Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 15, 2016

CLAIM NO. 201400043

KANAWHA STONE CO., INC. PETITIONER

VS. **APPEAL FROM HON. JONATHAN R. WEATHERBY, ADMINISTRATIVE LAW JUDGE**

WAYNE LUKE
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Kanawha Stone Co., Inc. ("Kanawha") seeks review of the August 25, 2014, Opinion and Award rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") finding Wayne Luke ("Luke") sustained work-related neck and low back injuries and awarding permanent partial disability ("PPD") benefits enhanced pursuant to KRS

342.730(1)(c)1 and medical benefits.[1] The ALJ also determined Luke sustained work-related hearing loss, but because his impairment rating did not reach the 8% threshold required by KRS 342.7305, only medical benefits were awarded. Kanawha also appeals from the November 25, 2014, Order overruling its petition for reconsideration.

On March 20, 2014, Luke filed a Form 101 alleging on July 26, 2013, he sustained cumulative traumas to his neck, back, and knees while working for Kanawha. On that same date, Luke also filed a Form 103 alleging work-related hearing loss. By Order dated March 20, 2014, the ALJ consolidated the claims. Because this appeal only pertains to the ALJ's decision regarding the injury claim, we will not discuss any of the evidence relating to the hearing loss claim.[2]

The Form 104 attached to Luke's Form 101 reveals he was first employed by Kanawha "from 2009 to 2011" and again from July 13, 2013, to July 26, 2013.

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[1] Even though the ALJ failed to enter a specific finding of the injured body parts, the impairment ratings of the doctors pertained to cervical and lumbar injuries.

[2] On appeal, Luke asserted a constitutional challenge to the hearing loss statute. By agreement of the parties the appeal was placed in abeyance pending the resolution of an appeal pending in the Court of Appeals involving the same issue.

On appeal, Kanawha asserts the ALJ's finding it bears the entire liability for Luke's work injuries is not supported by substantial evidence. It also contends the ALJ's finding Luke's work at Kanawha aroused a dormant non-disabling condition into disabling reality is not supported by substantial evidence.

Luke testified by deposition on April 30, 2014, and at the June 26, 2014, hearing. Luke last worked for Kanawha in July 2013 and has not worked since. Luke testified he quit because of lower back and neck pain. He denied having a specific back or neck injury or being laid off while working at Kanawha. Luke first worked for Kanawha operating a bulldozer, rock truck, front end loader, and excavator from 2009 until January 2011 when he went to work for Foothills Contracting ("Foothills").

While working for Foothills, he primarily operated a bulldozer and occasionally an excavator or rock truck. Luke estimated he worked for Foothills in 2011 and 2012 until he was laid off. After being laid off, he returned to work for Kanawha for the two week period in July 2013.

Luke testified he quit work on July 26, 2013, because he physically could no longer perform the work. Although he denied having any problems when he returned to

Kanawha in July 2013, he also testified his neck, back, and knees were bothering him before he returned to Kanawha.[3] He estimated he began experiencing neck and back pain in 2009 while working for Kanawha. As a result, he began taking Aleve or Tylenol. Luke testified his neck and back problems did not worsen while he worked at Foothills; however, those problems worsened during the ninety-two and a half hours he last worked for Kanawha. Luke denied being treated for back or neck problems prior to returning to Kanawha. In January or February 2012, Luke began treating with Dr. Chad Morgan who sent him to physical therapy.

Luke acknowledged his work at Foothills and Kanawha entailed the same physical demands. Both jobs involved work on steep rough ground which "beats on you." During his deposition, Luke acknowledged he did not inform the doctor performing Kanawha's pre-employment physical of his pre-existing neck and back problems. He explained the doctor did not ask if he was having problems. He passed the pre-employment physical. Dr. Morgan was the first physician to tell him his back and neck problems were due to operating equipment over his years of employment.

[3] Luke testified he was also experiencing knee pain in 2009, but because there was no finding of a work-related knee injury, we will not discuss testimony relating to knee problems.

At the time of his deposition, Luke occasionally used a brace for his neck and back. He did not believe his neck and back pain have lessened since he quit work. At that time, Dr. Amr El-Naggar was prescribing medication for his neck and back condition. When asked to rate his pain, Luke testified his pain was worse during the period he was employed by Kanawha in 2013. Luke testified that on a scale of one to ten his neck pain in 2009 was seven. While working for Foothills his neck pain remained at seven. In 2013 while working for Kanawha, his neck pain was nine or ten. Luke testified his back pain in 2009 was six or seven. While working for Foothills his back pain remained at six or seven. While working for Kanawha in 2013, his back pain was nine or ten. Luke explained why his neck and back pain worsened when he last worked at Kanawha:

> Q: Okay. You're telling us, if I – if I understand your testimony correctly today, you're telling us that – I'm not sure about the knees, and correct me if I'm wrong; but you're telling us that in the two weeks you worked for Kanawha Stone in 2013, June and July, that your neck and back pain worsened. Is that right?
>
> A: Yes.
>
> Q: Can you – can you tell us why that happened? Was there something different about the equipment or the job site or anything like that? Can you explain for me why that would happen?

> A: The job site was – it was – we were on solid rock, and you – we were moving – the equipment, you have to move real fast to get out of the way of rock trucks and to move the dirt. It was just really rough.

At the hearing, Luke testified that between 2009 and 2011 he experienced the same stress on the cervical and lumbar spine as he experienced in 2013 while working for Kanawha. He currently experiences low back pain extending into his hip and leg half way to his knee. He still uses a back brace. He has constant neck pain. Luke admitted he experienced the same type of back and neck pain while working for Foothills. This pain continued up until the time he applied for work at Kanawha in 2013. Luke provided the following testimony regarding his pre-employment physical:

> Q: Okay – did you undergo a pre-employment physical before at Kanawha again?
>
> A: Yes – yes.
>
> Q: Okay – so were you experiencing the pain you described at that time as well?
>
> A: Yes.
>
> Q: Okay – did you inform the physician that examined you of this pain?
>
> A: Yes.
>
> Q: So it’s your testimony you did tell him about this?

A: He asked me if I had any pains. I said, ‘Yes, I have’ and he checked me out. It was a physical that’s – I don’t – I mean, I don’t know exactly what he asked me. He asked me if anything was wrong or major and I – at that point I didn’t really – I hadn’t been to the doctor.

Q: Sir, I’ll state for the record it was your testimony in your deposition that you did not tell the doctor at that time you were experiencing pain in your neck and back. So can you clarify which it is, yes or no?

A: He asked me if I had any pain and I said yeah so – I mean, I don’t really know what – like I say, that’s been a while.

Q: When you were working at Kanawha in July of – let me back up one second. Did you start – your seconds [sic] stint with Kanawha did it start in June of 2013 or July of 2013? I think I seen two different months on the record.

A: We worked – I do not remember.

. . .

Q: Okay – an hour and half there and an hour and half back?

A: Yes. When you go apply for a job you don’t – if you’re wanting to work you don’t say I’m having pains.

Q: I understand that. But, if they ask you if you’re having pains, you know, shouldn’t you answer truthfully?

A: I’ve worked with pains, you know, all that time but that’s just – I mean, you know ...

Luke introduced the Form 107 of Dr. Jeffrey Uzzle which contains the following medical history:

> This 61-year-old man has worked dozer and heavy equipment operating jobs for 40 years in the coal mining industry and also building roads. He has developed cumulative trauma with gradual onset of neck, back and various arthralgias. His lower back bothers him the most. He has aching in both arms. He has weakness and numbness in both arms. He has pain in the left biceps. Over the past 2 years his symptoms have became [sic] gradually worse, without any specific injury, but during the past 2 years he has operated dozers over extremely rough terrain. He currently has ongoing chronic neck pain and lower back pain.

Dr. Uzzle noted Luke operated a dozer and heavy equipment for over forty years and last worked in July 2013. Luke had increased pain symptoms due to cumulative trauma. After setting forth the findings from his physical examination and review of October 5, 2013, x-rays of the cervical and lumbar spine, and the November 27, 2013, MRI of the lumbar and cervical spine, Dr. Uzzle diagnosed: "[c]ervical pain; brachial neuritis; pain in upper arm/joint; lumbar pain; cervical stenosis; lumbar disc extrusion; and biceps tendonitis left." Under the heading "Causation," Dr. Uzzle stated "[c]umulative trauma in relation to the above listed diagnosis." Under the "Explanation of Causal Relationship," Dr. Uzzle stated:

> I have reviewed the work history of the Plaintiff. I have conducted a clinical evaluation of the Plaintiff. It is my opinion that the series of mini traumas which has been experienced by this individual in the course of his work life has been brought into a disabling reality by his last work with the Defendant/Employer. The traumas were excessive forces which were placed on the musculoskeletal system as well as the joints, the disc in the spinal column, as well as the associated ligaments, fibers, and other structure that supports the joints in the spine. These have been developing over years of exposure; however, were largely not symptomatic until his last employment. This was a dormant non-disabling condition aroused into disabling reality by cumulative trauma.

Pursuant to the 5th Edition of the American Medical Association, Guides the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Uzzle assessed a 7% impairment rating for the lumbar injury and a 6% impairment rating for the cervical injury. He did not believe Luke possessed the physical capacity to return to the work he was performing at the time of the injury.

Kanawha introduced documents from the Kentucky Division of Unemployment Insurance relating to Luke's claim for unemployment insurance benefits. In a document styled "UI-408 Fact Finding Report – Claimant's Statement," filed with the Kentucky Division of Unemployment Insurance on September 26, 2013, Luke indicated that on July 21, 2013,

he gave prior notice to Kanawha that he would be quitting, and the last day to be worked was July 19, 2013. Luke indicated he did not work through the end of his notice explaining he quit because he had to "drive a two and a half hour drive back and forth from home." He also stated it was too costly and he was unable to continue staying in the location. He denied taking any action to avoid quitting. In a separate document styled "Most Recent Employer Information," Luke listed "quit" as the separation reason and "personal reason" as the secondary reason. His explanation was "two and a half hour drive to and from home daily." A second "UI-408 Fact Finding Report – Claimant's Statement," filed with the Kentucky Division of Unemployment Insurance on September 10, 2013, reflects Luke stated he did not give prior notice he would be quitting his job. Rather, he called on July 24, 2013, and told Kanawha he would not be back. Luke provided the reason for quitting his job: "It was 108 miles from my home to the job it was so far from my home that I could not do it." He stated he tried to find another job and he had a promise of another job but it had not started yet. With respect to why he did not take any actions to avoid quitting, Luke stated he could not travel two and a half hours one way to work, work ten hours, and then travel two and a half hours.

The Kentucky Division of Unemployment Insurance determined Luke was disqualified from receiving unemployment insurance benefits because he voluntarily left work due to the distance to work. It concluded Luke did not exhaust all reasonable alternatives prior to leaving work and he voluntarily left work, without good cause attributable to the employment.

Kanawha introduced the June 12, 2013, form styled "Medical Examination Report" completed by Luke in which he checked no as to whether he had chronic low back pain.

Kanawha introduced the April 23, 2014, Independent Medical Evaluation ("IME") report of Dr. Gregory Snider. After conducting an examination and reviewing medical records, pursuant to the AMA Guides, Dr. Snider assessed a 6% impairment rating for the cervical spine condition and a 7% impairment rating for the lumbar spine condition for a combined 13% impairment rating. With respect to his impairment rating, Dr. Snider provided the following explanation:

> In my opinion, Mr. Luke's conditions are multifactorial. These factors include age, avocational activities, genetic predisposition, individual variation, and work activities, apparently cumulative in nature. In my opinion, approximately half of this could be apportioned to work exposure, or approximately 7% WPI. At age 61, Mr.

> Luke has approximately 43 years' work exposure; 33 years of that is in coal mining and other jobs involving heavy equipment operation. He worked for approximately 4 years at Kanawha Stone, or approximately 10% of his work years. Thus, his impairment for exposure at Kanawha Stone would not exceed 1% WPI after rounding.

Kanawha introduced the June 13, 2014, deposition of Dr. Uzzle. Dr. Uzzle acknowledged Section B of his Form 107 notes that over the past two years Luke's symptoms have gradually worsened without any specific injury, and during those two years he had operated dozers over extremely rough terrain. Dr. Uzzle did not receive a history of a specific traumatic injury. He was aware Luke worked for Kanawha from July 13, 2013, through July 26, 2013. Regarding Luke's symptoms beginning in 2009 and continuing during the period he was employed by Kanawha twice and Foothills once, Dr. Uzzle provided the following testimony:

> A: Well, what my note indicates that he had described it as far as the past two years of his employment is when his symptoms became worse, and he did describe to me what he was doing during that timeframe that he attributed those symptoms to.

Dr. Uzzle testified further:

> Q: Here's the primary reason that I'm here today. Your initial history in your report makes reference to, again, quote, over the past two years his symptoms have become – actually it says

> became – gradually worse, end quote. But then moving on to section I, the heading is Explanation of Causal Relationship, it says, quote, these have been developing over years of exposure; however, were not largely – were largely not symptomatic until his last employment, period, end quote. By that do you mean the two weeks he spent at Kanawha Stone Company or his last two years of employment?
>
> A: In his case I'm referring to the last two years of employment.

Dr. Uzzle commented upon Dr. Snider's apportionment:

> Q: Before we started the deposition I shared with you Dr. Snider's evaluation report, and I asked you to review his last paragraph about causation. And I'll quote that into the record, at least in relevant part. In my opinion, Mr. Luke's conditions are multi-factorial. These factors include age, avocational activities genetic predisposition, individual variation, and work activities apparently cumulative in nature. In my opinion approximately half of this could be apportioned to work exposure or approximately seven percent WPI. At age sixty-one Mr. Luke has approximately forty-three years [sic] work exposure, thirty-three years of that is in coal mining and other jobs involving heavy equipment operation. He worked for approximately four years at Kanawha Stone, or approximately ten percent of his work years. Thus, his impairment for exposure at Kanawha Stone would not exceed one percent WPI after rounding. For the record, I'm not sure his math is correct in that I don't think all together Mr. Luke worked for Kanawha

> Stone for a total of four years. But do you have any opinion or comment on Dr. Snider's theory as to causation and apportionment there?
>
> A: I think his comments on causation are reasonable. His apportionment is a little different than the way I was thinking on it, and I just modified my thinking on this just before the deposition. But overall I think that Dr. Snider's attempt at rationalizing his apportionment is reasonable.

Dr. Uzzle opined Luke possessed anatomical problems which predisposed him to developing back and spine problems. Concerning whether Luke's entire work history contributed to causing the conditions of which he now complains, Dr. Uzzle testified:

> A: I think it contributed to. I always go to the area of time and what they were doing at the time when their symptoms more gradually or dramatically became worse to decide how apportionment should be addressed.

Regarding his 13% impairment rating, Dr. Uzzle testified:

> Q: Now, Doctor, I think the last question I have is the – sort of the big ball of wax that – if I ask you your opinion on apportionment of the impairment rating that you've assessed in this case, how much would you assess to the final exposure with Kanawha Stone?
>
> A: Since we're dealing with a relatively short term of employment, two weeks out of the past two years, if you took it just on a timeframe basis,

> two weeks out of two years is one percent. And that's how I would apportion the impairment that I addressed was one percent of the impairment was due to his most recent employment.

After summarizing the lay and medical evidence, the ALJ entered, in relevant part, the following findings of fact and conclusions of law:

> 14. Although arrived at differently, the medical experts, Drs. Uzzle and Snider, agree that the Plaintiff has a 13% whole person impairment. The ALJ is more persuaded by Dr. Uzzle's report because it more adequately accounts for the Plaintiff's pain and advanced degenerative changes. The ALJ is convinced by Dr. Uzzle's opinion that the Plaintiff's condition was brought into a disabling reality by his last work with the Defendant.
>
> 15. The ALJ finds that the apportionment later referenced by Dr. Uzzle is not relevant because the total impairment assessed by him was the result of a series of mini-traumas experienced over the course of the Plainitff's [sic] work life that were brought into a disabling reality by the last employment with the Defendant. The ALJ therefore finds that the 13% rating issued by Dr. Uzzle is more credible than the rather contorted multifactorial logic used by Dr. Snider to apportion certain percentages to other factors and employers one of which also happens to be this Defendant.
>
> 16. The ALJ therefore finds that the Plaintiff has sustained a 13% whole person impairment as a result of work

> related cumulative trauma that was aroused into a disabling reality while the Plaintiff was last employed with the Defendant and which became manifest on July 26, 2013. The ALJ consequently finds that the claim is not barred by the statute of limitations and that notice was properly given by the Plaintiff upon the filing of the claim on January 6, 2014.
>
> 17. The ALJ also finds that Dr. Uzzle is more credible regarding the Plaintiff's restrictions. Dr. Snider has opined that the Plaintiff is only limiting himself through his subjective complaints and that he has seen no exam finding that would make him incapable of returning to work. The ALJ finds this to be inconsistent with the rating assessed and the finding that the Plaintiff may not be at MMI which Dr. Snider also said. The ALJ is much more persuaded by Dr. Uzzle who concluded that the Plaintiff cannot return to his previous employment due to his extensive restrictions. The ALJ therefore finds that the Plaintiff is not capable of returning to the same type of work.

Kanawha filed a petition for reconsideration raising the same issues it now raises on appeal. Kanawha did not request additional findings of fact. Rather, it requested the appropriate order modifying the ALJ's opinion and award. In the November 24, 2014, Order overruling the petition for reconsideration, the ALJ indicated his opinion and award issued August 25, 2014, would remain unchanged

except of the following additional findings and conclusions:

> 1. The ALJ finds that the mechanism of injury to the Plaintiff is cumulative trauma and in accordance with the independent medical examination of Dr. Uzzle, further finds that a series of mini-traumas experienced over the course of the Plaintiff's work life has been brought into disabling reality by his last work with the Defendant.
>
> 2. The ALJ also finds in accordance with the opinion of Dr. Uzzle that the Plaintiff suffered from a dormant non-disabling condition that was aroused into a disabling reality by cumulative trauma while the Plaintiff was employed by the Defendant.

Concerning its first argument on appeal, Kanawha asserts the ALJ's reliance upon Dr. Uzzle's opinions is misplaced as his conclusions do not support the ALJ's findings. Therefore, liability must be apportioned. Kanawha contends it can only be liable for 1% of the 13% impairment rating. Similarly, it asserts the ALJ's finding Luke's work aroused a dormant non-disabling condition into disabling reality is not supported by substantial evidence as all the evidence indicates he had a disabling impairment before his last employment with Kanawha in 2013. Thus, his final 92.5 hours of work at Kanawha did not contribute to the impairment rating.

Kanawha notes both Drs. Snider and Uzzle assessed a 1% impairment rating. It also notes Dr. Uzzle testified all of Luke's work history contributed to his complaints and he agreed with Dr. Snider's assessment of a 1% impairment rating attributable to Luke's last work at Kanawha.

In its second argument, Kanawha asserts Luke failed to prove his complaints changed in any way during the time he was last employed with Kanawha as he acknowledged he was already experiencing neck and back pain before working for Kanawha in July 2013. It contends Luke misrepresented his conditions by citing to his response to the pre-employment questionnaire that he did not experience chronic low back pain. It also cites to Luke's answers provided to the Division of Unemployment Insurance where he indicated he quit his job because of the distance he had to drive. As a result, Luke's claim for unemployment benefits was denied because he voluntarily left work due to the distance to work. Thus, Kanawha contends Luke's claim he left work because of neck and back pain is contrary to the reasons provided in his claim for unemployment insurance benefits. It asserts substantial evidence does not support a finding that Luke's cumulative trauma was brought into disabling reality by the short period he worked for

Kanawha. Therefore, it requests the Board reverse the findings and order Luke's claim dismissed in its entirety.

Luke, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action, including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Luke was successful in that burden, the question on appeal is whether there was substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An 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). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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

We find no merit in Kanawha's argument substantial evidence does not support the ALJ's finding it bears the entire liability for Luke's cumulative trauma

neck and low back injuries. Dr. Uzzle's opinions expressed in his Form 107 constitute substantial evidence supporting the ALJ's determination Luke has a 13% impairment rating as a result of cumulative trauma injuries manifesting during his employment with Kanawha. In his Form 107 report, Dr. Uzzle opined Luke's neck and back conditions were largely not symptomatic until his last employment with Kanawha. Dr. Uzzle characterized Luke's condition prior to working for Kanawha in July 2013 as a dormant non-disabling condition aroused into disability reality by cumulative trauma. During his deposition, Dr. Uzzle changed his opinions regarding apportionment of his impairment rating and the nature of Luke's condition prior to his employment with Kanawha in July 2013. However, the ALJ was free to reject Dr. Uzzle's deposition testimony and rely upon his opinions expressed in the Form 107. In the Form 107, Dr. Uzzle unequivocally stated Luke's neck and back conditions were not symptomatic until he worked for Kanawha in July 2013. In his opinion and award, the ALJ specifically addressed Dr. Uzzle's deposition testimony finding "the apportionment later referenced by Dr. Uzzle is not relevant." Relying upon the opinions of Dr. Uzzle set forth in his Form 107, the ALJ concluded Luke had a 13% impairment rating as a result of work-related cumulative

trauma which was aroused by Luke's employment at Kanawha for two weeks in July 2013 and manifested on July 26, 2013. That is the ALJ's prerogative. As previously noted, the ALJ is free to rely upon portions of Dr. Uzzle's opinion while rejecting other differing opinions expressed by him.

In the recent case of Hale v. CDR Operations, Inc., et al, 2015WL6560450, rendered October 29, 2015, Designated To Be Published, the Kentucky Supreme Court rejected the premise that because of the short period of time Luke worked for Kanawha it is not liable for the entire impairment rating attributable to Luke's cumulative trauma injuries holding:

> Resurrecting the apportionment scheme of *Southern Kentucky Concrete* would in essence create a "lesser" class of claimants. In hearing loss and occupational disease claims - which are quite similar in nature to cumulative trauma because they occur gradually over time - the employer at the time of the last injurious or hazardous exposure is liable. The employee is entitled to the same amount of compensation whether he worked for one employer or many. An employee who sustains a harmful change in his human organism due to cumulative trauma over many years working for the same employer is entitled to compensation to the full extent of his resultant disability. But, someone like Hale would not be fully compensated, simply because he worked for multiple employers. We can discern no basis for such a distinction. "Although both the

> employee and the employer have rights under the [Workers' Compensation] Act, the primary purpose of the law is to aid injured ... workers." *Zurich Am. Ins. Co. v. Brierly,* 936 S.W.2d 561, 563 (Ky. 1996). Nothing in KRS Chapter 342 limits the liability of the employer, in whose employ the date of manifestation occurred, to the percentage of the claimant's work-life spent there.

Slip Op. at 16-17.

The fact Luke's last employment with Kanawha during which the cumulative trauma injuries manifested, spanned two weeks is immaterial. Consequently, Kanawha bears the entire liability for Luke's cumulative trauma injuries which manifested on July 26, 2013.

We add that Luke's April 2014 deposition testimony establishes he began experiencing neck and back pain in 2009 during the time he was working for Kanawha. Luke's neck and back pain did not increase during the period he worked for Foothills in 2011 and 2012. Luke testified it was only after he returned to work for Kanawha in 2013 that his neck and back pain worsened. This testimony buttresses the opinions expressed by Dr. Uzzle in his Form 107. It also demonstrates Luke initially began experiencing neck and back pain while working for Kanawha and that pain did not change after he left Kanawha and was employed by Foothills. This testimony also comprises

substantial evidence in support of the ALJ's determination Kanawha bears the entire liability for the 13% impairment rating assessed by both Dr. Uzzle and Dr. Snider.

We also find no merit in Kanawha's second argument that substantial evidence does not support the ALJ's finding Luke's work at Kanawha aroused a dormant non-disabling condition into disabling reality. The ALJ has the sole authority to determine the weight he will afford the evidence. Here, the ALJ assigned no weight to the information contained in documents from the Division of Unemployment Insurance relating to Luke's claim for unemployment insurance benefits. Rather, he chose to rely upon Luke's testimony and the opinions of Dr. Uzzle in determining Luke's neck and back pain manifested during his employment with Kanawha in July 2013. This Board cannot usurp the ALJ's fact-finding authority. The ALJ chose to disregard the statements Luke made to the Kentucky Division of Unemployment Insurance in his application for unemployment benefits and we have no authority to direct otherwise.

The same holds true for the information Luke provided to the doctor performing the pre-employment physical for Kanawha. There is no question Luke indicated he did not suffer from chronic low back pain. However,

there is nothing in the documents regarding neck symptoms. Further, Luke testified at the hearing he informed the doctor of his problems. The ALJ determines the evidence upon which he will rely, and this Board has no authority to infringe on the ALJ's fact-finding authority.

In addition, we note Kanawha did not assert a special defense, as set forth in 803 KAR 25:010 Section 5 (2)(d)(4), by asserting a false statement on an unemployment application. Rather it asserts Luke was untruthful in providing his pre-existing symptoms to the examining doctor. Since Luke's deposition testimony contradicts what he stated in the questionnaire he completed for the examining doctor, we believe the ALJ was well within his authority in believing Luke's testimony that he was truthful with the doctor regarding his pre-existing symptoms and condition.

Accordingly, the August 25, 2014, Opinion and Award and the November 25, 2014, Order ruling on the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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