OPINION ENTERED: June 5, 2012

CLAIM NO. 201001255 & 201000960

J-LOK CORPORATION PETITIONER

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

RONALD HAYES
and HON. DOUGLAS W. GOTT,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. J-Lok Corporation ("J-Lok") seeks review of the opinion, order and award rendered January 3, 2012 by Hon. Douglas W. Gott, Administrative Law Judge ("ALJ") determining Ronald Hayes ("Hayes") contracted occupational asthma and sustained a cervical injury while in the employment of J-Lok, and awarding temporary total disability

("TTD") benefits, permanent partial disability ("PPD") benefits and medical benefits. J-Lok also appeals from the order denying its petition for reconsideration rendered January 27, 2012.

J-Lok appeals only the ALJ's determination pertaining to Hayes' occupational disease claim. Therefore, medical and lay evidence pertaining to his cervical injury will not be reviewed. On appeal, J-Lok argues its evidence on record sufficiently overcame the presumptive weight afforded to the university evaluator, Dr. Cavallazzi, who diagnosed occupational asthma and found permanent impairment. In support of its argument, J-Lok cites the conflicting medical opinion of Dr. Selby, as well as the multiple industrial hygiene studies performed at the J-Lok plant. J-Lok also argues it is entitled "to a more detailed explanation of why the Administrative Law Judge adopted the conclusions of the university evaluator." We affirm.

Hayes filed the Form 101, Application for Resolution of Injury Claim on August 23, 2010, alleging he sustained a 1) work-related cervical spine injury on December 15, 2009 and 2) lung injuries as a result of chemical exposure on March 3, 2010. On October 21, 2010, Hayes filed a Form 102, Application for Resolution of Occupational Disease Claim, alleging bronchiolitis due to

exposure to Polylite while employed at J-Lok as a maintenance technician on March 8, 2010. In an order dated December 22, 2010, the ALJ consolidated the two claims.

Hayes testified by deposition on November 23, 2010 and at the hearing held November 15, 2011. Hayes, a resident of Madisonville, Kentucky, was born on March 22, 1958. Hayes completed high school and worked as a maintenance technician beginning in the 1980s. He began working for J-Lok on March 17, 2008 as a maintenance supervisor, where he installed all equipment and production lines, maintained and repaired equipment and trained other maintenance personnel. J-Lok primarily produced resin cartridges used in the mining industry. Hayes testified dust masks or respirators were not provided when he began working for J-Lok, but approximately one year and seven months later, paper respirators were made available.

Hayes denied having respiratory issues, infections, breathing problems or asthma prior to working for J-Lok. Hayes denied having asthma as a child, but acknowledged he had some type of respiratory issue as an infant for which he had no independent recollection. Hayes testified he never needed an inhaler until he began working for J-Lok.

Hayes filed a previous workers' compensation claim approximately fifteen years ago involving a hernia repair. He also had a prior back problem in 2007 which had resolved by March 2008.

Hayes testified his work at J-Lok caused him to have a respiratory injury due to handling chemicals. When asked to describe generally what happened to him while employed at J-Lok, Hayes testified as follows:

> A: I started working March 2008. And by September 2008, I started developing shortness of breath and coughing. And that's when I started seeing doctors for those conditions.
>
> Q: Who did you first see?
>
> A: Dr. Tackett.
>
> Q: What did he do for you?
>
> A: He gave me some medications to take and things of that nature.
>
> Q: Did it improve?
>
> A: No, sir, it did not. It got worse.
>
> Q: How was your - - well, what do you mean it got worse, Mr. Hayes? Can you just describe what worse means?
>
> A: The shortness of breath continued to increase and the coughing kept increasing to the point where it was like a violent reaction. I was having some - - definitely having some extreme difficulties in breathing and in coughing. I've had coughing episodes that were extremely difficult.

Hayes testified he then treated with Dr. Uragoda, a pulmonary specialist, who diagnosed occupational lung disease, restrictive lung disease and occupational asthma. Hayes continues to treat with Dr. Uragoda and with Dr. Tackett, his family physician.

On December 18, 2009, Hayes completed an accident report alleging he injured his neck and upper back when he picked up a heavy pump but he did not seek medical treatment. On March 8, 2010, Hayes completed another accident report alleging he had been exposed to chemicals, resulting in breathing and coughing problems. He testified he saw a physician that day and continued to have breathing problems thereafter and severe coughing attacks. Hayes testified he believed he had been exposed to polyester resin and had been diagnosed with bronchiolitis or asthma.

Hayes testified on March 10, 2010, he suffered a violent coughing attack, causing severe pain in his neck for which he sought treatment at the Urgent Care Center. An MRI was performed on March 18, 2010. Hayes subsequently underwent a disc fusion at C5-7. He also underwent an open lung biopsy in April 2010 while he was off work recuperating from his neck surgery. Hayes returned to work for J-Lok on or about May 19, 2010, with restrictions which included no exposure to airborne chemicals. Hayes testified on August

6, 2010, he and a co-worker were changing a valve when several gallons of a chemical leaked. Hayes experienced immediate breathing problems and violent coughing, and sought treatment at the Urgent Care Center. Hayes did not return to work for J-Lok upon the advice from his doctor.

Hayes testified he worked for approximately a month beginning in September 2010 at MSSC, an automotive supply company, as a manufacturing technical support which he had to quit due to his upper back and neck pain. Hayes testified he was not exposed to any chemicals at MSSC and his breathing problems improved while working there. Hayes testified he currently uses his inhaler and nebulizer approximately one to two times per week. He also uses a rescue inhaler approximately two or three times a week.

Hayes submitted the medical records of Dr. Uragoda, a pulmonary specialist, from Pennyrile Pulmonary Critical Care. On February 19, 2009, Hayes presented with persistent coughing, wheezing, and breathing difficulty. Dr. Tackett referred him for treatment with Dr. Uragoda for a persistent chronic cough beginning in September 2008, which had not improved despite traditional asthma treatment. Dr. Uragoda also noted Hayes started a new job prior to the onset of his symptoms where he worked around limestone, silica dust and benzene alcohol and had no family history of

asthma. Dr. Uragoda initially diagnosed chronic cough secondary to asthma and rhinitis. On March 6, 2009, Hayes informed Dr. Uragoda his symptoms appeared to improve as his work hours decreased. Dr. Uragoda opined his asthma is "probably occupation related." Again on November 13, 2009, Dr. Uragoda noted "there appears to be a special relationship to him starting work at a chemical factory in March 2008 when he started developing cough and wheezing and shortness of breath in September 2008." He noted usual asthma medications provided no relief and his condition improved when away from work. He also recommended use of a respirator at work. He again diagnosed asthma likely from industrial chemical exposure.

An open lung biopsy was performed on April 1, 2010, while Hayes was already off work due to neck surgery. On April 16, 2010, Dr. Uragoda noted the biopsy showed normal parenchymal tissue but felt a second biopsy should be completed since Hayes had been off work for approximately four weeks recovering from surgery, and therefore unexposed to occupational fumes. In a medical record dated May 14, 2010, he noted a pulmonary function test performed on April 21, 2010 showed "severe restrictive process with FVC 1.67 which is 36% predicted. FEV1 1.56, 41% predicted with a ratio 93%." Dr. Uragoda noted the pulmonary function test

was performed too soon after the lung biopsy and Hayes was still in a lot of pain, which skewed the test results. He diagnosed restrictive lung disease, suspected bronchiolitis from occupational exposure, and occupational related asthma.

On June 23, 2010, Dr. Uragoda noted Hayes had been back to work for two weeks and his respiratory symptoms had returned. Pulmonary function tests were performed on June 23, 2010 and demonstrated minimal obstructive lung defect, minimal airway obstruction, and mild restrictive lung defect. In his note of August 4, 2010, Dr. Uragoda stated:

> At this point it was pretty much clear that he was having his occupational exposure to dust that was causing him restrictive lung pattern and respiratory symptoms. Due to the spasms of coughing he developed a cervical disk rupture that caused severe neck pain and he underwent cervical discectomy by Dr. Eggers. Subsequently the patient had open lung biopsy to prove occupational lung exposure but he was off exposure at the time of his biopsy which came back normal.
>
> During the absence from work his symptoms nearly completely subsided except from an occasional use of albuterol inhaler. Since starting work his symptoms have come back in full force. He is constantly coughing, short of breath and wheezing. He definitely needs to quit working or stop his exposure to the chemicals that he is exposed to at work. I reviewed the MSDS sheets of the various chemicals exposed and most of them appear to have respiratory involvement.

Hayes submitted the medical records from Dr. Tackett, his primary physician. In a note dated March 8, 2010, Dr. Tackett stated Hayes had an 18 month history of progressive cough and shortness of breath beginning after his employment with J-Lok. He noted Hayes had respiratory difficulties as an infant, but had no history of asthma during his childhood or adult life. Dr. Tackett diagnosed occupational restrictive lung disease and asthma. In a note dated March 26, 2010, Dr. Tackett stated Hayes had been off work due to a recent cervical disc surgery during which time his breathing had improved. On September 2, 2010, Dr. Tackett noted Hayes had suffered a severe pulmonary reaction to chemical inhalation which had improved while he was off work. He also noted Hayes was unable to return to his work environment. On December 5, 2010, Dr. Tackett noted Hayes had changed employment and his breathing improved. In a letter dated December 9, 2010, Dr. Tackett opined Hayes was temporarily totally disabled from March 8, 2010 to May 19, 2010 and August 6, 2010 to September 14, 2010 due to his pulmonary condition resulting from work-related exposures and neck surgery. He also stated Hayes had reached medical maximum improvement ("MMI").

Dr. Tackett also testified by deposition on October 19, 2011 at Hayes' request. Dr. Tackett testified,

as of May 12, 2008, Hayes was having no pulmonary or respiratory issues, and he was cleared for employment with no restrictions. Dr. Tackett testified Hayes began having respiratory issues and coughing around September 2008, which progressed in a persistent fashion. He confirmed his opinion of a causal link between Hayes' respiratory issues and exposures to unknown chemicals at work due to the temporal aspect. Dr. Tackett testified Hayes' respiratory issues created an active disabling impairment which had improved since he changed employment.

Hayes submitted a medical record from Dr. Robert Holzknecht of WorkHealth dated August 6, 2010, which noted Hayes presented for evaluation after exposure to unsaturated polyester resin from J-Lok when the substance leaked from a valve he was changing. Hayes stated he began coughing, and became very dizzy and light-headed. Chest x-rays revealed no active disease but noted mild expiratory wheezing. Hayes also submitted medical records from Owensboro Medical Health System where he underwent a cervical disc fusion and an open lung biopsy on April 1, 2010.

J-Lok submitted the medical evaluation of Dr. Jeff Selby, a pulmonologist, dated November 18, 2010. Hayes stated he was exposed to several toxic chemicals at work causing difficulty breathing and violent coughing. Dr.

Selby noted the symptoms began in September 2008 and progressively worsened, leading Hayes to quit his job at J-Lok in September 2010. Dr. Shelby noted since leaving J-Lok, he was "100% better." He also noted Hayes is a non-smoker. Dr. Selby reviewed medical records, conducted a physical exam and laboratory data, including pulmonary function testing. Based upon the testing, Dr. Selby stated as follows:

> Pulmonary function testing shows a forced vital capacity (FVC) of 3.82 liters or 86% of predicted, a forced expiratory volume in one second (FEV1) of 3.17 liters or 88% of predicted, and an FEV1/FVC of 83% . . . . Overall interpretation is normal spirometry without significant improvement post-bronchodilator, normal lung volumes and normal diffusion capacity."

Dr. Selby opined Hayes did not suffer from an occupational lung disease, had the respiratory and pulmonary capacity to perform all work duties required of him, including those required at J-Lok, and had a normal physical examination. He also noted pulmonary function testing and a chest x-ray were normal. Dr. Selby concluded Hayes:

> has a history compatible with bronchial asthma. This appears to be garden variety asthma like what is present in up to 10% of the American public. It has responded well to conventional treatment resulting in normalization of his lung function. There is no

> definable link to any of his current or previous employment.

Dr. Selby also noted his disagreement with the course of treatment provided by Dr. Uragoda and found Hayes had a very severe lung disease as a young child. Dr. Selby concluded Hayes does not have occupational lung disease due to his work with J-Lok.

A university evaluation was performed on March 23, 2011 by Dr. Cavalazzi and a Form 108-OD was submitted in accordance with KRS 342.315. Dr. Cavalazzi noted Hayes started developing wheezing, coughing and shortness of breath in September 2008 after starting his job at a chemical factory in March 2008. He noted exposure to several chemicals at the company such as polyester resin, acetone and benzoate alcohol. Hayes stated his symptoms were the result of this work-related exposure, and noted improvement when he was off work for his neck surgery and lung biopsy, as well as when he quit his job at J-Lok. Although improved, Hayes continued to complain of shortness of breath and coughing. Dr. Cavalazzi noted Hayes is a non-smoker and his past medical history of infantile respiratory problems, GERD and hypothyroidism. Dr. Cavalazzi performed an x-ray, reviewed medical records, and administered several tests including the pulmonary function test, which resulted

in FVC of 3.84 (78%), FEV1 of 2.89 (77%) and FEV1/FVC of 75.54. Dr. Cavalazzi diagnosed occupational asthma and stated:

> The most compelling diagnosis to explain Mr. Hayes' symptoms is occupational asthma. Indeed, he experienced substantial improvement of the respiratory symptoms since he quit working. He has had classical symptoms of asthma with shortness of breath, wheezing, and cough. The pulmonary function test shows some evidence of airway obstruction with decrease in mid expiratory flow, an abnormality typically seen in asthma or small airway diseases.

Dr. Cavalazzi opined Hayes' occupational asthma is causally related to his work environment and found he suffered pulmonary impairment caused by factors in the work environment. Dr. Cavalazzi noted the chemical substances to which Hayes was exposed at J-Lok are known to cause asthma, and he cited medical literature showing the association between polyester resin and the development of asthma. Dr. Cavalazzi assessed an impairment range of 10-25% in accordance with the American Medical Association Guides to Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Dr. Cavalazzi opined Hayes can work as a maintenance technician but should avoid close contact with chemical substances and wear a respiratory mask.

Shannon Sutton ("Sutton"), the lab and safety supervisor at J-Lok, testified by deposition. Sutton testified J-Lok opened in May 2008 and produces, packages and ships resin cartridges. Sutton's duties include overseeing the quality of the plant, all laboratory testing for incoming and outgoing materials, and plant safety, including safety training and OSHA compliance. He also ensured chemicals were handled properly, the plant was ventilated, and to some degree, was accountable for the chemicals or by-products produced at the plant.

Sutton confirmed Hayes was hired as the maintenance supervisor. Sutton testified all new employees at J-Lok completed safety training covering general safety rules and chemical safety. Thereafter, weekly safety trainings were held. He testified training was also held every time a new chemical was introduced into the workplace. Sutton testified Hayes participated in the majority of the safety training. Sutton testified J-Lok now offers employees organic vapor nuisance masks and has never been cited for not providing respirators. Sutton acknowledged the presence of several hazardous chemicals at the plant. However, he denied knowledge of the allegations made by Hayes concerning overexposure or improper use and disposal of chemicals.

Five exhibits were attached to Sutton's deposition. An "Employee Exposure Monitoring" analysis was conducted by Air Source Technology, Inc., on December 11, 2008 during which monitors were worn by employees inside the J-Lok plant to measure exposure to dust, respirable crystalline silica, Styrene, and noise. The report concluded "all employee exposures were below the OSHA Permissible Exposure Limit (PEL) 8-hour Time Weighted Average (TWA) for the analysis performed on the day of sampling."

An "Occupational Exposure Monitoring for Benzyl Alcohol, Diethylene Glycol and Quinine" was conducted by CIH Services, Inc., on November 2, 2009 and the report was attached as an exhibit. It concluded the airborne concentrations of all contaminants measured were less than the applicable exposure limits of all employees monitored and the area sample concentrations were also below the applicable exposure limits. Another "employee exposure monitoring" analysis was conducted on October 14, 2010 by Air Source Technology, Inc., to monitor the exposure for Styrene. Again, the report concluded all employee exposures were below the OSHA exposure limit, ceiling limit, and five minute peak limit for Styrene on the day of sampling.

Two Certified Safety and Health Official ("CSHO") investigative reports were submitted as exhibits reflecting an inspector visited J-Lok as a result of safety and health hazards complaints. The first, dated March 3, 2009, could not substantiate complaints of 1) benzyl alcohol exposure, 2) improper dumping of Benox B-55, polyester resin and petroleum products and 3) improper closure of vents. The second, dated September 1, 2010, could not substantiate complaints of 1) improper training in the use of hazardous chemicals, 2) improper training in non-routine tasks, 3) lack of notice of new chemicals being introduced into the work area, 4) employee reprimands for wearing respiratory protection and reading MSDS and 5) health issues due to work exposure to chemicals. None of the investigations resulted in citations.

In the opinion, award and order rendered January 3, 2012, the ALJ found Hayes provided timely notice of both his injury and occupational disease claims and timely filed the Forms 101 and 102. The ALJ found Hayes sustained a cervical injury on December 15, 2009, but also had an active, symptomatic impairment at the time of the work injury. The ALJ assigned a pre-injury impairment of 25%, with an increase to 28% due to the work-related cervical injury. The ALJ awarded temporary total disability benefits

for Hayes' cervical injury. The ALJ also found Hayes suffered from an occupational disease, assigned an 18% impairment rating and awarded PPD benefits. The ALJ increased the award of PPD benefits for both the injury and occupational disease claims by the 3.2 multiplier pursuant to KRS 342.730(1)(c)1 and 3. In finding in favor of Hayes regarding his occupational disease claim, the ALJ stated as follows:

> **a. Standard of review.**
>
> 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 order for that burden to be sustained, no less than substantial evidence of each element of the claim must be introduced. Substantial evidence has been defined as some evidence of substance and relevant consequence, having the fitness to induce conviction in the minds of reasonable people. *Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986)*.
>
> As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. *Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993)*. Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky.App. 1995)*. In weighing the evidence the ALJ must consider the totality of the evidence.

Paramount Foods Inc., v. Burkhardt, 695 S.W. 2d 418 (Ky. 1985).

d. Occupational disease claim.

Dr. Rodrigo Cavallazzi conducted a university evaluation on March 23, 2011, pursuant to KRS 342.315. The history he received was shortness of breath, dry cough, and wheezing beginning in September 2010 after exposure to different chemicals at work. Symptoms were improved since leaving employment at J-Lok in September 2010. Dr. Cavallazzi assigned work related impairment of 10-25% based on the diagnosis of occupational asthma. He said Hayes did not retain the physical capacity to return to the type of work he did before his exposure. Dr. Cavallazzi's opinion on causation was supported by the records and deposition testimony of Dr. Mark Tackett, Hayes' primary care physician, and Dr. Lalith Uragoda, the treating pulmonologist.

In opposition, J-Lok submitted testimony from Shannon Sutton, safety supervisor at J-Lok, but the ALJ did not find it persuasive. For medical evidence, it filed the report of Dr. Jeff Selby, a pulmonologist in Henderson who evaluated Hayes at its request on November 18, 2010. Dr. Selby's spirometry testing was normal. His opinion was that Hayes did not have occupational asthma, but rather "garden variety asthma that is well controlled when taking his medications appropriately. There has been no permanent lung disease as a result of his past occupations including that at J-Lok Corporation."

KRS 342.315(2) provides for a university evaluator's findings to be given presumptive weight. In this case,

> the contrary report from Dr. Selby was given serious consideration, but the ALJ concluded that it did not overcome the presumptive effect of Dr. Cavallazzi's opinions of work relatedness and impairment, for reasons including those stated by Hayes in his Brief, at pages 9-10.
>
> The ALJ has the authority to convert a physician's testimony placing a claimant generally within a category of impairment under the AMA Guides into a specific numerical rating consistent with the Guides. *Pella Corp. v. Bernstein, 336 S.W.3d 451 (Ky. 2011).* From the 10-25% range of impairment assigned by Dr. Cavallazzi, the ALJ finds that Hayes' impairment is 18%.

In its petition for reconsideration, J-Lok argued the January 3, 2012 decision was defective because the ALJ failed to consider the entirety of the record. Specifically, J-Lok argued the ALJ did not discuss the multiple industrial hygiene studies performed at the plant which were attached to Sutton's deposition. J-Lok argued if the entirety of the record had been considered, the presumptive weight afforded to the university evaluation performed by Dr. Cavalazzi would have been overcome.

In his order dated January 27, 2012 denying J-Lok's petition for reconsideration, the ALJ stated as follows:

> . . . . As to the merits of the petition, it is denied. The ALJ

> considered the entirety of the record, regardless of whether reference to certain items of evidence were specifically noted or not.

On appeal, J-Lok argues its proof overcame the presumptive weight afforded to the university evaluator, Dr. Cavalazzi through Dr. Selby's medical opinion and the multiple industrial hygiene studies. Specifically, J-Lok notes Dr. Selby's spirometry test yielded better results than Dr. Cavallazzi's spirometry testing.

> The normal spirometry results from Dr. Selby completely refuted Dr. Cavalazzi's diagnosis because they removed the only test result Dr. Cavalazzi had to rely on in diagnosing "occupational asthma" . . . . Normal spirometry results cannot be faked.

J-Lok also argues Dr. Cavalazzi's conclusions should be rejected because Dr. Selby noted in his own opinion Hayes had not informed him of his GERD history, a known cause and contributor of asthma. J-Lok again argues the ALJ did not properly consider the results of the multiple industrial hygiene studies. Finally, J-Lok argues it is entitled to a more detailed analysis and explanation of why the ALJ rejected Dr. Selby's conclusions and the results of the multiple industrial hygiene studies.

In a workers' compensation case, the claimant bears the burden of proof and risk of non-persuasion

regarding every element of his claim. See Durham v. Peabody Coal Co., 272 S.W.3d 192 (Ky. 2008). Since Hayes was successful before the ALJ in regard to his occupational disease claim, the question on appeal is whether there was substantial evidence 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 the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). 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, 16 (Ky. 1977). Although a party may note evidence supporting a different outcome than that reached by the ALJ, such evidence is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974).

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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). It is well established, whether on reopening or at the time of an original proceeding, an ALJ is vested with wide ranging discretion. Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006); Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976). So long as the ALJ's rulings are reasonable under the evidence, they may not be disturbed on appeal. Special Fund v. Francis, 708 S.W.2d 641, 643 (Ky. 1986).

KRS 342.315(2) governs medical evaluations by university medical schools and states as following:

> The physicians and institutions performing evaluations pursuant to this section shall render reports encompassing their findings and opinions in the form prescribed by the executive director. Except as otherwise provided in KRS 342.316, the clinical findings and opinions of the designated evaluator shall be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence. When administrative law judges reject the clinical findings and opinions of the designated evaluator, they shall specifically

> state in the order the reasons for rejecting that evidence.

While KRS 342.315(2) generally requires presumptive weight to be afforded the clinical findings and opinions of the university evaluator, an ALJ has the discretion to reject such testimony where it is determined the presumption has been overcome by other evidence and he expressly states his reasons for doing so within the body of his decision. Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 891 (Ky. 2007); Morrison v. Home Depot, 197 S.W.3d 531, 534 (Ky. 2006); Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). Whether a party overcomes the presumption established under KRS 342.315(2) is not an issue of law, but rather a question of fact at all times subject to the ALJ's discretion as fact-finder to pick and choose from the evidence. Magic Coal Co. v. Fox, supra. As the Supreme Court cautions in Magic Coal Co. v. Fox, supra, the rebuttable presumption does not restrict the ALJ's ability to utilize the discretion afforded under the law to weigh the conflicting medical evidence. Should the ALJ choose to disregard the medical opinions and impairment rating of the university evaluator, which the ALJ is entitled to do under the discretion granted under the law, the ALJ is merely

required to set forth the rationale as to why said testimony was disregarded.

That said, we believe the ALJ's finding of an occupational disease was supported by substantial evidence. Dr. Cavallazzi, the university evaluator, rendered an opinion pursuant to KRS 342.315. After a physical examination, several tests, and a review of Hayes' medical records, Dr. Cavallazzi diagnosed occupational asthma. He cited to the pulmonary function test results and Hayes' respiratory improvement since quitting his job at J-Lok. Dr. Cavallazzi opined Hayes' occupational asthma is causally related to his work environment. He noted the chemical substances Hayes was exposed to at J-Lok are known to cause asthma, and cited medical literature establishing the association between polyester resin and the development of asthma. Dr. Cavallazzi assessed an impairment range of 10-25% using the AMA Guides. It is also noted both of Hayes' treating physicians, Drs. Uragoda and Tackett, concluded he suffered from an occupational disease as a result of his employment at J-Lok.

J-Lok's arguments on appeal are essentially an attempt to have this Board reweigh the evidence and direct a finding contrary to the ALJ's decision, a task we cannot do. The ALJ found persuasive the opinion of the university

evaluator and Hayes' treating physicians. Although J-Lok is able to point to some evidence of record which could have supported a finding in its favor regarding causation and occupational disease, by way of Dr. Selby's medical opinion and the occupational hygiene tests, such is not dispositive nor an adequate basis to reverse on appeal. J-Lok also argues Dr. Cavallazzi's opinion should be rejected because Dr. Selby noted in his own medical opinion Hayes had not informed him of his GERD history. However, it is clearly reflected in Dr. Cavallazzi's report.

We likewise find no merit in J-Lok's argument the ALJ's decision did not include a complete review of the evidence, primarily the multiple occupational hygiene reports attached to Sutton's deposition and why the ALJ rejected Dr. Selby's medical opinion. He was not required to do so. We find the ALJ's analysis to be sufficiently adequate to apprise the parties of the basis for his decision and to permit meaningful review on appeal. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chaffins, 502 S.W.2d 526 (Ky. 1973).

Accordingly, the ALJ's decision rendered January 3, 2012, as well as the order ruling on the petition for reconsideration dated January 27, 2012 are hereby **AFFIRMED.**

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON A STUART BENNETT
P O BOX 2150
LEXINGTON, KY 40588

COUNSEL FOR RESPONDENT:

HON JAMES ADAMS II
29 E CENTER STREET
MADISONVILLE, KY 42431

ADMINISTRATIVE LAW JUDGE:

HON DOUGLAS W GOTT
400 EAST MAIN ST, STE 300
BOWLING GREEN, KY 42102