

OPINION ENTERED: June 13, 2012

CLAIM NO. 200974675

FORT DEARBORN CO.

PETITIONER

VS.

APPEAL FROM HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE

DANNY ADKINS
and HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

STIVERS, Member. Fort Dearborn Co. ("Fort Dearborn") seeks review of the December 19, 2011, opinion, order, and award rendered by Hon. R. Scott Borders, Administrative Law Judge ("ALJ") finding Danny Adkins ("Adkins") sustained work-related injuries to his cervical spine, left shoulder, and left elbow. The ALJ awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD")

benefits enhanced by the three multiplier pursuant to KRS 342.730(1)(c)1, and medical benefits. The ALJ also ordered Adkins to undergo a vocational evaluation. Fort Dearborn also appeals from the January 17, 2012, order overruling its petition for reconsideration.

Adkins' Form 101 alleges a "repetitive motion and cumulative trauma affecting upper extremities, neck, shoulders, back, feet" occurring on October 21, 2009.

On appeal, Fort Dearborn argues the ALJ erred in finding Adkins' left shoulder and elbow condition to be work-related. It argues the ALJ mistakenly relied upon the records of Bluegrass Physical Therapy as evidence Adkins sustained a shoulder injury, and erred in rejecting the opinions of Drs. Dennis O'Keefe and J. Rick Lyon.¹ Fort Dearborn argues the ALJ erroneously relied on a fill-in-the-blank questionnaire in which Dr. Thomas Dovan wrote that the shoulder and elbow conditions were work-related. It asserts Dr. Dovan's conclusions contradicted "the entirety of the medical record," are based on an inaccurate history, and are blatantly inconsistent with his records and prior statements. Pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), Fort Dearborn

¹ The correct name of the entity that provided physical therapy is Bluegrass Outpatient Center.

maintains since Dr. Dovan's history is corrupt, because it is substantially inaccurate, or largely incomplete, any opinion generated by Dr. Dovan on the issue of causation cannot constitute substantial evidence.

Fort Dearborn argues the opinions of Drs. O'Keefe and Lyon establish Adkins did not report an elbow or shoulder condition until five and seven months, respectively, after the alleged injury. It argues the ALJ erroneously found the review of the medical records by Drs. O'Keefe and Lyon not to be totally accurate because the physical therapy records reportedly indicate Adkins was complaining of left upper extremity pain soon after the work-related incident. Fort Dearborn asserts the physical therapy records support the opinions of Drs. O'Keefe and Lyon and the ALJ's reliance on those records is reversible error. It maintains there is no mention of the shoulder injury or elbow condition in the medical records of Bluegrass Physical Therapy. Fort Dearborn argues Dr. Dovan's records reflect Adkins' shoulder condition is not work-related because when he filled out the claimant's application for short-term disability benefits and as late as October 2010, Dr. Dovan indicated the shoulder condition was non-work-related. Fort Dearborn insists Drs. O'Keefe and Lyon provide an overview of the "intervening medical

records" and there is nothing in the records establishing shoulder and elbow problems. The repeated examinations reflect no shoulder or elbow symptoms. Since there is not substantial evidence to support the ALJ's decision Adkins suffered a work-related elbow and shoulder injury, Fort Dearborn asserts "the ALJ's opinion should be overruled to the extent he found [Adkins] to have suffered a shoulder and elbow injury and remanded for a new determination of other contested issues."

As there is no dispute regarding Adkins' cervical injury and the impairment attributable to the injury, we will not address that injury.

Adkins testified at his July 6, 2011, deposition and at the hearing held on October 19, 2011. Adkins testified he worked for Dearborn and its two predecessors from 1993 to 2010. He performed repetitive work involving the use of his hands including lifting and pulling items. He later became a press operator which involved the most strenuous manual labor. At the time he stopped working in 2010, he was the lead pressman in the flexographic department. Adkins described the injury and his resulting problems as follows:

. . .

I had reached in behind the turn bar on the second unit to install the print cylinder; and as I was trying to put the shaft into the press to hold the print cylinder, I was leaning this way and my left arm just completely gave out and it kind of fell down; and I wanted to make sure that the cylinder didn't hit the anilox; because then you could damage the anilox and that's a lot of money to get them resurfaced; so at that time, I felt a pop in my neck, pain went down through my shoulder, my whole arm, and I had pain through the edge of the elbow in this area.

Q: At what point after that happened did you tell anybody there at the -

A: It was close to the end of my shift. I figured there was no problem. You get aches and pains. I went home, rested, went to sleep, woke up about - I don't know - four or five o'clock in the morning and couldn't even turn my head. My left arm was hurting, my shoulder ached, my elbow had a tingling feeling to it; and I waited until I knew someone was at work to take my call and phoned in and told them that I needed to go see a doctor, should I go to my own physician or what do they recommend; and the H.R. lady recommended me to go see Corp Care.

Q: And when you went to see the doctor at Corp Care, did you tell him the problems you were having?

A: Yes.

Q: Now, at that time, was there any particular one of these body parts that you described that was worse than the other?

A: At the time, my neck; but I was feeling pain in my arm, my shoulder, my elbow; but my main focus at that time was my neck, was the most severe pain.

Q: Were you having problems in other body parts then?

A: Yes, my left arm, shoulder, tingling in my elbow.

Q: And did you tell the doctor that?

A: Yes.

Q: Did that remain the case in the weeks and months after that?

A: No, they mainly treated my neck. I was still having occasional pains in my shoulder and elbow and down the aspect of my left arm, and that was that.

Q: Okay. Now, I think that the medical records indicate that after you went to Dr. Larson, he sent you to physical therapy, is that right?

A: Correct.

Q: And at some point after that, you began treating with some orthopedic surgeons down in Nashville, Dr. Dovan -

A: Yes.

Q: -- and -- and Dr. Glattes?

A: Yes.

Q: How did you get down to Nashville? What was --

A: Well, I had went back to Corp Care over my elbow because I couldn't stand the pain any more, and after he had referred me to occupational therapy and

physical therapy for my neck, the occupational therapist that was there was talking to me about he knew a doctor that was in Nashville that could probably take care of my shoulder or whatever problems I had, and he referred me to go see Dr. Dovan.

Q: And is it your understanding that Dr. Dovan is a shoulder specialist?

A: Yes.

Q: And was it Dr. Dovan that sent you to Dr. Glattes, who I believe is in the same practice?

A: Yes, for my neck.

Although Dr. Larsen, at Corp Care, mainly treated his neck, Adkins testified he was still having occasional pain in his shoulder and elbow which extended to his left arm. Dr. Dovan treated Adkins for the problems in his hands, elbow, and shoulder. Dr. Dovan referred him to Dr. Glattes for his cervical problem. Dr. Dovan performed surgery on his left shoulder on November 16, 2010, and on his left elbow on April 21, 2011. Adkins still sees Dr. Dovan and Dr. Glattes.

Concerning the issue on appeal regarding Adkins' left elbow and shoulder conditions, the ALJ concluded as follows:

Mr. Adkins supports this position with the submission of physical therapy records reflecting he complained of his left upper extremity with tingling, and

this left medial forearm and upper shoulder had pain. In addition, Mr. Adkins submitted medical proof from Dr. Dovan, his treating surgeon, who opined that this left shoulder and left elbow condition were causally related to the October 21 2009, work-related incident.

Fort Dearborn argues that Mr. Adkins has not met his burden of proving that his left elbow and left shoulder condition are causally related to the October 21, 2009, work-related incident. In support of their [sic] position they [sic] submitted medical proof from Dr. O'Keefe who felt that his condition was not causally related to the work-related incident. Dr. O'Keefe felt it was highly unlikely that his left shoulder and left elbow condition were caused by a work-related incident as he did not complain of symptoms regarding the same until sometime thereafter and he felt these conditions are common in the general population.

In addition, Fort Dearborn submitted medical proof from Dr. Rick Lyons [sic], who evaluated Mr. Adkins at their request. Dr. Lyons [sic] was of the opinion that the left shoulder and left elbow condition were not causally related to the October 21, 2009, work-related incident. He felt that the most common etiology of carpal tunnel syndrome is hereditary. He felt, however that his left shoulder condition was not work-related as he waited several months to report complaints.

In this specific instance, after careful review of the lay and medical testimony, the Administrative Law Judge relies upon the opinion of Dr. Dovan and finds that Mr. Atkins [sic] has met

his burden of proving that his left elbow and left shoulder condition [sic], and the resulting need for surgery to the same, are causally related to the October 21, 2009, work-related incident. In so finding, the Administrative Law Judge believes that the traumatic incident reported by Mr. Adkins caused not only injury to his cervical spine, as agreed to by the parties, but also caused injury to his shoulder and left elbow as found by Dr. Dovan. In addition, the argument that he did not reported [sic] the conditions several months after the occurrence of the same is not totally correct based upon the review of the physical therapy records indicating that he was complaining of left upper extremity pain soon after the work-related incident.

Concerning Adkins' occupational disability, the ALJ found as follows:

The next issue for determination is what level benefits Mr. Adkins is entitled to pursuant to KRS 342.730. This issue compasses the issues of extent and duration of disability and whether Mr. Adkins is entitled to application of any statutory multiplier's [sic].

In this instance, Dr. Lyons [sic] and Dr. O'Keefe have assessed Mr. Atkins [sic] a 5% functional impairment rating as a result of his cervical spine condition, pursuant to the Fifth Edition of the AMA Guidelines, and the Administrative Law Judge so finds. In regards to his left shoulder condition, the Administrative Law Judge relies on the opinion of Dr. Dovans [sic], his treating surgeon, and finds that he retains a 6% functional impairment

rating, pursuant to the Fifth Edition of the AMA Guides, as a result of his left shoulder injury.

In regard to his left elbow condition, the Administrative Law Judge likewise relies on the opinion of Dr. Dovans [sic] and finds that he retains a 0% functional impairment rating pursuant to the Fifth Edition of the AMA Guides. The 5% functional impairment rating for the cervical spine condition combined with the 6% functional impairment rating for the left shoulder condition yields an 11% functional impairment rating to the body as a whole. Pursuant to KRS 342.730(1)(b) the functional impairment rating is multiplied by a factor of one yielding an 11% permanent partial disability award.

In addition, based on the restrictions assessed Mr. Adkins by the medical experts herein, and the admission of the Defendant Employer that they could no longer accommodate his physical restrictions, to allow him to return to his job that he was performing at the time of his injury, the Administrative Law Judge finds that Mr. Atkins [sic] does not retain the physical capacity to return to the type of work he was performing at the time of his injury. Therefore his benefits shall be enhanced by the three-time statutory multiplier pursuant to KRS 342.730(1)(c)(1).

Based upon the average weekly wage of the parties have stipulated to of \$858.42, Mr. Adkins is entitled to have his permanent partial disability benefits calculated using the rate of \$520.72. Multiplying that amount by the 11% permanent partial disability yields a weekly benefit of \$57.27.

Multiplying that amount by the three-time statutory multiplier yields a weekly benefit of \$171.91.

The ALJ awarded medical benefits for the cervical, shoulder, and elbow injuries.

The records of Bluegrass Outpatient Center reflect that Adkins was initially seen for a "Physical Therapy Ortho Initial Evaluation" on November 4, 2009. Those records reflect Adkins' onset of problems occurred on October 22, 2009. The first page of the November 4, 2009, record under the heading "ROM Strength Extremities" bears a written notation pertaining to the shoulder and elbow. The rest of that entry is illegible. The second page of the document makes reference to the left medial forearm and left upper shoulder-lateral aspect. The typewritten "Physical Therapy Initial Evaluation" dated November 4, 2009, contains the following notation:

The patient now presents with significant impairments in cervical active range of motion and also continues to report difficulties with radicular pain and some radicular paresthesias specifically in the left upper extremity in a nondermatomal pattern. The patient has also difficulties with headaches. The patient also presents with upper extremity strength to be +4 to 5/5 throughout, however, pain elicited in the left upper extremity with testing. Neurogenic testing was negative this date and the patient has significant

tenderness to palpation in bilateral upper trapezius, cervical and thoracic paravertebral musculature and also right facet T4-T7.

The handwritten note of November 12, 2009, reflects Adkins feels better and has no headaches and has "little stiffness left elbow."

The handwritten notes of the physical therapist are fairly illegible; however, we are able to determine that the November 16, 2009, note reflects Adkins complained of left shoulder pain. Another handwritten note on that date reflects fluctuating pain in the mid-back, shoulder, and neck. The November 18, 2009, handwritten note reflects some stiffness and tightness in mid-back and left shoulder soreness. That note also contains the following notation: "Some mild (illegible) fluctuation mid-back, left shoulder."

The November 30, 2009, handwritten note reflects Adkins was better overall but experiencing discomfort in the upper mid-back and left shoulder.

The December 3, 2009, handwritten note of the physical therapist reflects Adkins had problems with his left shoulder. On that date there is a notation which refers to Adkins' left shoulder and cervical or upper thoracic area.

The December 17, 2009, handwritten notation reflects continued left shoulder pain. We are unable to decipher the other notations on that date.

The January 7, 2010, physical therapy discharge summary reflects Adkins had some limited range of motion and his bilateral shoulder active range of motion was within functional limits with no complaints. At that time, his gross strength was 5/5 for the bilateral upper extremities and shoulders. We believe a fair reading of the records reflects that during his course of physical therapy, Adkins was regularly treated for shoulder problems and to a lesser extent elbow problems. The January 7, 2010, discharge summary determined his acute range of motion and strength for the bilateral upper extremities and shoulders. Based on the previous notations by the physical therapists, we conclude the range of motion and strength testing of the shoulders and upper extremities on January 7, 2010, was conducted because Adkins had previously complained of problems and received treatment in those areas.

The March 11, 2010, "Occupational Therapy Ortho Initial Evaluation," reflects Adkins was having progressive elbow pain. Physical therapy notes dated March 12, 2010,

and March 17, 2010, reference Adkins' elbow and/or shoulder problems.

The April 8, 2010, typewritten document styled "Occupational Therapy Re-Evaluation" reflects Adkins' grip strength with his left hand was 26 and 50 with his right. The following assessment was noted:

It appears at this point that from MRI reports per the patient he has a moderate tear in the lateral epicondyle along with carpal tunnel. The carpal tunnel does not appear to be as symptomatic as the elbow, but he does report occasional paresthesias in the left hand. He does not appear to have a great deal [sic] edema, but this is somewhat hard to discern due to the bulk of his forearms. He seems to respond well to modalities and manual therapy, although exercises do appear to cause pain. Patient will benefit from skilled occupational services to decrease pain, increase range of muscle strength of the left upper extremity.

Thereafter, Adkins underwent physical therapy on April 8, April 15, April 19, April 22, May 4, May 7, May 12, and May 20, 2010. The records on various dates specifically note shoulder and elbow problems. The April 19, 2010, notation reflects "shooting pain in the elbow" and "added shoulder TE to upper strength."

The May 12, 2010, handwritten physical therapy note reflects Adkins was very fatigued with shoulder

exercises and complained of weakness in the shoulder and elbow.

The physical therapy records of Bluegrass Outpatient Center generated in November and December 2009 and early 2010 reflect Adkins consistently complained of elbow and shoulder problems. Thus, Fort Dearborn's contention the physical therapy records cause Dr. Dovan's medical history to be inaccurate and totally corrupt are without merit.

When he initially saw Adkins on March 22, 2010, Dr. Dovan's record reflects he noted that in October 2009, Adkins started having left elbow pain. He indicated the pain was in the lateral elbow and radiated into the forearm. Dr. Dovan noted the symptoms in the elbow increased with gripping and lifting. At that time, Dovan's impression was bilateral carpal tunnel syndrome and left elbow pain secondary to lateral epicondylitis. He noted Adkins was not progressing with therapy and an MRI of the left elbow was ordered. Dr. Dovan's handwritten intake notes are consistent with Dr. Dovan's March 22, 2010, typewritten report. Dr. Dovan's April 1, 2010, record indicates the MRI of the left elbow showed moderate extensor tendinosis consistent with lateral epicondylitis. Adkins' symptoms were bilateral hand numbness and tingling.

Dr. Dovan's impression was left lateral epicondylitis for which he recommended physical therapy. He would check Adkins in four to six weeks.

On April 27, 2010, Adkins underwent a lateral epicondyle injection.

Dr. Dovan's May 25, 2010, note reflect Adkins had an overall 75% improvement of his pain. Dr. Dovan noted Adkins had developed a two-day history of left shoulder pain which had resolved. Adkins described the pain as being in the dorsal proximal forearm as well as the lateral elbow.

Dr. Dovan's July 7, 2010, note reflects Adkins had undergone an MRI which revealed an intact rotator cuff with acromial morphology suggesting impingement syndrome. He noted Adkins appeared to have an anterolateral acromial osteophyte. At that time, Dr. Dovan noted as follows:

IMPRESSION/PLAN: Mr. Adkins has left shoulder impingement syndrome. This appears to all be tied to his initial injury. We discussed this today and he described it. He was using a machine at work, a large part fell that he tried to catch and had a traction-type injury to his left arm. At that point, he had arm pain with elbow pain, as well as shoulder pain. He felt the pull in his neck. He is seeing Dr. Glattes for his neck and I will defer causation of his neck pain to Dr. Glattes. Regarding the shoulder and arm pain, he had no pain prior and this

started immediately after the injury, thus, it is within reasonable medical probability that the current injuries that I am treating are related to his work injury. Regarding the current treatment, he would like to proceed with injection. The risks, benefits and alternatives were discussed. He tolerated the injection without difficulty. He is going to call me in four weeks and let me know the results.

On that date, Adkins underwent a left shoulder subacromial injection. Dr. Dovan saw Adkins on August 30, 2010, and noted elbow and shoulder problems.

Dr. Dovan's October 19, 2010, note reflects as follows:

Mr. Adkins is in the office today for follow-up of his left shoulder impingement syndrome with AC joint arthritis as well as lateral epicondylitis and carpal tunnel syndrome. He also has cervical pathology. Things are getting worse. He has been working his regular job and his shoulder is getting more and more painful. He is having difficulty fully raising it. It is an aching-type pain. He still gets the lateral elbow pain. As far as numbness, it is mostly dorsal in the thumb. His hand is not going to sleep at night. Pain in the shoulder mostly occurs with forward elevation activities.

Dr. Dovan saw Adkins on October 22, 2010, after an MRI of the left shoulder was performed on October 20, 2010. That note reflects the presence of rotator cuff tendinosis and a degenerative SLAP tear. Pain was present in the left

shoulder and continues to worsen. Adkins had difficulty elevating the shoulder. Dr. Dovan stated as follows:

We went over his initial injury. What essentially happened was he was holding a plate that weighed about 25 pounds. He was lowering it into a machine when his arm gave way. The plate pulled on his arm and he had to drop the plate into the machine. Since then, he has had the left shoulder pain. It continues to increase with activities, especially forward flexion activities. It is an aching and sharp-type pain. He still has the pain in the elbow and arm. He is not getting any more numbness in the hand.

The November 16, 2010, operative note reflects the following procedures were performed:

1. Left shoulder arthroscopic slap repair.
2. Left shoulder arthroscopic rotator cuff repair.
3. Left shoulder arthroscopic subacromial decompression.
4. Left shoulder arthroscopic distal clavicle resection.

It also reflects a post-operative diagnosis of:

1. Left shoulder type II slap tear.
2. Left shoulder high grade articular surface supraspinatus tear.
3. Left shoulder impingement syndrome.
4. Left shoulder distal clavicle arthritis.

Dr. Dovan continued to see Adkins post-surgery for his shoulder problem.

Concerning the continued left elbow symptoms, on February 16, 2011, Dr. Dovan noted Adkins was getting a lot of pain in the left lateral elbow from his lateral epicondylitis and his condition was getting worse. Adkins told Dr. Dovan he has pain with gripping and lifting activities which is interfering with his therapy. Dr. Dovan administered a lateral epicondyle injection.

The April 21, 2011, operative note reflects a left lateral epicondylar debridement with tendon repair was performed. The post-operative diagnosis was left lateral epicondylitis and left lateral ulnar collateral ligament complex, degeneration/instability.

The last note of Dr. Dovan introduced in the record is dated August 2, 2011. At that time, Adkins was still having problems with his shoulder and elbow.

Pursuant to a referral by Dr. Dovan, Adkins was initially seen on March 22, 2010, by Dr. Christopher Glattes for cervical problems. Dr. Glattes' records also confirm a five month history of shoulder and elbow problems.

A September 20, 2011, questionnaire was completed by Dr. Dovan. Dr. Dovan hand wrote his response to those questions which are as follows:

I. Left Shoulder Condition

1. What is your diagnosis with regard to Mr. Adkins' left shoulder?

SLAP Tear, RR Tear, (illegible)

2. Based on the information available to you (including the documents provided to you as well as the history given directly to you by Mr. Adkins), is it more probable than not that the left shoulder condition was caused by the trauma of the work-related incident of October 21, 2009 or by combination of that trauma superimposed upon a pre-existing, dormant condition such as degeneration and/or arthritis?

Yes

3. What AMA rating would you assess for the [sic] Mr. Adkins' left shoulder? Please refer to the 5th Edition of the AMA Guides.

10% UE

II. Left Elbow Condition

1. What is your diagnosis with regard to Mr. Adkins' left elbow?

Lateral Epicondylitis with Lateral (illegible)

2. Based on the information available to you (including the documents provided to you as well as the history given directly to you by Mr. Adkins), is it more probable than not that the left elbow condition was caused by the trauma of the work-related incident of October 21, 2009 or by combination of that trauma superimposed upon a pre-existing dormant condition such as degeneration and/or arthritis?

Yes

3. What AMA rating would you assess for the [sic] Mr. Adkins' left elbow? Please refer to the 5th Edition of the AMA Guides.

0% per 5th Edition

Adkins, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including causation. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Adkins 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 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).

The physical therapy notes and the records of Dr. Dovan qualify as substantial evidence sufficient to support the ALJ's finding with reference to Adkins' work-related left shoulder and elbow condition. While the contrary opinions pertaining to causation expressed by Drs. O'Keefe and Lyon may have been articulated in greater detail, such opinions represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (Ky. 2003). Likewise, the fact Dr. Dovan hand wrote his opinions regarding the impairment rating attributable to the left shoulder and elbow conditions goes to the weight and credibility to be afforded his testimony, which is a matter to be decided exclusively within the ALJ's province as fact-finder. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

Further, we find no merit with regard to Fort Dearborn's argument that Cepero v. Fabricated Metals Corp., supra, is applicable in the case *sub judice*. The physical therapy records generated in November 2009, continuing

through January 2010, reflect Adkins intermittently complained of elbow and shoulder problems. In fact, those records reflect Adkins regularly received treatment for his left shoulder pain. Thus, we find the history which Dr. Dovan obtained and relied upon was not inaccurate, incomplete, and corrupt.

After an examination of the record, this Board believes Cepero, supra, is inapplicable to this case. Cepero, supra, was an unusual case involving 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. We find nothing akin to Cepero in this case.

Further, the fact that at one time Dr. Dovan may have indicated the shoulder condition was not work-related

is of no significance. As previously noted, the ALJ may rely on a physician's opinion even though it is contrary to an opinion expressed by the same physician in the same claim.

Since the physical therapy records reflect Adkins complained of elbow and shoulder pain shortly after his injury and was treated for those problems by physical therapy in November 2009 and December 2010, Dr. Dovan's reliance upon those records in obtaining a medical history is appropriate. Further, the fact Dr. Dovan's opinion that Adkins' elbow and shoulder problems were due to his work-related injury of October 21, 2009, may have been based in whole or in part on the information contained in the physical therapy records does not in any manner taint his opinion. That being the case, Dr. Dovan's opinions clearly constitute substantial evidence supporting the ALJ's determination Adkins sustained work-related injuries to his neck, shoulder, and elbow. Since the decision of the ALJ is supported by substantial evidence we are without authority to disturb his decision on appeal. Special Fund v. Francis, supra.

Accordingly, the December 19, 2011, opinion, order, and award and the January 17, 2012, order overruling

the petition for reconsideration by Hon. R. Scott Borders,
Administrative Law Judge, are **AFFIRMED**.

ALL CONCUR.

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