

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: July 26, 2013

CLAIM NO. 201196140

JAMES STAMPER

PETITIONER

VS.

APPEAL FROM HON. OTTO D. WOLFF,
ADMINISTRATIVE LAW JUDGE

CONCRETE CORING OF CENTRAL KY, INC.
and HON. OTTO D. WOLFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. James Stamper ("Stamper"), *pro se*, seeks review of the opinion, order and award rendered October 30, 2012 by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ") finding he sustained two work-related injuries to his right wrist. The first injury occurred on June 4, 2010 while Stamper was employed by Concrete Coring of Central

Kentucky, Inc. ("Concrete Coring"). The second injury occurred on February 9, 2011 while he was employed by Labor Finders of Kentucky, Inc. ("Labor Finders"). The ALJ determined the February 2011 injury is the sole cause of Stamper's present complaints, and awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits increased by the three multiplier and medical benefits. The ALJ determined Concrete Coring was responsible for temporary medical benefits stemming from the June 4, 2010 work-related injury through February 8, 2011. Stamper also appeals from the January 11, 2013 order denying Labor Finders' petition for reconsideration, which he partially joined.

Stamper argues on appeal the ALJ erred in determining the February 2011 injury is the sole cause of his present complaints. Stamper argues his complaints are due to the June 2010 injury, and therefore Concrete Coring should bear the responsibility for all medical and income benefits. Because the decision by the ALJ is supported by substantial evidence and no contrary result is compelled, we affirm.

Stamper filed two separate Form 101s on December 14, 2011. In Claim Number 2011-01583, Stamper alleged he injured his right wrist and head on June 4, 2010 when he was

mugged while unloading his work truck in the course of his employment with Concrete Coring. In Claim Number 2011-01583, Stamper alleged he injured his right wrist on February 9, 2011 when he slipped and fell on ice while employed by Labor Finders. The ALJ ordered the two claims consolidated on January 17, 2012. Neither Stamper, Concrete Coring, nor Labor Finders objected to the consolidation throughout the litigation of these claims.

Subsequently, Labor Finders filed a medical fee dispute and motion to join Dr. Luis Scheker on January 26, 2012. Relying upon Dr. Peter Kirsch's December 1, 2011 utilization review, Labor Finders disputed the compensability of a splint prescribed by Dr. Scheker. The medical fee dispute was later amended to contest the compensability of treatment recommended by Dr. Ronald Burgess.

Stamper testified by deposition on February 27, 2012 and June 16, 2012, and at the final hearing held August 31, 2012. Stamper was born on December 31, 1962, and resides in Danville, Kentucky. He completed the tenth grade and earned a GED.

Stamper testified he began working at Concrete Coring in June 2009 as a concrete cutter, which required him to operate various drills and saws. He testified he was

mugged while unloading his work truck on June 4, 2010. He was struck on the head with an unknown object causing him to fall onto his right arm. Stamper testified Colin Stout ("Stout"), the owner of Concrete Coring, advised him to take off work the rest of the day. Stout further advised he did not want to report the incident to the insurance carrier, and he would take care of the medical bills. While enroute home, Stamper became ill and drove himself to the emergency room. Stamper was diagnosed with a mild concussion and a fractured wrist which was placed in a cast. Stamper then treated with Danville Orthopedics and Sports Medicine where he underwent x-rays and an MRI was recommended. Stout did not pay his medical expenses and the MRI was never conducted.

Stamper testified he missed two days of work due to his June 2010 injuries. He returned to Concrete Coring and resumed his regular duties, working fifty to sixty hours a week. Stamper testified he was under no restrictions while working for Concrete Coring, but was advised to be careful. At the hearing, he stated he was restricted to light duty. Throughout his employment with Concrete Coring, Stamper's right wrist remained swollen and he had diminished strength. Taping his wrist enabled him to complete his job duties. Stamper was fired from Concrete Coring July 28,

2011, and the medical expenses associated with the June 2010 injury were not paid.

Stamper testified he began working for Labor Finders, a temporary employment agency, a few days later in August 2010. Prior to February 9, 2011, Stamper was primarily placed with construction companies performing physical labor. He stated he was able to do his jobs as long as he kept his wrist taped. However, he developed numbness and loss of grip strength. If he removed the tape, he experienced pain and popping in his wrist. Stamper also testified no formal restrictions had been imposed prior to February 9, 2011.

Stamper injured his right wrist on February 9, 2011 when he slipped and fell on ice. At the time, Labor Finders had placed him with a construction company as a safety monitor. This required him to communicate by radio ensuring an area was clear when cranes were in operation. Stamper went to the emergency room on the day of the accident. He then went to BaptistWorx, and was referred to Dr. Margaret Napolitano. Dr. Napolitano placed a cast on his right wrist and ordered an MRI and bone scan. Stamper testified his wrist condition did not improve and he was referred to Dr. Schecker, who eventually performed surgery on August 10, 2011. Dr. Schecker also prescribed two different

braces for his right arm. Since he could operate the radio with his left hand, Stamper continued to work for Labor Finders with a cast on his right arm as a safety monitor until his surgery. However, that particular job ended two months prior to the February 27, 2012 deposition. Stamper testified he has not worked since the August surgery and is restricted to one-handed duty. Stamper testified the surgery has provided only limited relief. Labor Finders paid his medical expenses resulting from the February 2011 fall, with exception of the splint which was the subject of the medical fee dispute. He also received TTD benefits.

Stamper testified his right wrist symptoms increased following the second incident. The pain he now experiences is different from what he felt prior to the second incident, and is no longer localized to his right wrist and hand. He now experiences symptoms in his hand, wrist, elbow and shoulder. He continues to wear a splint prescribed by Dr. Schecker and takes Gabapentin and over-the-counter Tylenol. Stamper testified he could not return to his former job with Concrete Coring in his current condition. He also stated although he could return to the specific position as safety monitor, he could not return to any of the prior job assignments with Labor Finders.

In support of his claim, Stamper attached the June 4, 2010 Ephraim McDowell Hospital records, which charted complaints of a headache and right wrist pain following an assault occurring earlier the same day. A CT scan of the head was normal, but a right wrist x-ray demonstrated a "possible small fracture fragment adjacent to navicular but a discrete fracture of the navicular not noted" which could represent a small chip fracture. Labor Finders submitted the records from Dr. Jeremy Tarter of Danville Orthopaedic & Sports Medicine, who rendered treatment for the 2010 wrist injury. On June 10, 2010, Dr. Tarter concluded it looked "more like a soft issue injury," placed Stamper in a removable thumb immobilizer and placed "some restrictions on him to protect him." On July 8, 2010, Dr. Tarter noted x-rays showed some cystic changes in the scaphoid and the area of calcification, and recommended an MRI. Handwritten notes indicate telephone messages were left for Stamper as to the method of payment for the MRI.

Labor Finders submitted the February 9, 2011 record from the James B. Haggin Hospital which indicated Stamper had a small cyst in the scaphoid, mild to moderate degenerative narrowing of the radial scaphoid joint/radiocarpal regain and no evidence of a fracture.

Stamper submitted the records of Dr. Napolitano, whose February 23, 2011 note indicates a recommendation for an MRI of the right wrist. She restricted Stamper to one-handed duty and recommended he continue wearing a brace. On March 7, 2011, Dr. Napolitano noted a right wrist MRI revealed effusions in the radiocarpal and distal radioulnar joints suggesting capsulitis; a small cyst or erosion in the scaphoid near the radioscapoid joint; and prominent soft tissue swelling/edema in the soft tissues dorsal to the wrist.

A bone scan was performed by Dr. Roland Talanow on May 16, 2011. Dr. Talanow stated the results could be related to degeneration in the radiocarpal joint, microfracture or infection, and also noted likely unrelated degenerative changes in the left[sic] first interphalangeal joint and left[sic] wrist.

Dr. Joseph Seipel performed an EMG/NCV of the right upper extremity on November 3, 2011, and concluded the findings were essentially normal. A second EKG/NCV was performed on June 25, 2012, which Dr. Seipel found mildly abnormal with electrographic evidence of possible asymptomatic mild left median nerve neuropathy at the wrist.

The records of Dr. Scheker of Kleinert & Kutz Handcare were also submitted. On June 6, 2011, Dr. Scheker

noted Stamper injured his right wrist on February 8, 2011 when he fell while working for Labor Finders as a crane/safety monitor. He diagnosed osteoarthritis in the right wrist, pain, and carpal tunnel syndrome, and restricted him to one-handed work. His notes indicate he performed a right wrist scaphoidectomy on August 10, 2011. Dr. Scheker assigned an 11% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

On June 19, 2012, counsel for Stamper sent a letter to Dr. Scheker "regarding a 2/9/11 work-related injury." As noted by the ALJ in his decision, Dr. Scheker, in a handwritten response, stated he diagnosed "Right mid carpal arthritis post hyperextension wrist injury (illegible) deformity, radioscapoid arthritis, scap (illegible) dissociation, complicated by RSD, carpal tunnel and cubital tunnel syndrome." Dr. Scheker indicated "yes" to the question "Is the diagnosis the result of the work-related injury?" Pursuant to the AMA Guides, Dr. Scheker assigned an 11% impairment rating and indicated Stamper does not retain the capacity to return to the type of work performed at the time of the injury. He indicated Stamper cannot hyperextend his hand to support himself in climbing or crawling.

Labor Finders filed the March 14, 2012 report prepared by Dr. Burgess who diagnosed radiocarpal osteoarthritis of the right wrist with aggravation by the February 9, 2011 injury. He also diagnosed an exacerbation of a previous degenerative disease of that joint since a degenerative cyst was also seen at the radioscapoid joint on June 4, 2010. Dr. Burgess found Stamper had reached maximum medical improvement ("MMI") from the February 9, 2011 injury. Dr. Burgess assessed an 18% impairment pursuant to the AMA Guides. He noted Stamper had degenerative disease with a degenerative cyst from osteoarthritis of the radiocarpal joint prior to both the 2010 and 2011 injuries, and that both injuries were an aggravation of the pre-existing osteoarthritic changes. Dr. Burgess also stated at least a degree of his symptomatology was active prior to the 2011 injury. Dr. Burgess stated Stamper is unable to use his right wrist for manual activities and could not return to the type of work performed at the time of his February 9, 2011 injury. Dr. Burgess opined Stamper is a candidate for arthrodesis of the wrist, and would attain MMI three months following the procedure.

In an addendum dated March 28, 2012, Dr. Burgess opined Stamper had a pre-existing, active condition of the

right wrist with degenerative disease at the radiocarpal joint prior to the February 9, 2011 work injury. Likewise, Dr. Burgess stated Stamper had pre-existing osteoarthritis of the right wrist prior to the "July 28, 2010" work injury, but he could not determine whether it was symptomatic and active. Dr. Burgess stated the August 10, 2011 surgery was due to the pre-existing active wrist condition. He also noted while Stamper is unable to use his right wrist for manual activities other than very light duty, he retains the physical capacity to return to his job as a radioman. Finally, Dr. Burgess opined the recommended total-wrist arthrodesis is due to the pre-existing and active condition.

Labor Finders also filed the April 8, 2012 vocational rehabilitation report of Dr. Stephanie Barnes. Dr. Barnes stated Stamper is not permanently and totally disabled because he is capable of performing sedentary and light work which does not require use of his right hand or wrist. Dr. Barnes found Stamper retains the physical capacity to perform the type of work he was doing at the time of the alleged injury for Labor Finders, but cannot perform the type of work he was doing at Concrete Coring.

Stamper filed the December 6, 2011 report of Dr. Richard DuBou, who after reviewing both injuries and subsequent treatment, determined it was impossible to state

which one was the most important. Without any other information, Dr. DuBou stated he would "apportion the injuries 50/50 in terms of causation." Dr. DuBou determined Stamper had not yet reached MMI and declined to assign an impairment rating.

In an addendum dated May 17, 2012, Dr. DuBou noted he agreed with Dr. Burgess' diagnosis of ankylosis, and assigned a 13% impairment rating pursuant to the AMA Guides. Dr. DuBou also recommended a full wrist arthrodesis. He estimated Stamper would reach MMI three months after the procedure. In the same addendum, Dr. DuBou stated as follows:

There is not enough information in the chart to enable apportionment of his 18% whole person impairment between the first injury on February 9 and the second injury in 2010. As I mentioned in my first letter, I would apportion them 50/50 essentially as a guesstimate.

Concrete Coring filed Dr. Thomas Gabriel's June 13, 2012 report. He diagnosed chronic right wrist pain, and status post four-corner fusion with scaphoid excision for SLAC wrist. He opined Stamper shows no evidence of a clinical nerve compression. Dr. Gabriel further noted he is "not convinced" additional surgery or therapeutic intervention, including a total wrist fusion, would relieve

Stamper's continuing wrist pain. Regarding causation, Dr.

Gabriel stated as follows:

There is no evidence in the multiple imaging studies performed of an acute right wrist injury as a result of either the June 2010 work injury fall, or the 2/9/11 work injury fall. Initial radiographs in June of 2010 and post-injury radiographs of 2/9/11, as well as more specialized imaging studies, fail to demonstrate any significant interval change, acute fracture, or acute ligamentous disruption. However, both injuries, and more specifically the 2/9/11 injury resulted in symptom exacerbation and pain to the level of requiring reconstructive surgery. It would seem that the patient was able to recover from the June 2010 work injury fall, as he was able to return to gainful employment with [Labor Finders] doing heavy manual labor/construction work. Thus I do not find that the 6/4/10 injury fall while working at Concrete Coring resulted in either a harmful change or an exacerbation/aggravation of pain necessitating the four-corner fusion. The patient, by all reports including a review of medical records, recovered from the 6/4/10 injury fall and did not have a further aggravation of his wrist pain until his[sic] 2/9/11 when he slipped on ice while working for [Labor Finders.] Even this injury fall did not create a radiographic harmful change, but unfortunately did exacerbate or aggravate [Stamper's] wrist pain to a level that never improved sufficiently and to a level that required reconstructive wrist surgery.

Regarding the June 2010 incident, Dr. Gabriel stated Stamper reached MMI on or about the time he resumed

gainful employment in August 2010 with Labor Finders. Dr. Gabriel assigned a 0% impairment rating and declined to assess permanent restrictions. He further opined Stamper has the physical capacity to return to the same type of work performed at the time of his work injury with Concrete Coring.

Dr. Gabriel stated Stamper had reached MMI from the February 9, 2011 incident. He assigned a 14% impairment rating pursuant to the AMA Guides, due to the February 2011 work injury and subsequent surgery. Dr. Gabriel permanently restricted Stamper from lifting over twenty pounds and noted he is functionally able to resume gainful employment with Labor Finders.

The August 15, 2012 benefit review conference ("BRC") order indicated the parties stipulated Stamper was paid TTD benefits at the rate of \$166.71 per week from August 10, 2011 through April 23, 2012, medical benefits in the amount of \$23,041.40 for the 2011 injury by Labor Finders, and no medical benefits for the 2010 injury by Concrete Coring. The following were identified as contested issues: benefits per KRS 342.730, work-relatedness/causation, average weekly wage, unpaid or contested medical expenses, injury as defined by the ACT, credit for reimbursement, exclusion for pre-existing disability/

impairment, TTD over/underpayment, vocational rehabilitation and "apportionment as to medicals, if any."

In the October 30, 2012 Opinion, Order and Award, the ALJ found as follows:

"Injury"

A determination must be made regarding whether Plaintiff's 2010 work and/or his 2011 work incident, gave rise to an "injury" as that term is defined in the Act.

2010 Injury

In his 2010 injury, Plaintiff sustained a work-related traumatic event when he was mugged and pushed to the ground. This event occurred out of and in the course of his employment.

The next component of an "injury" requires one to prove the traumatic event proximately caused a harmful change in his body as evidence by objective medical findings. Herein, objective findings include, but are not limited to, the x-rays obtained at the ER of Ephraim McDowell Regional Medical Center on the day of his incident. These x-rays were remarkable for "small ossific fragments adjacent to the navicular... arthritic change within the radiocarpal joint". On July 8, 2010 x-rays showed cystic changes in the scaphoid and an area of calcification. It was also noted, Plaintiff's injury may be more of a soft tissue injury than a bone injury. In addition to these objective diagnostic test results, Plaintiff consistently noted his right wrist and hand was [sic] swelling.

Persuasive proof has been presented indicating Plaintiff sustained an "injury" as that term is defined in the Act.

2011 Injury

On February 9, 2011, while working for Defendant Labor Finders, Plaintiff slipped and fell on a patch of ice. This fall constitutes a work-related traumatic event sustained in the course of his employment. Plaintiff's slip-and-fall was the proximate cause of harmful changes in his body, these changes were documented by objective medical findings. During the course of his treatment for his February 9, 2011 slip-and-fall, an MRI was obtained on March 7, 2011 and revealed effusions in the radiocarpal and distal radial ulnar joints suggesting capsulitis, a small cyst or erosion in the scaphoid near the radioscapoid joint, and swelling/edema in the soft tissues dorsal to the wrist, particularly laterally.

Plaintiff has presented persuasive evidence that he sustained an "injury" as a result of his September[sic] 9, 2011 work incident.

CAUSATION

Having determined Plaintiff sustained two work-related "injuries" to his right wrist, it is next appropriate to ascertain whether both injuries or just one is causing Plaintiff's right wrist problem.

The most persuasive evidence on this issue comes from Defendant Concrete Coring's Dr. Gabriel, who opined the cause of Plaintiff's present right wrist problem is the 2011 work incident. It cannot be denied that following his

first injury, Plaintiff continued to work doing manual labor. Plaintiff did not exhibit an impairment, disability or limitation. Plaintiff worked without restrictions until his second injury. Dr. Gabriel accurately noted, Plaintiff, by all reports, including Plaintiff's medical records, recovered from his 2011[sic] injury.

It is also noteworthy, as well as persuasive, that all of Plaintiff's available Kleinert & Kutz, post-February 9, 2011 records document, based upon Plaintiff's representations, that the cause of his wrist problem was his 2011 work incident. At the time of his treatment with Kleinert & Kutz, Plaintiff did not connect any part of his wrist problem to his 2010 incident. Every Kleinert & Kutz record, including Plaintiff's initial intake form and out-of-office diagnostic test reports, document the cause of Plaintiff's problem as a 2011 work incident.

As to causation, the opinions of Drs. DuBou and Burgess are not persuasive. For the above-explained reasons, Dr. DuBou's input is not persuasive. The undersigned finds Dr. Burgess' input on causation to be confusing. In fact, after reviewing his input several times it was still difficult to tell which Defendant retained him. Dr. Burgess documents three aspects of Plaintiff's injury: a pre-2010, pre-2011, and post-2011. It is confusing when he wrote, "The patient certainly had degenerative disease with a degenerative cyst from osteoarthritis of the radiocarpal joint prior to his injury in 2010 and prior to his injury on February 9, 2011. I feel that both injuries were an aggravation of the pre-existing osteoarthritic changes. At least a degree of symptomatology was

active prior to the February 9, 2011, injury, based on his testimony that his wrist was continuously painful following the first injury." It is even unclear to which injury he attributes his 18% WPI rating. Dr. Burgess' supplemental input of March 28, 2012 does little to clarify his previous input. The persuasive evidence, consisting of Dr. Gabriel's input, the records of Kleinert & Kutz, and the lack of persuasiveness in the other medical experts' reports, forces the determination that the 2011 injury is the sole cause of Plaintiff's present wrist impairment.

After determining the 2011 injury was the sole cause of Stamper's present wrist problems, the ALJ adopted the 11% impairment rating assigned by Dr. Schecker. The ALJ found Stamper entitled to the three multiplier pursuant to KRS 342.730(1)(c)1 and vocational benefits pursuant to KRS 342.730. Based upon the stipulations of the parties and wage records, the ALJ determined Stamper's average weekly wage while working for Labor Finders was \$250.00 per week. Relying upon the opinion of Dr. Gabriel, the ALJ also determined Stamper reached MMI from the August 10, 2011 surgery by June 13, 2012. The ALJ stated as follows regarding medical benefits:

MEDICAL BENEFITS

Of course, Defendant Labor Finders is liable to pay for all reasonable and necessary medical treatment needed to provide Plaintiff with a cure and/or

relief from the effect of his February 9, 2011 work injury.

Having determined Plaintiff did sustain a work injury on June 4, 2010 while working for Defendant Labor Finders [sic] but did not result in a permanent impairment, he is still entitled to medical benefits due as a result of that injury. Concrete Coring's obligation would continue through February 9, 2011. FEI Installation Inc. v. Williams, Ky., 214 S.W.3d 313 (2007).

The ALJ awarded TTD benefits from August 10, 2011 through June 13, 2012, PPD benefits increased by the three multiplier, and medical benefits for the February 9, 2011 work-related injury against Labor Finders. He also found Labor Finders entitled to a credit for TTD benefits paid. The ALJ found Concrete Coring was obligated to pay for "such medical benefits as may be reasonably required for the care and relief from the effects of [Stamper's] June 4, 2010 work-related injury. This obligation will cease as of February 8, 2010."

On November 14, 2012, Labor Finders filed a petition for reconsideration requesting the ALJ apply the analysis for a pre-existing active condition, which demonstrates Stamper's condition is solely the result of the 2010 injury sustained while employed with Concrete Coring. It also argued the ALJ "did not address the direct and

natural consequence rule." It requested the ALJ correct portions of the opinion which misconstrued Dr. Burgess' opinion. Finally, it argued Stamper has the physical capacity to return to the type of work he was performing for Labor Finders at the time of his second injury.

Concrete Coring filed a petition for reconsideration on November 14, 2012 requesting the ALJ correct typographical errors regarding the date its obligation to pay for medical expenses ceased.

Stamper filed a response to Labor Finder's petition for reconsideration and stated he joined its request the ALJ find his condition is the result of the 2010 injury sustained while employed by Concrete Coring and to adopt the 18% impairment rating assessed by Dr. Burgess.

By order dated December 29, 2012, the ALJ amended portions of the opinion to reflect Concrete Coring's obligation for payment of medical expenses continue through and cease as of February 8, 2011. By order dated January 11, 2013, the ALJ overruled Labor Finders petition for reconsideration determining it merely sought to re-argue the merits of the claim.

Subsequently, a Form 110-I settlement agreement was approved by the ALJ on February 19, 2013. The agreement reflects Stamper and Labor Finders agreed to a settlement

regarding the second 2011 right wrist injury for a lump sum payment of \$32,500.00 computed pursuant to the October 30, 2012 opinion. The settlement includes payments for waivers of past medical benefits after August 31, 2012, future medical benefits, vocational rehabilitation and right to reopen. As a result of this settlement, the Board dismissed Labor Finders as a party to this appeal by order dated March 6, 2013.

On appeal, Stamper, *pro se*, argues he had a pre-existing active condition prior to the February 2011 injury sustained while employed by Labor Finders. In other words, Stamper argues the June 4, 2010 event resulted in an injury as defined by the Act, for which he never became asymptomatic. Stamper points to portions of his deposition testimony and the opinion of Dr. Burgess. Therefore, Stamper argues his right wrist condition and resulting surgery are due to the 2010 injury, and therefore liability rests with Concrete Coring. Likewise, Stamper argues Concrete Coring should "bear full responsibility for TTD, PPD with a three multiplier, past and future medical benefits and vocational rehabilitation as the condition is the direct and natural results of the 2010 injury." In his reply brief, Stamper appears to disagree with statements

made by Concrete Coring in its brief to the Board. He also argues the ALJ erred in consolidating the two claims.

Because Stamper is proceeding *pro se*, we will attempt to explain the fundamental legal principles controlling how this Board must decide an appeal.

Under Kentucky's workers' compensation system, the ALJ functions as both judge and jury. When performing the duties of a jury, the ALJ is commonly referred to as the "fact-finder." As fact-finder, the ALJ reviews the evidence submitted by the parties and decides which testimony from the various witnesses is more credible and best represents the truth of the matter or matters in dispute. The ALJ, as judge, then applies the law to the facts as he determines them to be true. As a matter of law, the facts as decided by the ALJ cannot be disturbed on appeal by this Board so long as there is some substantial evidence of record to support the ALJ's decision. See KRS 342.285(1); Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Although we understand Stamper is frustrated at the outcome of his claim, we also recognize the difficulty of the ALJ's job as fact-finder. As a rule, in every worker's compensation claim, both sides resolutely contend they have presented evidence of "the truth" concerning

those matters at issue. It is for this very reason in cases where the evidence is conflicting, the facts concerning an issue as determined by the ALJ are afforded vast deference as a matter of law on appellate review.

Authority establishes Stamper, as the claimant in a workers' compensation case, bore the burden of proving each of the essential elements of his cause of action before the ALJ, including causation and the extent and duration of any disability generated by the work injury alleged. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Stamper was unsuccessful in his burden, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984).

"Compelling evidence" is defined as evidence so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985). As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). 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 (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, supra.

The record contains substantial evidence supporting the ALJ's finding Stamper sustained a work injury on June 4, 2010 while working for Concrete Coring, which did not result in a permanent impairment. Likewise, the record contains substantial evidence supporting the ALJ's finding Stamper sustained a work injury on February 9, 2011 while working for Labor Finders which is the sole cause of his present wrist impairment. In making his determination, the ALJ found the opinions of Dr. Gabriel, and the records from Kleinert & Kutz most persuasive. Likewise, the ALJ adopted the 11% impairment rating assigned by Dr. Schecker. This medical testimony constitutes

substantial evidence and no contrary result is compelled. We acknowledge Stamper points to conflicting evidence which would support his arguments. However, as noted above, mere evidence contrary to the ALJ's decision is inadequate to require reversal on appeal. Magic Coal Co. v. Fox, supra.

Contrary to Stamper's assertion, the ALJ found he sustained an injury, although temporary, while working for Concrete Coring on June 4, 2010, for which it was liable for medical expenses through February 8, 2011. This determination is in accordance to Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), where the Court held it is possible for a claimant to submit evidence of a temporary injury for which temporary income and medical benefits may be awarded, yet fail in the burden to prove a permanent harmful change to the human organism for which permanent benefits are appropriate. Since the rendition of Robertson, this Board has consistently held it is possible for an injured worker to establish a temporary injury for which only TTD benefits and temporary medical benefits may be awarded, but not meet his or her burden of proving a permanent harmful change to the human organism for which permanent benefits are authorized. Because the ALJ's decision is in accordance with the law and is supported by

substantial evidence, we will not disturb his decision on appeal.

The remaining arguments propounded by Stamper in his appeal to the Board, including allegations of bad faith by Concrete Coring and erroneous consolidation of claims, were not preserved as issues before the ALJ, either in the BRC order or at the hearing. 803 KAR 25:010 section 13(14) provides "Only contested issues shall be the subject of further proceedings." Therefore, since the issues of bad faith and consolidation were not preserved for a decision by the ALJ, they may not be considered on appeal.

Accordingly, the October 30, 2012 opinion, order and award and the January 11, 2013 order rendered by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, are hereby **AFFIRMED.**

ALL CONCUR.

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