

OPINION ENTERED: June 28, 2012

CLAIM NO. 201001060

JOHN RIDDLE

PETITIONER

VS.

**APPEAL FROM HON. R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE**

SWARTZ ENTERPRISES  
and HON. R. SCOTT BORDERS,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION AFFIRMING IN PART AND  
VACATING AND REMANDING IN PART**

\* \* \* \* \*

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

**ALVEY, Chairman.** John Riddle ("Riddle") seeks review of the opinion and order rendered January 15, 2012 by Hon. R. Scott Borders, Administrative Law Judge ("ALJ") dismissing his claim for benefits for alleged injuries resulting from a motor vehicle accident occurring on September 18, 2009, which he filed against Swartz Enterprises ("Swartz").

Riddle also appeals from the February 17, 2012 order denying his petition for reconsideration.

On appeal, Riddle argues the ALJ erred in relying upon the medical opinions of Drs. Primm and Vaughn in finding he sustained no cervical or lumbar injuries due to the September 18, 2009 motor vehicle accident pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004). Riddle also argues the ALJ abused his discretion by failing to award a temporary period of medical benefits pursuant to Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). We affirm in part, and vacate and remand in part.

Riddle testified by deposition on October 29, 2010 and at the final hearing held November 18, 2011. Riddle, a resident of Owingsville, Kentucky, was born on May 14, 1971 and is a high school graduate. He also obtained a commercial driver's license. Prior to his employment with Swartz, Riddle had worked in the construction industry, on farms as a laborer, as a pipe fitter and he also assisted in relocating cemeteries.

In 2001, Riddle testified he began working for Central Rock located in Lexington, Kentucky as an equipment operator where he worked until 2006. Sometime during his employment at Central Rock, Riddle sustained a whiplash

injury to his neck. He did not file a workers' compensation claim for that incident, but he sought medical treatment on his own. Riddle continued to work following his neck injury, despite persistent neck problems. Riddle testified he eventually sought pain management in Fort Lauderdale, Florida for his neck, but did not remember the name of the facility. Riddle testified at his deposition he had been traveling to Florida for the past year and a half, approximately once a month, to obtain prescriptions for pain medication, which he thought was "codone 30", muscle relaxers and Xanax. Riddle continued to go to Florida for medication while working for Central Rock.

Riddle testified he was still having neck problems when he began working for Swartz in the summer of 2006 and he continued to travel to Florida to get his prescriptions filled. Riddle testified he was able to perform his job duties at Swartz while taking his medication prior to the motor vehicle accident. Riddle was actively taking his prescriptions on September 18, 2009, the day of the motor vehicle accident. He stopped traveling to Florida when he began medical treatment for his alleged injuries stemming from the motor vehicle accident. Riddle also had a low back complaint stemming from an incident occurring approximately

ten years previous which resolved after he treated with pain medication and muscle relaxers.

Riddle began working for Swartz as a laborer in June 2006. Swartz, a highway contractor, cleared vegetation throughout Kentucky identified as unsafe by the state highway department. Riddle drove trucks, tractors and bobcats, and also used chain saws and bush hogs, lifted wood, pulled brush, and weed-eated. Riddle testified on September 18, 2009, he and two other employees were in Louisville, Kentucky weed-eating around guardrails and signs. Riddle was driving a heavy duty Ford truck when a smaller truck coming from the opposite direction lost control and struck the front corner driver's side of his vehicle. Riddle remained in the truck until the ambulance and police came to the scene. Ambulance personnel transferred Riddle to Jewish-Saint Mary's Hospital. At the deposition, Riddle testified he experienced pain in his left ankle, head and ribs. At the hearing, Riddle testified as follows regarding his initial symptoms:

A: Well, the ambulance come and got me out of the driver's seat and put me on a stretcher in the ambulance. And, my ankle was hurting and - - well, my whole body was hurting, I thought I was going to die. It was very scary. I don't get scared too often. And, my ankle was hurting, my ribs, I'm for sure they was broke. And, my back was hurting, my

neck was hurting and I was in shock, I feel like.

Q: How was your head?

A: It hurt. It felt like it had a big knot on it.

Q: Do you know if you hit your head on something in the truck?

A: I was just hanging on and hoping I was going to live through it. It was actually a - - it was pretty scary. It happened real quick.

Riddle testified he returned to work the next working day after his boss told him he could take it easy and sit on a tailgate and hold a sign or flag. He continued to work in this manner until March 20, 2010. Riddle admitted he did not initially seek medical treatment after visiting the emergency room, explaining he was still getting his prescriptions in Florida. Riddle testified his ankle and rib injury eventually resolved, but he noticed gradual back pain located at his beltline. Riddle testified the back pain then started going into his legs, eventually causing his left leg to give out. Riddle also testified his neck pain worsened. As a result of his back and leg problems, Riddle went to Dr. Moss upon a referral from his attorney, on February 9, 2010. Dr. Moss ordered an MRI and

physical therapy, and referred Riddle to Dr. Lewis. Dr. Lewis performed back surgery on March 22, 2010.

Riddle continues to treat with prescription medication. At his deposition, Riddle testified he takes pain medication, muscle relaxers and Xanax. The medication is the same as he was getting from Florida prior to the accident, but at a lesser dosage. At the hearing, Riddle testified he now receives pain management from Dr. White at the Grant County Wellness Center. Riddle also went to Pathways in November 2010 because he "went crazy" due to his lack of activity stemming from his work-related injuries.

Riddle testified the back surgery helped, but he still suffers from leg pain, back pain, and headaches on a daily basis. Riddle explained his previous neck problems have worsened since the motor vehicle accident. His onset of pain is now quicker and the pain has worsened. He explained he has trouble sleeping, walking and sitting.

Riddle filed the Form 101 on September 15, 2010 alleging injuries to his back and ribs caused by the September 18, 2009 motor vehicle accident. Riddle later filed two motions to amend the Form 101 to include neck, head, and psychological injuries. Both motions were granted by the ALJ. Riddle attached to the Form 101 medical records from Jewish Hospital and St. Mary's Healthcare Medical

Center Northeast ("Jewish Hospital"), Dr. Moss, Dr. Lewis and Dr. Weber. The medical record from Jewish Hospital dated September 18, 2009, noted Riddle arrived by ambulance following a head-on motor vehicle accident, in which he was restrained and no air bags deployed. Riddle complained of left ankle pain, headache and left flank pain. He also experienced mild chest and neck pain, neck stiffness, but no back pain. An ankle x-ray, chest x-ray, head CT and cervical spine all appeared normal. Riddle was diagnosed with a chest wall contusion, head injury and ankle sprain, and he was discharged.

Dr. Moss' record dated February 19, 2010, noted Riddle primarily complained of left lower back pain radiating to his leg due to the motor vehicle accident. Dr. Moss prescribed medication, ordered physical therapy, ordered an MRI, and placed Riddle on light duty. An MRI dated February 19, 2010 demonstrated disk bulging at L2-L3 and L3-L4 with a radial tear involving the L3-L4 disk, posterior disk herniation at L4-L5, large posterior disk herniation and associated radial tear at L5-S1, spinal stenosis at L4-L5 and L5-S1 and neural encroachment. In a follow-up visit, Dr. Moss referred Riddle to Dr. Lewis with the Louisville Orthopaedic Clinic.

In a medical record dated March 10, 2010, Dr. Lewis noted complaints of low back pain with radiation in the left leg. He diagnosed low back pain with left leg radiculopathy secondary to a herniated disc lumbar spine, specifically L3-L4, L4-L5, and L5-S1. Dr. Lewis performed evocative discograms at L2-L3, L3-L4, L4-L5 and L5-S1 and disc decompression at L3-L4, L4-L5 and L5-S1 on March 22, 2010. The postoperative diagnosis was low back pain with radiculopathy supported by positive evocative discograms at L3-L4, L4-L5, and L5-S1. On April 6, 2010, Dr. Lewis noted Riddle was doing better, and he recommended walking and prescribed Lortab. Swartz submitted Dr. Lewis' record dated May 4, 2010, in which he opined Riddle had reached medical maximum improvement ("MMI") and he assigned a 7% impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment 5<sup>th</sup> Edition, ("AMA Guides"). He noted Riddle was to receive his pain medication from his family physician or pain management doctor. Dr. Weber of Kentuckiana Interventional Pain Specialists also noted the surgery occurring on March 22, 2010.

Riddle submitted the police report generated as a result of the September 18, 2009 motor vehicle accident reflecting the driver of a Chevrolet truck lost control and

struck the truck driven by Riddle on its front left bumper, causing moderate property damage. Swartz submitted the Louisville Metro EMS report dated September 18, 2009, which noted a chief complaint of fracture/dislocation upon arrival at the scene. Assessments of his neck, chest, upper and lower back revealed no abnormalities, but found pain in the left lower leg and left foot. The record noted Riddle complained of a headache and left ankle pain.

Riddle and Swartz submitted the medical records from Kentucky Bariatric and Pain Management ("KBPM") which revealed Riddle began treating with them on March 27, 2009. On March 27, 2009, it was noted Riddle complained of cervical spine and occasional low back pain resulting from a work-related injury in 2006 at Central Rock. The record also noted Riddle was seeing Dr. Githens in Florida who prescribed medication. Riddle continued to treat with KBPM on a monthly basis for cervical spine pain for which his medications were renewed. A July 1, 2009 record noted a diagnosis of lumbago.

Following the motor vehicle accident, Riddle continued to treat with KBPM. In a medical record dated October 2, 2009, it was noted Riddle continued to have cervical spine pain and denied any new changes or complaints. He was diagnosed by KBPM with cervical spine

pain, muscle spasm and difficulty sleeping, and his prescriptions were renewed. It was also noted he was involved in a "head on collision". On October 30, 2009 and December 4, 2009, Riddle continued to present with complaints of cervical spine pain, with no new complaints or diagnosis. On December 31, 2009 and January 29, 2010, Riddle presented with the same complaint of cervical spine pain, but also complained of left leg pain. On May 21, 2010, the September 18, 2009 motor vehicle accident was noted, as well as Riddle's low back surgery. Riddle complained of cervical pain, left leg pain and low back pain. KBPM diagnosed "DDD cervical," anxiety, insomnia, muscle spasm, headaches, low back pain and depression. He was prescribed Xanax, Soma and Oxycodone. Riddle continued to treat with KBPM on a monthly basis for cervical and lumbar pain, leg pain, insomnia, muscle spasms, headaches and occasional anxiety until March 25, 2011.

Swartz submitted the medical records from the Bath County Clinic. On December 7, 2007 and February 28, 2008, Riddle was diagnosed with lumbago. Specifically, on December 7, 2007, it was noted Riddle complained of low back pain radiating into his right leg, for which the onset had been gradual and had been occurring in an intermittent pattern for years.

Finally, Riddle submitted the medical records from Pathways, Inc. dated November 9, 2010 and November 29, 2010. Riddle complained of depression, trouble sleeping, hopelessness, worthlessness, irritability and loss of energy. He was diagnosed with major depressive disorder.

Riddle submitted reports from two medical evaluations performed by Dr. Bilkey. On December 1, 2010, Dr. Bilkey performed an evaluation regarding Riddle's lower back injury. He noted symptoms of daily low back pain with radiation into the lower left limb and treatment with Oxycodone, Soma and Xanax. Dr. Bilkey noted a prior low back strain occurring approximately seven years previous which had since resolved. He also noted lumbago diagnosed in 2007 and 2008. Dr. Bilkey diagnosed:

9/18/09 work related motor vehicle accident, lumbar strain, lumbar radiculopathy treatment by percutaneous disc decompression procedure. There is chronic pre-existing lumbar degenerative disc disease. Mr. Riddle has acquired chronic low back pain and impairment.

Dr. Bilkey noted evidence of pre-existing degenerative disc disease with neuro-compression. He noted Riddle then acquired a lumbar radiculopathy from the September 18, 2009 motor vehicle accident for which he underwent surgery. He opined Riddle acquired chronic low back pain and impairment which he related to the motor

vehicle accident. Dr. Bilkey noted a pre-existing low back condition and active treatment for cervical spine pain, but opined Riddle had not been previously limited in his work activities. Dr. Bilkey assessed a 13% impairment rating, of which 5% was due to his pre-injury condition, thus yielding an 8% impairment pursuant to the AMA Guides, caused by the September 18, 2009 work injury. Dr. Bilkey opined Riddle had reached MMI, but recommended continuation of pain management treatment and medication, a CT myelogram, and an evaluation by an orthopedic spine surgeon. He restricted Riddle to light duty with maximum occasional lifting of ten pounds, avoidance of repetitive bending and twisting, and no climbing ladders. He noted the restrictions precluded Riddle from performing the work duties he carried out prior to the work injury.

On May 19, 2011, Dr. Bilkey performed an evaluation regarding Riddle's cervical spine injury. Dr. Bilkey noted Riddle continues with pain management treatment and has had no formal or diagnostic treatment procedures regarding his neck. Dr. Bilkey noted symptoms of daily neck pain with radiation into the shoulders and up the neck, as well as headaches. Riddle denied any previous neck problems other than a 1996 work-related neck injury, which required no treatment and subsequently resolved. Dr. Bilkey

diagnosed a September 18, 2009 work-related motor vehicle accident with cervical strain, scapular and cervical muscle spasm. Dr. Bilkey opined Riddle had not reached MMI and he recommended an updated MRI scan and physical therapy. Dr. Bilkey noted Riddle's active treatment for neck pain prior to the work-related accident, and opined he had an aggravation or worsening of his pre-existing chronic neck pain due to the accident. Dr. Bilkey assessed a 7% impairment rating and a pre-existing impairment of 5%, thus yielding a 2% impairment rating pursuant to the AMA Guides, due to the September 18, 2009 motor vehicle accident.

Riddle also submitted the report from the psychological evaluation by Dr. Perri, a psychologist, dated March 29, 2011. Riddle stated at the time of the motor vehicle accident, he thought he was going to die. Dr. Perri noted persistent pain in Riddle's neck, shoulders and low back despite treatment with Oxycodone, anti-inflammatory and anti-anxiety treatment. Dr. Perri diagnosed post-traumatic stress disorder, noting Riddle's thoughts of death in the accident, his avoidance behaviors, and his reported distressful dreams, trouble sleeping, heightened irritability and difficulty concentrating. Dr. Perri also opined the diagnosis stemmed directly from Riddle's involvement in the motor vehicle accident and did not

involve any pre-existing condition. Dr. Perri assessed a 10% impairment rating pursuant to the AMA Guides, 5<sup>th</sup> and 2<sup>nd</sup> Editions, and recommended treatment in the form of psychotherapy and medication management.

Swartz submitted the medical report of Dr. Vaughan dated January 25, 2011. Dr. Vaughan noted complaints of lower back pain radiating into the left leg and intermittent left leg numbness. Dr. Vaughan reviewed Riddle's medical history before and after the motor vehicle accident. Following the accident and emergency room visit, Riddle stated he did not seek medical care until February 2010. He also stated he had a prior low back injury ten to fifteen years ago, which had resolved, and a prior neck injury between 2000 and 2005 while working for Central Rock for which he received treatment at a pain clinic. Dr. Vaughan noted Riddle's current medication of Xanax, Oxycodone, Alprazolam and Meloxicam. He diagnosed a lumbar strain and a lumbar disk herniation. He opined the September 18, 2009 accident was not the cause of the disk herniations, explaining as follows:

I base this on the fact that there was no history of any complaints to any medical providers until over 3 months after the injury. There is no temporal relationship between the time of the accident and onset of symptoms. He was also clearly complaining of lower back

pain while being treated in his pain clinics prior to this accident (see office notes of Kentucky Bariatric and Pain Treatment). Patient also did not actually seek medical treatment for his lower back and left leg pain for 5 months after his accident, or in February 2010.

Dr. Vaughan opined the lumbar discectomy was unrelated to the motor vehicle accident based upon the lack of complaint, history or treatment for several months, as well as the pre-existing back problems which were treated at the pain clinic immediately prior to the accident. Rather, he noted the herniated discs were more likely due to the natural aging process. Dr. Vaughan assessed a 5% impairment rating for his lower back based upon the AMA Guides, but he did not relate any of the impairment to the accident. Dr. Vaughan noted restrictions of no lifting more than 25 pounds and avoidance of repetitive bending and twisting of his back. He reiterated the restrictions had no relation to the accident.

Swartz submitted the report of Dr. Primm, an orthopedic surgeon, dated October 4, 2011. Dr. Primm noted complaints of neck and back pain, intermittent numbness in both legs, and trouble sleeping, and current medications of Oxycodone, Soma and sleeping pills. He diagnosed chronic neck and back pain requiring pain management prior to the

September 18, 2009 accident and cervical strain and chest contusion following the accident. When asked whether Riddle sustained any permanent harmful change to the human organism regarding the cervical spine as a result of the work accident, Dr. Primm stated as follows:

I do not feel there is objective evidence that this individual sustained any "permanent harmful change to the human organism" as it relates to his cervical spine or lumbar spine following the 9/18/09 motor vehicle accident. Also, I tend to agree with Dr. Vaughn,[sic] in that, I really cannot relate any of his lumbar complaints to the motor vehicle accident, since I noted he reported no complaints of back pain following the 9/18/09 motor vehicle accident to his pain management physicians for over three months after his motor vehicle accident. That is, when reviewing his records, I noted that, for several months after the accident, he reported no new symptoms.

Dr. Primm also noted Riddle's treatment for his cervical spine remained the same for months following the accident and therefore opined the continued treatment for his cervical spine after the accident was not attributable to the motor vehicle accident. Regarding Riddle's cervical spine, Dr. Primm assessed a 5% impairment rating pursuant to the AMA Guides all attributable to pre-existing active conditions. He noted no restrictions or future medical treatment arising from the motor vehicle accident. He

further opined Riddle had reached MMI regarding his cervical spine and maintained the capacity to return to the same type of work he performed at the time of the accident.

Swartz submitted the report from the evaluation performed by Dr. Shraberg, a psychiatrist, dated May 18, 2011. Riddle complained of chronic pain and Dr. Shraberg noted he had remained on the same regimen of narcotics he had been on for years consisting of Xanax, Oxycodone and Meloxicam. Riddle denied flashbacks or significant symptoms of post-traumatic stress disorder, but complained of lack of activity due to the alleged injuries. Dr. Shraberg noted Riddle's prior neck injury occurring at Central Rock and his treatment for chronic neck and back pain for several years. This included using the "Florida Pipe Line" to receive narcotics. He noted the Florida clinic where Riddle had treated was no longer in business, having been targeted by law enforcement raids. Dr. Shraberg also noted treatment at KBPM prior to and after his September 18, 2009 accident and prescriptions for Roxicodone, Xanax and Soma at the time of the accident. Dr. Shraberg opined Riddle had remained dependent on Xanax and narcotics for many years before and after the accident.

Dr. Shraberg diagnosed substance dependency, narcotics and Xanax, for at least seven to ten years

predating the September 18, 2009 accident, with chronic neck and back pain, and insomnia. Dr. Shraberg opined it would be in Riddle's best interest to detoxify, be maintained on anti-inflammatory medicine and return to work. Dr. Shraberg further stated:

In my opinion, whatever degree of pain he had from his degenerative back disease or disc disease was relieved by the surgery. His present pain is addictive pain related to his long-standing dependence on narcotics and would be remedied by discontinuation. There is no evidence of a mood disorder induced by the injury nor restrictions that would be attributable to legitimate pain at his junction. He has 0% permanent psychiatric impairment, therefore, utilizing Chapters 14 and 18 of the Fifth Edition AMA Guidelines.

Dr. Shraberg also testified by deposition on August 1, 2011. In forming his opinion, he found noteworthy Riddle's history of controlled substances due to pain problems which occurred when working at Central Rock, including his prescription for Oxycodone and Soma for a number of years prior to the September 18, 2009 accident, and his use of the Kentucky to Florida pipeline to get his medications. Following the September 18, 2009 accident, Dr. Shraberg testified Riddle continued on the same type of drugs. He also noted Riddle made no psychiatric complaints in his deposition, medical records or history related to a

post-traumatic stress disorder, such as flashbacks, nightmares, and difficulty driving. Dr. Shraberg opined no psychiatric diagnosis arose from the effects of the September 2009 motor vehicle accident and assessed a 0% impairment rating pursuant to the AMA Guides. He further testified no restrictions were attributable to the effects of the September 2009 motor vehicle accident and he did not believe the accident's effects played any role in Riddle's need to go through a detoxification program.

Finally, Riddle submitted addendum reports by Dr. Bilkey and Dr. Perri. Dr. Bilkey prepared two reports, one dated August 4, 2011 and another dated October 20, 2011, in which he expressed his disagreement with the medical opinions of Drs. Vaughan and Primm. Dr. Perri also filed a report in which he expressed his disagreement with the psychiatric opinion of Dr. Shraberg.

In the opinion and order rendered January 15, 2012, the ALJ found as follows:

The first issues for determination are whether or not Mr. Riddle suffered an injury as defined by the Act, which encompasses the issue of whether or not his low back, neck, and psychiatric conditions are causally related to the motor vehicle accident [sic] September 18, 2009.

KRS 342.0011 (1) defines injury as meaning "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. Injury...shall not include a psychological, psychiatric, or stress-related change in the human organism, unless it is a direct result of a physical injury." The Plaintiff bears the burden of proof and risk of non-persuasion in each and every element of his case. *Snawder vs. Stice*, 576 SW 2d 276 (KY App. 1979), *Jones vs. Newberg*, 890 SW 2d 284 (KY 1994).

Mr. Riddle alleges that as a result of the September 18, 2009, motor vehicle accident he aggravated his chronic cervical spine condition, injured his lumbar spine, resulting in his undergoing low back surgery, and developed psychiatric problems consisting of post-traumatic stress disorder and major depression as a result of dealing with his chronic pain condition resulting from the motor vehicle accident.

Mr. Riddle supports this position with medical testimony from Dr. Bilkey who opined that at least a portion of his cervical and lumbar spine conditions are causally related to the September 18, 2009, motor vehicle accident and from Dr. Perri who opined that Mr. Riddle suffers from post-traumatic stress disorder, as well as major depression that he believes is related to the chronic pain resulting from [sic] September 18, 2009, motor vehicle accident.

Mr. Riddle argues that while he had been treating at a pain clinic, and receiving narcotic pain medication,

muscle relaxers, and Xanax, for several years prior to this motor vehicle accident, he was able to work without difficulty but now as a result of his accident he is no longer able to work and is totally disabled.

Swartz Enterprises argues that Mr. Riddle suffered nothing more than minor injuries as a result of the September 18, 2009, work-related incident. They [sic] argue that his current cervical spine condition and lumbar spine condition are not causally related to the September 18, 2009, work-related incident and that he does not suffer from post-traumatic stress disorder, or major depression as he alleges.

Swartz Enterprises supports their [sic] position with testimony from Dr. Vaughan and Dr. Primm both whom opined that Mr. Riddle's lumbar spine condition is not causally related to [sic] September 18, 2009, work-related incident nor is in the need for his lumbar surgery. Both doctors set forth that Mr. Riddle did not complain of low back problems to the doctors at the pain clinic, that he was seen on a monthly basis, and receiving medications, from September 2009 through March of 2010. Both doctors were of the opinion that Mr. Riddle's complaints of low back pain had no temporal relationship to the motor vehicle accident.

In regard to his cervical spine complaints, both doctors were of the opinion that his cervical spine problems were purely pre-existing and active and that the medications he was taking both before and after the motor vehicle accident remained the same.

In regards[sic] to Mr. Riddle's allegations that he suffers and[sic]

psychiatric problems as a result of his physical injuries Swartz Enterprises submitted medical proof from Dr. Shraberg who opined that Mr. Riddle did not suffer from post traumatic stress disorder nor did he suffer from major depression that was causally related to the September 2009 motor vehicle accident.

In fact, Dr. Shraberg felt that Mr. Riddle suffered from substance dependency for [sic] least 7-10 [sic] predating the motor vehicle accident with chronic neck and back pain and insomnia complaints.

In this specific instance, after careful review of the lay and medical testimony, the Administrative Law Judge is simply not persuaded that that[sic] Mr. Riddle has met his burden of proving that he suffered an injury as defined by the Act to his lumbar spine, cervical spine, or psychiatrically as a result of the September 18, 2009, motor vehicle accident. In so finding, the Administrative Law Judge finds persuasive and relies upon the opinions of Dr. Vaughan, Dr. Primm, and Dr. Shraberg.

Mr. Riddle's story simply does not add up. It is readily apparent to the undersigned Administrative Law Judge that Mr. Riddle has a substance abuse problem as evidenced by the fact that he has traveled to Florida to treat at pain clinics and has continued to seek out pain clinics that will continue to prescribe him narcotic pain medications, muscle relaxers, and Xanax to enable him to feed his addiction. Mr. Riddle has been operating in this fashion for the last 7-10 years and is now attempting to use this claim of injuries from the motor vehicle accident of September 18,

2009, as a means to pay for his continued use of the medications that he is clearly dependent/addicted to.

Therefore, the Administrative Law Judge finds that Mr. Riddle has failed to prove that he suffered an injury as defined by the Act which would entitle him to any additional Worker's Compensation benefits, therefore his claim shall be dismissed.

Due to the foregoing findings the remaining issues herein are deemed moot.

. . . .

**ORDER**

IT IS HEREBY ORDERED AND ADJUDGED AS FOLLOWS:

The Plaintiff, John Riddle's claim for Worker's Compensation benefits for an alleged injury to his low back, neck, and psychiatrically, resulting from the motor vehicle accident on September 18, 2009, against the Defendant Employer, Swartz Enterprises, and/or their [sic] insurance carrier, shall be and the same is hereby DISMISSED.

In his petition for reconsideration, Riddle argued the ALJ erred in dismissing his low back and psychological injury claims and requested the ALJ award indemnity and medical benefits accordingly. Regarding Riddle's low back claim, he argued, as he does on this appeal, the medical opinions of Dr. Vaughan and Dr. Primm cannot constitute

substantial evidence pursuant to Cepero. Specifically, Riddle states:

Dr. Vaughan evaluated for the Defendant/Employer and incorrectly reported there was no history of any complaints or treatment for several months following the September 18, 2009 work-related injury and asserts Mr. Riddle did not seek medical treatment for Low Back and Left Leg symptoms until 5 months following the work-related injury. Dr. Primm agreed with Dr. Vaughan and noted Mr. Riddle did not report any complaints of Low Back pain for three months following the September 18, 2009 work-related injury and did not report any Back symptoms to the pain management physicians for over three months. Dr. Vaughan and Dr. Primm reported Mr. Riddle had a pre-existing history of Lower Back complaints.

In support of this argument, Riddle points to the September 18, 2009 Jewish Hospital record noting left flank pain, the December 31, 2009 and January 29, 2010 KBPM notations of left leg pain and the October 2, 2009 KBPM notation of a head-on collision. He also requested, as he does on this appeal, additional findings of fact regarding his entitlement to "temporary medical benefits" pursuant to Robertson v. United Parcel Service, supra, and argues at the very least, he is entitled to medical benefits for the initial treatment provided by Louisville Metro EMS and Jewish Hospital. The ALJ denied Riddle's petition for reconsideration by order dated February 17, 2012.

As the claimant in a workers' compensation proceeding, Riddle had the burden of proving each of the essential elements of his cause of action including causation/work-relatedness of the alleged injuries. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Riddle was unsuccessful before the ALJ regarding work-relatedness/causation, the question on appeal is whether the evidence compels 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).

In rendering a decision, KRS 342.285 grants the ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. AK Steel Corp. v. Adkins, 253 S.W.3d 59 (Ky. 2008). The ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979); Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). Although a party may note evidence supporting a

different outcome than 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). The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings are so unreasonable they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 200). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 79 (Ky. 1999).

That said, we find the evidence does not compel a finding of lumbar, cervical or psychological injuries resulting from the September 18, 2009 motor vehicle accident. The ALJ found the opinions of Dr. Vaughan, Dr. Primm, and Dr. Shraberg most persuasive. Likewise, it is abundantly clear the ALJ did not find Riddle credible. Dr. Vaughan opined Riddle's lower back condition did not result from the September 18, 2009 accident noting 1) no history of any complaints to any medical providers until over 3 months after the injury; 2) no temporal relationship between the time of the accident and onset of symptoms; 3) prior low back complaints while being treated in his pain clinics; and

4) no medical treatment sought for his lower back and left leg pain until five months after his accident. Dr. Vaughan also noted Riddle stated he did not seek medical care until February 2010. Dr. Primm opined Riddle did not suffer a cervical or lumbar injury as a result of the September 18, 2009 accident noting his agreement with Dr. Vaughan. Riddle also did not report back pain complaints to his pain management physicians for over three months after the accident and his cervical spine treatment remained the same for months following the accident. Dr. Shraberg opined Riddle did not suffer from post-traumatic stress disorder due to the motor vehicle accident. He did however diagnose substance dependency.

We find no merit in Riddle's argument Cepero v. Fabricated Metals Corp., supra, precludes Dr. Vaughan's and Dr. Primm's opinions from constituting substantial evidence. Cepero involved a complete failure to disclose and affirmative efforts by the employee to cover up a significant prior injury occurring two and a half years prior to the alleged work-related injury. In the case *sub judice*, Riddle merely points to conflicting evidence supporting his position, i.e., a complaint of "left flank pain" at the emergency room, a notation of left leg pain on December 31, 2009 and January 29, 2010, and a notation of a

head-on collision on October 2, 2009. Therefore, the evidence does not compel a finding of lumbar, cervical or psychological injuries as a result of the September 18, 2009 motor vehicle accident.

There is no question the motor vehicle accident occurred and Riddle was taken to the hospital for treatment. Regarding Riddle's argument for temporary medical benefits pursuant to Robertson v. United Parcel Service, supra, we vacate and remand the ALJ's decision. In Robertson, the Kentucky Supreme 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.

In his decision, the ALJ noted Swartz had made TTD payments, however he made no finding Riddle was entitled to an award of TTD benefits. On remand, the ALJ is directed to determine whether Riddle was temporarily totally disabled due to the injury, and if so, the appropriate period of TTD benefits. Likewise, if the ALJ determines Riddle is entitled to a period of TTD benefits, he is directed to determine whether Riddle is entitled to a temporary award of medical benefits pursuant to FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007).

Accordingly, we **AFFIRM IN PART** the January 15, 2012 opinion and order and the February 17, 2012 order on petition for reconsideration concluding Riddle did not suffer cervical, lumbar or psychological injuries as a result of the September 18, 2009 motor vehicle accident and **VACATE AND REMAND IN PART** for further determination on entitlement to temporary total disability benefits and medical benefits.

ALL CONCUR.

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