Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 29, 2015

CLAIM NO. 201301442

JEFFREY WILSON PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

H T HACKNEY CO., INC. and
HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART & REMANDING

* * * * * *

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

ALVEY, Chairman. Jeffrey Wilson ("Wilson") appeals from the Opinion on Remand rendered November 25, 2014 by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") finding he sustained a temporary injury and awarding medical benefits through May 30, 2013, with the exception of a repeat left shoulder MRI. Wilson also seeks review of the

February 11, 2015 order denying his petition for reconsideration.

On appeal, Wilson argues the ALJ's finding he sustained only a temporary injury is contrary to the overwhelming evidence establishing he suffered a permanent injury as defined by the Act warranting an impairment rating. He also argues the ALJ erred in failing to adopt the impairment rating assessed by Dr. Warren Bilkey, and in failing to award medical benefits beyond May 30, 2013. Because substantial evidence supports the ALJ's determination of a temporary injury warranting no permanent partial disability ("PPD") benefits, and no contrary result is compelled, we affirm. However, we vacate and remand for clarification regarding the duration of Wilson's entitlement to medical benefits.

In the original decision rendered April 22, 2014, the ALJ adopted the 0% impairment rating assessed by Dr. Robert Jacob, determined a repeat MRI was not medically necessary, and found Wilson was not entitled to vocational rehabilitation benefits. In the "Award" section of the opinion, the ALJ awarded "such medical expenses including but not limited to provider's fees, hospital treatment, surgical care, nursing supplies, and appliances as may be reasonably required for the cure and relief from the effects

of the work-related injury, not to include the MRI conducted in 2014."

Wilson appealed, and in an opinion rendered September 19, 2014, this Board vacated and remanded the claim. We determined the ALJ "did not make essential findings of fact and determinations necessary to support his ultimate award of medical benefits. We also conclude the ALJ's analysis regarding 'Injury as Defined by the Act/Benefits Per KRS 342.730' are unclear and deficient." After reviewing the definitions of "injury" and "objective medical findings" pursuant to KRS 342.0011(1) and (33), as well as the case of Gibbs v. Premier Scale Co./Indiana Scale Co., 50 S.W.3d 754 (Ky. 2001), this Board stated as follows:

> In the opinion, the ALJ stated Drs. Jacob and Guarnaschelli opined Wilson's subjective complaints are inconsistent with the diagnostic studies conducted or the physical examinations performed, an opinion consistent with the normal neurological findings noted by Dr. Raque. The ALJ specifically found "the objective medical findings listed above are more convincing than the independent medical examination conducted by Dr. Bilkey." The ALJ then rejected Dr. Bilkey's assessment of impairment, and found Wilson sustained a 0% impairment rating based upon Dr. Jacob's opinion. At best, the ALJ's statements regarding whether Wilson sustained an injury are unclear. Although arguably the ALJ found Wilson did not sustain an injury, in the award section of the opinion, he

awarded medical benefits for Wilson's "work-related injury."

Therefore, the April 22, 2014 opinion does not contain a specific determination or sufficient findings of fact and explanations regarding whether Wilson sustained an injury as defined by the Act. The evidence is conflicting regarding this issue and the parties identified "injury as defined by the ACT" as a contested issue at the BRC. Importantly, Wilson requested additional findings of fact addressing whether he sustained an injury in his petition for reconsideration, which was summarily denied by the ALJ in the June 16, 2014 order. The ALJ's findings regarding Wilson's subjective complaints are inconsistent with the diagnostic studies conducted or the physical examinations performed. An opinion consistent with the normal neurological findings noted by Dr. Raque does not adequately address whether he sustained an injury as defined by the Act. Therefore, the opinion and order is vacated and the claim is remanded for a determination of whether Wilson sustained an injury as defined by the Act pursuant to the above- referenced analysis. If the ALJ finds Wilson did in fact sustain an injury, he must also determine whether it was temporary or is permanent.

If the ALJ determines Wilson sustained only a temporary injury, he then must determine whether he is entitled to temporary benefits pursuant to Robertson v. United Parcel Service, supra, and FEI Installation, Inc. v. Williams, supra.

. . . .

It is well established an ALJ can award

> future medical benefits for a work-related injury, although a claimant has reached maximum medical improvement and did not have a permanent impairment rating resulting from the injury. *See* FEI Installation, Inc. v. Williams, supra. Finally, if the ALJ determines he did not sustain an injury, either permanent or temporary, as a result of the MVA, Wilson is not entitled to indemnity or medical benefits and his claim must be dismissed in its entirety. We do not direct any particular result and the ALJ may make any determination which is supported by the evidence. This Board's decision renders the remainder of Wilson's arguments on appeal moot.

The September 19, 2014 Board opinion was not appealed by either party. In the November 25, 2014 Opinion on Remand, the ALJ provided the following additional findings:

> 1. The ALJ reiterates his reliance upon the opinions of Drs. Racque[sic] and Jacob, and along with the objective medical findings herein, finds that the Plaintiff suffered a temporary injury that has resolved. The ALJ specifically relies upon the findings of Dr. Jacob who concluded that the Plaintiff had no residual musculoskeletal pathologic conditions attributed to the work injury as well as no evidence of radiculopathy, chronic cervical sprain, or muscle spasms or weakness upon examination.
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> 2. The ALJ further finds in accordance with the opinions of Drs. Jacob and Guarnaschelli that the Plaintiff's subjective complaints are not consistent with the objective medical findings and that as of the May 30, 2013, as determined by Dr. Guarnaschelli, the Plaintiff showed no objective signs of

> any harmful change to the human organism as a result of the work-related motor vehicle accident of October 4, 2012.

The ALJ awarded medical benefits as may reasonably be required for the "cure and relief from the effects of the temporary work-related injury, not to include the MRI conducted in 2014, and otherwise terminating on May 30, 2013 in accordance with the above findings."

Wilson filed a petition for reconsideration essentially asserting the same arguments he now raises on appeal. Wilson requested additional findings of fact supporting the finding of a temporary injury, regarding the appropriate impairment rating, and regarding payment for unpaid medical bills. The ALJ summarily overruled Wilson's petition on February 11, 2015.

Wilson filed a Form 101 alleging he injured his neck, left shoulder and left arm in a work-related motor vehicle accident ("MVA") on October 4, 2012 while working for H.T. Hackney Co. Inc. ("Hackney") as a merchandising manager. Hackney subsequently filed a medical dispute contesting a request for a repeat left shoulder MRI performed on February 1, 2014. Wilson, who is right handed, began working for Hackney on September 11, 1992. Wilson had worked as a merchandising manager for eight years at the

time of the MVA on October 4, 2012 which required him to travel to convenience stores and set up products.

On October 4, 2012, Wilson was waiting at a stop light when another vehicle rear-ended him. Wilson stated he experienced immediate pain in his left shoulder, left arm and chest. Wilson sought medical treatment approximately a week later at First Stop Urgent Care when his symptoms did not subside. He later sought treatment with Drs. George Raque and John Guarnaschelli. Wilson underwent conservative treatment, which he testified was unsuccessful. Surgery has not been recommended. Wilson testified his neck, left shoulder and arm pain worsened throughout the course of treatment and he developed numbness and tingling throughout his left arm and hand.

Wilson missed no work following the MVA and continued his job as merchandising manager until June 2013. He delegated his lifting duties to the employees he managed. In June 2013, he became a sales representative with Hackney earning the same salary he earned at the time of the accident. Wilson indicated he has no difficulty performing the job as a sales representative which is easier than working as a merchandising manager.

We previously summarized the relevant medical evidence as follows:

Wilson filed the records from First Stop Urgent Care, indicating he treated from October 11, 2012 to March 10, 2013. The records note complaints of left chest, shoulder, neck and left arm pain, as well as numbness and tingling throughout the left arm and hand. X-rays of the left shoulder revealed no acute abnormality, and x-rays of the cervical spine demonstrated mild degenerative disc disease with no acute findings. A left shoulder MRI is reported to demonstrate subcoracoid bursitis, although it was not filed in the record. A cervical MRI was performed in October 2012, however, there is neither a discussion of the results nor a copy of the report contained in the records of First Stop Urgent Care. Wilson was treated conservatively with medication, home exercises, heat and massage, and physical therapy. He was also referred to Norton Leatherman Spine for a consultation. The most recent note dated March 10, 2013 reflects a diagnosis of pain in the neck and shoulder region. Wilson was returned to work with restrictions of no lifting with the left arm in excess of five pounds for two weeks.

Wilson also filed the records of Dr. Raque, who he saw on two occasions. On February 16, 2013, Dr. Raque noted a cervical MRI "revealed a left C6-7 disc herniation. It does flatten the anterior aspect spinal cord or foraminal stenosis. There is no signal change in the cord however in the cord deformity is not severe." His examination revealed normal range of motion in the neck, no tenderness, and an essentially normal musculoskeletal and neurologic exam. He noted Wilson complained of neck pain on flexion and turning to the left. Dr. Raque diagnosed cervical spondylosis without myelopathy and

recommended epidural steroid injection. On April 8, 2013, it was noted the first injection relieved his pain by thirty percent, but a second injection worsened his symptoms. Wilson was diagnosed with a herniated cervical disc and neck pain, and prescribed pain medication.

Hackney filed the records of Dr. Guarnaschelli, who treated Wilson on April 11, 2013 and May 28, 2013. Dr. Guarnaschelli noted the neck and neurologic examinations were essentially normal, but there was "some pain in reshifted the range of motion of the left paracervical spinous processes paraspinous muscles and left shoulder . . . ." Dr. Guarnaschelli also noted his examination did not support a finding of true radiculopathy or myelopathy. He opined Wilson sustained a musculoskeletal and/or whiplash-related disorder for which he ordered cervical diagnostic studies. On May 28, 2013, Dr. Guarnaschelli noted cervical spine x-rays ruled out a fracture, dislocation or spondylolisthesis; and a cervical MRI demonstrated mild degenerative changes and osteophyte complex formation. He determined Wilson is not a candidate for surgery after noting his diagnosis of a whiplash-related disorder and pre-existing age-related degenerative disc changes with no radiculopathy or myelopathy.

Wilson filed the August 13, 2013 report of Dr. Warren Bilkey who diagnosed a "10/4/12 work related [MVA], cervicothoracic strain injury, myofascial pain involving left scapular muscles." He noted "MRI findings are benign" and found no evidence of any surgical pathology affecting the neck or shoulder. He also noted there was considerable spasm involving the scapular musculature. Dr. Bilkey opined

the above-referenced diagnoses are due to the October 4, 2012 work injury. Dr. Bilkey stated Wilson has reached maximum medical improvement and assessed a 7% impairment rating using the Cervical DRE Category II, pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Dr. Bilkey restricted Wilson from lifting over ten pounds with his left arm and recommended home exercises and medication for pain control. He also found the lifting restriction would preclude Wilson from returning to his usual work duties performed prior to MVA.

Hackney filed the January 17, 2014 report of Dr. Robert Jacob. He noted a left shoulder MRI was within normal limits except for evidence of a subacromial bursitis. Diagnostic studies of the cervical spine revealed age-related, multi-level degenerative changes and small disc osteophyte complexes at C4-5 and C6-7, which are non-impinging and age appropriate changes. Dr. Jacob noted the records do not indicate Wilson manifested any radicular symptoms, verifiable or non-verifiable, in the C5 or C7 nerve roots. Dr. Jacob stated the disc protrusions are small and are not clinically relevant. Dr. Jacob noted his examination demonstrated a completely normal cervical spine, normal upper extremity neurological exam, and normal left shoulder, chest wall, and shoulder girdle exam with no evidence of muscle spasm. Dr. Jacob stated as follows regarding diagnosis and injury:

> My diagnosis for Mr. Wilson's neck, shoulder, and left arm pain are subjective complaints of pain without objective findings. Based on the

> physical evidence, the impact was minimal and he was wearing a seatbelt, no airbag deployment, and he sought no medical attention for one week. He has preexisting age-related degenerative cervical spine disease which has been neither aggravated nor exacerbated by the auto accident. Although he underwent treatment for neck complaints following the accident, his subjective complaints in my opinion were out of proportion to his objective findings and mechanism of injury. I do not find any residual musculoskeletal pathologic conditions that could be attributed to this accident and no evidence of radiculopathy, chronic cervical sprain, or muscle spasms or weaknesses.
>
> It is my opinion based on my evaluation, review of his medical records and diagnostic studies that he had not sustained a harmful change to the human organism as evidenced by objective medical findings.

Dr. Jacob opined Wilson qualified for a Cervical DRE Category I, and assessed a 0% impairment rating pursuant to the AMA Guides. He opined Wilson is capable of returning to his former position without any lifting restrictions, and he declined to recommend additional medical management or diagnostic testing.

On appeal, Wilson argues the ALJ erred in finding

his work-related injury was only temporary, asserting the overwhelming medical evidence compels a finding of a permanent injury. Wilson asserts the ALJ failed to consider the clinical findings noted in the First Stop Urgent Care records, Dr. Raque's interpretation of the cervical MRI and diagnosis, Dr. Guarnaschelli's examination findings, Dr. Bilkey's finding of decreased cervical range of motion and spasms, and Dr. Jacob's findings of decreased cervical range of motion. Wilson asserts the above-referenced evidence compels a finding of a permanent injury.

Wilson also argues the ALJ erred in adopting the impairment rating of Dr. Jacob, who placed him in the DRE category I warranting a 0% impairment rating. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Wilson argues he qualifies for the DRE cervical category II. In a similar argument, Wilson asserts the impairment rating assessed by Dr. Jacob cannot be relied upon since it contradicts his own examination findings.

Wilson argues because he sustained a permanent injury warranting PPD benefits, he is also entitled to continuing medical benefits. In the alternative, Wilson argues he is entitled to continuing medical benefits for his temporary injury, and the ALJ erred in limiting his award

through May 31, 2013.

Finally, Wilson argues the ALJ failed to address his request for an order directing Hackney to pay outstanding medical bills from First Stop Urgent Care.

As the claimant in a workers' compensation case, Wilson bore the burden of proving each of the essential elements of his cause of action before the ALJ, including injury as defined by the Act and entitlement to benefits. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since he 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 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.

Pursuant to the directives of this Board, the ALJ clarified he found Wilson sustained a temporary injury relying primarily upon the opinions of Drs. Jacob and Raque. Because the ALJ adequately addressed this Board's request,

and his determination of a temporary injury is supported by substantial evidence and no contrary result is compelled, we will not disturb his determination on appeal.

Since the rendition of Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), this Board has consistently held it is possible for an injured worker to establish a temporary injury for which temporary benefits may be paid, but fail to prove a permanent harmful change to the human organism for which permanent benefits are payable. In Robertson, the ALJ determined the claimant failed to prove more than a temporary exacerbation and sustained no permanent disability as a result of his injury. Therefore, the ALJ found the worker was entitled to only medical expenses the employer had paid for the treatment of the temporary flare-up of symptoms. The Kentucky Supreme Court noted the ALJ concluded Robertson suffered a work-related injury, but its effect was only transient and resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis. The Court stated:

> Thus, the claimant was not entitled to income benefits for permanent partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident. Id. at 286

It is well established an ALJ can award future medical benefits for a work-related injury, although a claimant has reached maximum medical improvement and did not have a permanent impairment rating resulting from the injury. *See* FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007).

In this instance, the ALJ relied upon the records of Dr. Raque and the opinion of Dr. Jacob in determining Wilson sustained a temporary injury due to the October 4, 2012 work-related MVA. On February 16, 2013, Dr. Raque noted a cervical MRI demonstrated a C6-7 disc herniation, but demonstrated no signal change in the cord. His examination revealed normal range of motion in the neck, no tenderness, and an essentially normal musculoskeletal and neurologic exam. He noted Wilson complained of neck pain on flexion and turning to the left. Dr. Raque diagnosed cervical spondylosis without myelopathy and recommended epidural steroid injection. On April 8, 2013, the physical examination was essentially normal, with the exception of complaints of increased pain on flexion of the neck and turning from side to side. Wilson was diagnosed with a herniated cervical disc and neck pain, and prescribed pain medication.

In his January 17, 2014 report, Dr. Jacob found Wilson had a normal cervical examination, normal upper extremity neurological examination, normal left shoulder, chest wall and shoulder girdle examination. He likewise found no evidence of muscle spasm in any of the cervical, shoulder girdle or chest wall musclulature. He reviewed the medical records, and noted Dr. Raque's examination on February 16, 2013 revealed a full range of motion in the neck without tenderness, and a normal neurological examination. Dr. Jacob reviewed Wilson's diagnostic studies, and noted the osteophyte complexes at C4-5 and C6-7 were small, non-impinging, age-appropriate changes, and clinically not relevant. Dr. Jacob noted there was no medical evidence of stenosis or manifestation of any true radicular symptoms. He found the impact from the MVA minimal. He stated Wilson's pre-existing age-related degenerative cervical spine disease was neither aggravated nor exacerbated by the MVA. Dr. Jacob found Wilson's subjective complaints out of proportion to the objective findings and mechanism of injury. Dr. Jacob found no residual musculoskeletal pathologic conditions attributable to the MVA, and no evidence of radiculopathy, chronic cervical sprain, or muscle spasms or weaknesses. Dr. Jacob

concluded Wilson has not sustained a harmful change to the human organism as evidenced by objective medical findings.

Based upon the above-referenced evidence, the ALJ could reasonably conclude Wilson sustained only a temporary injury. Wilson's ability to point to other medical evidence in the record supporting his contention of a permanent injury is insufficient for reversal on appeal. Taken together, the Dr. Jacob's opinion and the records of Dr. Raque constitute substantial evidence supporting the ALJ's determination Wilson sustained a temporary injury due to the October 4, 2012 work-related accident warranting no impairment rating, and no contrary result is compelled.

We likewise find no error in the ALJ's determination Wilson's temporary injury resulted in a 0% impairment rating, based upon opinions of Dr. Jacob. In Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206, 210 (Ky. 2003), the Kentucky Supreme Court explained the assessment of impairment ratings and the proper interpretation of the AMA Guides are medical questions solely within the province of medical experts. *See also* KRS 342.0011(11)(a), (35) *and* (36); *and* KRS 342.730(1)(b). For that reason, an ALJ is not authorized to arrive at an impairment rating by independently interpreting the AMA Guides. George Humfleet Mobile Homes v. Christman, 125

S.W.3d 288 (Ky. 2004). Rather, the improper interpretation of the AMA Guides and assessment of an impairment rating pursuant to the AMA Guides are medical questions reserved only to medical witnesses. Kentucky River Enterprises, supra, Lanter v. Kentucky State Police, 171 S.W.3d 45, 52 (Ky. 2005). Therefore, while an ALJ may elect to consult the AMA Guides in assessing the weight and credibility to be accorded an expert's impairment assessment, as finder of fact, he is never required to do so. George Humfleet, supra.

In his report, Dr. Jacob concluded Wilson only qualified for the DRE category I, and assessed a 0% impairment rating. Dr. Jacob expressly stated he arrived at his conclusions utilizing the AMA Guides, Table 15-5, page 392. In support of this conclusion, Dr. Jacob noted at the time of his examination, Wilson had no significant clinical findings, no muscular guarding, no motion segment integrity, and no other indication of impairment related to the injury. Dr. Jacob also stated his review of the medical records revealed no physician identified a specific nerve root involvement, and all of those reviewed noted normal neurological examinations.

We conclude Dr. Jacob's opinion and impairment rating constitute a sufficient basis from which the ALJ

could reasonably infer the assessed impairment pursuant to the 5th Edition of the AMA Guides. Dr. Bilkey's differing impairment assessment merely represents conflicting evidence which the ALJ in his role as fact-finder was free to accept or reject.

Contrary to Wilson's argument on appeal, this case is distinguishable from Jones v. Brasch-Barry General Contractor's, 189 S.W.3d 149 (Ky. App. 2006). In Jones, a physician, during cross-examination, admitted the claimant's injury fell within the parameters of one category of impairment but placed him in a higher category, explaining the AMA Guides were flawed and served no more than guidelines. Here, two physicians have provided conflicting impairment ratings. Neither party pursued additional testimony nor was an admission made by Dr. Jacob stating he disregarded the AMA Guides in assessing an impairment rating. Likewise, neither party chose to depose the physicians regarding their opinions.

With the above determinations in mind, we vacate and remand on the issue of entitlement to future medical benefits for the effects of Wilson's work-related temporary injury, though not for the reasons he has argued. Here, the ALJ limited the award of medical benefits, stating he found Wilson's subjective complaints were inconsistent with the

objective medical findings and "that as of the (sic) May 30, 2013, as determined by Dr. Guarnaschelli, the Plaintiff showed no signs of any harmful change to the human organism as a result of the work-related motor vehicle accident of October 4, 2012." However, a review of the May 30, 2013 office note from Dr. Guarnaschelli reveals he did not make such a finding, and in fact recommended the continuation of conservative treatment. On May 30, 2013, Dr. Guarnaschelli noted Wilson presented for a follow-up visit and second surgical opinion regarding a work-related injury. After noting Wilson's past medical history and medication intake, Dr. Guarnaschelli stated as follows:

> **EXAM: NEUROLOGIC/MUSCLULOSKELETAL: Atypical neck and upper shoulder discomfort following a work-related injury**
>
> **REVIEW OF DIAGNOSTIC DATA**
> Initial and followup x-rays of the cervical spine to rule out a fracture dislocation or spondylolisthesis as well as a repeat MRI scan of the cervical spine showing evidence of mild degenerative changes and osteophyte complex formation
>
> **ASSESSEMENT AND PLAN**
> Mr. Wilson is a 49 yr/o male patient following a work-related injury with clinical findings of a whiplash related disorder and radiographic findings of pre-existing age-related degenerative disc changes. In the absence of any clear-cut radiculopathy or myelopathy I believe it is best to avoid any

> considerations for surgical intervention. I have advised followup with his personal physician and a common sense approach with home exercises conditioning and other conservative measures for management.
> (original emphasis)

The ALJ's statement Dr. Guarnaschelli found Wilson showed no signs of a harmful change to the human organism due to the October 4, 2012 work accident is inconsistent with the May 30, 2013 note. KRS 342.020(1) provides liability for medical benefits exists "for so long as the employee is disabled regardless of the duration of the employee's income benefits." The Kentucky Supreme Court has concluded "disability exists for the purposes of KRS 342.020(1) for so long as the work-related injury causes impairment, regardless of whether the impairment rises to a level that it warrants a permanent impairment rating, permanent disability rating, or permanent income benefits." FEI Installation, Inc. v. Williams, 214 S.W.3d at 318-319.

Therefore, we vacate the award of medical benefits and remand the claim for the ALJ to clarify his finding regarding the duration of entitlement to medical benefits, and to provide an analysis consistent with FEI Installation, Inc. v. Williams, supra.

Finally, we address Wilson's contention the ALJ did not specifically address Hackney's failure to pay

outstanding medical bills from First Stop Urgent Care in his award of temporary medical benefits through May 31, 2013. In light of our determination regarding the appropriate period of medical benefits above, it would be speculative of the Board to address this specific argument. However, assuming the ALJ awards medical benefits beyond March 10, 2013 (the last recorded visit of record at First Stop Urgent Care), a general award of medical benefits would encompass treatment received at First Stop Urgent Care for the cure and relief from the effects of the temporary work-related injury, excluding the repeat MRI.

For the foregoing reasons, the November 25, 2014 Opinion on Remand and the February 11, 2015 order on reconsideration rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, are hereby **AFFIRMED IN PART, VACATED IN PART.** This claim is **REMANDED** for additional findings and entry of an amended opinion and award in conformity with the views expressed herein.

ALL CONCUR.

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