# Commonwealth of Kentucky
# Workers' Compensation Board

**OPINION ENTERED: July 24, 2015**

CLAIM NO. 201170462

FLAT ROCK FURNITURE PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

STEVEN NEELEY
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

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

**RECHTER, Member.** Flat Rock Furniture ("Flat Rock") appeals from the January 12, 2015 Opinion and Order on Remand and the February 20, 2015 Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). On appeal, Flat Rock argues the ALJ improperly relied upon

evidence not contained in the record. For the reasons set forth herein, we affirm.

Steven Neeley ("Neeley") worked at Flat Rock as a machine operator. He was injured on October 10, 2011 when a piece of wood slipped out of a holder and struck his right eye. In an Opinion and Order dated July 14, 2014, the ALJ determined Neeley is permanently totally disabled as a result of the accident, and awarded medical benefits and income benefits. Flat Rock appealed the decision to this Board. In an Opinion rendered November 14, 2014, we summarized the proof as follows:

> Neeley filed a Form 101 on February 25, 2013, alleging he injured his right eye on October 10, 2011 when it was struck by a piece of wood which slipped out of a holder. Neeley's employment history indicates he began working for Flat Rock in September 2000. Prior to that, he worked as a machine operator for another employer from 1987 to 2000. He is a high school graduate with no specialized or vocational training.
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> Neeley testified by deposition on October 3, 2013, and again on January 7, 2014. He also testified at the hearing held June 19, 2014. Neeley was born on August 26, 1963, and is a resident of Annville, Kentucky. He began working for Flat Rock on September 20, 2000. He worked there as a machine operator preparing wood for the furniture manufacturing process. He also operated a forklift, built furniture, and assisted in bending wood used in making chairs.

On October 10, 2011, Neeley was bending a piece of wood used in making hoops for chairs. When he attempted to place a hoop in a holder for finishing, it slipped and struck him in the right eye. At the time of the accident, he was wearing glasses which were broken by the force of the impact, and his eye was scratched. He was taken to St. Joseph Hospital in London, Kentucky. He was transferred to the University of Kentucky Medical Center ("UKMC"). He has not worked since the accident, except for preaching at two small churches for which he is paid one hundred dollars per month.

Subsequent to the accident, Neeley underwent multiple surgical and laser procedures for the right eye. He also underwent cataract surgery for his left eye which he understood was an attempt to equalize his vision. His injury and treatment resulted in his wearing a patch over his right eye due to complaints of double vision, and the wearing of dark glasses to combat light sensitivity. Neeley stated he is unable to drive due to the light sensitivity, and the lack of depth perception.

Neeley uses multiple eye drops on a daily basis to treat his condition. He does not believe he can return to his previous employment which consisted of using tools, including saws, or any other aspect of his work due to his visual difficulties. Likewise, he does not believe he can perform any aspect of his other previous employment including logging, work at a coal processing plant, welding, or as a security guard.

In support of the Form 101, Neeley filed the November 27, 2012 report of Dr. Sheila Sanders with whom he treated

at the UKMC. Dr. Sanders noted Neeley has right eye pain and photophobia in the left eye. She stated Neeley is unable to drive a company vehicle, and his activities are limited due to light sensitivity stemming from the October 10, 2011 injury. She stated Neeley is visually impaired in the right eye and has untreatable diplopia with severe light sensitivity. Dr. Sanders stated his symptoms are inconsistent with the physical findings. She opined, "I believe it is unlikely he can return to work ever unless he experiences spontaneous improvement." On June 20, 2013, she performed another procedure for glaucoma, and indicated Neeley was unable to work. On July 23, 2013, Dr. Sanders noted Neeley had a long complicated history following his eye trauma. She noted his concerns about being able to function safely at work. She advised him to continue using eye drops.

Dr. Raymond Schultz examined Neeley on April 26, 2013. He noted the October 10, 2011 traumatic right eye injury when a piece of wood slipped from a holder. He diagnosed a corneal abrasion of the right eye, resolved, with no visual scarring; soft tissue swelling, resolved; contusion of the right orbital area and lids, resolved without any significant scarring; Hyphema, blood in the auteria chamber of the right eye, resolved; decreased visual acuity in the right eye, 20/70 best corrected after cataract extraction with intraocular lens implant; secondary cataract of right eye at elevated pressure, enlarged optic cup, visual field defect, and all components of traumatic glaucoma unresolved; light sensitivity and double vision, unresolved; maculopathy, unresolved. He opined all of these conditions were caused by the work

injury. He stated Neeley had not reached maximum medical improvement ("MMI"), and therefore he could not assess a functional impairment rating. Dr. Schultz stated Neeley does not retain the capacity to do the work he performed at the time of the injury. He restricted Neeley from driving or working around machinery due to lack of depth perception.

Flat Rock filed records from Dr. Ben Mackey for treatment from February 11, 2013 through June 18, 2013 for dilated pupil, glaucoma and eye irritation. On his initial date of treatment, Dr. Mackey stated he was unsure why Neeley had iritis. He noted he would consider performing an iridotomy if the intraocular pressure did not improve. On February 20, 2013, Dr. Mackey noted improvement, and indicated Neeley could return to work, but would have difficulty placing or moving small objects, or driving at night. On that same date, Dr. Mackey was concerned about Neeley's anisometropia, noting a huge difference in the glasses prescription between the two eyes. He stated cataract surgery may be required on the better eye. The cataract surgery was later performed for the left eye.

Flat Rock filed the January 27, 2012 record of Dr. James Huffman. Dr. Huffman diagnosed Neeley with a questionable orbital floor fracture; resolved corneal abrasion; ecchymosis; contusion, eyelids/periocular; improved "subconj." hemorrhage; presbyopia, trauma induced glaucoma; [slight] scarring of the cornea; KCS (dry eye syndrome); mydriasis. He indicated Neeley could return to work with the aid of dark glasses to protect his eye. On March 6, 2012, Dr. Huffman indicated

Neeley could wear an eye patch at work. On April 9, 2012, Dr. Huffman noted Neeley's complaints of blurry vision, and double vision when he did not wear an eye patch.

Dr. Woodford Van Meter evaluated Neeley on September 17, 2013 at Flat Rock's request, and prepared a report dated September 19, 2013. He noted the history of traumatic right eye injury, and outlined numerous procedures and treatment administered. He stated Neeley complained of double vision, light sensitivity, and the use of eye drops. Dr. Van Meter opined Neeley's complaints were consistent with chronic glaucoma. He stated Neeley may require additional surgery. He assessed a 17% impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") for Neeley's work-related injuries. He was unable to elicit a reliable history of double vision, or demonstrate diplopia, and was unsure if wearing an eye patch increased Neeley's acuity.

In a subsequent report dated December 17, 2013, Dr. Van Meter stated he could not explain Neeley's photosensitivity and diplopia, and there was no clinical correlation of the subjective symptoms. He stated the 17% impairment rating was actually assessed based upon the 6th Edition of the AMA Guides, but there was little difference in the result using either edition. He stated Neeley could return to work at his pre-injury job, but may be unable to use some tools due to his lack of depth perception.

Dr. Ralph Crystal performed a vocational evaluation on March 17, 2014. He stated Neeley is employable on a

> regular basis. He further opined Neeley is a good candidate for vocational rehabilitation.

In the November 14, 2014 Opinion, this Board concluded the ALJ had failed to make specific findings of fact sufficient to support the award or allow meaningful review. The claim was remanded, and the ALJ was also directed to specifically address whether Neeley's left eye complaints are related to the injury to his right eye. On remand, the ALJ again concluded Neeley is permanently totally disabled as a result of the injury to his right eye. In reaching this conclusion, the ALJ stated his reliance upon Neeley's testimony, and the medical evidence from Drs. Sanders and Schultz.

In summarizing Dr. Sanders' medical records in the January 12, 2015 Opinion and Order on Remand, the ALJ stated:

> The medical records of Dr. Sheila Sanders were filed in the record. In her November 27, 2012 record, Dr. Sanders stated that Mr. Neeley has right eye pain and photophobia in his left eye, that his activities are limited due to light sensitivity stemming from his October 10, 2011 work injury, that Mr. Neeley is visually impaired in his right eye and has untreatable diplopia with severe light sensitivity, and that Mr. Neeley is unable to drive a company vehicle. Dr. Sanders further stated that it is unlikely that the plaintiff can ever return to work unless he

> experiences spontaneous improvement. In the January 20, 2013 record, Dr. Sanders stated that Mr. Neeley is unable to work. In the July 23, 2013 record, Dr. Sanders stated that she is concerned about whether Mr. Neeley will ever be able to function safely at work.

Later, in analyzing whether Neeley is permanently totally disabled, the ALJ discussed his consideration of Dr. Sanders' medical records:

> Dr. Sanders was Mr. Neeley's treating eye specialist. She stated that he has right eye pain and photophobia in his left eye. She stated that he is unable to drive a company vehicle. She stated that his activities are limited due to light sensitivity stemming from the October 10, 2011 work injury. She stated that Mr. Neeley is visually impaired in his right eye and has untreatable diplopia with severe light sensitivity. She stated that it is unlikely that he can ever return to work unless he experiences spontaneous improvement. She stated that Mr. Neeley is concerned about being able to function safely at work. She stated that Mr. Neeley was unable to work. I make the determination that the medical evidence from Dr. Sanders, the plaintiff's treating eye specialist, is very persuasive and compelling.

Flat Rock petitioned for reconsideration from the ALJ's Opinion and Order on Remand. The petition was denied, and this appeal followed. Flat Rock challenges the ALJ's reliance on Dr. Sanders' medical opinion on several grounds. It argues the ALJ mischaracterized Dr. Sanders' records, and

improperly relied upon treatment record notes occurring before Neeley had reached maximum medical improvement. It also argues the ALJ relied on records from Dr. Sanders which had not been properly admitted into evidence.

We first review the evidence from Dr. Sanders contained in the record. Attached to Neeley's Form 101 is a form generated by Managed Care Risk Services and completed by Dr. Sanders on November 27, 2012, about one year after the injury. In response to questions posed on the form, Dr. Sanders indicated Neeley cannot return to his usual shift or hours, and cannot drive a company vehicle. Dr. Sanders stated Neeley is "limited by severe light sensitivity" when asked to specify any environmental requirements. She also included the following narrative statement:

> Please note: Mr. Neeley is visually impaired in his right eye and has intractable diplopia with severe light sensitivity. Currently we have exhausted all possibilities of improving his symptoms. I believe it is unlikely that he can return to work ever unless he experiences spontaneous improvement.

Flat Rock filed a letter dated November 27, 2012 from Dr. Sanders to Dr. Huffman. The letter reads:

> Mr. Neeley came back on November 27, 2012. He also saw Dr. Bradley today for a strabismus evaluation and she will be sending a separate report. As you know, he had tube shunt explant on the right eye August 13, 2012, after multiple

tissue erosions. His current drop regiment includes Pred Forte QID, Azopt BID, Combigan BID, Lumigan QHS, and Atropine BID all in the right eye only. He reports using the Pred Forte and Atropine today, but has not used any of the pressure drops. He continues to wear tinted sunglasses over an eye patch on the right eye. He states that he continues to have severe photophobia in many lighting situations. The light sensitivity brings on severe pain in the right eye, making him unable to function. He reports difficulty tracking movement, as objects seem to get a long blur around them as they move. Recently he went to a funeral and had difficulty recognizing faces in a crowd. He notes that once he is speaking one-on-one with a person, he is able to recognize them.

Today, uncorrected visual acuity was count fingers at two feet. With refraction I could improve him to 20/400 OD. On the left, with his habitual glasses he sees 20/20. Intraocular pressures measured 27 mmHg OD and 18 mmHg OS. On the right eye the conjunctiva has healed in nicely from the previous tube procedures. The cornea has some very mild haze. The anterior chamber is deep ad quiet. The intraocular lens is stable. The pupil is large and slightly irregular. He has 1+ posterior capsular opacity. The funduscopic examination shows a cup-to-disc ratio of about 0.45 with some mild diffuse pallor of the optic nerve. The left anterior segment looks completely normal. It is quiet with only a trace of nuclear sclerosis. Mr. Neeley performed OCT analysis which shows some macular irregularity consistent with epiretinal membrane on the right. The nerve fiber layer around the optic nerve shows a fairly robust and normal pattern in both eyes.

> I am at a loss to completely explain Mr. Neeley's symptoms and have little to offer him in the way of additional improvement. As we have previously discussed, the severity of his symptoms seems inconsistent with physical findings, and an element of embellishment is suspected. There is some posterior capsular opacity in the right eye, but it does not look significant, especially since he is patching the eye continuously. His intraocular pressures are higher today, but he has not taken any of his prescribed drops for pressure. I am hopeful that the IOP can be stabilized if he resumes his normal regimen. It should be noted that on color plate testing, he named only one out of 12 on the right and named 12 out of 12 on the left, however his test performance may be degraded by his poor acuity on the right. He is planning to see you for a pressure check in January and I have tentatively scheduled him to return here in six months. I am certainly happy to see him again if there are interim concerns.

Neeley filed an "off-work statement" signed by Dr. Sanders on June 20, 2013. The note states Neeley "had glaucoma surgery on June 20, 2013. Please excuse him from work for the next six weeks."

Neeley also filed numerous operative reports detailing procedures performed by Dr. Sanders. The final record from Dr. Sanders is a letter to Dr. Huffman dated July 23, 2013. In this letter, she reiterates Neeley's surgical history, including a summary of the then-most-

recent June 19, 2013 surgical procedure. Dr. Sanders explained:

> Neeley has done well since this procedure, but continues to have intractable diplopia and severe light sensitivity. He continues to be concerned he could not function safely at his work. His job has high visual demands and he has to work with heavy machinery and could easily traumatize himself if he cannot properly gauge distances. He operates a large machine saw.
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> Today uncorrected visual actuity was 20/100 OD and 20/20 OS. He continues to be sensitive to light in both eyes. Intraocular pressures have improved to 18mmHg OD and 13 mmHg OS. He had one loose suture today which I removed. I understand that he is also seeing Dr. Bradley again today to see if any glasses or surgery could be considered to help with his chronic double vision. I have advised him to continue to use the Azopt and Combigan twice a day in both eyes. He is not completely off antiinflamatories. I believe we are entering a chronic phase with this right eye. Further [surgical procedures] could be considered if the pressure creeps higher again."

We first address Flat Rock's claim that the November 27, 2012 medical record was not submitted into evidence, and therefore could not be relied upon by the ALJ. The record was attached to Neeley's Form 101. 803 KAR 25:010 §8(4) states "all medical reports filed with Forms 101 … shall be admitted into evidence without further order

if: (a) an objection is not filed prior to or with the filing of the Form 111; and (b) the medical reports comply with Section 10 of this administrative regulation."

Flat Rock admits it filed no objection to the admission of Dr. Sanders' November 27, 2012 form. Instead, Flat Rock generally argues it is not in conformity with 803 KAR 25:010 §10. Importantly, Flat Rock does not identify any specific deficiency and our review reveals none. The report is signed by Dr. Sanders, as required by 803 KAR 25:010 §10(3), and her physicians' index number was actually submitted by Flat Rock when it filed the November 27, 2012 letter to Dr. Huffman. Therefore, we find no error in the ALJ's consideration of and reliance upon Dr. Sanders' November 27, 2012 report.

Additionally, we reject Flat Rock's contention the ALJ erred in relying upon the January 20, 2013 "off work statement." While Flat Rock claims the note is not in evidence, our review of the record reveals it was filed by Neeley on June 28, 2013.

We next turn to Flat Rock's additional challenges to the ALJ's reliance on Dr. Sanders' reports. Flat Rock argues the ALJ mischaracterized the reports by attributing Neeley's complaints to Dr. Sanders as her own conclusions or diagnoses. It also claims it was an abuse of discretion to

rely upon statements made by Dr. Sanders concerning Neeley's condition before he reached maximum medical improvement.

We first note there is no blanket prohibition against reliance upon a physician's statement made prior to the attainment of maximum medical improvement. The particular statement was made by Dr. Sanders in the November 27, 2012 report. She indicated her concern Neeley would ever be able to return to work "unless he experiences spontaneous improvement." When considered in conjunction with Neeley's ongoing treatment after this statement was made, we believe it is probative of Dr. Sanders' impression of his overall condition. Stated otherwise, Dr. Sanders' subsequent medical records indicate Neeley never did experience "spontaneous improvement". Rather, his condition worsened and required further surgical intervention.

Furthermore, we find no reversible error where the ALJ noted "Dr. Sanders stated that she is concerned about whether Mr. Neeley will ever be able to function safely at work." While this recitation of Dr. Sanders' letter is arguably misleading because she did not directly state this concern in her letter, the ALJ later accurately restated the record. At page 13 of the Opinion and Order on Remand, the ALJ acknowledged *Neeley told* Dr. Sanders he is concerned about being able to function safely at work. Nonetheless,

the fact Dr. Sanders repeated this concern in her letter to Dr. Huffman might be considered a tactic endorsement of Neeley's fear. It is within the ALJ's discretion to determine the weight and character of the evidence.

It seems the crux of Flat Rock's appeal goes to the weight afforded to Dr. Sanders' reports and letters. However, it is not within the province of this Board to reweigh the evidence. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). As the fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Certainly, considering his reliance on Dr. Sanders' records in reaching the ultimate conclusion, the ALJ might have more thoroughly summarized her reports and letters. However, upon review of the entire record, we cannot conclude the ALJ has mischaracterized or misunderstood Dr. Sanders' records to such an extent as to constitute a clear error which would warrant reversal pursuant to KRS 342.285(2). Nor do we find any deficiency in Dr. Sanders' reports which would require their exclusion, as a matter of law. As the fact-finder, the ALJ is entitled to rely on Dr. Sanders' medical records in reaching his ultimate conclusions. We additionally note the ALJ also relied upon Dr. Schultz, whose report also supports the

ALJ's ultimate conclusion Neeley is permanently totally disabled.

For the foregoing reasons, the January 12, 2015 Opinion and Order on Remand and the February 20, 2015 Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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