Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 17, 2015

CLAIM NO. 201400467 & 201400466

JAMES RIVER COAL COMPANY PETITIONER

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

RONALD WAYNE CHILDERS and
HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING & REMANDING

* * * * * *

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

ALVEY, Chairman. James River Coal Company ("James River") appeals from the Opinion and Order on Remand rendered April 17, 2015 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). This Board previously entered an opinion on February 20, 2015 vacating and remanding a decision of the ALJ rendered August 14, 2014, and the order on

reconsideration rendered September 23, 2014 awarding Ronald Wayne Childers ("Childers") temporary total disability ("TTD"), permanent total disability ("PTD") benefits and medical benefits for injuries to the neck and low back due to cumulative trauma sustained as a result of his work at James River.

This is the second time this claim has been appealed to this Board. James River argues the award of PTD benefits is not supported by substantial evidence of record. James River notes this Board previously directed the ALJ to make findings of impairment attributable to each alleged work injury, and to specifically identify the lay and medical evidence he relied upon to support his findings. Likewise, James River notes the ALJ failed to make a proper analysis pursuant to Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000) in determining Childers is entitled to an award of PTD benefits. James River notes the ALJ on remand awarded PTD, but no TTD benefits, and allowed a credit for unemployment benefits paid. Because the ALJ has failed to comply with the previous direction of this Board, and has failed to support his decision with substantial evidence, we vacate the award of PTD benefits, and remand for additional findings based upon the evidence of record as indicated below.

The facts of this claim have been recited previously and we adopt our summary found in the February 20, 2015 Opinion Vacating and Remanding. We list below pertinent portions of our previous opinion:

> The ALJ did not provide sufficient findings of fact and an explanation which allow for meaningful review of his determination Childers sustained work-related cumulative trauma injuries to his back and neck.
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> . . .
>
> We are unable to determine the specific portion or portions of the summarized testimony which supports the ALJ's determination Childers sustained work-related injuries to the back and neck. Even though the ALJ stated Childers testified he began experiencing low back pain, he did not discuss any testimony as to what Childers believed caused this low back pain. Significantly, Childers testified he had received extensive treatment for low back pain prior to working for James River. The ALJ's statement Childers testified he was not physically capable of returning to work for James River or any other job for which he has work experience does not establish Childers sustained a work injury. More importantly, Childers' testimony summarized by the ALJ contains no reference to neck symptoms and by extension a neck injury. Further, the ALJ's summary does not indicate whether Childers was referring, in part, to the effects of his severe hip condition when he stated he was unable to work for James River or perform any other job at which he had work experience. We note Childers

provided extensive testimony, during his deposition and at the hearing, regarding his symptoms and the nature of his injury, none of which was summarized by the ALJ.

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Dr. Bakun's benign statement that in his opinion the "structural changes and mild spasms in the affected areas have been worsened by Childers' occupation" does not establish Childers sustained work injuries during his employment at James River. Further, Dr. Bakun did not state the extent to which the conditions were aggravated and whether these were dormant non-disabling conditions aroused into disabling reality by Childers' work activities at James River. Dr. Bakun did not offer an opinion as to whether Childers sustained a work injury. More importantly, Dr. Bakun does not diagnose work-related injuries to the back and neck. Thus, the ALJ's reliance upon the portions of Dr. Bakun's report, which he summarized, without further explanation does not sufficiently provide the basis for his determination of causation.

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The ALJ also relied upon what he characterized as persuasive and compelling medical evidence from Dr. Uzzle.

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... Dr. Uzzle diagnosed "chronic neck sprain/strain from cumulative trauma according to his history" and "chronic lumbar sprain/strain with degenerative disc disease." He did not link either to Childers' work. Rather, under the

heading "Causation," he stated "[c]umulative trauma sustained over the work history of Ronald Childers is the cause of his complaints." In his explanation of causal relationship, Dr. Uzzle states a series of mini traumas which have been experienced by Childers in the course of his work life was brought into disabling reality by his last work with James River. Dr. Uzzle characterized the traumas as excessive forces placed on the musculoskeletal system and the joints, disc in the spinal column, ligament fibers, and other structures supporting the joints in the spine. Notably absent is a statement specifically stating which sections of the spine were subjected to the mini-traumas and how the mini-traumas affected specific segments of the spine. Dr. Uzzle then stated these conditions have been developing over the years of exposure and largely not symptomatic until Childers' last employment. Dr. Uzzle's statement that Childers' problems were largely not symptomatic until his last employment does not establish Childers sustained back and neck injuries solely attributable to his last employment. In fact, Dr. Uzzle's next statement that this was a dormant non-disabling condition aroused into disabling reality by cumulative trauma does not in any fashion attribute any or all of the cumulative trauma to Childers' work for James River. Rather, Dr. Uzzle indicates a dormant non-disabling condition, which he does not describe, was aroused by cumulative trauma. Dr. Uzzle's report does not provide separate and distinct discussions of the nature of the cumulative trauma injuries to both the back and neck.

Thus, without more, the ALJ's references to Childers' summarized

testimony and to medical evidence from Drs. Uzzle and Bakun "covered in detail above" do not sufficiently apprise the parties or this Board of the basis for the ALJ's decision on the issue of whether Childers sustained a compensable back and or neck injury. The ALJ must provide a separate and distinct analysis regarding each alleged injury, and enter sufficient findings of fact which provide the basis for his determination as to whether Childers sustained a work-related neck injury and a work-related back injury. This is especially true since in its petition for reconsideration, James River requested separate findings for each alleged injury and the ALJ failed to comply with the request.

. . .

Since the basis for his determination of work-related back and neck injuries is not supported by sufficient findings of facts, the ALJ's determination Childers sustained back and neck work injuries must be vacated. Similarly, the award of PTD benefits must also be vacated.

. . .

On remand, should the ALJ determine Childers sustained a work-related injury or injuries, he must identify the specific portions of Childers' testimony and medical evidence upon which he relied in support of his findings. This analysis would necessarily include specific findings as to the nature and extent of any work injury he determines Childers sustained, the basis for each determination, and the impairment rating attributable to the work injury.

. . .

In summary, on remand, should the ALJ again determine Childers sustained a work-related injury or injuries he must state what percentage of Childers' impairment, if any, is directly attributable to his work at James River. In doing so, the ALJ must cite, in his amended opinion and order, the medical proof that establishes Childers' work at James River contributed in some degree to the effects of his overall cumulative trauma injury and then, with specificity, denote to what degree it contributed. Simply because Childers was last employed by James River does not place the entire liability for Childers' alleged disability on James River. The ALJ must cite to evidence of record establishing that Childers' work activities performed during his employment with James River contributed to his overall permanent condition, producing some degree of harmful change to the human organism.

. . .

Even though we are vacating the award of PTD benefits, we are compelled to address the ALJ's analysis concerning the issue of permanent total disability. Permanent total disability is defined as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. KRS 342.0011(11)(c). "Work" is defined as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34). The Kentucky Supreme Court set forth

the following analysis in Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48, 51 (Ky. 2000) in determining whether a claimant is permanently and totally disabled:

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

Here, the ALJ only cited to Ira A. Watson Department Store v. Hamilton, supra, and did not engage in the appropriate analysis of the factors discussed above. The mere statement he relied upon Childers' testimony and the medical evidence from Drs. Bakun and Uzzle, which the ALJ indicated he had covered in detail previously, is insufficient to apprise the parties and

this Board of the basis for his determination. The ALJ provided Childers' age and noted he had a good work ethic. He did not indicate how Childers' age and work ethic factored into his decision. Any analysis concerning the existence of permanent total disability requires the ALJ to set forth how the severity of Childers' injury or injuries as well as how his age, work history, and education factored into his decision to award PTD benefits. As noted by the Supreme Court in Ira A. Watson Department Store v. Hamilton, supra, the ALJ must make specific findings regarding Childers' post-injury physical, emotional, intellectual, and vocational status and how those factors interact. The ALJ failed to discuss any of those factors.

The ALJ's analysis regarding Childers' entitlement to PTD benefits is insufficient as the ALJ did not provide the basis for his finding Childers would not be able to find work consistently under normal employment conditions. He merely stated that based upon "the above factors" he made the factual determination Childers could not find work consistently under regular work circumstances and work dependably. That statement without further explanation is insufficient. The ALJ must cite to the specific portions of the lay and medical evidence he relied upon for making such a finding.

. . .

As we are vacating the ALJ's findings regarding a work-related injury and the award of permanent total disability, the award of TTD benefits must also be vacated. We note, the award of TTD benefits in a claim where PTD benefits

have been awarded is unnecessary. That fact aside, we agree with James River the ALJ's analysis regarding TTD benefits is insufficient.

. . .

In the case *sub judice*, it is clear the ALJ awarded TTD benefits based upon Dr. Uzzle's assessment of MMI. What is not clear, however, is why the ALJ initiated his award of TTD benefits on October 15, 2013, which, according to the evidence in the record, is the day Childers was laid off. Significantly, Childers testified that after being laid off on that date he applied for work anywhere and everywhere but mainly at coal companies. The ALJ merely cited to Magellan Behavioral Health v. Helms, supra, but did not outline the law pertaining to entitlement to TTD benefits in detail in both the August 14, 2014, Opinion and Order and the September 23, 2014, Opinion and Order on Reconsideration. The ALJ merely stated he relied upon Dr. Uzzle's opinion as to when Childers attained MMI, which is an insufficient analysis supporting an award of TTD benefits on this issue. Again, the ALJ must provide adequate findings of fact based on the evidence in order to advise the parties and this Board of the basis for his decision. Shields v. Pittsburgh and Midway Coal Min. Co., supra; Big Sandy Cmty. Action Program v. Chaffins, supra. It is not the role of this Board to speculate on the ALJ's rationale and to render an opinion based on that speculation.

On remand, should the ALJ determine Childers is only entitled to PPD benefits, the ALJ must engage in the two prong analysis outlined herein in determining any period during which

> Childers is entitled to TTD benefits. The ALJ must also determine the appropriate start date for the payment of PPD benefits.

In the Amended Opinion and Order on Remand rendered April 17, 2015, the ALJ awarded PTD, but no TTD benefits. We note in the ALJ's original decision, and order on reconsideration, along with his decision on remand, he acknowledged Childers is treating with Patricia Boggs, APRN ("Nurse Boggs") who works with Dr. George Caudill, but failed to address her treatment records. Nurse Boggs was apparently Childers' family physician from whom he received treatment during twenty office visits from July 2012 through July 2014. Those records were submitted by motion from James River. On August 8, 2014, the ALJ entered an order allowing the records of Nurse Boggs into evidence.

Nurse Boggs noted Childers primarily treated for right hip pain, but he also complained of neck, back and arm pain. On August 3, 2012, Nurse Boggs reported Childers stated he had experienced right hip pain for seven years. On October 21, 2013, Nurse Boggs noted Childers' complaints of neck and left arm pain. She stated the complaints of low back and neck pain were chronic. On November 21, 2013, Nurse Boggs noted Childers' low back pain was chronic.

Childers reported he had experienced constant neck pain for fifteen years which began when he popped his neck.

The ALJ added the following paragraph in his decision on remand:

> The plaintiff gave a deposition on June 5, 2014. Mr. Childers testified that he worked for James River from 2007 to October 13, 2013, driving a rock truck. He operated the rock truck 10 hours a day. Mr. Childers testified that he is taking Lortab for pain relief 3 times a day. He has been taking Lortab for the last 2 years for his back and hip. He stated that he has sharp pain in the center and lower part of his back. His back has gotten bad the last 5, 6 or 7 years. He cannot lie down for a long time and has difficulty sleeping. Mr. Childers is being treated for his back by Nurse Practitioner Boggs at Dr. Caudill's office. The plaintiff stated that he is having stiffness in his neck with a constant headache. He first started noticing those symptoms in his neck about 7 or 8 years ago.

The ALJ also added the following:

> One of the landmark cumulative trauma cases in Kentucky jurisprudence is the decision of the Kentucky Supreme Court in *Hill v. Sextet*, 65 S.W.3d 503 (Ky. 2002). In that case, Judge Overfield relied on the medical evidence from Dr. David Gaw, who stated that in his opinion the repetitive insults to the plaintiff's neck and back from his work caused a cumulative trauma injury to his spine, aggravating and accelerating his degenerative problems, i.e., a gradual injury. Dr. Gaw was the first physician to determine that the plaintiff's work over the years

> accelerated the development of the degenerative condition in his cervical and lumbar spine and aroused the preexisting condition into disabling reality. That was the first time that a physician diagnosed a gradual work-related injury. Judge Overfield determined that the plaintiff, therefore, gave timely notice of his gradual injury.

The ALJ then reiterated his determination Childers suffered a significant injury by stating as follows:

> Based upon Mr. Childers' credible and convincing lay testimony, which is covered in detail above, and the persuasive, compelling and reliable medical evidence from Dr. Bakun, the chiropractor, which is covered in detail above, as well as the persuasive, compelling and reliable medical evidence from Dr. Uzzle, the examining physician, which is covered in detail above, I make the determination that Mr. Childers suffered significant cumulative trauma injuries to his back and neck as a result of his repetitive work activities for the defendant over the lengthy period of time he was employed as a heavy equipment operator by James River from 2007 to October 13, 2013.

This is the exact language the ALJ used in the original decision.

The ALJ then stated as follows:

> I make the determination that the lay testimony of Mr. Childers, as covered above, is very credible and convincing. Mr. Childers testified that he worked

for James River for 6 or 7 years driving a rock truck and operating heavy equipment. He had to move 50 loads per day utilizing the 200 ton truck. He had to drive over rough terrain. The loader dumped the big rocks into his truck, subjecting him to a lot of jarring. He had to climb into and out of his truck. He began experiencing low back pain. He reported his symptoms to his supervisor at James River in May, 2010. He has been treated by Nurse Practitioner Boggs in Dr. Caudill's office for his painful symptoms. He last worked for James River on October 15, 2013. He stated that he is not physically able to return to the work he did for the defendant or any other job at which he has had work experience.

Dr. Bakun, the chiropractor, received from Mr. Childers a medical history that his symptoms were sharp stabbing lower back pain, which radiated into his right leg and also constant neck pain radiating into his left shoulder, as well as headaches. Mr. Childers told Dr. Bakun that his condition was exacerbated by sudden movements of his neck, as well as bending, lifting, sitting, standing and walking. Based upon the plaintiff's history and his physical examination of Mr. Childers, Dr. Bakun diagnoses were as follows: Cervicalgia, cervicobrachial syndrome, pain in thoracic spine, lumbalgia, sciatica and headaches. Dr. Bakun stated that in his medical opinion Mr. Childers' employment with James River caused or contributed to the aforementioned condition, including the loss of normal cervical lordotic curve, the loss of normal thoracic kyphotic curve and lumbosacral facet syndrome at L5/S1. Dr. Bakun stated that in his opinion those structural changes and myospasms of those areas have been

worsened by the plaintiff's occupation. Dr. Bakun stated that his opinions were based upon reasonable medical probability.

Mr. Childers gave to Dr. Uzzle, the examining physician, a medical history of chronic neck and low back pain which he related to cumulative trauma from his work in the mining industry from 2005 to 2013. Dr. Uzzle performed a comprehensive physical examination of Mr. Childers and reviewed pertinent medical records and diagnostic test results. Dr. Uzzle's diagnoses were as follows: (1) Right hip osteoarthritis that has developed following hip fracture from a non-occupational related motorcycle accident in 2005 that was treated with open reduction internal fixation. (2) Chronic neck sprain strain from cumulative trauma according to his history. (3) Chronic lumbar sprain strain with degenerative disc disease. Dr. Uzzle stated that within reasonable medical probability the plaintiff's injury was the cause of his complaints and that the cause of his complaints was cumulative trauma sustained over his work history. Dr. Uzzle stated that in his opinion the plaintiff was subjected to a series of mini traumas experienced by him in the course of his work life, which was brought into disabling reality by his last work with James River. Dr. Uzzle stated that the traumas were excessive forces which were placed upon the plaintiff's musculoskeletal system, as well as his joints, the disc in his spinal column, as well as the associated ligaments, fibers and other structures that support the joints of his spine. Dr. Uzzle stated that in his opinion those conditions have developed over years of exposure, but were largely not symptomatic until his last employment, being that with James River. Dr. Uzzle

stated that in his opinion the plaintiff had dormant non-disabling conditions which were aroused or brought into disabling reality by cumulative trauma. Dr. Uzzle stated that using the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, Mr. Childers' permanent whole person impairment will be 10% to the body as a whole. Dr. Uzzle apportioned 5% of Mr. Childers' permanent whole person impairment to his cumulative trauma lumbar injuries and the other 5% of the plaintiff's permanent whole person impairment to the cumulative trauma injuries to the plaintiff's neck. Dr. Uzzle stated the plaintiff did not have an active impairment prior to his injuries. Dr. Uzzle stated that the plaintiff reached maximum medical improvement on April 5, 2014.

Based upon the credible and lay testimony of Mr. Childers, as covered in detail above, and the persuasive, compelling and reliable medical evidence from Dr. Bakun, as covered in detail above, as well as the persuasive, compelling and reliable medical evidence from Dr. Uzzle, as covered in detail above, I make the determination that Mr. Childers will sustain under the AMA Guides, Fifth Edition, a 5% permanent impairment to the body as a whole as a result of his work-related cumulative trauma injuries to his back and a 5% permanent impairment to the body as a whole as a result of his work-related cumulative trauma injuries to his neck directly attributable to his work for James River over the period 2007 to October 13, 2013. Based upon all of the above-cited evidence, I make the determination that that evidence establishes that Mr. Childers' work activities performed during his employment with James River contributed

to his overall permanent condition which produced harmful changes in his human organism. I specifically rely upon Mr. Childers' testimony that during the 7 years he worked as a heavy equipment operator for James River he drove a rock truck and also operated heavy equipment, and on the job he had to move 50 loads per day utilizing a 200 ton truck, that he had to drive over rough terrain, that the loader dumped big rocks into his truck, subjecting him to a lot of jarring, that he had to climb into and out of his truck, and that he began experiencing low back pain and reported his painful symptoms to his supervisor in May, 2010.

Based upon the above-specified substantial evidence, I make the determination that the case of *Southern Kentucky Concrete Contractors, Inc. v. Campbell,* 662 S.W.2d 221 (Ky. App. 1983) is not on point with the factual situation in the case at bar. In making that determination, I rely upon the Opinion of the Workers' Compensation Board in Claim No. 2013-01961, James River Coal Company v. Rodney Bolen, dated February 13, 2015, originally decided by Judge Polites. In that case, Judge Polites made the determination that Mr. Bolen suffered cumulative trauma to his back which slowly evolved over years to the point where it arrived at a level of disabling reality, that the plaintiff had no active impairment prior to his injury, that any repetitive work activities that the plaintiff engaged in prior to his work for the defendant caused the plaintiff to develop a dormant non-disabling condition that was not active prior to his employment with the defendant and which only became disabling during and as a result of the plaintiff's employment with the defendant. I make

> the determination that that is exactly the situation in the case at bar.
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> I also make the determination that the manifestation date for Mr. Childers' claim for cumulative trauma to his back and neck was December 11, 2013, when Dr. Bakun first informed the plaintiff that he had work-related cumulative trauma to his back and neck. The record shows that on January 8, 2014, Mr. Childers' attorney notified James River that Mr. Childers has been informed by a physician that he suffers from work-related cumulative trauma as a result of his employment with James River. In making that determination, I rely upon the decision of the Kentucky Supreme Court in *Hill v. Sextet Mining Corp*., 65 S.W.3d 503 (Ky. 2001).

Regarding the award of PTD benefits, the ALJ stated as follows:

> "'Permanent total disability' means the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury . . . ." Kentucky Revised Statutes (KRS) 342.0011. To determine if an injured employee is permanently totally disabled, an ALJ must consider what impact the employee's post-injury physical, emotional, and intellectual state has on the employee's ability "to find work consistently under normal employment conditions . . . . [and] to work dependably[.]" *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48, 51 (Ky. 2000). In making that determination,
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>> "the ALJ must necessarily consider the worker's medical condition . . . [however,] the ALJ is not

> required to rely upon the vocational opinions of either the medical experts or the vocational experts. A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured."

Id. at 52. (Internal citations omitted.) See also, *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979).

In *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979), the Kentucky Supreme Court stated that what it had in that case was lay testimony descriptive of and supportive of a permanent disability, together with medical testimony that was not in conflict with the lay testimony. The high court stated that where the medical evidence clearly and unequivocally shows the actual body condition, then the lay testimony is competent on the question of the extent of disability which has resulted from the bodily condition. The high court further stated that where there is medical testimony from which the decision maker could have concluded that the plaintiff did suffer from a work-related trauma, then, having reached that conclusion, the decision maker could then use the lay testimony to determine the extent, if any, of the occupational disability.

The record shows that Mr. Childers has had a good work history. He worked in the coal mining industry and at construction labor for 10 years. He worked for James River for 7 years as a heavy equipment operator. As of the date of the Final Hearing, Mr. Childers was 43 years of age, which is defined as being within middle-age from an occupational standpoint. He is no longer a young man. He has serious back

> and neck pain which causes him serious occupational disability. He takes prescription pain medication (Lortab) on a daily basis to control his back and neck pain. He is under regular medical treatment for his painful back and neck symptoms. I make the determination that if Mr. Childers goes out into the highly competitive job market he will have an extremely difficult time finding any regular gainful employment. The serious and permanent injuries to his back and neck constitute significant limitations for reemployment in the highly competitive job market.
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> In this case, I considered the serious nature of the plaintiff's work-related injuries to his back and neck, his high school education, which was many years ago, his credible and convincing lay testimony, as covered in detail above, and the persuasive, compelling and reliable medical evidence from both Dr. Bakun, the chiropractor, and Dr. Uzzle, the physician, which is covered in detail above. Based upon all of the above factors, I make the determination that Mr. Childers cannot find work consistently under regular work circumstances and work dependably. Based upon all of the above factors, I reach the legal conclusion that Mr. Childers is permanently and totally disabled beginning on October 15, 2013, when he last worked.

Regarding the period of TTD benefits previously awarded, the ALJ found as follows:

> Pursuant to the direction of the Board, I make the determination that an award of temporary total disability benefits in this case where permanent total disability benefits have been awarded is

> unnecessary. Therefore, that issue is discarded as moot.

Finally, the ALJ awarded James River credit for unemployment benefits paid during the period of PTD benefits.

We note the ALJ, as fact-finder, has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The 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); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999). So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

However, such discretion is not unfettered. In reaching his determination, the ALJ must also provide findings sufficient to inform the parties of the basis for his decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

That said, KRS 342.285 (2)(d) & (e) state as follows:

> (2) No new or additional evidence may be introduced before the board except as to the fraud or misconduct of some person engaged in the administration of this chapter and affecting the order, ruling, or award, but the board shall otherwise hear the appeal upon the record as certified by the administrative law judge and shall

> dispose of the appeal in summary manner. The board shall not substitute its judgment for that of the administrative law judge as to the weight of evidence on questions of fact, its review being limited to determining whether or not:
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> > (d) The order, decision, or award is clearly erroneous on the basis of the reliable, probative, and material evidence contained in the whole record;
> >
> > Or
> >
> > (e) The order, decision, or award is arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

The ALJ's determination on remand remains deficient. He specifically failed to review or even list the records of Nurse Boggs which specifically note Childers complained of neck and low back pain for years, including a time span prior to working for James River. We also note the ALJ has again failed to point to the specific evidence from either Dr. Bakun or Dr. Uzzle which reflect Childers' injuries occurred while he was working for James River.

We remain unable to determine the specific portion or portions of the brief summarization of the evidence which supports the ALJ's determination Childers sustained work-related injuries to his neck and low back. Although the evidence indicates Childers takes pain medication, and did

so long before he ceased his employment at James River, it does not establish this is prescribed for neck or low back pain rather than for the residuals of the unrelated right hip injury he sustained in a motorcycle accident in 2005. In his decision on remand, the ALJ pointed to Childers' testimony he began having neck pain seven to eight years ago, which conflicts with the records from Nurse Boggs which reflect he has experienced neck pain for over fifteen years, beginning with a popping incident. We additionally note Dr. Uzzle's statement indicating Childers' conditions were largely not symptomatic prior to his last employment. This indicates his condition may have indeed been symptomatic prior to his employment with James River. The ALJ must address this apparent conflicting statement from Dr. Uzzle on remand.

We previously outlined deficiencies in the reports of Drs. Bakun and Uzzle, and directed the ALJ to "provide a separate distinct analysis regarding each alleged injury, and enter sufficient findings of fact which provide the basis for his determination as to whether Childers sustained a work-related neck injury and a work-related back injury." We acknowledge the ALJ referenced that portion of Dr. Uzzle's report regarding the assessment of 5% impairment to the low back, and 5% impairment to the neck; however, this

does not address our previous direction regarding the basis for such assessment. We likewise note the ALJ renewed his finding Childers' injuries manifested on December 11, 2013 despite the admonition by this Board he could not do so which was clearly outlined on page 28 of our previous decision.

We additionally note the ALJ was previously directed to provide and outline the specific portions of Childers' testimony, and the medical evidence supporting his findings. We stated, "This analysis would necessarily include specific findings as to the nature and extent of any work injury he determined Childers sustained." Likewise, the ALJ was directed to specifically provide the basis for each determination, and the impairment rating attributable to the work injury. Again, the ALJ failed to determine the specific basis for Dr. Uzzle's assessments of impairment.

The ALJ specifically noted Dr. Uzzle related Childers' chronic low back and neck pain to "cumulative trauma from his work in the mining industry from 2005 to 2013." This includes a period of time Childers spent working for other employers, and conflicts with the ALJ's conclusion Childers' "injuries" were solely due to cumulative trauma he experienced from 2007 to 2013 while working for James River.

The ALJ noted Dr. Uzzle stated Childers sustained traumas consisting of excessive forces on the musculoskeletal system, but did not describe the specific portions of the spine which were affected. The ALJ noted Dr. Uzzle stated Childers' injury caused his complaints, however he failed to describe what injury or injuries Childers actually sustained.

The ALJ's summary of Dr. Bakun's report was the same as he stated in his original decision. He noted Childers reported to Dr. Bakun his complaints developed due to ten years of working in the coal industry, which included a period of time prior to his employment with James River. The ALJ acknowledged, "Dr. Bakun stated that in his medical opinion patient's previous employment caused or contributed to the aforementioned condition." The ALJ also pointed to Dr. Bakun's opinion Childers sustained a loss of cervical lordosis and thoracic kyphosis, and lumbosacral facet syndrome at L5/S1 worsened by his occupation. We note, however, Dr. Bakun provided no opinion stating Childers' condition was caused by his employment with James River.

We again note that despite the ALJ's determination Childers sustained 5% impairment for the cervical complaints, and 5% for the lumbar complaints, he failed to point to any specific injury to the cervical or lumbar

spine. This Board previously directed the ALJ to provide a separate distinct analysis regarding each alleged injury. However, here he merely adopted the impairment rating assessed by Dr. Uzzle without pointing to specific injuries as he was previously directed to do.

We agree the ALJ was not required to discuss every shred of evidence which factored into his decision. However, after being directed to do so, and having been afforded the opportunity to provide some explanation for his reasoning, the ALJ has failed to adequately respond to the previous direction of this Board

The ALJ has again provided primarily conclusory pronouncements rather than findings. Merely making conclusory statements without citation to supporting substantial evidence amounts to an abuse of discretion. Abuse of discretion has been defined, in relation to the exercise of judicial power, as that which "implies arbitrary action or capricious disposition under the circumstances, at least an unreasonable and unfair decision." Kentucky Nat. Park Commission, ex rel. Comm., v. Russell, 301 Ky. 187, 191 S.W.2d 214 (Ky. 1945). Bullock v. Goodwill Coal Co., 214 S.W.3d 890, 893 (Ky. 2007).

The ALJ was further directed to make a specific determination of what percentage of Childers' impairment is

attributable to his work at James River. As we noted previously, merely because James River was Childers' last employer does not make it liable for his impairment. This is especially true in light of the information contained in Nurse Boggs' records, and the reports of Drs. Uzzle and Bakun. We additionally note that on page 5 of his decision on remand, the ALJ stated Childers advised Dr. Bakun he developed neck pain from working ten years in the coal industry. Again, this includes a period of time before he began working for James River.

We likewise note the ALJ has again failed to point to evidence which establishes what "dormant non-disabling conditions were aroused into disabling reality by the cumulative trauma", as we directed in our previous decision. Broad pronouncements of reliance upon "evidence" as compelling and reliable provides no more of a basis supporting an award of benefits than do trite misquotations from cases with no bearing upon the issues to be decided.

In the previous opinion entered by this Board we noted the ALJ had failed to adequately address the factors set forth in Ira A. Watson Department Store v. Hamilton, supra. We again note the ALJ's assessment regarding PTD benefits is insufficient. The ALJ listed the fact Childers is 43 years old, which he stated is middle-age, without

making any determination regarding how this effects his ability to obtain employment. He also noted Childers takes pain medication for his neck and low back. Nurse Boggs' records indicate Childers was taking pain medication before he left his employment with James River, for his unrelated right hip and leg pain. Other than statements by evaluating physicians, the ALJ failed to cite to evidence indicating Childers is indeed taking pain medication for his neck and low back, and how this impacts his ability to work. The ALJ must also take into consideration the fact Childers actually sought employment in the coal industry after he left his employment with James River.

The ALJ is once again directed to provide an analysis encompassing all requirements pursuant to Ira A. Watson Department Store v. Hamilton, supra, in reaching his determination. If after reviewing all of the factors, based upon the evidence, the ALJ determines Childers is not entitled to PTD benefits, he must make a determination of whether an award of permanent partial disability benefits is appropriate. If so, the ALJ must also engage in an appropriate analysis regarding entitlement to TTD benefits. We previously outlined the required analysis pertaining to an award of TTD benefits on pages 34 to 38 of our previous

opinion, and the ALJ is directed to make an analysis pursuant to the direction, if appropriate.

In arriving at this decision, we are not engaging in fact-finding. The ALJ is permitted to make any appropriate award based upon the evidence. However, the ALJ must provide an analysis which will allow for meaningful review. The ALJ is not permitted to reopen proof time, or to allow for any additional submission of evidence. The ALJ must make all determinations based upon the evidence as it existed at the time of his original decision.

Therefore, for the foregoing reasons, the award of PTD benefits by Hon. William J. Rudloff, Administrative Law Judge, in opinion on remand rendered April 17, 2015 is hereby **VACATED**. This claim is **REMANDED** to the ALJ for entry of an amended decision in conformity with the views expressed herein.

STIVERS, MEMBER, CONCURS.

RECHTER, MEMBER, CONCURS IN PART AND DISSENTS IN PART.

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