medical testimony and a worker's assessment of his or her ability to labor. *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979).

"Permanent partial disability" means the condition of an employee who, due to an injury, has a permanent disability rating but retains the ability to work. KRS 342.0011(11)(b).

It has long been the rule that the claimant bears the burden of proof and the risk of nonpersuasion before the fact-finder with regard to every element of a workers compensation claim. *Young v. Burgett*, 483 S.W.2d 450 (Ky. 1972). In this instance, the ALJ finds from applying the criteria above to the facts of Brown's case that he has proven permanent total disability.

Brown suffered significant crush injuries to his lower extremities from a 25-foot fall to a marble floor. Both of

the Defendant's evaluating physicians, Dr. Salamon and Dr. Myrick, agreed on the diagnosis of bilateral chronic regional pain syndrome. Dr. Myrick agreed with Dr. Bilkey's 39% impairment rating. There is a consensus that Brown is limited to sedentary work, and the ALJ finds that he has no transferrable skills that would aide him in obtaining such work presently.

Brown credibly supported his claim with the following testimony: "My feet shed about once a month. They get little spots on them and they change colors. One side of my foot will be purple, one side will be a normal-looking color, and then you look at it again and it will be polka dotted. It's like when I take my step, when I raise my feet up, it's like somebody is ripping my Achilles tendon on half of my right foot and my left foot it's like somebody ripping my shin down in front of my leg. It's the constant change of circulation and everything and drastic changes, like cold weather...It takes me forever to put on socks, because the more I twist and tug on my feet, the more they hurt." (HT p. 17, 20). He cannot stand more than 15 minutes at a time. His sleep is affected by muscle spasms. He cannot wear jeans because he cannot bend his feet to fit in them. The defendant argues that Brown rejected a post-injury job driving a sweeper truck for which he was capable, but the ALJ does not believe it is reasonable to think that Brown could drive such a truck for five-and-a-half hours a day. Brown is a still-youthful 30 years old, which alone weighs heavily against a finding of total disability; but Brown's pain, impairment, and restrictions are currently so significant that such a result is compelled in this case.

KRS 342.710(3) provides in part:
"When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment."

In *Wilson vs. SKW Alloys, Ky.*, 893 S.W.2d 800 (1995), the court held that the phrase "work for which an [employee] has previous training or experience" means suitable employment. It goes on to define "suitable employment" as meaning work which bears a reasonable relationship to an individual's experience and background, taking into consideration the type of work the person was doing at the time of injury, his age and education, his income level and earning capacity, his vocational aptitude, his mental and physical abilities and other relevant factors both at the time of the injury and after reaching his post-injury maximum level of medical improvement. The ALJ finds, as the Defendant concedes, that Brown does not retain the physical abilities to do work which is of the same status as the work he was performing at the time of the injury. Therefore, he will be awarded vocational rehabilitation.

Facility filed a petition for reconsideration requesting additional findings of fact regarding the determination Brown is permanently totally disabled based on the factors contained in McNutt Construction/First General Services v. Scott, 40 S.W.3d 854, 859 (Ky. 2001). It also requested additional findings of fact regarding the

vocational and medical proof it had submitted. In addition, Facility requested the ALJ enter findings of fact regarding the "bona fide job offer that was made to the plaintiff by Jennifer Coombs." It asserted this was necessary in light of Muncy v. Peoples Rural Tel. Co. Co-op., 432 S.W.2d 409 (Ky. 1968) which it maintained precludes an award of PTD benefits when a plaintiff refuses a job offer. In the January 4, 2013, order ruling on the petition for reconsideration, the ALJ stated as follows:

The ALJ initially notes that the *Shields* case and its progeny stand for the proposition that the ALJ must state findings sufficient to support the legal conclusion; enable the parties to understand the basis for the conclusion; and permit meaningful appellate review. In this case, the ALJ gave detailed explanation of the facts that supported the finding of permanent total disability. In requesting additional findings, the Defendant is essentially asking the ALJ to provide comment on various "facts" that it claims did not support the finding of total disability. The ALJ is not required to address each such argument, but will sustain the petition to provide additional support for the award made herein, as follows.

The Defendant first requests a discussion on how the factors to be considered for total disability in *Ira A. Watson Department Store v. Hamilton*, 34 S.W.3d 48 (Ky. 2000) "interact" with Plaintiff's testimony that the ALJ found credible. The ALJ addressed this in the Opinion by noting that

Plaintiff's age was a significant factor weighing against a finding of total disability. But his education, vocational skills, and, most importantly, his heavily burdensome physical limitations, prevent a return to work on a regular and sustained basis. But for the consideration of Plaintiff's age, this was not a close call.

The Defendant next raised the contrary vocational opinion of Paula Shifflet [sic]. The ALJ did not accept her testimony. Among the reasons for that was that Shifflet [sic] did not personally interview Brown and observe his obvious physical limitations.

The Defendant pointed out that Dr. Salamon released driving restrictions for Plaintiff. That is true, but does not prove in this case that Plaintiff is capable of regular and sustained driving at work.

The Defendant pointed out that Dr. Myrick released Plaintiff to sedentary work. Such a restriction in Plaintiff's case supported his claim for total disability.

The Defendant again pointed out that the Defendant, through Jennifer Coombs, offered Plaintiff a job after his driving restrictions were lifted. The potential effectiveness of that evidence was diminished, as noted in the Opinion, by the fact that Coombs did not know about the operation of the sweeper truck, specifically whether Plaintiff would have to operate a manual transmission with his feet or not, and did not know how far he would have to walk from the parking lot into work to operate the sweeper. Regardless, the evidence was that the

job description applicable to the job of operating a sweeper - route technician - contained physical requirements that Brown could not perform on a full-time basis.

On appeal, Facility argues the ALJ erred in finding Brown totally occupationally disabled. Citing to Muncy v. Peoples Rural Tel. Co. Co-op., supra, it maintains because Brown refused its job offer, he cannot be permanently totally disabled within the meaning of the statute.

Facility also argues although Brown had a 39% impairment and is restricted to sedentary work with lifting restrictions, "no medical report says that Mr. Brown cannot drive." It asserts Dr. Michael Salamon, who evaluated Brown at Facility's request and Dr. Witten stated Brown was limited to sedentary work but was able to drive. Additionally, Dr. Bilkey's deposition reveals he agreed with the restrictions of Drs. Witten and Salamon.² Facility argues the ALJ should have relied upon the unrebutted restrictions imposed by the physicians which established Brown was able to drive.

²Although Facility asserts in his deposition Dr. Bilkey stated he agreed with the restrictions of Drs. Witten and Salamon, we find no such deposition in the record. However, we note in his report Dr. Bilkey stated he agreed with the restrictions imposed by Dr. Witten.

Facility notes Jennifer Coombs ("Coombs"), its human resources director, testified she offered a job to Brown driving a sweeper truck at \$9.00 an hour working five hours per day. Facility posits this job was not created for Brown and although some accommodations were made such as helping with lifting, this was a job which is performed in its "normal course of business." It contends Coombs described the job as sedentary and indicated Brown would drive the sweeper vehicle, engage in no lifting, and walk minimally. Facility states Coombs testified Facility had an injured worker wearing a boot performing this very job. Citing to the report of its vocational expert, Paula R. Shifflett, MRC, CRC, in which she defined sedentary work, it argues Coombs' testimony establishes the job it offered to Brown "fit right into" the definition of sedentary work. Facility argues the ALJ's reasons for rejecting Coombs' testimony were erroneous.

Facility also argues the ALJ erred in relying upon Brown's testimony regarding his physical problems instead of focusing on the medical evidence. Facility contends since CRPS is involved, the medical issues are complex and the ALJ cannot dismiss the medical opinions and rely upon Brown's testimony. Citing to Arnold v. Toyota Motor Mfg., 375 S.W.3d 56 (Ky. 2012), Facility argues as follows:

The ALJ rejected the bona-fide offer based upon the testimony of the claim [sic], and this was in error when the decision should have been based upon the un-rebutted medical evidence that Mr. Brown is able to drive. The ALJ also based the PTD award, and rejection of the job offer, based upon a misunderstanding of the facts. The job description was relied upon by the ALJ, but Jennifer Coombs testified that there was no lifting requirement with this job as this would be performed by another employee. The rejection of the release to drive by Dr. Salamon was erroneous, and in error as the opinion was un-rebutted medical evidence.

Facility requests the award be vacated and the claim remanded for an award of PPD benefits consistent with a 39% impairment, or in the alternative, the case be remanded to the ALJ for "further findings of fact on the bona-fide job offer, and PTD award, based upon a correct understanding and summary of the facts and conclusions of law based upon them."

Brown, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including entitlement to PTD benefits. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Brown was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735

(Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. 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). An ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ,

such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). 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 a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Dept. 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).

We find no merit in Facility's assertion the ALJ erroneously determined Brown to be totally occupationally disabled. In his March 30, 2012, letter, Dr. Witten stated, in relevant part, as follows:

5. Concerning changes in Mr. Brown's feet and ankles secondary to this injury there were several. First he had his obvious fractures which at this time are healed. However fractures are also associated with soft tissue injuries. When a bone is fractured

ligaments and tendons attached to these areas are also injured. Mr. Brown fell from a height which caused him to have much more soft tissue injuries than one would often expect from these type injuries, and therefore his major problem is not to the bone but actually to the soft tissues and the joints at the end of these bones. Although he has continued to improved [sic] and can now walk on his feet, he still has pain in both feet whenever he does walk secondary to the injuries in the ankle and midfoot joints.

6. I feel Mr. Brown is going to continue to have disability associated with his feet. He at the present time is unable to walk for any length of time without pain. At times he does have to sit down to rest. I feel [sic] will be unable to return to the type of employment that he had before which to my understanding was a construction type of job. He also may very well need further surgeries in the future to fuse different joints in his feet to give him more stability and less pain. Finally he is having chronic pain and may need chronic pain management for this.

. . .

8. Permanent restrictions I have based upon the last time I evaluated Mr. Brown is that he could perform sedentary work. He should not be expected to walk very far distances i.e. more than fifty yards at a time without being able to rest. I do not believe he could perform any gainful employment that requires him to be on his feet for much of that time. Although he will be able to drive a vehicle I think he will need a long term handicap parking permit so he does

not have to walk long distances once he is parked.

Clearly these restrictions are substantial and are hardly a ringing endorsement of Brown's ability to drive a vehicle. Further, contrary to Facility's assertion no physician imposed a restriction of no driving, the note of Dr. Christopher L. Nelson, Brown's pain physician, reflects on July 16, 2012, he provided the following restrictions: "[patient] should not be driving or lifting, if at all possible patient should be stationary at all times."³

There is no dispute Brown is not capable of performing jobs involving physical labor and Brown's testimony establishes he has only driven one time since the injury. On that occasion, he drove approximately two miles to the grocery store and could not get out of the car due to his feet swelling. Brown stated he remained in the car until the swelling subsided and then drove home without going into the grocery store. Brown testified he cannot walk without the crutches and cam boots and always wears the cam boots and takes the crutches whenever he leaves home. On many occasions, he is forced to keep his feet elevated as much as six to seven hours a day to reduce the

³ Brown was referred to Dr. Nelson with Bluegrass Pain Consultants by Dr. Witten, his treating physician.

swelling and it takes a lengthy period of time for him to put on his socks.

The ALJ's description of Brown's testimony regarding the problems with his feet is comprehensive and fully supports the determination Brown is unable to drive. In addition to the problems described by the ALJ in the December 3, 2012, opinion, award, and order, Brown testified he could not perform the job Coombs offered because he could not push a gas pedal, explaining his feet swell and "lock up." Similarly, Brown did not know anything about the truck he was to drive in performing this job, had never worked as a delivery man, and did not have his CDL license. Brown explained he lives in Bagdad, Shelby County, and as far as he knows there are no taxi cabs or buses available.

Although Coombs testified Brown would not be required to lift, and would only have to walk from his vehicle to the office as a route technician, she acknowledged the job description is as follows:⁴

1. Lift, push or pull objects weighing up to 40 lbs.,
2. Carry items under 20 lbs.,
3. Squat, bend, stoop, and reach,

⁴This job description is contained in exhibit two of Coombs' October 18, 2012, deposition.

4. Perform repetitive arm and hand movements,
5. Walk distances over 100 yards,
6. Work in noisy environments,
7. Work in warm and/or chilly environments,
8. Work outside for brief intervals,
9. Fill out simple paperwork

After providing this job description, the following exchange took place between Coombs and Brown's attorney:

Q: Okay. And you called it a route technician job?

A: Yes.

Q: Okay. Could you provide us with a copy of that right now?

A: Yes.

Mr. Scheynost: Is that okay, John?

Mr. Spies: Yeah, that's fine.

Q: Okay. The job description you just handed me, it says at the top, "Job Description - Route Tech." Is that accurate?

A: Yeah. That's a general job description for our cleaners.

Q: Okay. But this would also apply to him in this job that you just described?

A: Yes.

Q: Okay. And on it, it says he has to carry items that are 20 pounds?

A: Yes. But we were provided to have him with someone so he would not have to lift.

Q: Okay. It also says lift - lift, push and pull objects weighing up to 40 pounds?

A: If needed.

Coombs acknowledged she was unaware of the distance Brown would have to walk from the parking lot to report to work. She was unaware whether the truck had an automatic or standard transmission. Coombs acknowledged she knew nothing about the truck Facility proposed Brown would drive. Therefore, the ALJ was not bound to rely on Coombs and was free to conclude Brown could not perform the job offered by Facility and was permanently totally disabled.

The facts in the case *sub judice* are substantially different than in Muncy v. Peoples Rural Tel. Co. Co-op., supra. There, the Court of Appeals described the factual situation as follows:

The gist of the medical testimony is that Muncy may not at present be able to climb poles, but that he can do other work such as clearing brush along the lines of his employer, that he was able to dig holes and to furnish materials and supplies to other linemen, and such work was offered to him at his same pay, and the offer was refused. Although the fracture of his leg healed with good alignment, Muncy chose to retire and accept his pension benefits. In such circumstances we

conclude that the Board was correct in deciding that Muncy is not permanently and totally disabled within the meaning of the Workmen's Compensation Act.

Id. at 409-410.

Here, there is clearly a dispute whether Brown is capable of performing the job, working five hours a day five days a week, which Facility offered. Therefore, we decline to hold that a job offer, which is dubious at best, bars the ALJ from determining Brown is totally occupationally disabled. Rather, we believe the following language in Ira A. Watson Dept. Store v. Hamilton, supra, is dispositive:

An analysis of the factors set forth in KRS 342.0011(11)(b), (11)(c), and (34) clearly requires an individualized determination of what the worker is and is not able to do after recovering from the work injury. Consistent with *Osborne v. Johnson*, *supra*, it necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact. It also includes a consideration of the likelihood that the particular worker would be able to find work consistently under normal employment conditions. A worker's ability to do so is affected by factors such as whether the individual will be able to work dependably and whether the worker's physical restrictions will interfere with vocational capabilities. The definition of "work" clearly

contemplates that a worker is not required to be homebound in order to be found to be totally occupationally disabled. See, *Osborne v. Johnson*, *supra*, at 803.

Although the Act underwent extensive revision in 1996, the ALJ remains in the role of the fact-finder. KRS 342.285(1). It is among the functions of the ALJ to translate the lay and medical evidence into a finding of occupational disability. Although the ALJ must necessarily consider the worker's medical condition when determining the extent of his occupational disability at a particular point in time, the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. See, *Eaton Axle Corp. v. Nally*, Ky., 688 S.W.2d 334 (1985); *Seventh Street Road Tobacco Warehouse v. Stillwell*, Ky., 550 S.W.2d 469 (1976). A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured. *Hush v. Abrams*, Ky., 584 S.W.2d 48 (1979).

Id. at 51-52.

Based on the above language, the ALJ was permitted to disregard Brown's rejection of Facility's job offer and rely upon the opinions of the physicians and the testimony of Brown in determining he was totally occupationally disabled.

Similarly, we decline to hold the fact the claimant is diagnosed with CPRS prohibits the ALJ from

relying upon the worker's testimony regarding his physical condition and ability to perform various activities both before and after being injured. Id. at 52. Regardless of the fact Brown had CPRS, the ALJ is free to reject portions of the medical testimony and accept Brown's testimony regarding his physical abilities after the injury in determining he is totally occupationally disabled. Ira A. Watson Dept. Store v. Hamilton, supra, does not require the ALJ to rely upon the vocational opinions of either the medical experts or vocational experts. Id. at 52. Rather, the ALJ is permitted to base his decision as to whether Brown is totally occupationally disabled on the lay and medical evidence.

As previously noted, Dr. Witten's explanation of Brown's injuries and continuing problems does not unequivocally establish Brown is able to drive a vehicle. Dr. Witten noted Brown has pain in both feet whenever he walks and may need further surgery "to fuse different joints in his feet" in order to give him more stability and less pain. Brown's testimony regarding his physical problems and ability to drive is consistent with the problems Dr. Witten noted in his March 30, 2012, letter. The contents of Dr. Witten's March 30, 2012, letter, and Dr. Nelson's July 16, 2012, note, in combination with

Brown's testimony constitute substantial evidence supporting the ALJ's determination Brown is totally occupationally disabled.

Further, we find Facility's assertion the ALJ's decision was based on a misunderstanding of the facts to be rather disingenuous. The ALJ did not misunderstand one iota of the evidence. As previously noted, in his December 3, 2012, opinion, award, and order, the ALJ set forth Brown's testimony which led him to believe Brown was not capable of performing any type of sedentary work and could not consistently drive a truck or any vehicle for a five and a half hour day. In the January 4, 2013, order the ALJ also explained in detail why he chose not to rely upon the opinions of Shifflett, the vocational expert, Dr. Salamon, and Dr. Myrick. Similarly, the ALJ also explained why he found Coombs' testimony not to be credible.

Contrary to Facility's contention, the ALJ is not required to explain why he rejected certain evidence; rather, he is only required to provide the basis for his decision. Thus, we believe the ALJ fully complied with the mandates of Arnold v. Toyota Motor Mfg., supra, as he summarized the evidence and set forth the basis for his decision that Brown was totally occupationally disabled. Stated differently, the ALJ's opinion, award, and order and

his order ruling on the petition for reconsideration permit this Board to determine his findings in this case are supported by substantial evidence.

Accordingly, because the ALJ's decision is supported by substantial evidence and the ALJ more than adequately provided the basis for his decision in this claim, the December 3, 2012, opinion, award, and order and the January 4, 2013, order ruling on the petition for reconsideration by the ALJ are **AFFIRMED**.

ALVEY, CHAIRMAN, CONCURS.

SMITH, MEMBER, NOT SITTING.

COUNSEL FOR PETITIONER:

HON JOHN W SPIES
333 GUTHRIE GREEN #203
LOUISVILLE KY 40202

COUNSEL FOR RESPONDENT:

HON SCOTT SCHEYNOST
P O BOX 58308
LOUISVILLE KY 40268

ADMINISTRATIVE LAW JUDGE:

HON DOUGLAS W GOTT
400 E MAIN ST STE 300
BOWLING GREEN KY 42101