Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 2, 2013

CLAIM NO. 201172804

JERRY W. CAMPBELL PETITIONER

VS. **APPEAL FROM HON. JOHN B. COLEMAN, ADMINISTRATIVE LAW JUDGE**

HINKLE CO. d/b/a
SUMMIT MATERIAL HOLDINGS
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

and

HINKLE CO. d/b/a
SUMMIT MATERIAL HOLDINGS CROSS-PETITIONER

VS.

JERRY W. CAMPBELL CROSS-RESPONDENT
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE RESPONDENT

OPINION
VACATING IN PART ON APPEAL,
AFFIRMING ON CROSS-APPEAL
AND REMANDING
* * * * * *

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

STIVERS, Member. Jerry W. Campbell ("Campbell") appeals and Hinkle Co. d/b/a Summit Material Holdings ("Hinkle") cross-appeals from the January 9, 2013, opinion and award of Hon. John B. Coleman, Administrative Law Judge ("ALJ") finding Campbell totally occupationally disabled based on the combined effects of a work injury sustained on July 26, 2011, and a previous work injury occurring in December 1985.[1] The ALJ also determined the 1985 injury resulted in 40% occupational disability and awarded permanent total disability ("PTD") benefits reduced by 40%, the disability which existed immediately prior to the July 26, 2011, injury. Campbell also appeals from the February 11, 2013, order overruling his petition for reconsideration.

On appeal, Campbell concedes the ALJ was not precluded from considering his prior work-related injury in determining whether he was totally disabled. However, he argues there was no evidence of an occupational disability immediately preceding his July 26, 2011, work injury. Thus, it was error for the ALJ to find 40% of his total disability to be non-compensable.

[1] During the November 13, 2012, hearing, Campbell testified the injury occurred when he was kicked by a horse while working on December 25, 1985. However, Dr. Russell Travis' October 18, 2012, report reveals the medical records he reviewed relative to the 1985 injury reference a December 23, 1985, injury. Therefore, we will continue to refer to a December 1985 injury.

On cross-appeal, Hinkle asserts KRS 342.730(1)(a) prohibits disability for exempt work injuries from being considered in determining whether an employee is totally occupationally disabled. Hinkle asserts as follows:

> KRS 342.730(1) prohibits disability from exempt injuries from being considered in determining whether the employee is totally disabled. Agricultural employees are exempted under KRS 342.650. It makes no sense when interpreting the two statutes in conjunction to relieve Campbell's agricultural employer from liability for the costs and disability of an injury sustained while in their employ, then subject Hinkle Company to greater liability that it otherwise would have had if the agricultural injury had never occurred. As the prior impairment and disability suffered by Campbell in this case was an exempt impairment or disability, and not a compensable disability, this prior active impairment cannot be combined with the work injury in determining whether Campbell was totally disabled.
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> . . .
>
> K.R.S. 342.730(1)(a) establishes that an employee cannot be found permanently and totally occupationally disabled due to a work-related injury, along with an agricultural injury which is exempt from the Act. KRS 342.730(1)(1) is a limitation on the ALJ finding a permanent total disability based on the effects of a compensable and an agricultural injury.

It argues the ALJ's award should be reversed and remanded for additional findings and an award of permanent partial disability ("PPD") benefits.

The Form 101 alleges Campbell sustained a back injury on July 26, 2011, when the dozer he was operating went over a berm "and then sat down on solid rock." There is no dispute the work injury caused a disc herniation. On January 16, 2012, he underwent surgery performed by Dr. Steven Kiefer. The operative report reflects a pre-operative diagnosis of: 1) lumbar spinal stenosis; and 2) left L3-L4 disc herniation. Surgery was performed consisting of the following procedures:

1. L3 laminectomy with medial facetectomies and foraminotomies.

2. Left L3-L4 discectomy.

Significantly, none of Campbell's medical records relating to the treatment of the 1985 injury and the 1987 surgery were introduced.

Hinkle introduced Dr. Henry Tutt's December 22, 2011, independent medical evaluation ("IME") report and the August 29, 2012, addendum to the IME report. With respect to the 1985 injury, Dr. Tutt noted Campbell related he had back problems in 1987 when working on a horse farm and had been kicked by a horse. Campbell underwent a "lumbar disc

operation" at Central Baptist Hospital, but could not recall the name of his treating physician. Campbell could recall he had back and left leg pain and the operation relieved the pain. Campbell stated he was pain free until the July 26, 2011, work injury.

Dr. Tutt diagnosed a left L3-4 disc herniation as a result of the July 26, 2011, injury. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Tutt assessed a 14% total impairment.[2] Regarding the presence of prior active impairment, Dr. Tutt concluded as follows:

> Before the work event occurring on 6/26/2011, Mr. Campbell had undergone a lumbar discectomy at another level with relief of his lumbar radiculopathy equating him with a pre-existing impairment rating correlating with a lumbar DRE category III and equating, with a normal neurological examination, with 10% expressed in terms of percent of the body as a whole.

Hinkle also introduced the October 18, 2012, report of Dr. Russell Travis generated after a medical records review. Dr. Travis stated he had reviewed the December 23, 1985, record of Dr. Coyer who saw Campbell as a result of being kicked in the left chest by a stallion.

[2] This is contained in Dr. Tutt's August 29, 2012, addendum which contains Dr. Tutt's final opinions as his examination and first report preceded the surgery performed by Dr. Kiefer.

A large left hemothorax was drained using a chest tube. The major complaint at that point was pain at or about the site of the blunt trauma. There were obvious rib fractures. The assessment was "blunt chest trauma, fractured rib, hemothorax, now with continued chest pain, dyspnea and hypoxemia." Campbell likely had a myocardial contusion but there was not enough clinical evidence of cardiac dysfunction that would account for his hypoxemia.

Also reviewed was a December 23, 1985, emergency room note revealing Campbell fractured the 7th and 8th ribs on the right side. The December 27, 1985, operative note of Dr. Saha reflects he performed a "left closed thoracostomy." Dr. Saha's impression was "blunt chest trauma, left hemothorax, atelectasis left lower lobe." Dr. Saha's December 30, 1985, operative note reflects he performed "exploratory left thoracotomy, evacuation of pericardial effusion, repair of ruptured diaphragm and decortication." All other medical records reviewed by Dr. Travis relate to the July 26, 2011, injury.

Dr. Travis concluded the July 26, 2011, injury caused a herniated disc at the "L3-4 left." Based on the AMA Guides, Dr. Travis assessed a combined impairment rating of 17%. He concluded since Campbell had no significant problems until the July 26, 2011, injury,

"there is no percentage that was prior active." However, based on the AMA Guides, Dr. Travis concluded Campbell would have an 8% impairment rating resulting from the previous surgically treated herniated disc. Consequently, Campbell had an 8% impairment rating prior to July 26, 2011, "leaving 9% secondary to the work-related accident of July 26, 2011."

Campbell submitted the Form 107 completed by Dr. James C. Owen on August 21, 2012. Since two surgeries were performed "at the same lumbar area," Dr. Owen opined the range of motion method must be utilized in assessing impairment. Pursuant to the AMA Guides, as a result of both injuries, Dr. Owen assessed an 18% whole person impairment, none of which was active prior to the injury. He noted Campbell had "no history of days lost, doctor visits, or admission of chronic pain prior to the injury."

Campbell's September 24, 2012, deposition was introduced. Campbell testified he is 58 years old and has a tenth grade education. He has no specialized training but possessed a commercial driver's license. Campbell was kicked by a horse in 1985 while employed at Stonereath Farm in Paris, Kentucky, which he stated resulted in "mild back surgery." He was paid workers' compensation benefits while off work and received no settlement or other benefits. The

injury caused “a hole in the heart,” a punctured lung, a punctured diaphragm, broken left ribs, and broken sternum. Campbell eventually underwent back surgery in 1987 after which he received no follow-up care and prescription medication. He sustained no other injuries while working at the horse farm. Prior to working for Hinkle all of his work experience had been on a horse farm. He described his work on the horse farm as stallion grooming which entailed “helping them breed,” cleaning the stalls, grooming horses, and taking the horses in and out of the stalls. He characterized his job as “pretty physical.” Campbell explained why he chose to no longer work in the horse industry:

> Q: What was it that made you decide to get out of working in the horse industry?
>
> A: That had something to do with it.
>
> Q: What was it?
>
> A: Getting hurt I guess.
>
> Q: That’s what made you decide that?
>
> A: Well, yeah, changed my whole attitude, yeah, a lot of it.
>
> Q: Did you go back to working in the horse industry after you were hurt?
>
> A: Yes, ma’am.

> Q: According to your application you started working for Hinkle back in ’93; is that right?
>
> A: Yes, ma’am.

When he initially began working for Hinkle he worked as a laborer and later operated heavy equipment, usually a bulldozer. Campbell denied having back problems prior to his July 26, 2011, work injury. He always worked a ten hour day generally six days a week. However, when work was occasionally slow Campbell worked five days a week. At the time he was injured he was working twelve hours a day six days a week.

At the November 13, 2012, hearing, Campbell testified he underwent back surgery in 1987 and returned to work eight weeks after the surgery. He has been gainfully employed since then. He again denied experiencing low back problems prior to the subject work injury. Similarly, he missed no work and there were no complaints about his work prior to the injury. Concerning his reason for ending his employment in the horse industry and the jobs that followed, Campbell explained:

> A: Well, I got a job at Hinkle.
>
> Q: What was the reason that you were looking for a job outside the horse industry?

> A: I can’t really answer that, I’ll be honest with you. I started working in a – well, I went to a farmer’s feed mill. And I didn’t like that, so I just wanted to do something different, I think.
>
> Q: Did you work at a farmer’s feed mill before you came to work with Hinkle?
>
> A: I did.
>
> Q: What did you do there?
>
> A: I just run a pellet mill.
>
> Q: How long did you work there?
>
> A: About – not a year, maybe nine months.
>
> Q: And did you have the job with Hinkle lined up when you left there?
>
> A: No, I was a mechanic. I was a mechanic out of my house.

Campbell estimated he worked as a mechanic out of his home for approximately six months until he obtained the job at Hinkle.

In the January 9, 2013, opinion and award, the ALJ concluded the fact Campbell’s first work injury occurred in the course of employment that was exempted from workers’ compensation coverage pursuant to KRS 342.650, did not preclude him from considering the effects of the prior work injury along with the subject injury in determining whether Campbell was totally disabled. In determining

Campbell was totally occupationally disabled, the ALJ reasoned:

> The plaintiff's prior injury was indeed severe in nature as he suffered a fractured sternum, fractured ribs, punctured lung and punctured heart. He underwent back surgery in 1987, but was able to return to work in approximately eight weeks and testified that he was able to perform his work activities with the defendant without difficulty until his current injury. Since the current low back injury, the plaintiff's testimony is that he is no longer able to perform his usual and customary work due to his lower back pain. He believes he would be unable to endure the prolonged sitting or the vibration caused by heavy equipment although he has seen an improvement in his leg pain following surgery. He has undergone surgery for lumbar stenosis and the L3-L4 disc herniation which was performed on January 16, 2012. Dr. Tutt and Dr. Travis both carved out impairments for pre-existing active impairment from the prior low back surgery. However, the medical evidence makes it clear the plaintiff suffered an L3-L4 herniation at the time of his work injury as noted by Dr. Tutt, Dr. Kiefer and Dr. Owen. In any event, a claimant's own testimony may also be substantive when considering occupational disability. *Hush v. Abrams, 584 S.W.2d 48(Ky. 1979)*. Permanent total disability is defined in *KRS 342. 0011(11)(c)* 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. Work is defined as meaning providing service to another in return for remuneration on a

regular and sustained basis in a competitive economy. *KRS 342.0011(34)*. In determining whether a worker is totally disabled, an Administrative Law Judge must consider several factors including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. *Ira A. Watson Department Store v. Hamilton, Ky., 34 SW3d 48 (2000)*. In this instance, we are faced with a plaintiff who was 56 years of age at the time of his injury and has a very limited 10th grade education. The plaintiff's work has been as a laborer on horse farms or on road construction with the work being described as very strenuous in nature. While working for the defendant, he not only was subjected to vibrations, jars and jolts while operating heavy equipment, he was also responsible for doing pre-shift inspections on the equipment itself. The plaintiff has now been assessed with impairments ranging from 10% to 20%. I note the claimant is a credible individual. Although his treating surgeon released him to return to work, I am more convinced by the restrictions offered by Dr. Owen wherein he recommended no lifting greater than 20 pounds as well as avoidance of activities requiring recurrent bending, squatting and stooping. When I consider these restrictions along with the fact that he has undergone two lower back surgeries, his medical impairment, advanced age, limited education and work experience, I am convinced the plaintiff has been rendered permanently and totally disabled as that term is now defined due to the combined effects of the injury to his lumbar spine of July 26, 2011 and the effects of the prior work

related injuries of December 1985.

Concerning the occupational disability attributable to the 1985 previous work injury, the ALJ concluded:

> Exclusions from a total disability award must be based upon pre-existing disability while an exclusion from a partial disability award must be based upon pre-existing impairment. *Roberts Brothers Coal Company v. Robinson, 131 SW3d 181 (Ky. 2003).* At the time of the 1985 injury, permanent partial disabilities were based upon a consideration of the same factors outlined above including the plaintiff's age, education level, vocational skills and medical restrictions. In this instance, given the severe injuries the plaintiff received in 1985 along with the fact that the plaintiff did have a 10th grade education and was in his early thirties at the time of his prior injuries, I am convinced that he would have retained a 40% occupational disability as a result of the injury. In making this determination, I note the prior work incident led to severe injuries with surgeries which led to him eventually leaving that line of work although the plaintiff was able to obtain his job in the road construction industry. Therefore, I find the plaintiff has been rendered permanently and totally disabled as a result of the combined effects of the injury of July 26, 2011 to his lumbar spine and the effects of the prior work related injuries of December 1985. The prior active occupational disability must be carved out of the permanent total disability award at the rate of 40%. In effect, the plaintiff shall receive

> 60% of a permanent total disability award from the date of his injury of July 26, 2011.

Campbell filed a petition for reconsideration asserting the ALJ misapplied the law and requested the ALJ reconsider his finding the combined effects of the 1985 and July 26, 2011, injuries rendered him permanently totally disabled. Campbell maintained there was no evidence the 1985 injury resulted in occupational disability. Further, there was no evidence he had any occupational disability during the time he performed "heavy duty" jobs for Hinkle. Campbell asserted he was entitled to an award of PTD benefits without reduction for a previous occupational disability.

By order dated February 11, 2013, the ALJ overruled Campbell's petition for reconsideration.

The burden of proving a pre-existing condition fell upon Hinkle. Wolf Creek Collieries v. Crum, 673 S.W.2d 735, 736 (Ky. App. 1984). Since Hinkle was successful in its burden, the question on appeal is whether there is substantial evidence to support the ALJ's decision. "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

That said, the ALJ must provide a sufficient basis to support his determination. Cornett v. Corbin

Materials, Inc., 807 S.W.2d 56 (Ky. 1991). Parties are entitled to findings sufficient to inform them of the basis for the ALJ's 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). This Board is cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusion was drawn so the parties are reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973).

We conclude the factors relied upon by the ALJ in determining Campbell had a 40% pre-existing occupational disability do not constitute substantial evidence. As noted by the ALJ, exclusions from a total disability award must be based upon pre-existing disability. The mere fact the 1985 injury generated an impairment rating does not mean that prior to the July 26, 2011, injury Campbell had a pre-existing disability. Roberts Brothers Coal Co. v. Robinson, 113 S.W.3d 181 (Ky. 2003). In Roberts Brothers Coal, supra, the Supreme Court explained:

> Thus, awards under KRS 342.730(1)(a) continue to be based upon a finding of disability. In contrast, an award of permanent partial disability under KRS 342.730(1)(b) is based solely on a finding that the injury resulted in a particular AMA impairment rating, with the amount of disability being determined by statute. In other words, KRS 342.730(1)(a) requires the ALJ to determine the worker's disability, while KRS 342.730(1)(b) requires the ALJ to determine the worker's impairment. Impairment and disability are not synonymous. We conclude, therefore, that an exclusion from a total disability award must be based upon pre-existing disability, while an exclusion from a partial disability award must be based upon pre-existing impairment. For that reason, if an individual is working without restrictions at the time a work-related injury is sustained, a finding of pre-existing impairment does not compel a finding of pre-existing disability with regard to an award that is made under KRS 342.730(1)(a).

Id. at 183.

The fact Campbell had a tenth grade education and was in his early thirties at the time of the injury does not constitute substantial evidence in support of the ALJ's decision. Further, the ALJ's finding Campbell's prior work incident resulted in "severe injuries with surgeries" eventually causing him to leave the "line of work" is not a completely accurate summarization of Campbell's testimony. The medical records reviewed by Dr. Travis and Campbell's

testimony establish he underwent multiple surgeries. However, there is no evidence touching on the actual severity and the lasting effects of his injuries. Further, Campbell's deposition testimony recited herein, reflects he stopped working in the horse industry due to the fact he had gotten hurt, not due to the physical effects of the 1985 injury. During the hearing, Campbell was again asked the reason he stopped working in the horse industry and explained he obtained a job with Hinkle. When asked why he sought a job outside the horse industry, he replied he could not answer the question. More importantly, Campbell's testimony establishes he worked approximately eight years after the injury and six years after back surgery, before he quit working in the horse industry. Campbell then worked approximately nine months at a farmer's feed mill and six months as a mechanic at his home.

Moreover, the medical evidence does not support a finding of pre-existing disability. Drs. Owen and Travis unequivocally state any impairment attributable to the 1985 injury was not active. Although characterizing the pre-existing impairment as active, Dr. Tutt does not impose any restrictions on Campbell's physical activities due to the 1985 injury.

Therefore, we conclude the reasons provided by the ALJ in support of the determination Campbell had a 40% occupational disability prior to the subject injury do not constitute substantial evidence in support of that determination. We also find it significant that in determining Campbell was totally occupationally disabled, the ALJ relied almost exclusively upon the physical effects of the July 26, 2011, injury and that he was 56 years old, had not increased his education level, and had a history of performing very strenuous labor. In determining Campbell was totally occupationally disabled, the ALJ's only reference to the previous injury was the fact he had undergone two lower back surgeries. Stated another way, the ALJ failed to define the effects of the 1985 injury that lead him to conclude the effects of both injuries resulted in total occupational disability.

In light of our decision the 40% pre-existing disability must be vacated, and the ALJ's determination Campbell is totally occupationally disabled must also be vacated. Based upon two lower back surgeries, his medical impairment, advanced age, limited education, and work experience, the ALJ concluded Campbell was totally occupationally disabled. However, the ALJ went further stating the combined effects of both injuries rendered

Campbell permanently totally disabled. Except for a reference to the prior surgery, the ALJ did not cite to any factor attributable to the first injury which led to this conclusion. Thus, the conclusion the combined effects of the injuries rendered Campbell permanently and totally disabled is not supported by the record. Although the ALJ cited extensively to the type of work Campbell performed while working for Hinkle and relied upon the restrictions imposed by Dr. Owen, he failed to reference any limiting effects of the first injury. Therefore, the determination Campbell is totally occupationally disabled must be vacated and the claim remanded for additional findings of facts regarding the extent, if any, of Campbell's occupational disability as a result of the 1985 injury and whether the July 26, 2011, injury standing alone results in permanent totally disability.

If the ALJ determines Campbell retained a pre-existing disability he must cite to the evidence in the record supporting that determination. Then he shall revisit the issue of whether the combined effects of both injuries rendered Campbell permanently totally disabled. However, if the ALJ determines Campbell did not have an occupational disability prior to July 26, 2011, then he shall determine whether due solely to the effects of the

July 26, 2011, injury Campbell is totally occupationally disabled all of which shall be supported by additional findings of fact.

We find no merit in Hinkle's protective cross-appeal. KRS 342.0011(1) defines injury as follows:

> "Injury" means any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful change in the human organism evidenced by objective medical findings.

The above definition only requires an injury occur in the course of employment. The 1985 injury sustained while working for Stonereath Farm satisfies the statutory definition of an injury.

There is no dispute the work Campbell performed in 1985 when injured at work constituted employment in agriculture as defined by KRS 342.0011(18) and was exempted from coverage by KRS 342.650(5).[3] However, that fact does not preclude the injury's effects from being considered along with a subsequent injury in resolving the issue of permanent total disability.

KRS 342.730(1)(a) reads as follows:

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[3] *See* Fitzpatrick v. Crestfield Farm, Inc., 582 S.W.2d 44 (Ky. App. 1978).

> For temporary or permanent total disability, sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state average weekly wage as determined in KRS 342.740 during that disability. Nonwork-related impairment and conditions compensable under KRS 342.732 and hearing loss covered in KRS 342.7305 shall not be considered in determining whether the employee is totally disabled for purposes of this subsection.

The above section prohibits a non-work-related impairment and condition from being considered in determining whether the employee is permanently totally disabled. Since Campbell's prior lumbar low back injury was work-related, the non-work-related exclusion articulated in KRS 342.730(1)(a) is not applicable in this case. Consequently, the ALJ was permitted to determine whether the July 26, 2011, injury along with previous work-related injuries resulted in Campbell being permanently totally disabled. The fact Campbell's work, at the time he was injured, was exempted from coverage pursuant to KRS 342.650 does not alter the fact he sustained a work-related injury as defined in KRS 342.0011. KRS 342.730(1)(a) prohibits non-work-related impairment and conditions from being considered in determining whether an

employee is permanently totally occupationally disabled. Any impairment and possible disability Campbell sustained while working as an employee of Stonereath in 1985 was work-related; consequently, the ALJ was permitted to consider the effects of the injury along with the effects of the subsequent injury in determining whether Campbell was totally occupationally disabled.

Further, we find Hinkle's reliance upon Johnson v. Scotts Branch Coal Company, 754 S.W.2d 555 (Ky. App. 1988) to be misplaced. There, the issue was whether "post-injury disabilities can be added to work injuries so as to enhance the percentage of disability and consequent duration of payments." Id. at 556.

Accordingly, those portions of the January 9, 2013, opinion and award determining Campbell is totally occupationally disabled, has a 40% pre-existing occupational disability, and the award of permanent total disability benefits reduced by 40% are **VACATED**. The February 11, 2013, order overruling Campbell's petition for reconsideration is also **VACATED**. On cross-appeal, the ALJ's decision is **AFFIRMED**. This matter is **REMANDED** to the ALJ for entry of an amended opinion and award in conformity with the views expressed herein.

ALL CONCUR.

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