OPINION ENTERED: MAY 11, 2012

CLAIM NO. 201193606

JULIE CASE LITTLE PETITIONER

VS. **APPEAL FROM HON. HOWARD E. FRASIER, JR., ADMINISTRATIVE LAW JUDGE**

THREE RIVERS MEDICAL CENTER
and HON. HOWARD E. FRASIER, JR.,
ADMINISTRATIVE LAW JUDGE
REASSIGNED TO HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION AFFIRMING

* * * * * *

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

SMITH, Member. Julie Case Little ("Little") appeals from the November 9, 2011 Opinion and Order rendered by Hon. Howard E. Frasier, Jr., Administrative Law Judge ("ALJ"), dismissing Little's claim for permanent disability benefits as a result of an April 21, 2009 injury she sustained in the course of her employment with Three Rivers Medical Center ("Three Rivers"). Little also appeals from the December 12,

2011 order denying her petition for reconsideration. On appeal, Little argues the ALJ's decision is not supported by substantial evidence and the evidence compels a finding in her favor.

Little filed a Form 101 Application for Resolution of Injury Claim, on April 13, 2011, alleging injuries to her back, buttocks, left hip, left leg, and an emotional component as a result of lifting a patient onto a CT table on April 21, 2009.

Little testified by deposition on May 18, 2011 and at the formal hearing held September 19, 2011. Little testified that on April 21, 2009 as she was helping a large patient who was attempting to sit up on a narrow CT table, she felt a dull pain in her back radiating down her left leg. She continued helping the patient until he was able to successfully sit up. Little continued working but her pain increased to the point she began to limp. She reported her injury to her supervisor, Leslie Wellman, who told Little to go home early or go to the emergency room. Little left early and went to her fiancé's home where she rested for two hours before going home. Her back pain worsened and when Tylenol medication failed to relieve her symptoms, her father took her to Highlands Regional Medical Center where she received a pain injection. Her pain

symptoms continued and her father took her to Three Rivers where a CAT scan and MRI were performed. Little received medication and was taken off work for two days. Little stated she felt better before the weekend was over and she was able to return to work on Monday.

Little sustained a left foot fracture in late 2009 and had to wear a boot to work. Other than this minor setback, she was able to function without serious pain symptoms until the summer of 2010 when she had increased pain with “a pulling effect” in her left leg and severe cramps in both legs. She sought medical treatment once more when she began having difficulty walking. Problems with her foot fracture eventually subsided.

Regarding her April 21, 2009 work injury, Little stated she saw a nurse practitioner and obtained an MRI which revealed a disc herniation. Dr. Lee A. Balaklaw administered trigger point injections which eased her pain. Little was also referred to Dr. Briggs for epidural injections. However, her pain returned within two days of each injection. She sought further treatment for back pain at the emergency room at King's Daughters where surgery was recommended.

Little underwent surgery on March 15, 2011. Following surgery, she developed “foot drop step gait” in the left

leg. Her back pain lessened, but the pain in her left leg would come and go. She also experienced in her left leg from the knee to the bottom of her foot.

When asked about prior injuries, Little recalled having a pulled muscle on one occasion when she was a teenager. She recovered following treatment and had no other back problems. She also acknowledged she had taken psychiatric medication for two months after the death of her first husband in 2006. She was also treated at Mountain Comprehensive Care in 2010 for continuing problems related to her husband's death, depression, inability to work and difficulty paying her bills.

Little admitted to having prior injuries when questioned about Dr. Balaklaw’s August 20, 2010 note, wherein he recorded a five year history of back pain. She indicated she had not reported the work injury to Dr. Balaklaw because, at that time, she had not made the connection to the 2009 injury, and did not do so until she was questioned by a billing clerk.

Little acknowledged having “a couple of flare-ups here and there” following her childhood coccyx injury. She also admitted to falling on ice in December 2009. Little related that, in 2009, she was bent down cleaning a vent when her daughter tapped her on the tailbone with the end

of a wooden hammer causing inflammation of her tailbone. She also acknowledged she had fallen while dancing in 2009. She denied any back pain as a result of the fall. She did not remember a fall in 2008 as reflected in notes of Mr. Thomas Stickler.

At the hearing, Little stated her tailbone pain only occurred when she was sitting with direct pressure applied. Her lower back pain is continuous. Little indicated she is unable to sit or stand for long periods and she continues to have pain in the lumbar area. She stated the pulling effect in her leg had subsided but she continued to have numbness from the knee to her toe. She has a “drop foot step gait” and uses a cane. She was unstable while walking without a brace or cane. She last saw her surgeon, Dr. Osborn, in August 2011 and she had not been released to return to work. In her opinion, the surgery was unsuccessful.

Little indicated she continued to have emotional problems because of her inability to work and stress related to her bills. She stated she did not like going out in public or having people see her since she did not work and walked with a cane. Little indicated she was unable to perform any of her past work or physically

perform any job requiring her to sit, stand and walk for eight hours per day, five days per week.

On cross-examination, Little stated the incident with a hammer occurred in December 2009 and she slipped on ice in March 2011. She admitted there were periods of time after the April 2009 injury when she was not limited in her activities. When asked about Dr. Balaklaw's August 20, 2010 note regarding a fall while dancing with her child two weeks previously, Little denied the incident occurred at that time and stated it occurred in December 2008 at a Christmas party. Little stated she received no treatment for her low back from shortly after the April 21, 2009 injury until August 2010. She indicated all of her treatment prior to that time involved injuries to her tailbone.

Leslie Ann Wellman ("Wellman"), Imaging Director at Three Rivers, and Little's direct supervisor, testified by deposition on June 29, 2011. She worked with Little on a daily basis. She remembered hearing about the lifting incident on April 21, 2009. Little missed no work and did not request any more assistance with patients than she had in the past. Wellman remembered that Little's next complaint regarding back and leg pain was in the fall of 2009. She noted Little was an excellent employee and a

truthful person. Wellman indicated Little was walking with a limp in the fall of 2010. Little complained her back and hips were hurting and her legs “felt funny.” Wellman stated Little got to the point where she “really couldn't stand totally upright.” She could tell Little was in pain by the way she was walking and was bent over. She stated it was not probable Little was having problems from the date of her injury until the fall of 2010. Wellman stated “I think that if she had an injury, she would have come to me.”

Three Rivers filed a discharge summary from its facility dated February 27, 2009. Little had been admitted on February 25, 2009 for generalized weakness and low blood sugar. The discharge summary included a diagnosis of chronic low back pain.

Three Rivers filed a lumbar MRI report dated April 22, 2009, noting a lifting injury at work with severe left hip pain. The MRI revealed a bulging L4–5 disc with no frank herniation or neural impingement. Three Rivers also filed an April 18, 2010 lumbar MRI report revealing degenerative L4–5 disc with left sided herniation.

Three Rivers filed Dr. Balaklaw’s records dated August 28, 2010 and March 17, 2011. Dr. Balaklaw noted a history of pain starting five years earlier. He noted Little had

fallen from a tree as a child, landing on her tailbone. Dr. Balaklaw further noted Little fell two weeks earlier while dancing with a child, fracturing her left metatarsal. Additionally, Dr. Balaklaw noted Little fell in December 2009 when she lost her balance. He also noted she had a lifting injury on one occasion at work.

Dr. Balaklaw recorded numerous diagnoses including displaced lumbar disc, cellulitis coccyx (old), depression, neuropathy, sacroiliitis, paraspinous muscle spasm, myofascitis, vitamin and mineral deficiency, coccdynia, cervicalgia, and right knee arthritis. His records included a "Notice to All Patients Regarding Insurance Coverage" signed by Little on August 20, 2010. The form required disclosure of any claim of the applicability of workers' compensation coverage. It also included the statement that "Failure to inform Dr. Balaklaw and his office staff about the work-related nature of a pain complaint will be grounds for dismissal from Dr. Balaklaw's practice." When Dr. Balaclaw received a request for records from the workers' compensation carrier, he discharged Little from his care.

Little submitted records from St. Mary's Medical Center and St. Mary's Neurosurgery concerning treatment from March 7, 2011 through March 15, 2011. Little

completed and signed a patient history form dated March 7, 2011. She indicated she had pain, cramping and a "pulling effect" from August 2010 to the present with the onset of symptoms stated as "August 2009 worse August 2010." Dr. Brett Osborn indicated Little was temporarily totally disabled from March 10, 2011 through June 10, 2011. Dr. Osborn performed an L4–L5 left hemilaminotomy, L4–L5 axillary discectomy, and L5 left foraminotomy.

Three Rivers filed a March 8, 2011 lumbar MRI report which revealed degenerative changes and disc disease at L4–5. The report further noted "the soft tissue signal in the left central/foraminal region is most likely a disc herniation, although a nerve sheath tumor is also possible."

Little filed records from Thomas Stickler, APRN and Dr. Jeremy Klein concerning treatment on April 4, 2011 and May 13, 2011. Mr. Stickler, as verified by Dr. Klein, diagnosed low back pain and radiculopathy and osteopenia on August 17, 2010. On May 13, 2011, Dr. Klein opined Little was currently disabled, her condition was likely permanent, and her injury was work-related.

Dr. Eric Johnson, a psychologist, performed an independent psychological evaluation on May 26, 2011. He found Little had symptoms of mild major depressive disorder

and a somatoform disorder, most likely a pain disorder. He also noted a self-reported history of depression prior to the work injury. Dr. Johnson opined Little had an 18% psychological impairment, 6% as a result of pre-existing depression. He felt the impairment level may decline with appropriate psychiatric treatment.

Dr. David P. Herr, an orthopedic surgeon, performed an independent medical evaluation ("IME") on June 8, 2011. Dr. Herr noted a low back injury and bulging disc were identified shortly after April 21, 2011. However, he noted there was no additional treatment until August 17, 2010. He noted her symptoms progressed during these months and she occasionally missed a day or two from work. He felt Little would reach maximum medical improvement ("MMI") on March 15, 2012. Dr. Herr diagnosed herniated nucleus pulposus, L4–L5, post-laminectomy syndrome, and left foot drop. Dr. Herr assigned a 35% whole body impairment pursuant to the AMA Guides and stated a 13% rating pursuant to DRE lumbar category three was not adequate under the circumstances. He indicated Little's neurologic status was not likely to improve.

Dr. Herr reviewed the August 20, 2011 note of Dr. Balaklaw referring to a pre-existing coccyx injury, fracture of the left foot, fall in December 2009 and injury

at work in 2009. He also reviewed Little's deposition. Dr. Herr then opined the history credibly placed the onset of Little's L4–L5 disc herniation as occurring April 21, 2009. He stated work-related causation was also supported by a note from Dr. Briggs on January 6, 2011, reflecting an onset date of April 2009. Dr. Herr opined there was no rational basis to apportion any part of Little's disc herniation and impairment to a pre-existing condition. Dr. Herr stated Little lacked the physical capacity to return to her former work and restricted her from repetitive or prolonged forward bending, heavy lifting or sitting greater than 1-1/2 hours.

Dr. Brett Osborn, an orthopedic surgeon, obtained an EMG study on June 15, 2011 which was read as abnormal and consistent with left L4–5 radiculopathy. On July 7, 2011, Dr. Osborn opined Little was not at MMI and was temporarily totally disabled as a result of a herniated lumbar disc and radiculopathy caused by the work injury of April 21, 2009.

Dr. Timothy C. Kriss, a neurosurgeon, performed an IME on July 11, 2011. Dr. Kriss indicated Little's current low back condition warranted a 13% impairment pursuant to the AMA Guides under DRE category three for significant functional limitations based on foot drop and chronic left L5 radiculopathy. However, he stated the current back

condition was not related to the April 21, 2009 low back injury. Dr. Kriss noted Little had no treatment for her back or leg symptoms for almost an entire year. Dr. Kriss opined Little had a temporary musculoskeletal strain on April 21, 2009 and would have reached MMI by July 21, 2009. He stated the current low back condition and March 15, 2011 surgery were related to a combination of non-work-related events including a fall from a swing at age 11, falling on ice in December 2009, and falling in late February 2010. He felt she would reach MMI from her non-work related low back condition on March 15, 2012. Dr. Kriss stated the low back strain resolved without the need for permanent restrictions or continued medical treatment.

Dr. Kriss testified by deposition on August 9, 2011. Based upon his review of the records, he stated Little first exhibited symptoms of nerve root compression in the fall of 2010. He indicated the type of nerve root compression present in Little's low back was an extremely painful type that would have been obvious to her and those around her. He stated Little's symptoms would have manifested at an earlier time if the injury of April 21, 2009 resulted in a disc herniation. He provided the following explanation:

> Because she has the disc herniation that has migrated outside the disc space and because it's large and severe, if it were to be from trauma, I would expect it to present pretty close to that trauma, if not immediately within days or at most a few weeks. I can't recall having seen a disc herniation that severe where – where I was sure that it was caused by trauma, and yet there was a huge delay. I just haven't seen that patient yet.

Dr. Kriss stated that, if the work injury had caused the disc herniation shown on the August 18, 2010 MRI and the worsening shown on the March 8, 2011 MRI, something other than a disc bulge would have been shown on the April 22, 2009 MRI. Dr. Kriss explained that, because of the gap of more than a year before Little had additional leg symptoms following the April 21, 2009 injury, such injury had resolved and was only temporary in nature. He stated the fall on ice in December 2009 and a fall occurring two weeks before August 20, 2010, identified by Dr. Balaklaw, were probable causes of the disc herniation.

Dr. Timothy Allen, a psychiatrist, conducted an independent psychiatric evaluation on August 3, 2011. Dr. Allen stated pre-existing major depression and a current pain disorder contributed to Little’s current depression. He found a 5% psychiatric impairment related to her current pain disorder. He indicated that, if Little’s left leg and

back problems were determined to be work-related, then so should the 5% psychiatric impairment pursuant to the AMA Guides. He felt Little had reached MMI with no psychiatric work restrictions.

In his deposition taken August 12, 2011, Dr. Allen indicated he had reviewed the psychological report of Dr. Johnson. Dr. Allen opined Little was either better from a psychiatric viewpoint than at the time of Dr. Johnson's examination, or she had exaggerated her symptoms at the time of the earlier examination. On cross-examination, Dr. Allen indicated only 2.5% of Little's impairment would be traceable to her back pain and foot drop. The remaining 2.5% would relate to other new pain symptoms including fibromyalgia, cardiac condition, weight gain, and carpal tunnel.

After reviewing the evidence, the ALJ made the following findings of fact and conclusions of law relevant to this appeal:

> (1) The Plaintiff bears the burden of proof and the risk of non-persuasion with respect to every essential element of the claim. Caudill v. Maloney's Discount Store, Ky. 560 S.W.2d 15 (1977). The undersigned finds that the Plaintiff is a very sympathetic witness, has been an excellent employee, and is no longer able to perform her CT tech duties because of her current low back condition.

However, the Plaintiff has simply not presented any credible lay or expert testimony or opinions supporting work-related causation for the changes first noted around August 20, 2010, and continuing to worsen through the time of a March 8, 2011, MRI.

Admittedly, the first time that the Plaintiff made any connection between her April 21, 2009, injury and her more recent low back symptoms was when a billing clerk asked her in early 2011 why she was not submitting her medical bills as a workers[’] compensation claim. Noteworthy is the fact that Dr. Balaklaw closely questioned the Plaintiff about the existence of any work injury in August 20, 2010, and made her sign a specific and highlighted statement that the treatment was not for a work injury. In fact, Dr. Balaklaw later dropped her as a patient when he discovered that she changed her mind about the existence of a work injury over six months after he began treating her.

The lay testimony of Ms. Wellman, while supportive of the quality of her work and general truthfulness, does not support the existence of any low back symptoms between late April 2009 and August 2010. Whether or not all the specific dates of a number of non-work-related traumas to the low back and tail bone identified in numerous post–April 2009 medical records are completely accurate, it is clear that she was hit in the buttocks with a wooden hammer by her daughter, had a fall or injury while dancing with her daughter, and slipped on ice at some point prior to August 2010.

Moreover, a close examination of the detailed records of Dr. Balaklaw

who took a thorough and complete inventory of all medical conditions and prior trauma does not reveal any significance given to the event of April 2009. At most, there is a vague mention of a prior work injury without a specific date. Yet, a fall occurring two weeks before August 20, 2010, and other post–work injury traumas are more clearly identified.

(2) With a large gap in time of 16 months between the work injury and identification of any symptoms consistent with disc herniation and radiculopathy, the opinion of medical professionals becomes more important. The undersigned finds the detailed explanation of Dr. Kriss in his report and during his deposition testimony of no work-related causation is more credible than the opinions of Dr. Herr, Dr. Klein, Mr. Stickler, and Dr. Osborn.

Only Dr. Herr attempts to provide any analysis as to work-related causation other than a one sentence opinion in a medical record or report. Yet, Dr. Herr’s statement that her symptoms gradually worsened is not supported by any medical records or an inability to perform her work prior to August 2010. Even Ms. Little admits that at most, she might have had two mild episodes of low back pain during this time.

Dr. Kriss points out that the disc herniation is of such a painful and severe type, its existence would have been obvious to the Plaintiff and others well prior to August 2010, if it was connected with the trauma she suffered on April 21, 2009. This opinion is both convincing and unrebutted. While some arrows can be

shot at the exact timing of the other nonwork–related events in question, the burden on causation is borne by the Plaintiff. Whether or not the symptoms in August 2010 can be blamed on something that happened two week[s] previously, in March 2010, in December 2009, or a combination of such events, the undersigned finds that the Plaintiff has not met her burden of proving the trauma on April 21, 2009 played a role in her current low back symptoms and the surgery that was performed in March 2011.

(3) The undersigned finds that the event of April 21, 2009, as a temporary low back strain that had resolved when she reached MMI on July 21, 2009, with no additional treatment or work restrictions needed after that date as opined by Dr. Kriss. Because the Plaintiff did not even seek reimbursement of medical expenses or any income benefits until 2011, all remaining disputed issues are moot. There is no temporary compensable of [sic] period of medical expenses and no compensable period for TTD benefits sought by the Plaintiff between April 21, 2009, and July 21, 2009.

(4) Further, having found no work injury after July 21, 2009, and therefore no connection between any pain disorder and the plaintiff's current psychiatric impairment, the claim for psychiatric impairment, income benefits, and medical benefits is also dismissed. This is consistent with the opinion of Dr. Allen that his finding of partial work–related impairment was contingent on a finding of a work–related pain disorder.

(5) Based on the findings above, the Plaintiff's claim for a permanent

> injury, income benefits, and medical expenses is dismissed.

Little filed a petition for reconsideration raising essentially the same arguments she now raises on appeal to the Board. By order dated December 12, 2011, the ALJ denied Little's petition for reconsideration, providing the following findings:

> The undersigned finds that the Plaintiff has failed to identify any patent error in the Opinion and Order of November 9, 2011;
>
> The undersigned finds that the fatal flaw in the Plaintiff's request for reconsideration is the complete absence of credible medical opinions of a permanent harmful change as a result of the work activities of April 21, 2009;
>
> The undersigned finds absolutely no evidence that the Plaintiff, a medical professional, had any idea of work-related causation for her more recent severe symptoms until such matter was initially suggested to her by a billing clerk;
>
> The undersigned finds that while medical proof can often provide substantial evidence on both sides of an issue, the opinion of Dr. Herr and the recitation of the "magic language" of work–related causation by other physicians under the current circumstances are simply not credible to support the burden of proving that the distant mild temporary symptoms of the Plaintiff have any work-related

> connection to the more recent severe symptoms;
>
> The undersigned also notes that he does not always agree with the opinions of Dr. Kriss and recently rejected the opinion of Dr. Kriss as not credible and awarded total occupational disability in a final Opinion and Award of June 6, 2011, in Joshua Perkins v. Walmart, No. 05–85239;
>
> The undersigned finds, as he stated previously, that the Plaintiff presents a sympathetic situation and does not doubt that she now subjectively and honestly believes that her symptoms are work-related; however, the other proof, including the credible medical opinions, do not tip the scales in favor of the Plaintiff on this issue;
>
> The undersigned finds that despite a sympathetic claimant, and zealous representation by her counsel, the medical evidence here simply does not provide the credible proof necessary for the Plaintiff to prevail on the issue of causation;
>
> The objections of the plaintiff are overruled;
>
> Plaintiff's petition for reconsideration is denied.

On appeal, Little argues the ALJ's decision is not supported by substantial evidence and must be reversed as a matter of law, since the ALJ was compelled to find in her favor. Little contends the ALJ did not remain in the role of fact-finder and the Board should re–weigh the evidence

and substitute its judgment with respect to questions of fact. Little argues the ALJ erred in analyzing the record in concluding she did not sustain a compensable low back and psychological injury. Little argues the medical evidence from Drs. Klein, Osborn, Herr and Kriss establish she sustain a work-related injury which necessitated back surgery. Little states it is significant no one stated she was untruthful or was malingering. Little notes it was stipulated she sustained a work-related injury on April 21, 2009 and Three Rivers paid medical expenses in the amount of $2,411.10.

Little contends the ALJ incorrectly stated there was no credible lay or expert testimony or opinion supporting work-related causation for the changes first noted in August 2010 and continuing to worsen through March 8, 2011, when an MRI was performed. Little contends the ALJ failed to consider the April 22, 2009 MRI, which established objective evidence of a permanent injury. Little argues the ALJ erred in finding the opinion of Dr. Kriss persuasive in finding no work-related causation and only a temporary injury without impairment. She argues her testimony and that of Drs. Herr, Klein and Osborn establish Dr. Kriss' opinion is not reliable. She contends the ALJ gave no rational basis for objecting to those opinions and

relying on the opinion of Dr. Kriss in finding a temporary condition. Little notes she testified she worked in pain from the date of the injury until her surgery. She states she “didn't whine and complain” because she was afraid of losing her job.

Little argues the ALJ erred in dismissing the claim for psychological impairment based upon the opinion of Dr. Allen. She contends the credible medical evidence establishes her psychological condition is related to the work accident with a resulting impairment based upon the opinion of Dr. Johnson.

Little argues that, even if the ALJ did not err in finding she did not qualify for an impairment rating, she should still be entitled to medical benefits because the evidence establishes she requires ongoing treatment for the injuries she sustained from a work-related accident.

It is well established a claimant in a workers’ compensation claim bears the burden of proving each of the essential elements of her cause of action including causation. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Little was unsuccessful in her burden of showing causation before the ALJ, the question on appeal is whether, upon consideration of the whole record, 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).

As fact-finder, the ALJ has the sole authority to determine the quality, character and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Similarly, the ALJ alone has the discretion to judge the weight to be accorded to and inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Luttrell v. Cardinal Aluminum Co., 909 S.W.2d 334 (Ky.App. 1995). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999); Halls Hardwood Floor Co. v. Stapleton, 16 S.W.3d 327 (Ky.App. 2000).

While Little has pointed to evidence upon which the ALJ could have relied to find in her favor, conflicting evidence alone does not require reversal on appeal.

Whittaker v. Rowland, *supra*. In order to reverse the decision of the ALJ, it must be shown there was no evidence of substantial probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

Here, substantial evidence supports the ALJ's finding. Little's arguments on appeal are essentially an attempt to have the Board re-weigh the evidence and direct a finding contrary to the ALJ's decision. We may not do so. The ALJ found Little failed in her burden of proving her problems after July 21, 2009 were connected to the work incident of April 21, 2009. The ALJ was most convinced by the opinions of Dr. Kriss who opined Little sustained only a temporary low back strain which resolved as of July 21, 2009, without need of further treatment. Dr. Kriss was unequivocal in stating the disc herniation which required surgery was not caused by the April 21, 2009 work incident. The MRI perfomred in April 2009 revealed only a bulging disc, and Dr. Kriss' testimony indicated the herniation shown on later MRIs would have produced symptoms within days or weeks of the incident if that incident had caused the herniation. Dr. Kriss noted there were no significant complaints for approximately 16 months following the work incident. Further, Little confirmed she had only two minor "flare-ups"

during that period which were controlled by over the counter medication.

Clearly, the record contains substantial evidence supporting the ALJ's finding that the work incident produced only a temporary injury which resolved by July 21, 2009. In Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), 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 line with Robertson, we believe the ALJ's conclusions were reasonable. Dr. Kriss' opinion is substantial evidence that the need for surgery was not related to the work injury. Thus, any impairment related to the surgery is not work-related and is not compensable.

Since the ALJ concluded Little's current low back condition and pain are not related to the work incident, he was well within his role as fact-finder in concluding any psychological impairment is not compensable. The ALJ specifically noted Dr. Allen's assessment of partial work-related impairment was contingent on a finding of a work-related pain disorder. The ALJ was not convinced the

current pain is work-related, thus any psychological condition related to that pain cannot be work-related.

To summarize, the ALJ properly considered all evidence of record, weighed that evidence, and reached a decision supported by substantial evidence and in conformity with the law. Thus, we are without authority to direct a different result.

Accordingly, the November 9, 2011 Opinion and Order and the December 12, 2011 order on petition for reconsideration rendered by Hon. Howard E. Frasier, Jr., Administrative Law Judge are hereby **AFFIRMED**.

ALL CONCUR.

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