

Commonwealth of Kentucky  
Workers' Compensation Board

OPINION ENTERED: October 28, 2013

CLAIM NO. 201187801

JULIE CAMPS

PETITIONER

VS.

APPEAL FROM HON. ALLISON E. JONES,  
ADMINISTRATIVE LAW JUDGE

GARRARD COUNTY FISCAL COURT  
and HON. ALLISON E. JONES,  
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

and

GARRARD COUNTY FISCAL COURT

CROSS-PETITIONER

VS.

JULIE CAMPS  
and HON. ALLISON E. JONES,  
ADMINISTRATIVE LAW JUDGE

CROSS-RESPONDENT

RESPONDENT

OPINION  
AFFIRMING

\* \* \* \* \*

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

**STIVERS, Member.** Julie Camps ("Camps") appeals from the  
June 18, 2013, opinion, order, and award of Hon. Allison E.

Jones, Administrative Law Judge ("ALJ") finding Camps sustained a work-related injury to her right ankle and awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits enhanced by the three multiplier pursuant to KRS 342.730(1)(c)1, and medical benefits. Pursuant to KRS 342.710, the ALJ referred Camps to the Department for Vocational Rehabilitation Services for an evaluation. Camps also appeals from the July 8, 2013, order denying her petition for reconsideration. Garrard County Fiscal Court ("Garrard County") cross-appeals from the June 18, 2013, opinion, order, and award and the July 8, 2013, order overruling its petition for reconsideration.

The sole issue raised by Camps on appeal concerns the ALJ's calculation of her average weekly wage ("AWW") and the ALJ's failure to include the wages Camps earned from concurrent employment with Clark County Emergency Medical Services ("Clark County EMS") prior to the injury. On the date of injury, May 13, 2011, Camps was not employed by Clark County EMS and did not have concurrent employment. On cross-appeal, Garrard County challenges the award of vocational rehabilitation services.

Camps, an emergency medical technician ("EMT"), sustained an acute inversion twisting injury of her right

ankle.<sup>1</sup> She was initially treated by Dr. James R. Werkmeister who referred her to Bluegrass Orthopedics. An MRI revealed a complete tear of the anterior talofibular ligament as well as the calcaneofibular ligament. Surgery was subsequently performed by Dr. Jason Harrod on April 5, 2012. Dr. Harrod's postoperative diagnosis was: "chronic ankle pain with chronic ankle instability, right." The procedures performed were as follows:

1. Diagnostic and operative ankle arthroscopy with debridement, right ankle;
2. Open lateral ankle stabilization/Chrisman-Snook type procedure, right ankle.

Camps was evaluated by Dr. Michael Best on January 26, 2012, at the request of Garrard County. Because a second MRI of the ankle was needed to determine the status of the anterior talofibular ligament and the calcaneofibular ligament, Dr. Best declined to assess an impairment rating as Camps had not attained maximum medical improvement. Dr. Best determined Camps sustained a harmful change to the human organism which he characterized as two ligament tears of the ankle but declined to impose work

---

<sup>1</sup>See the independent medical evaluation ("IME") report of Dr. Frank Burke dated November 8, 2012.

restrictions until the status of the ligaments was determined.

The only impairment rating based on the 5<sup>th</sup> Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") was provided by Dr. Burke in his November 8, 2012, report. Dr. Burke noted after undergoing surgery Camps continued to be symptomatic. Her current symptoms were "intermittent lateral calf pain and cramping proximal to the site of harvesting of the tendon" which occurred four or five times per week after Camps walked around campus going to class. Camps had painful loss of dorsiflexion making it difficult to go up and down stairs, and to ride horses which she had done for thirty-five years. Dr. Burke noted Camps had "significant impairments with any efforts at squatting, crawling, or climbing." Her leg has "difficulty with uneven ground persistently, as well as rapidly and acute motions, such as moving away from horses."

Dr. Burke diagnosed a complete lateral ligament tear requiring reconstruction. He noted Camps had "significant improvement in the stability exam generally, although she had lost a significant amount of motion." Pursuant to the AMA Guides, Dr. Burke assessed an 8% impairment rating. He restricted Camps from activities

requiring climbing, crawling, balance on the right leg, and being around moving mechanical machinery. Since it had been over seven months since her surgery he doubted Camps' range of motion would improve.

Camps testified at the April 19, 2013, hearing that her ability to flex her toes toward her shin is limited. Because of nerve damage in her foot she is not "sure footed." Camps explained she will miss a step or a pedal and sometimes stumbles. Camps refuses to take pain medication. On cold, damp, rainy days she experiences a dull ache. If she takes a quick step or "will come out with any force" she has a lot of pain. Camps has a loss of shock absorption because the cartilage was removed. As a result, she experiences pain in her foot when she strikes the ground "hard enough."

Camps testified the injury prevents her from squatting. She explained she is now unable to lift a stretcher with weight on it because the task requires a low squat with her heels flat on the ground and her back straight when she "power[s] up." Further, her ankle will not bend enough. She believes if she tried now to engage in such lifting she would be setting herself up for a back injury. At home she asks her sons to help her lift any heavy item off the ground. Camps identified the following

significant problems she would have with returning to her previous work as an EMT:

A: ...And something that was also a common requirement was car wrecks or people getting injured or deciding - or having a medical emergency in an unusual place. I've had to, you know, go into creeks, go down steep inclines, pull people up out of, go down narrow steps. Just - I've had to navigate through all sorts of situations and I would be required to again at that job. And with the - the unsureness [sic] of my footing and the fact that I can't lift correctly, I feel like I would be not - I wouldn't be useable in the way I was before. It's not the type of job where you can just call for help. A lot of times, it's me and one person. We might be out really - in a rural area with a person where minutes matter and that's - I can't be an effective paramedic if I'm, like, oh, I have to bow out of this one. The guy is, too - you know. And - and so that's my feeling. I don't know if that's complete enough, but -

Before becoming an EMT, Camps worked in and around the horse industry. Camps' previous jobs working with horses involved handling and breaking horses. She characterized this as a dangerous and physical job which required "sure footing."

Camps testified her work history included only two non-physical jobs, a summer job working in an office at a resort and the other as a part-time school photographer while in college. At both she earned minimum wage. Aside

from those two jobs all of her other jobs involved working as an EMT or with horses.

Camps does not believe she can return to work at her pre-injury pay level. She has applied for many jobs "outside horses" and "outside fire and EMS" which are entry level, and she has not received any responses. She believes she could find a paramedic job very quickly if she were able to perform her job safely.

At the time of her injury, Camps was also a full-time student. She explained at one time she was pursuing a "B.S.N. in nursing," but decided not to pursue the degree because she would have to stand on her feet for twelve hours. Before the injury, she switched and was pursuing a degree in occupational therapy which entailed more sitting, physical therapy, and nursing. She estimated that at the time of her injury, she was twenty to thirty percent finished with her Bachelor's degree in occupational therapy. At the time of the hearing, she estimated she had completed eighty-four percent of the course requirements to obtain a Bachelor's degree at Eastern Kentucky University. After the injury she attended classes on crutches. She believes she will obtain her Bachelor's degree at the end of the 2014 spring semester. She explained an occupational therapy degree encompasses a Master's program which she has

aggressively pursued by going to school full-time the entire school year. At the time of the hearing, she had three years remaining to obtain her Master's degree. She explained a Bachelor's degree would not permit her to be employable in the occupational therapy field.

Camps testified she was not working two jobs when injured and was not working under a contract of hire with Clark County EMS. Her concurrent employment with Garrard County and Clark County EMS ended approximately seven days before the injury. Camps explained in January 2010, she moved from Winchester to Danville. Because her job only required working two twenty-four hour shifts a week she continued to work at Clark County EMS for several months while working for Garrard County. Due to the distance and the cost of gasoline, she decided to obtain a part-time job with Boyle County Emergency Medical Service ("Boyle County EMS") which hires part-time paramedics. Camps explained when the injury occurred she was in the midst of the move. She testified most of the year prior to the injury she had worked two jobs. As a single mother, she always had two jobs in the EMS field. Her supervisors knew she worked two jobs the entire year prior to her injury.

In the June 18, 2013, opinion, order, and award, the ALJ noted the parties agreed Camps sustained a work-

related injury resulting in an 8% impairment, was entitled to the three multiplier because the injury rendered her unable to return to her paramedic position, and her TTD benefits should be offset by the unemployment benefits she received during the period TTD benefits were paid.<sup>2</sup> The ALJ concluded case law required her to compute Camps' AWW based only on her employment with Garrard County "because she was not under a concurrent contract of employment at the time of the injury at issue."

The ALJ's findings of fact, conclusions of law, and evidentiary basis regarding AWW is as follows:

Camps makes a very compelling and rationale argument to support her inclusion of wages from Clark County. The ALJ, however, is duty bound to follow published authority from the higher appellate courts. The ALJ finds *Wal-Mart v. Southers*, 152 S.W.3d 242, 246 -47 (Ky. App. 2004), controls the case at hand. In this case, the Kentucky Court of Appeals held that: "The statute in question only lists two elements necessary to establish concurrent employment: proof the claimant was working under contracts with more than one employer **at the time of injury**, and proof the defendant

---

<sup>2</sup> Although benefits per KRS 342.730 and credit for unemployment benefits were listed as contested issues in the April 10, 2013, benefit review conference memorandum and order, in its brief to the ALJ, Garrard County conceded Camps' ankle injury resulted in an 8% impairment and she was entitled to the three multiplier because she was unable to return to her paramedic position. At the hearing, Camps conceded her TTD benefits should be offset by unemployment benefits received during the period TTD benefits were paid.

employer had knowledge of the employment."

In this case, Camps was not working under contracts with more than one employer **at the time of injury**. Certainly, she had done so in the past and based on her testimony, the ALJ finds that Camps intent was to continue to do so in the future. However, at the time of injury she had terminated her employment with Clark County and had not yet secured a contract for employment with another employer. As such, the ALJ is precluded from including Camps' concurrent wages from Clark County, earned in the weeks prior to her injury.

In many respects, the ALJ recognizes that this is a harsh result. Again, however, the ALJ finds current authority clear with respect to the requirements for including concurrent wages. Those requirements were not satisfied in this claim with respect to Camps employment with Clark County.

As such, the ALJ concludes that the Camps [sic] AWW in this claim is limited to the wages she earned working for the Garrard County. Based on the wage records submitted by Garrard County, the ALJ finds that Camps [sic] AWW was \$470.96.

Accordingly, the ALJ awarded PPD benefits based upon the 8% impairment enhanced by the three multiplier. As previously noted, the ALJ also awarded TTD benefits and medical benefits.

Concerning entitlement to vocational rehabilitation benefits, the ALJ found as follows:

Under KRS 342.710(3), an employee, who is unable to perform work for which he has previous experience or training as the result of a work injury, shall be entitled to vocational rehabilitation services, including retraining and job placement, in order to "restore him to suitable employment." "Suitable employment" has been defined as work that bears a reasonable relationship to an employee's experience and background, taking into consideration the type of work performed at the time of injury, age, education, income level, earning capacity, physical and mental abilities, vocational aptitude, and other relevant factors. See *Wilson v. SKW Alloys, Inc.*, 893 SW2d 800 (Ky. App. 1995).

Whether to award vocational rehabilitation is a matter committed to the discretion of the ALJ. See *Carnes v. Parto Bros. Contr. Inc.*, 171 S.W.3d 60 (Ky. App. 2005). The purpose of vocational rehabilitation is the "restoration of the injured employee to gainful employment." KRS 342.710(1).

Relevant to this case, however, the Act is clear that the ALJ's authority is initially limited to a referral for an evaluation to access the "practicability of, need for, and kind of service, treatment, or training necessary to render [the claimant] fit for a remunerative occupation." KRS 342.710(3). After receipt of the report, the ALJ may order the services and in unusual cases can order them to extend beyond 52 weeks. *Id.*

In other words, the ALJ must make a preliminary vocational evaluation order, if warranted by the facts, and then once the evaluation is complete

determine whether rehabilitation is in order, what type, and the appropriate duration if the parties are unable to agree. The ALJ, however, does not have the authority to prospectively award a specific type or duration of vocational rehabilitation prior to completion of the evaluation.

The ALJ finds based on Camps' testimony that her current physical limitations preclude her from returning to her prior job or positions for which she [sic] the training or work history to perform. As such, the ALJ finds that Camps would benefit from a vocational evaluation. The ALJ, however, defers to the evaluator to identify various programs and/or types of feasible vocational rehabilitation services for which Camps might qualify.

In the award section, the ALJ ordered as follows:

Pursuant to KRS 342.710, Plaintiff is referred to the Department for Vocational Rehabilitation Services for an evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render Plaintiff fit for a remunerative occupation. The expense shall be the responsibility of the Defendant Employer and/or its insurance carrier. Should a dispute arise between parties following the contents of this report, either party shall file the appropriate Motion to the undersigned.

Both parties filed petitions for reconsideration.

Camps contended the ALJ did not make sufficient findings concerning the issue of concurrent employment, and the award should be amended to reflect her AWW is based on a

concurrent wage and a finding of an AWW of \$1,038.17. Camps requested a finding she was concurrently employed prior to the injury and the proper standard for determining her wage is to consider the best quarter of both employments for one year preceding the injury.

In its petition for reconsideration, Garrard County requested the ALJ reverse the award of vocational rehabilitation submitting Camps was only earning \$10.00 per hour at the time of the injury, has an associate's degree, and few physical restrictions. Therefore, the evidence compelled a finding Camps was able to find suitable employment without the assistance of vocational rehabilitation.

In overruling the petitions for reconsideration, the ALJ stated as follows:

**A. Plaintiff's Petition**

Plaintiff asserts that the ALJ erred in failing to include her wages from her employment with Clark County in calculating her AWW. As explained in the prior Opinion, Order & Award, the ALJ found that Plaintiff's concurrent employment with Clark County terminated prior to her injury date. The ALJ then determined that binding precedent requires that for concurrent employment to be included in the AWW calculation there must be contract for employment in place at the time of the injury. *Wal-Mart v. Southers*, 152 S.W.3d 242, 246 - 47 (Ky. App. 2004). As there was no

contract for concurrent employment in place at the time of Plaintiff's injury, the ALJ finds no patent error in the prior Opinion, Order & Award.

**B. Defendant Employer's Petition**

The Defendant Employer asserts that the ALJ incorrectly "awarded" vocational rehabilitation. The ALJ determined based on Plaintiff's testimony that she was not capable of returning to her prior work as an EMT or the type of work she had performed in the past. As such, the ALJ determined that a referral for a vocational evaluation was appropriate. It is possible that the vocational expert might conclude that Plaintiff does not require any rehabilitation. However, the ALJ believes as explained in the prior Opinion, Order, & Award, that the evidence of record supports the referral.

On appeal, Camps asserts the evidence establishes that except for the last few days before her injury, she worked two jobs the entire one year period preceding the injury, and was in the process of shifting to another job at the time the injury occurred. Thus, Camps argues KRS 342.140 requires the ALJ to consider the earnings from both jobs. Camps maintains KRS 342.140 does not require the employee to have concurrent employment at the time of the injury. Rather, it requires Camps to have worked concurrent employments prior to the injury. Noting the ALJ concluded she was bound by Wal-Mart v. Southerns, 153 S.W.3d

242 (Ky. App. 2004), Camps argues the opinion contains contradictory statements. Camps then provides her interpretation of the relevant sections of KRS 342.140 in support of her position. Camps asserts in Huff v. Smith Trucking, 6 S.W.3d 819, 820 (Ky. 1999), the Supreme Court noted the goal of KRS 342.140(1)(d) and (1)(e) is to determine a realistic estimation of what the injured worker would be expected to earn in a normal period of employment. Camps argues as follows:

The entire statute taken as a whole and the Supreme Court's interpretations of the statute make it clear that the legislative intent is to obtain 'a realistic estimate of the workers' earning capacity.' The Employer's interpretation would result in tragic injustice to the Plaintiff and a windfall for Employer. Under that interpretation a person who regularly worked two jobs for forty years may be injured in a part time job on the one day when they were not actively working two jobs and be denied 90% of the compensation they would have been entitled to on the preceding day. The legislature could not have intended such an arbitrary rule.

On cross-appeal, as it did in its petition for reconsideration, Garrard County maintains Camps was earning \$10.00 an hour at the time of her injury, has an associate's degree and few physical restrictions. It posits KRS 342.140 only entitles Camps to the necessary

vocational rehabilitation services in order to restore her to suitable employment. It asserts this Board should agree that without the assistance of vocational rehabilitation, Camps is capable of obtaining suitable employment, i.e. a job paying \$10.00 an hour.

Concerning Camps' argument on appeal, the relevant statute is KRS 342.140 Sections (1)(d) and (5) which reads as follows:

(1) If at the time of the injury which resulted in death or disability or the last date of injurious exposure preceding death or disability from an occupational disease:

. . .

(d) The wages were fixed by the day, hour, or by the output of the employee, the average weekly wage shall be the wage most favorable to the employee computed by dividing by thirteen (13) the wages (not including overtime or premium pay) of said employee earned in the employ of the employer in the first, second, third, or fourth period of thirteen (13) consecutive calendar weeks in the fifty-two (52) weeks immediately preceding the injury;

. . .

(5) When the employee is working under concurrent contracts with two (2) or more employers and the defendant employer has knowledge of the employment prior to the injury, his or her wages from all the employers shall be considered as if earned from the employer liable for compensation.

The first sentence in each of the above-cited sections imply the employee's work status at the time of the injury is key. Section (5) is applicable only when the employee is working under concurrent contracts at the time of the injury and not at some point prior to the work injury. Although the facts in this case may lead to a harsh result, Camps must have had concurrent employment at the time of injury in order for the wages she earned at Clark County EMS to be included in the calculation of her AWW. As noted by the ALJ, the holding in Wal-Mart v. Southers, supra, is dispositive. There, the Court of Appeals stated:

We note at the outset there is nothing in the relevant statute that requires proof of remuneration to establish concurrent employment. Moreover, Wal-Mart has not provided any support for its contention that intermittent employment necessarily negates the existence of mutuality of obligation. The statute in question only lists two elements necessary to establish concurrent employment: proof the claimant was working under contracts with more than one employer at the time of injury, and proof the defendant employer had knowledge of the employment.

Id. at 246-247.

Camps acknowledged she was not under a contract of hire with multiple employers and did not have concurrent

employment at the time of the injury. Although she may have had concurrent employment approximately seven days before the injury, she did not have concurrent employment at the time of the work injury.<sup>3</sup> Further, Camps had not obtained a contract of hire with Boyle County EMS which was in effect at the time of her injury. Thus, the ALJ did not err in calculating Camps' AWW based solely upon her earnings at Garrard County.

Similarly, we find no merit in Garrard County's argument the ALJ erred in awarding vocational rehabilitation services. Camps' testimony reveals she sustained a significant injury to the extent Garrard County conceded she did not retain the capacity to return to her prior job. Thus, Camps does not have the ability, as she had done in the past, to work two different jobs in order to earn substantial wages. Camps' testimony establishes she has only worked for an emergency medical service or in the horse industry both of which involved strenuous manual labor.

KRS 342.710 provides in pertinent part:

(1) One of the primary purposes of this chapter shall be restoration of the

---

<sup>3</sup>Although Camps filed her June, July, and August 2010 pay stubs, we are unable to locate any payroll records or pay stubs verifying Camps worked for Clark County EMS beyond August 2010 and establishing her earnings for the remainder of 2010 and the first four months in 2011.

injured employee to gainful employment, and preference shall be given to returning the employee to employment with the same employer or to the same or similar employment.

...

(3)... When as a result of the injury he is unable to perform work for which he has previous training or experience, he shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him to suitable employment. ...

The fundamental purpose of vocational rehabilitation is the restoration of an injured worker to gainful and suitable employment. KRS 342.710(1)(3) and Wilson v. SKW Alloys, 893 S.W.2d 800 (Ky. App. 1995) "Suitable employment" has been interpreted to mean work that bears a reasonable relationship to the employee's experience and background, taking into consideration the type of work the person was doing at the time of injury, his age and education, his income level and earning capacity, his vocational aptitude, his mental and physical abilities and other relevant factors, both at the time of injury and after reaching his post-injury maximum level of medical improvement. Id. The determination of whether a claimant has returned to suitable employment is a factual

determination solely within the discretion of the ALJ as fact-finder.

Although KRS 342.710 specifically provides that a person who is unable to perform work for which he has previous training or experience is entitled to vocational rehabilitation services, that provision cannot be viewed in isolation. Importantly, one of stated statutory goals is to return the injured worker to "suitable, gainful employment." In Haddock v. Hopkinsville Coating Corp., 62 S.W.3d 387, 391 (Ky. 2001), the Court wrote "[r]estoring a worker to 'suitable employment' means attempting to achieve a reasonable relationship between the worker's pre- and post-injury earning capacity." ...

Importantly, the standard for an award of vocational rehabilitation benefits under KRS 342.710 is different than the standard for entitlement to the three multiplier. Under KRS 342.710 past training and work experience is considered as well as the actual job performed at the time of injury. The claimant's capacity to labor as a result of the work injury is the standard under both KRS 342.710 and KRS 342.730(1)(c)1.

Although substantial evidence amply supports an award of vocational rehabilitation services, we note the ALJ merely found Camps would benefit from a vocational

evaluation and permitted the evaluator "to identify various programs and types of feasible vocational rehabilitation services for which Camps might qualify." In the award section, the ALJ stated if after reviewing the contents of the reports a dispute arose, either party was entitled to file the appropriate motion. The ALJ's opinion is consistent with KRS 342.710(3) which reads, in relevant part, as follows:

(3) ... When as a result of the injury he or she is unable to perform work for which he or she has previous training or experience, he or she shall be entitled to such vocational rehabilitation services, including retraining and job placement, as may be reasonably necessary to restore him or her to suitable employment. In all such instances, the administrative law judge shall inquire whether such services have been voluntarily offered and accepted. The administrative law judge on his or her own motion, or upon application of any party or carrier, after affording the parties an opportunity to be heard, may refer the employee to a qualified physician or facility for evaluation of the practicability of, need for, and kind of service, treatment, or training necessary and appropriate to render him or her fit for a remunerative occupation. Upon receipt of such report, the administrative law judge may order that the services and treatment recommended in the report, or such other rehabilitation treatment or service likely to return the employee to suitable, gainful employment, be

provided at the expense of the employer or its insurance carrier. ...

The ALJ has yet to award vocational rehabilitation services. Thus, Garrard County's protestations are premature. Further, the Court of Appeals in Carnes v. Parton Bros. Contracting, Inc., 171 S.W.3d 60, 68, 69 (Ky. App. 2005) instructed as follows:

In statutory interpretation and construction, "[m]ay' is permissive [,]" [footnote omitted] while "[s]hall' is mandatory[.]" [footnote omitted] We conclude that the use of the word "may" in KRS 342.710(3) places vocational rehabilitation entirely within the discretion of the CALJ.

Based on Camps' testimony, the severity of her injury, and its disabling effects, we find no abuse of discretion by the ALJ in referring Camps for a vocational evaluation.

Accordingly, the June 18, 2013, opinion, order, and award and the July 8, 2013, order overruling the petitions for reconsideration are **AFFIRMED**.

ALL CONCUR.

**COUNSEL FOR PETITIONER:**

HON JOHN S HARRISON  
83 C MICHAEL DAVENPORT BLVD #3  
FRANKFORT KY 40601

**COUNSEL FOR RESPONDENT:**

HON JACKSON W WATTS  
131 MORGAN ST  
VERSAILLES KY 40383

**CHIEF ADMINISTRATIVE LAW JUDGE:**

HON J LANDON OVERFIELD  
657 CHAMBERLIN AVE  
FRANKFORT KY 40601