

OPINION ENTERED: November 16, 2012

CLAIM NO. 201182770

JUDY BALLARD

PETITIONER

VS.

**APPEAL FROM HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE**

FAY'S MOBILE HOME
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Judy Ballard ("Ballard") seeks review of the Opinion and Order rendered June 6, 2012 by Hon. Chris Davis, Administrative Law Judge ("ALJ") dismissing her claim against Fay's Mobile Home ("Fay's") for failure to prove either a temporary or permanent work-related injury occurring on June 22, 2011. Ballard also appeals from the

order rendered July 23, 2012 denying her petition for reconsideration.

On appeal, Ballard argues the ALJ's finding she sustained no work-related injury is clearly erroneous based upon the nature and consistency of her complaints, the medical testimony of her treating physicians and her treatment for pain. Ballard argues Dr. O'Keefe's opinion should be given little weight since her treating physicians opined she did sustain a work-related injury. She also argues, as a neurologist, Dr. O'Keefe does not specialize in the treatment of the spine. She further argues Fay's failed to offer substantial evidence her prior back condition was active immediately prior to the June 22, 2011 injury. Finally, Ballard argues she is entitled to the temporary total disability ("TTD") benefits, which were terminated on October 25, 2011.

Ballard testified by deposition on February 1, 2012, and at the hearing held April 25, 2012. Ballard was born on July 24, 1961 and resides in Bowling Green, Kentucky. She completed the eleventh grade and does not have any specialized training or certifications. Ballard began working for Fay's in April 2003 as a helper/carpenter and was working in that capacity on June 22, 2011. As a helper/carpenter, Ballard testified she would paint, tile,

patch, remove and replace drywall, tear out and install flooring and hang cabinets. Ballard testified her husband, Mark Ballard ("Mark"), also worked for Fay's at the time she was injured.

Ballard testified on June 22, 2011, she and Mark were replacing a floor in a mobile home. As they were carrying a four feet by eight feet sheet of OSB board from their vehicle to a home, Ballard testified she felt pain in her tail bone, shooting down her right leg and into her foot. She was not twisting or bending when she experienced the onset of pain. Ballard testified she did not know how much a four feet by eight feet OSB board weighed, but stated it requires two people to carry it.

Ballard testified she currently experiences pain across her low back, down through her buttocks, right leg and foot. Her right leg is frequently cold, and her right foot feels as if it is in a vise. She also complains of numbness and a lack of control in three of her toes. Ballard denies having similar problems previously and testified she has been unable to return to work since the incident. Ballard testified she cannot perform most of the job duties she was performing at the time of the work incident due to her current condition.

Ballard began treating with Dr. Chhabra at Corpcare on June 23, 2011, who ordered x-rays, prescribed medication, administered two shots and referred her to physical therapy with Bluegrass Outpatient Center. Dr. Chhabra also prescribed a wheelchair due to her right leg problems. Ballard testified she was then referred to Dr. Taleghani in September 2011. He ordered an MRI of the lumbar spine and an x-ray of her right hip. He recommended "a blocker" and referred her to a pain specialist, Dr. Pasupuleti. The blocker has not been done due to the denial by workers' compensation. Ballard testified her treatment received to date has not helped alleviate her pain.

Ballard testified she suffered a work-related arm injury in 2004. In 2006, Ballard injured her low back and neck in a motor vehicle accident ("MVA"). As a result of the MVA, Dr. Lewis from Louisville Orthopedics performed a plasma mediated percutaneous discectomy on her neck, and later operated on her lower back in August 2007. Subsequently, Ballard's low back problem completely resolved and she returned to work in November 2007 with no restrictions. In 2009, Ballard testified she injured her mid back while working for Fay's, which shortly resolved. Other than the 2009 incident, Ballard testified she was

essentially pain free from November 2007 until June 22, 2011.

Ballard testified she received TTD benefits in the amount of \$442.00 every two weeks, which were terminated on October 25, 2011. On the same date, the workers' compensation insurer also stopped paying for her medical treatment.

Mark also testified at the hearing held on April 25, 2012 and confirmed he was working with Ballard on June 22, 2011. Mark testified he did not know how much the four feet by eight feet sheets of OSB board weighed, but stated it is hard for him to carry by himself. Mark testified since the June 22, 2011 incident, Ballard cannot do many activities and walks with a constant limp. Mark acknowledged Ballard had a prior low back surgery in 2007 as a result of a motor vehicle accident. He testified following the 2007 surgery, Ballard did not have the problems and complaints she currently experiences. Ballard was able to do all or most of the same job duties she was able to perform prior to the MVA.

In support of the Form 101, Application for Resolution of Injury Claim, Ballard attached the medical records of Dr. Shalini Chhabra from Corpcare. Ballard first treated with Dr. Chhabra on June 23, 2011 complaining of

severe low back pain radiating down her right leg after picking up flooring material at work on June 22, 2011. Dr. Chhabra noted Ballard had been doing fine following her prior low back surgery. Dr. Chhabra assessed discogenic low back pain and right leg radiculopathy. She ordered a lumbar spine x-ray, prescribed medication, administered an injection and referred Ballard to physical therapy. She restricted Ballard to a sitting job only, no lifting, pushing or pulling over five pounds and no bending, stooping or twisting. Dr. Chhabra later restricted Ballard from work. Ballard continued to treat with Dr. Chhabra through August 10, 2011, but showed little improvement. In a July 18, 2011 record, Dr. Chhabra prescribed a walker and wheelchair. On August 10, 2011, Dr. Chhabra noted Ballard had been discharged from physical therapy due to a lack of improvement and had been in a wheelchair for the last two to three weeks due to right leg weakness. Dr. Chhabra referred Ballard to a neurosurgeon, ordered an MRI and refilled her prescription medication.

Ballard also filed the physical therapy records from Bluegrass Outpatient Center dated June 22, 2011 through July 20, 2011.

Fay's subsequently filed a medical fee dispute on January 20, 2012 to preserve its ability to contest the

compensability of future medical expenses, and relied upon the report of Dr. Dennis O'Keefe. Dr. Christopher Taleghani and Dr. Shalini Chhabra were joined as parties to the claim by order dated January 31, 2012.

Fay's submitted the October 21, 2011 medical report of Dr. Dennis O'Keefe, a neurologist, who evaluated Ballard on October 18, 2011. He noted in 2004 or 2005, Ballard underwent a pronator release and a carpal tunnel release of the right. Ballard reported she was in a motor vehicle accident in 2007 injuring her neck and low back. Treatment included plasma disc decompressions performed in both the cervical and the lumbar spine. Ballard was off work for approximately one year and then returned to work without restriction. In 2009, Ballard injured her mid back causing her to miss work for a short time, but then returned with no problems. On June 22, 2011, Ballard reported she developed pain in her buttock and right leg as she was carrying a piece of plywood flooring material while at work for Fay's.

Dr. O'Keefe noted complaints of pain in her low back and right buttock, radiating down the right leg and into her foot. Ballard also complained of coldness in her right leg, soreness at the base of her foot, hypersensitivity with three toes on the right foot and

general right leg weakness. Dr. O'Keefe noted Ballard exhibited markedly histrionic behavior with episodes of tearfulness, moaning, groaning, and stiff, irregular movements. Upon physical examination, he found no evidence of weakness, reflex changes or sensory loss involving the lower extremity. He reviewed an x-ray of the right hip, noting it was essentially normal. He also reviewed an MRI of the lumbar spine dated September 21, 2011 and opined it showed very modest degenerative changes. He found no evidence of significant lumbar spinal stenosis or nerve root compression at the L3-4, L4-5 or L5-S1 disc space levels.

Dr. O'Keefe diagnosed mild degenerative disc disease of the lumbar spine without evidence of central canal stenosis or focal nerve root compression and markedly histrionic behavior, strongly suggestive of malingering. He noted the objective medical findings include the MRI, his physical examination revealing Ballard had normal strength, reflexes and sensation in her low extremities and a number of "pain behaviors" suggesting nonorganic pain. He opined none of the objective findings result from the June 22, 2011 work-related injury. He noted Ballard did not suffer any significant injury to the lumbar spine or leg as a result of the June 22, 2011 event, and she would have reached maximum medical improvement ("MMI") on or about June 23, 2011.

Pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. O'Keefe opined Ballard did not suffer any permanent impairment as a result of the June 22, 2011 event and assigned a 0% impairment rating. He noted Ballard is capable of returning to work, requires no permanent restrictions, and does not require any further medical treatment, diagnostic testing or narcotic analgesics.

Fay's also submitted a supplemental report by Dr. O'Keefe dated February 28, 2012. He stated he reviewed the medical records of Dr. Lewis from 2006 through 2008. Dr. Lewis performed plasma mediated discectomy at the L4-5 and L5-S1 disc space levels. Dr. Lewis assigned a 12% impairment rating due to her lumbar spine injury. When asked if Ballard had a pre-existing, active back condition, Dr. O'Keefe opined she had a 5% impairment rating pursuant to the AMA Guides. He also noted he disagreed with the opinion of Melissa Collings, a physician's assistant associated with Dr. Taleghani, expressed in a November 17, 2011 medical record.

Dr. O'Keefe testified by deposition on March 19, 2012. He reiterated and confirmed his October 21, 2011 opinion. Dr. O'Keefe opined the September 21, 2011 lumbar spine MRI demonstrated very modest degenerative changes with

no evidence of major central canal stenosis or nerve root compression and he disagreed with Ms. Collings' interpretation. He again noted Ballard's neurological exam was essentially normal and opined Ballard demonstrated a number of histrionic and theatrical behaviors, as well as symptom magnification. Dr. O'Keefe testified there were no objective signs consistent with the severity of her complaints.

Dr. O'Keefe testified there is no indication of sacroiliac joint abnormality based on her x-ray and examination and noted Ballard's injury mechanism would not be significant enough to cause a sacroiliac problem. Dr. O'Keefe doubted Ballard suffered any injury at all on June 22, 2011, and opined if she did suffer an injury, it would have been temporary and long since resolved. Dr. O'Keefe clarified the 5% impairment rating he assigned in the February 2012 letter is related to her prior low back problems and not related to the June 22, 2011 work event. He testified Ballard did not need further medical treatment, and he saw no indication she needed a wheelchair or injection therapy.

Ballard filed a response to the medical fee dispute noting the June 22, 2011 event and subsequent treatment with Drs. Chhabra and Taleghani, included a lumbar

spine MRI showing a disc herniation at L3-4 and L4-5 and stenosis. Ballard attached to the response, the November 17, 2011 medical record by Melissa Collings, a physician's assistant associated with Dr. Taleghani at Cumberland Brain and Spine. Ms. Collings noted Ballard visited without being evaluated by pain management for possible sacroiliac joint injections versus lumbar epidural steroid injections due to denial by workers' compensation. Ms. Collings noted the lumbar MRI shows "a mild disc herniation off to the left at L3-4 and a moderate-sized disc herniation at L4-5 causing bilateral foraminal stenosis right greater than left." She recommended Ballard be evaluated by pain management for epidural steroid injections versus sacroiliac joint injections, as well as physical therapy. Ms. Collings stated Ballard would remain off work. She also noted her disagreement with Dr. O'Keefe's opinion.

Fay's also submitted the Utilization Review, Notice of Denial and the Physician Review Report by Dr. Bart Olash dated November 8, 2011. Dr. Olash reviewed Ballard's medical history and treatment, noting the September 21, 2011 MRI demonstrated minimal degenerative disc disease, with no significant spinal stenosis or nerve root impingement. He also noted an x-ray of the right hip demonstrated some degenerative changes in the bilateral SI joint and the lower

lumbar spine. Dr. Olash agreed with Dr. O'Keefe's opinion. He opined Ballard suffered a minor injury on June 22, 2011, which was at most a minor musculoligamentous strain of the lumbar spine, long since resolved. Dr. Olash noted Ballard has marked complaints not associated with corresponding objective findings on physical exam or radiographic study. He opined no further medical treatment is necessary, including physical therapy, use of a wheelchair, visits with Dr. Taleghani, and Hydrocodone, Gabapentin, Robaxin or Mobic. He recommended a home exercise program and use of over the counter medication.

In a letter dated February 5, 2012, Dr. Olash reiterated his agreement with Dr. O'Keefe's opinion in its entirety. He diagnosed minor musculoligamentous strain to the lumbar spine as a result of the June 22, 2011 work incident. Such an injury should have been treated with activity modification, four weeks of physical therapy and short-term use of nonsteroidal anti-inflammatory agent, mild narcotic analgesic and/or muscle relaxer. Thereafter, Ballard should reach MMI and require no further evaluation or care.

Both parties submitted medical records from Dr. Christopher Taleghani, a neurosurgeon from Cumberland Brain and Spine. On September 1, 2011, Dr. Taleghani noted

complaints of right sided low back pain radiating down her right leg, mild numbness and paresthesias, and difficulty walking necessitating the use of a wheelchair. Dr. Taleghani ordered a lumbar MRI, x-ray of the right hip and physical therapy. He recommended Ballard remain off work and ordered her to continue using a wheelchair secondary to lower extremity instability. On September 22, 2011, Dr. Taleghani noted the lumbar MRI shows an L4-5 disc bulge with bilateral foraminal stenosis and facet hypertrophy. The hip x-ray showed some arthritic changes to the bilateral sacroiliac joints. He then referred Ballard to Dr. Pasupuleti for evaluation and treatment, with possible epidural versus sacroiliac joint injections. Ballard also saw Ms. Collins on November 17, 2011 as noted above. On March 15, 2012, Dr. Taleghani opined Ballard's pain complaints stemmed from either her sacroiliac joint or her disc herniation at L4-5 causing lateral recess, foraminal stenosis or both. In order to determine which is causing Ballard's pain, he recommended Ballard have a sacroiliac joint injection, followed by transforaminal epidural injections. He also recommended Ballard remain off work until she had the injections.

The parties submitted diagnostic studies performed at Western Kentucky Diagnostic Imaging on September 21,

2011. A right hip x-ray demonstrated degenerative changes within the bilateral sacroiliac joints and lower lumbar spine, and no acute bony abnormality. A lumbar MRI showed minimal diffuse disc bulge at L3-4 and L5-S1, diffuse disc bulge at L4-5 and no evidence of nerve root impingement at any level. It demonstrated:

Multilevel spondylosis of the lumbar spine. This results in mild central canal stenosis at L4-5 with bilateral neuroforaminal narrowing at this level. There is also minimal left neuroforaminal narrowing at L3-4.

Dr. Taleghani testified by deposition on April 24, 2012. He reviewed Ballard's treatment history and also noted her previous low back surgery in 2007. He testified the lumbar MRI showed Ballard had lumbar spondylosis, mild central canal stenosis at L4-5, narrow foraminal narrowing at L4-5 and minimal narrowing at L3-4. The right hip x-ray showed some mild degenerative changes within the sacroiliac joints. Dr. Taleghani testified the above diagnostic studies meant her pain was either stemming from her sacroiliac joint or from her disc bulge. Therefore, he recommended the sacroiliac joint injections, and if they were unsuccessful, an epidural injection at L4-5.

Dr. Taleghani testified there is no evidence indicating Ballard had back problems from 2007 to 2011 and

he was unaware of whether she was restricted from work on June 22, 2011. Dr. Taleghani testified her disc disease was fairly dormant at the time of the accident and knew of no active impairment or any reports of pain preceding the June 22, 2011 event.

Dr. Taleghani disagreed with Dr. O'Keefe's opinion noting he is not a neurosurgeon, orthopedic spine surgeon, nor an occupational medicine doctor. He testified Dr. O'Keefe is a neurologist and not qualified to diagnose sacroilitis.

Dr. Taleghani testified Ballard's current symptoms and treatment result from her June 22, 2011 accident. He testified his findings upon physical examination were consistent with a lumbar spine injury, including weakness and radicular symptoms. He testified Ballard did not show any signs of malingering. He further opined if Ballard has sacroilitis, the June 22, 2011 event either caused or exacerbated her condition. Dr. Taleghani testified Ballard had not reached MMI since he has not been able to diagnose the source of her pain. He testified Ballard cannot return to work for Fay's due to the effects of the June 22, 2011 incident.

Fay's submitted medical records from Dr. Norman Lewis dated December 26, 2006 through November 25, 2008

indicating treatment for low back and neck injuries sustained as a result of a November 2006 motor vehicle accident. Dr. Lewis performed a plasma mediated discectomy at C3-4, C4-5 and C5-6 on February 5, 2007 and later a percutaneous plasma mediated discectomy at L4-5 and L5-S1 on August 6, 2007. On September 9, 2007, Dr. Lewis noted complete relief from low back pain and opined Ballard had attained MMI. He assessed a 13% impairment rating due to cervical discectomies and a 12% due to lumbar discectomies. In a note dated November 25, 2008, Dr. Lewis noted Ballard returned complaining of low back pain and difficulty working. He diagnosed continued axial low back pain without radiculopathy secondary to a contained disc herniation L5-S1. Dr. Lewis recommended medication with possible epidural steroid therapy.

In the benefit review conference ("BRC") order dated April 25, 2012, the ALJ noted the claim had been bifurcated on the issues of compensability of medical treatment recommended by Dr. Taleghani and TTD benefits. The parties stipulated TTD benefits were paid from July 23, 2011 to October 25, 2011.

In the Opinion and Order dated June 22, 2012, the ALJ dismissed Ballard's claim in its entirety for failure to

prove a work-related injury, temporary or permanent, stating as follows:

In analyzing this claim the Administrative Law Judge has reviewed all of the evidence in this claim, as summarized above. The Administrative Law Judge has also reviewed the parties' briefs and arguments.

The Plaintiff has had a pre-existing low back condition which resulted in surgery and the assignment of an impairment rating. Then, while the normal course of her job duties she alleges a low back injury, witnessed only by her husband. As a result the alleged injury she is now, by her estimation, confined to a wheelchair. It is no matter, to me, that subsequent to her own choice to use a wheelchair that some physicians validated her use of the wheelchair. The fact remains there is absolutely no objective evidence, either through the mechanism of injury or objective diagnostic testing that would justify the use of wheelchair.

The undersigned need to [sic] not divine a reason for why the Plaintiff is using a wheelchair nor explain away her symptoms or allegations. The simple fact is I do not believe that she sustained any traumatic injury to her low back, at work or otherwise, on June 22, 2011 and cumulative trauma injury, work-related or otherwise, has been proven.

The fact that TTD and some medical benefits were paid is no bar at law or fact to this decision.

In reliance on Dr. O'Keefe the Plaintiff's claim for any work-related

injury and benefits thereto, is dismissed for failure to prove any work-related injury.

In her petition for reconsideration, Ballard argues, as she does in her appeal, the ALJ's finding of no work-related injury contrary to the evidence submitted by Ballard, including the medical opinion of her treating physician, Dr. Taleghani. She notes the fact pattern of her complaints, the medical history and treatment for pain are consistent with an onset of a work-related injury on June 22, 2011 - either sacroilitis or a lumbar disc injury. Ballard also argued there is no evidence Ballard suffered any similar pain in the four years prior to June 22, 2011. Ballard also requested an order requiring Fay's to pay TTD benefits. The ALJ denied her petition by order dated July 23, 2012.

On appeal, Ballard states the standard of review is *de novo*. On appeal, Ballard also argues she did not have a pre-existing, active impairment at the time of the work incident pursuant to Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007). Ballard notes she had been working without restriction since 2007 and testified her prior low back pain had completely resolved in 2007. Ballard also notes Kentucky does not require work to be the sole cause of the injury and argues the question is whether work caused,

aggravated, or accelerated the onset of disability, citing to McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (Ky. 2011). Pursuant to Dr. Taleghani's opinion, Ballard either has sacroilitis or a lumbar disc injury, both of which would be at least exacerbated, if not caused by, the June 22, 2011 event.

Ballard argues Dr. O'Keefe's opinion Ballard did not suffer a work-related injury should be afforded little weight since 1) it contradicts the opinions her treating physicians, Drs. Chhabra and Taleghani; 2) defendants tend to choose examining doctors who tell them what they want to hear; and 3) Dr. O'Keefe is a neurologist and does not specialize in the treatment of the spine. Finally, Ballard argues she is entitled to TTD benefits until she is able to return to work. Ballard argues she has not attained MMI and her treating physician opined she cannot return to work under her current condition.

We first note Ballard erroneously asserts the standard of review is *de novo*. As the claimant in a workers' compensation proceeding, Ballard had the burden of proving each of the essential elements of her cause of action including the occurrence of a work-related injury and entitlement to TTD benefits. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Ballard was

unsuccessful before the ALJ, the question on appeal is whether the evidence compels a finding in her 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. 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 reasonable inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 79 (Ky. 1999).

We cannot say the ALJ's determination finding Ballard did not sustain a traumatic injury to her low back at work on June 22, 2011 is so unreasonable based upon the evidence that it must be reversed as a matter of law. We note the evidence of record contains two medical opinions supporting the ALJ's conclusion. Dr. O'Keefe diagnosed mild degenerative disc disease of the lumbar spine without evidence of central canal stenosis or focal nerve root compression and markedly histrionic behavior, strongly suggestive of malingering. He noted Ballard did not suffer any significant injury to the lumbar spine or leg as a result of the June 22, 2011 event and would have reached MMI on or about June 23, 2011. Dr. O'Keefe opined Ballard did not suffer any permanent impairment and assigned a 0% impairment rating. He found Ballard is capable of returning to work, requires no permanent restrictions, and does not require any further medical treatment.

Dr. Olash opined Ballard suffered a minor injury on June 22, 2011, at most a minor musculoligamentous strain of the lumbar spine, which has long since resolved. He noted Ballard has marked complaints not associated with corresponding objective findings on physical exam or radiographic study. He opined no further medical treatment is necessary, including physical therapy, use of a wheelchair, visits with Dr. Taleghani and the medications of Hydrocodone, Gabapentin, Robaxin or Mobic. Dr. Olash also stated he agreed with the opinion of Dr. O'Keefe.

Ballard's arguments essentially point to conflicting evidence in the record, mainly the testimony and records of Dr. Taleghani, supporting a more favorable outcome. This is not an adequate basis to reverse on appeal and we find the evidence does not compel a finding of a work-related injury occurring on June 22, 2011. We also note nothing in Chapter 342 or the applicable regulations mandate greater weight be afforded to a treating physician's testimony. Sweeney v. King's Daughters Medical Center, 260 S.W.3d 829, 830 (Ky. 2008).

That said, we also note the ALJ did not misapply the law regarding pre-existing conditions and find Finley v. DBM Technologies, supra, and McNutt Construction, supra, are not applicable. In Sweeney v. King's Daughters Medical

Center, 260 S.W.3d 829, 833 (Ky. 2008), the Supreme Court noted as follows:

Finally, the ALJ did not misapply the law regarding pre-existing conditions. McNutt Construction/First General Services v. Scott, 40 S.W.3d 854, 859 (Ky. 2001), stands for the principle that "[w]here work-related trauma causes a dormant degenerative condition to become disabling and to result in a functional impairment, the trauma is the proximate cause of the harmful change; hence, the harmful change comes within the definition of an injury." [footnote omitted] It is inapplicable in the present situation because the ALJ relied on medical evidence that work-related trauma caused no permanent harm and because no overwhelming medical evidence compelled otherwise.

In Blankenship v. Wal-Mart Stores, Inc., 2011-SC-000131-WC, rendered September 22, 2011, Designated Not To Be Published, the Supreme Court stated:

The court determined ultimately that the dispute over whether the injury caused a dormant pre-existing condition to become disabling was inapplicable because the ALJ found the critical issue to be whether a work-related injury actually occurred. Noting that the ALJ found the claimant to be untruthful, the court found no error in the decision to reject his evidence of causation because the physicians testifying on his behalf based their opinions on a false history.

[text omitted]

Finley and *McNutt* were inapplicable because the ALJ found the claimant not to be credible and, as a consequence, rejected medical opinions based on a history that the ALJ concluded was false.

Slip Op. at 5.

We believe the above language to be applicable in the case *sub judice*. This claim does not involve a situation where the claimant sustained a work-related injury resulting in a permanent impairment, and also had a pre-existing active condition which merited an impairment rating necessitating the impairment attributable to the active condition be carved out of the award. The ALJ relied on medical evidence in finding no work-related injury and no overwhelming medical evidence compelled otherwise. Since the ALJ determined there was no work-related trauma causing permanent harm, then there was no reason to conduct an analysis pursuant to Finley v. DBM Technologies, supra, and McNutt Construction, supra.

Accordingly, the June 6, 2012 Opinion and Order dismissing Ballard's claim and the July 23, 2012 order denying Ballard's Petition for Reconsideration by Hon. Chris Davis, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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