OPINION ENTERED: March 8, 2012

CLAIM NO. 200900458

ISON CAULKING & WATERPROOFING, LLC PETITIONERS

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

ROGER HAWKINS
UNINSURED EMPLOYERS' FUND
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

and

UNINSURED EMPLOYERS' FUND PETITIONER

VS.

ROGER HAWKINS
ISON CAULKING & WATERPROOFING, LLC
JAMAL TAHA, M.D.
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Commonwealth of Kentucky Uninsured Employers' Fund ("UEF") and Ison Caulking & Waterproofing,

LLC ("Ison") seek review of the November 10, 2011, opinion, award, and order rendered by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ"). The ALJ found Roger Hawkins ("Hawkins") sustained a work-related back injury and 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.

Hawkins' Form 101 alleges a September 29, 2008, low back injury while an employee of Ison. In his August 31, 2010, deposition, Hawkins described his injury as follows:

> A. Well, I was working on a six-foot bakers scaffold caulking the top of a window. I got finished caulking it. And [sic] way we climbed up a bakers scaffold, on one end we have to, when we climb back in we'll have to throw one foot over and hold on to the end of it and throw the other, my other foot over and start stepping down the ladders. And when I, my last foot went over it, it missed a rung, I slipped and fell backwards.
>
> Q. How high were you up at that point that you fell?
>
> A. I'd say three-and-a-half to four feet.
>
> Q. And when you fell you fell backwards, what did you land on?

> A. It happened so fast I think that kindly [sic] way was, I was going back kindly [sic] on my heels and then I landed on my butt and I ended up on my back.

Hawkins worked for Ison as a caulker and testified his work activities included carrying and climbing ladders, working on scaffolds, crawling on his hands and knees, and carrying thirty pound buckets of caulking. Hawkins has worked as a caulker for approximately eleven or twelve years. Hawkins testified after the fall, his back hurt but he believed he could finish the rest of his shift. He has not worked since that day. The next day, Hawkins notified his supervisor of the injury and went to the emergency room at "Sycamore Hospital." Hawkins was treated by Dr. Richard M. Donnini who referred him to Dr. Jamal Taha, a neurosurgeon. Dr. Taha performed surgery consisting of the following:

> 1. Anterior lumbar interbody fusion L5-S1 with discectomy and application of LT cage of Medtronic PEEK and BMP.
>
> 2. Posterior decompressive laminectomy L4-5 with medical facetectomy and foraminotomy and decompression of neural tissue under microscopic dissection.
>
> 3. Posterolateral arthrodesis L4-5 and L5-S1 with BMP and autograft for transforaminal interbody fusion L4-5 from the left side with application of crescent cage of Medtronic, five

> segmental pedicle screw fixation L4-L5-S1 with pedicle screw fixation.

Dr. Donnini also referred Hawkins to Dr. John Kelly.

Concerning the issues raised on appeal, the ALJ entered the following findings and conclusions:

> **a. Workrelatedness/causation/occurrence of "injury"/preexisting active.**
>
> The ALJ relies on the evidence from Roger Hawkins, Vickie Hawkins, Jonathan Ison, Ronald Cooper, Dr. Taha, Dr. Kelly, and Dr. Donnini to find that Plaintiff Hawkins had a preexisting active lumbar degenerative condition that was aggravated to the extent that surgery was recommended after the incident on September 29, 2008 when he fell or jumped from the scaffold. To the extent that the injuries recognized by Dr. Tutt and Dr. Bender were considered temporary by them, those opinions were rejected in part because surgery was carried out to relieve the severe symptoms caused by the aggravation on September 29, 2008, and the impairment related to that surgery is necessarily permanent. *See Robertson v. United Parcel Service*, 64 S.W.3d 284 (Ky. 2001).
>
> **b. Average weekly wage.**
>
> Pursuant [sic] KRS 342.140(1)(d) and (e), the ALJ finds that Hawkins' average weekly wage is $958.04, as calculated in his wage pleading filed September 20, 2011.
>
> Defendant UEF argued in its Brief that Hawkins had not properly supported his wage claim. However, even though the Defendant did not complete an AWW-

1, wage records were produced that supported Hawkins claim to the $958.04 wage rate. Further, Hawkins provided documentation of wages earned by similarly situated employees to fix the weekly earnings for the missing four weeks of the 13-week quarter and enable the calculation provided for by KRS 342.140(1)(e). Therefore, the Defendants' argument that the record does not provide reliable documentation to calculate the AWW is without merit.

. . .

d. Benefits under KRS 342.730.

The ALJ relies on Dr. Tutt for the apportionment of impairment, notwithstanding his opinion on causation. The ALJ finds that Hawkins' preexisting active impairment was 5% at the time of the injury, and his current impairment is 18%; therefore, his work related impairment is 13%. One reason why the ALJ found Dr. Tutt's evidence on impairment more persuasive than that of Dr. Kelly is because Dr. Kelly said in his March 4, 2010 note that he would rate Hawkins under the range of motion model of the Guides [sic] because of the two-level fusion (which the ALJ believes to be accurate), but his Form 107 reflected impairment assigned under the DRE model. Dr. Tutt cited Table 15-7, which contemplates the range of motion model.

The ALJ relies on Dr. Kelly, Dr. Donnini, and Dr. Taha to find that Hawkins lacks the physical capacity to return to his preinjury [sic] work and is therefore entitled to the 3.0 multiplier of KRS 342.730(1)(c)1.

Hawkins' PPD is calculated as follows: AWW of $958.04 x 2/3 =

> $638.69, subject to maximum for 2008 injuries of $502.51 x 13% x 1.0 x 3.0 = $195.98 per week until he qualifies for old-age social security retirement benefits. KRS 342.730(4).
>
> Hawkins did not present an argument on the preserved issue of TTD. The ALJ does not find the record to support TTD prior to surgery. Hawkins will be awarded TTD from August 27, 2009 through March 4, 2010, when Dr. Kelly said he reached MMI.
>
> The Defendant/Employer is liable for medical benefits related to the low back, including the surgery that was performed.

No petitions for reconsideration were filed.

On appeal, Ison challenges the ALJ's opinion, award, and order on four grounds. First, Ison contends Hawkins is not entitled to enhanced benefits pursuant to KRS 342.730(1)(c)1. Ison asserts since the ALJ relied upon Dr. Tutt's opinion regarding the impairment attributable to Hawkins' pre-existing condition and work injury, he should have relied on Dr. Tutt's opinion in resolving the issue of entitlement to the three multiplier pursuant to KRS 342.730(1)(c)1.

Second, Ison argues Hawkins is not entitled to TTD benefits. Noting the ALJ stated "'Hawkins did not present an argument on the preserved issue of TTD,'" Ison asserts Hawkins had the burden of proving entitlement to

TTD benefits and failed in that burden. Ison maintains Hawkins was returned to light duty one month after the accident, and Hawkins admitted he was capable of returning to work. Ison argues Dr. Donnini and Dr. Murphy assigned no restrictions, and the restrictions of Dr. Taha and Dr. Kelly do not prevent Hawkins from climbing a scaffold or using a caulking gun.

Third, Ison asserts since Hawkins has a pre-existing active condition, the ALJ should have ordered Ison is liable for the portion of the medical benefits related to the treatment of the back condition which was causally related to the work injury.

Finally, Ison argues Hawkins did not suffer a work-related injury. Relying on the testimony of Ronald Cooper ("Cooper"), Hawkins' co-worker and supervisor, Ison asserts Hawkins fabricated this injury. It also maintains the restrictions assigned by the physicians did not affect Hawkins' ability to work and he is capable of returning to work.

Citing to Dr. Tutt's opinion, the UEF argues Hawkins did not prove he suffered an injury as defined by the Act. It also maintains Ison's IME physician, Dr. Bender, stated "any disability of [Hawkins] is due to the unnecessary surgery performed by Dr. Taha." It maintains

Dr. Taha did not challenge Dr. Bender's opinion. The UEF argues as follows:

> The ALJ states the allegation that [Hawkins] jumped off the scaffold rather than fell is immaterial because horseplay is not alleged. That misses the whole argument on defense. It wasn't an issue of horseplay, it was an issue of fraud.

The UEF cites to the fact Hawkins never told any of his physicians about his pre-existing back problems.

Conceding KRS 342.140(1)(e) is the applicable statute concerning the computation of Hawkins' average weekly wage ("AWW"), the UEF argues there is no evidence in the record as to what Hawkins would have earned had he been so employed by Ison the full thirteen weeks. The UEF asserts as follows:

> Rather than attempt to prove his claim for an average weekly wage by substantial evidence, [Hawkins] filed a 'Notice of Filing Plaintiff's Wage Records and Summary of Wage Computation'. Included was [Hawkins'] wage records for the 9 weeks he worked, but [Hawkins] also included a 'summary' wherein he gratuitously added a section: "Other Similar Employee Wages Computed Under KRS 342.140(e)" and proceeded to fill in four weeks of wages to make up the 13 weeks, but failed to support that section with any evidence whatsoever.

Therefore, it asserts the only possible method of determining Hawkins' AWW is to use the wages earned during

the period Hawkins was employed with Ison and divide by thirteen which would result in a $636.68 AWW.

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

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 is no evidence of substantial probative value to support the ALJ's 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).

Furthermore, in the absence of a petition for reconsideration, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Stated otherwise, inadequate, and incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is identifiable evidence in the record that supports the ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky. App. 2000).

We find no merit in the arguments of the UEF and Ison that Hawkins failed to prove an injury as defined by the Act. During his deposition and at the hearing, Hawkins explained the cause of his injury and its effects. Cooper testified Hawkins jumped off the scaffold, landed on his feet, then sat down and rolled back. Cooper stated Hawkins did not complain about his back that day but acknowledged Hawkins called the next morning saying he could not work. At that time, Hawkins told Cooper "he had a broken spine or something." Cooper "figured" Hawkins' condition was related to the events which occurred on September 29, 2008,

and acknowledged it was possible Hawkins was injured. Significantly, Cooper admitted he reported the injury to Jonathan Ison, the owner.

At his deposition, Jonathan Ison testified Cooper called him and told him Hawkins did not show up for work the next day, September 30, 2008. Jonathan Ison testified Cooper told him Hawkins stepped down off the scaffold and fell on his back.

Dr. Kelly's Form 107 under the heading "Explanation of Causal Relationship", reflects as follows:

> Explain how the work-related injury caused the harmful change in the human organism.
>
> Description of the work-place injury (8 ft fall from scaffolding as described in section B) is consistent with the objective findings. Though he has degenerative changes on his MRI, those were asymptomatic prior to the fall. Patient did not have same or similar condition prior to the work injury.

During his October 11, 2010, deposition, after being shown the records reflecting Hawkins had prior back problems, Dr. Kelly testified his impairment rating of 21% was not solely attributable to the work injury. Dr. Kelly opined Hawkins was suffering from ongoing back pain prior to the injury. Therefore, 20% of the 21% or 4.2% of the assessed impairment was due to a pre-existing active condition and

the remainder of the assessed impairment was due to the September 29, 2008, injury. Dr. Kelly testified whether Hawkins jumped or fell from the scaffolding did not change the severity of the injury.

Dr. Taha's March 14, 2011, report reflects Dr. Taha responded "yes" to the question "Do you find within reasonable medical probability Roger's fall from scaffolding is the cause of his complaints and consistent with your physical exam and objective medical findings?" Likewise, Dr. Taha concurred with Dr. Kelly's impairment rating of 21%, his apportionment of 4.2% to the pre-existing active condition, and apportionment of 16.8% to the work injury.

In a September 22, 2010, letter, Dr. Donnini stated as follows:

> With reasonable medical probability, Mr. Hawkins fall from the scaffolding caused his low back injury and substantially aggravated his arthritis and caused a significant disc bulging and instability of the spine. This is consistent with my physical examination and objective findings in his patient.

The lay and medical evidence recited herein constitutes substantial evidence which supports the ALJ's determination Hawkins sustained a work-related injury. Therefore, that determination must be affirmed.

Likewise, we find no merit in Ison's assertion Hawkins is not entitled to enhanced benefits via the three multiplier. As previously pointed out, the ALJ is authorized to rely upon one physician in resolving one issue but may reject that same physician's opinion in resolving another issue. Consequently, the ALJ is free to rely upon Dr. Tutt's impairment rating but reject his opinion in resolving the issue of entitlement to the three multiplier. As is the ALJ's prerogative, he relied upon the opinions of Drs. Kelly, Donnini, and Taha in finding Hawkins lacked the physical capacity to return to his pre-injury work, therefore entitling him to enhancement of his income benefits pursuant to KRS 342.730(1)(c)1. In his May 22, 2010, Form 107, Dr. Kelly stated Hawkins did not retain the physical capacity to return to the type of work he performed at the time of the injury. In his March 14, 2011, report, Dr. Taha expressed the same sentiment stating Hawkins could not perform his prior caulking position. Likewise, in his September 22, 2010, report, Dr. Donnini stated he agreed with Dr. Kelly that Hawkins could not perform his prior duties. The opinions of those physicians constitute substantial evidence which mandate the enhancement of Hawkins' benefits by the three multiplier be affirmed.

Further, we find no merit in Ison's assertion Hawkins is not entitled to TTD benefits. Even though Hawkins did not provide an argument concerning entitlement to TTD benefits, it was raised as a contested issue. Although the ALJ concluded the records did not support an award of TTD benefits prior to the surgery, it is clear from the award of TTD benefits the ALJ believed Hawkins established entitlement to TTD benefits from August 27, 2009, through March 2, 2010.

Temporary total disability means an employee has not reached maximum medical improvement ("MMI") from an injury and has not reached a level of improvement that would permit a return to employment. KRS 342.0011. TTD is a factual finding in which the ALJ is called upon to analyze the evidence presented and determine the date the injured employee reaches MMI or attains a level of improvement such that he is capable of returning to gainful employment. KRS 342.0011(11); W.L. Harper Construction Co. v. Baker, 658 S.W.2d 202 (Ky. App. 1993); Central Kentucky Steel v. Wise, 19 S.W.3d 657 (Ky. 2000). Generally, the duration of an award of TTD benefits may be ordered only through the earlier of those two dates.

A valid argument cannot be made that after undergoing surgery performed by Dr. Taha, Hawkins was not

temporarily totally disabled. The duration of the award of TTD benefits following the surgery was the sole issue to be resolved by the ALJ. Based on the opinion of Dr. Kelly, who concluded Hawkins attained MMI on March 4, 2010, the ALJ awarded TTD benefits through that date. Dr. Kelly's opinion regarding MMI satisfies the first prong of the two-prong test set forth in the statute. Concerning the second prong, in Magellan Behavioral Health v. Helms, 140 S.W.2d 579 (Ky. App. 2004), the Court of Appeals defined return to employment as follows:

> The second prong of KRS 342.0011(11)(a) operates to deny eligibility to TTD to individuals who, though not at maximum medical improvement, have improved enough following an injury that they can return to work despite not yet being fully recovered. In *Central Kentucky Steel v. Wise*, the statutory phrase 'return to employment' was interpreted to mean a return to the type of work which is customary for the injured employee or that which the employee had been performing prior to being injured.

The November 16, 2011, opinion, award, and order does not address Hawkins' ability to return to employment; however, since no petition for reconsideration was filed our only task is to determine if substantial evidence supports the ALJ's award of TTD benefits. We believe the ALJ could rely upon the opinions of Hawkins' physicians and Hawkins'

testimony in determining Hawkins was incapable of a return to employment during the period TTD benefits were awarded. Significantly, we have already determined substantial evidence supports the ALJ's determination Hawkins was entitled to the three multiplier because he did not retain the physical capacity to return to the type of work he was performing at the time of the injury.

We find no merit in Ison's argument that since Hawkins had a pre-existing active condition, the ALJ should have found it is liable for only the medical expenses associated with that portion of his back condition causally related to the work injury. The ALJ determined Hawkins had a pre-existing active lumbar degenerative condition which was aggravated to the extent surgery was required after the injury on September 29, 2008. Given the nature of Hawkins' injury, we believe the ALJ is not required to draw a distinction between the medical benefits attributable to his pre-existing active condition and his condition attributable to the September 29, 2008, injury.

In the case *sub judice*, the ALJ determined Hawkins has a permanent functional impairment rating as a result of the work injury. This Board has consistently held that a worker who has established a work-related permanent impairment rating has also established a

disability for purposes of KRS 342.020 and is entitled to future medical benefits. We interpret the court's holding in FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007) to mean that where there is evidence of a permanent impairment rating in accordance with the AMA Guides, as a matter of law, it is error for an ALJ to rule broad-spectrum and prospectively that future medical care is not causally related to the injury or unreasonable and unnecessary. In such circumstances, pursuant to KRS 342.020(1), a general award of future medical benefits is mandated, and as noted by the court: "[u]nder 803 KAR 25:012; Mitee Enterprises v. Yates, 864 S.W.2d 654 (Ky. 1993) and National Pizza Co. v. Curry, 802 S.W.2d 949 (Ky. App. 1991), an employer is free to move to reopen an award to contest the reasonableness or necessity of any medical treatment and also whether the need for treatment is due to the effects of the injury." FEI Installation v. Williams at 319. Therefore, we find no error in the ALJ's award of medical benefits in the case *sub judice*.

Finally, we find no merit in the UEF's contention the ALJ erred in his computation of AWW. The applicable statute is KRS 342.140(1)(e) which reads as follows:

> 1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure

> preceding death or disability from an occupational disease:
>
> . . .
>
> (e) The employee had been in the employ of the employer less than thirteen (13) calendar weeks immediately preceding the injury, his average weekly wage shall be computed under paragraph (3), taking the wages (not including overtime or premium pay) for that purpose to be the amount he would have earned had he been so employed by the employer the full thirteen (13) calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation.

On September 13, 2011, Ison filed a Form AWW-I Wage Certification reflecting Hawkins worked eight full weeks before his work injury. The Wage Certification also reflects that during six of the eight weeks, Hawkins worked forty hours and earned $26.11 per hour resulting in Hawkins being paid $1,044.40.[1] During the week ending September 7, 2008, Hawkins worked thirty-two hours and had a weekly wage of $835.32. During the week ending August 31, 2008, Hawkins worked thirty-seven hours and had a weekly wage of $966.07. Attached to the Form AWW-I Wage Certification is Hawkins' pay stub for each week. Also attached are the

[1] The wages Hawkins earned during the week he was injured was not included in the Form AWW-I.

payroll records of Hawkins and the employees who worked with him during that eight week period covering the pay period ending August 10, 2008, running through the pay period ending October 5, 2008.[2] Also attached are the payroll records of Ison's employees for the five weeks immediately prior to Hawkins' first work week covering the pay periods ending July 6, 2008, through August 3, 2008. Significantly, Jonathan Ison testified all of the individuals, including Hawkins, worked as caulkers. Thus, the payroll records for the five weeks prior to Hawkins' employment reflect the wages paid to caulkers. Those same records were also attached as "Exhibit 1" to Ronald Cooper's deposition and reflect as follows:

Week ending 7/6/08	**Hours**	**Hourly Rate**	**Regular Pay**
Ronald J. Cooper	31.50	$26.11	$822.47
Ronald H. Cooper	40.00	$26.11	$1,044.40

Week ending 7/13/08	**Hours**	**Hourly Rate**	**Regular Pay**
Ronald H. Cooper	40.00	$26.11	$1,044.40
Ronald J. Cooper	38.00	$26.11	$992.18

[2] Hawkins was injured during the pay period ending October 5, 2008. Hawkins earned wages in nine pay periods.

Week ending 7/20/08	**Hours**	**Hourly Rate**	**Regular Pay**
Craig Lynn Collins	29.50	$26.211	$770.25
Ronald H. Cooper	40.00	$26.11	$1,044.40
Ronald J. Cooper	40.00	$26.11	$1,044.40

Week ending 7/27/08	**Hours**	**Hourly Rate**	**Regular Pay**
Craig Lynn Collins	40.00	$26.11	$1,044.40
Ronald H. Cooper	40.00	$26.11	$1,044.40
Ronald J. Cooper	40.00	$26.11	$1,044.40

Week ending 8/3/08	**Hours**	**Hourly Rate**	**Regular Pay**
Craig Lynn Collins	40.00	$26.11	$1,044.40
Ronald H. Cooper	40.00	$26.11	$1,044.40
Ronald J. Cooper	40.00	$26.11	$1,044.40

On September 20, 2011, Hawkins filed a computation of his AWW. Hawkins included the eight weeks set out in Ison's Form AWW-I. He also included the wages Hawkins earned during the week he was injured. In addition, based upon the wage record filed with Cooper's deposition and attached to Ison's Form AWW-I, Hawkins is attributed income of $1,044.40 for the weeks ending July 13, 2008, July 20, 2008, July 27, 2008, and August 3, 2008. This resulted in total earnings during a thirteen week

period of $12,454.47. That figure divided by 13 resulted in an AWW of $958.04. Hawkins utilized Ison's filings in providing the ALJ with what he contended was Hawkins' AWW pursuant to KRS 342.140(e).

Although Hawkins incorrectly included the wages earned during the week of his injury in computing the AWW, we note this computation error was not raised before the ALJ. As previously noted, no petition for reconsideration was filed. Likewise, this issue is not raised on appeal. KRS 342.140(e) requires that in arriving at the AWW, the ALJ is to determine the amount Hawkins would have earned had he been employed for the full thirteen weeks immediately preceding Hawkins' injury. Thus, the wages Hawkins earned during the week of his injury should not have been included. Rather, the full five weeks prior to Hawkins' employment should have been used by Hawkins in computing his AWW. Because no one has raised this specific objection, we will not address it. The fact remains Hawkins' computation was based on the payroll records filed in the record and reflects what Hawkins contended he would have earned had he been so employed by Ison for the full thirteen calendar weeks immediately preceding his injury. Hawkins' computation of the AWW is supported by Ison's payroll records, and since there was no objection to the

use of wages earned during the week Hawkins was injured, the ALJ was entitled to rely upon Hawkins' computation.

In the case *sub judice*, the ultimate goal was to determine the amount Hawkins would have earned had he been employed by Ison for thirteen calendar weeks immediately preceding the injury and had worked, when work was available to other employees in a similar occupation. The ALJ's reliance on Hawkins' computation of his AWW based on the records filed by Ison regarding the earnings of other caulkers for the weeks immediately preceding Hawkins' employment was appropriate. Therefore, we believe the ALJ's determination of Hawkins' AWW is in keeping with the statutory goal and must be affirmed.

We emphasize since no petition for reconsideration was filed by the UEF or Ison, our sole task on appeal is to determine whether the record contains substantial evidence supporting the ALJ's determination on each issue raised on appeal. Based on our review of the record, we find substantial evidence supports the decision of the ALJ; therefore, we must affirm.

Accordingly, the November 10, 2011, opinion, award, and order of the ALJ is **AFFIRMED**.

ALL CONCUR.

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