Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: May 22, 2015

CLAIM NO. 201392309

KENTUCKY COOPERAGE PETITIONER

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

TERRY MATTINGLY
and HON. CHRIS DAVIS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Kentucky Cooperage ("Cooperage") seeks review of the December 11, 2014, Opinion, Award, and Order of Hon. Chris Davis, Administrative Law Judge ("ALJ") finding Terry Mattingly ("Mattingly") sustained a work-related right knee injury and awarding temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits enhanced pursuant to KRS 342.730(1)(c)2

and medical benefits. Cooperage also appeals from the January 20, 2015, Order overruling its petition for reconsideration.

On appeal, Cooperage challenges the enhancement of Mattingly's benefits by the two multiplier and the ALJ's reliance upon Dr. Warren Bilkey's 7% impairment rating. The parties stipulated Mattingly sustained a work-related injury on January 24, 2013, and Cooperage received due and timely notice.

On January 24, 2013, Mattingly was carrying a hydraulic cylinder when he stepped down and felt a pop in his right knee. The February 26, 2013, operative report of Spring View Hospital reveals Dr. Daniel Hunt performed the following procedures: "1. Arthroscopic partial medial meniscectomy. 2. Arthroscopic chondroplasty, medial femoral condyle."

Concerning the impairment rating attributable to the injury, Mattingly submitted the May 13, 2014, report of Dr. Bilkey in which he assessed a 7% impairment rating. Cooperage submitted the July 17, 2014, report of Dr. Martin Schiller in which he assessed a 2% impairment rating. In his report, Dr. Schiller took issue with the impairment rating assessed by Dr. Bilkey asserting the 7% impairment rating was not permitted by the 5th Edition of the American

Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). Cooperage introduced Dr. Bilkey's deposition in which it questioned his use of Table 17.5 contained on page 529 of the AMA Guides.

Mattingly testified at an August 26, 2014, deposition and at the August 22, 2014, hearing. Cooperage introduced the November 6, 2014, depositions of Timmy Glazer ("Glazer") and Barry Shewmaker ("Shewmaker").

The December 11, 2014, decision contains the following findings of fact and conclusions of law:

> 9. The issues preserved for adjudication are benefits pursuant to KRS 342.730; credit for unemployment benefits and exclusion for pre-existing disability/impairment.
>
> As fact finder, the ALJ has the authority to determine the quality, character and substance of the evidence. *Square D Company v. Tipton*, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge the weight and inferences to be drawn from the evidence. *Luttrell v. Cardinal Aluminum Co.*, 909 S.W.2d 334 (Ky. App. 1995). In weighing the evidence the ALJ must consider the totality of the evidence. *Paramount Foods Inc., v. Burkhardt*, 695 S.W. 2d 418 (Ky., 1985).
>
> In analyzing this claim the Administrative Law Judge has reviewed all of the evidence in this claim, as summarized above. The Administrative Law Judge has also reviewed the parties' briefs and arguments.

As for impairment rating I rely upon Dr. Bilkey and select the 7%. Both Dr. Bilkey and Dr. Schiller are respected physicians and evaluators. Both have set forth their findings and conclusions in an intelligent and cogent fashion. On the one hand Dr. Schiller's assessment is more in keeping with the full release provided by Dr. Hunt.

Conversely, and ultimately deciding my opinion is the fact I believe that the Plaintiff had a pre-existing, dormant, right knee osteoarthritis brought into a disabling reality by the work injury. The Plaintiff, prior to the work injury, had never treated for his right knee, never been assigned an impairment rating or restrictions for it and had no occupational disability for it. Now that the condition is symptomatic it is reasonable and allowed to conclude that it is work-related. This is our standard, i.e. one of a dormant condition being brought into disabling reality and therefore compensable.

This analysis is sufficient for both impairment rating and any exclusion for a pre-existing, active condition.

Because I accept the full release given by Dr. Hunt as of April 10, 2013 and because unemployment benefits did not start until June, 2013, there is no credit for unemployment benefits. Mattingly is certainly not totally disabled.

As for restrictions I accept and agree with, generally, Dr. Hunt's overarching medical opinion that the Plaintiff can return to work without restrictions. I believe and find that based on this full release he retains

the capacity to return to the type of work done on the date of injury.

He did return to work, for approximately two months, at wages equal or greater than on the date of injury.

I further find, in reliance on the testimony of the Plaintiff, and not directly contradicted by any witness, that the reason that he left work early on his last date of employment was due to temporary discomfort and/or pain in his right knee. Due to this discomfort/pain he requested to be allowed to leave work early and was therefore terminated. Therefore, the reason he is not now working, despite having the permanent physical capacity to work, is related to his work injury.

As such he is entitled to the 2x multiplier pursuant to KRS 342.730(1)(c)2. for all periods in which his wages were or are less than his AWW on the date of injury, $1039.04. Because the Plaintiff bears the burden of proof and the record only reflects he was terminated in June, 2013 I will find that his last date of work was June 30, 2013, as this is the least advantageous date to him.

Mattingly's permanent partial disability award shall be 564.52 (workers' compensation rate) x .07 (impairment rating) x .85 (grid factor) = $33.59 a week, for 425 weeks, from January 25, 2013, and excluding all periods of temporary total disability benefits and but his benefit shall be $67.18 during all periods in which he earns less than $1039.04 per week, including from July 1, 2013 through the date of the hearing and continuing thereafter during any and all said periods, even if not contiguous with

> the current period. He is also entitled to all reasonable and necessary, work-related medical expenses for the injury to his right knee.

Cooperage filed a petition for reconsideration requesting additional findings of fact relating to the finding Mattingly had a 7% impairment rating and seeking an explanation why the ALJ did not rely upon an impairment rating in accordance with the AMA Guides. Cooperage also requested additional findings of fact concerning the ALJ's enhancement of Mattingly's benefits by the two multiplier.

In the January 20, 2015, Order overruling the petition for reconsideration, the ALJ stated as follows:

> 1. With respect to paragraphs 1. and 2. of the Petition they are requesting further findings of fact when ample facts to support the decision have been set forth. They do not point to any patent error of fact or law.
>
> 2. With respect to paragraph 3. this issue was not preserved and regardless the opinion of one physician, Dr. Schiller, does not create a presumption that Dr. Bilkey used the guides wrong.

Concerning its first argument that the two multiplier is not applicable, Cooperage argues Mattingly testified he would still be working for Cooperage had he not become angry and quit. It asserts Mattingly is not working there because of his temper not his injury. Cooperage contends the testimony from its representatives

reveals Mattingly had seniority and could have moved to jobs of his choice earning the same or greater wages until retirement. It asserts that in spite of Mattingly's intemperate outburst and threats, he would have been rehired with the appropriate apology. Cooperage argues it is entitled to a decision based on a correct understanding of the evidence. It contends the ALJ erroneously found Mattingly left work due to problems stemming from his injury. Further, the ALJ erroneously found Mattingly's testimony was uncontradicted. Citing to Chrysalis House v. Tackett, 283 S.W. 3d 671 (Ky. 2009), Cooperage argues there is no basis for enhancement by the two multiplier since "Mattingly can only receive the multiplier if he has left his work for reasons related to his injury."

Concerning its second argument, Cooperage argues the gait derangement table contained in Table 17-5 can only be used when the claimant requires the use of an assistive device and the ALJ ignored the fact Mattingly was not using such a device. Therefore, the gait derangement table is inapplicable. Cooperage argues as follows:

> His next highest rating comes from the Table 17-10 for 'Varus Angulation.' However, as pointed out by Dr. Schiller, '[t]his amount of varus is almost impossible to identify on physical examination, but is something that can be identified on weight

> bearing x-rays. Thus this is an impairment value given by Dr. Bilkey which is not scientific.'

Cooperage contends Table 17-33 of the AMA Guides specifically addresses Mattingly's condition and he has a 2% impairment rating.

Mattingly, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Mattingly 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). An 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). 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 will address Cooperage's argument in reverse order. Dr. Bilkey's report contains the following impression:

> 1/24/13 work injury, right knee strain, medial meniscus tear, aggravation of degenerative joint disease of the right knee. Mr. Mattingly has undergone surgery. There is residual chronic pain affecting the right knee, limitation of motion and painful gait.

Dr. Bilkey believed Mattingly had pre-existing asymptomatic osteoarthritis of the right knee and was not having symptoms and received no diagnostic treatment prior to the January 24, 2013, work injury. He noted, in relevant part, as follows:

> According to the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition, there are different measures by which permanent impairment may be calculated. There are specific rules which govern which of these measures may or may not then be combined. According to the Guides, when there are competing but pertinent methods to calculate impairment, the highest is to be utilized.
>
> For residual limitation of motion of the right knee according to Table 17-10 for varus angulation there is 4% whole

> person impairment. According to Table 17-5, for residual gait impairment there is 7% whole person impairment. According to Table 17-6, for atrophy there is 1% whole person impairment. According to Table 17-8 for residual hamstring weakness there is 5% whole person impairment. There may be impairment with respect to arthritis, loss of cartilage interval. I would need to review standing x-rays of the knee to see if any impairment related to loss of cartilage interval applies here. I do not have such x-rays to review for today's assessment.
>
> According to the Guides, these measures of impairment may not be combined. Since the highest is to be utilized, Mr. Mattingly has 7% whole person impairment as referenced on Table 17-5, the entirety of which is due to the 1/24/13 work injury. There is no apportionment to be made to an active pre-existing impairment. While Mr. Mattingly may have had a pre-existing dormant impairment, for the reasons noted above, he did not have an active pre-existing impairment. Hence there is no apportionment of this 7% whole person impairment rating.

During Dr. Bilkey's deposition, the following exchange took place:

> Q: Could you please read that?
>
> A: 'Table 17-5 are for full-time gait derangements of persons who are dependent on assistive devices.'
>
> Q: All right. I didn't see anywhere in your report that he was dependent upon any assistive devices.
>
> A: Correct.

Q: So, then, that impairment rating under Table 17-5 is really not appropriate, is it?

A: No. When I say ‘no,’ I don’t mean that I’m agreeing with you. The AMA Guides has areas where there are apparent contradictions, and this is one of them.

The first impairment is for mild gait impairment, subsection A, which means a limp with a shortened stance phase, documented moderate to advanced arthritic change of the hip, knee, or ankle. That does not require any assistive device.

So, on the one hand the paragraph is saying that there is no need for a full-time gait -– or is a need for assistive devices with dependency on these. On the other hand, an impairment is issued for individuals who are not dependent on an assistive device.

Q: Well, it says here under mild, under severity, for a 7 percent, it says simply ‘antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes of hip, knee, or ankle.’ Does that say anything about whether or not you have an assistive device?

A: That one statement does not say anything about assistive device; however, the subsequent impairments make specific reference to assistive devices.

Q: You mean for a 15 percent?

A: In the case of a part-time dependence on it, with use of a cane.

Q: All right. And it say [sic], and I quote, under subparagraph C it says,

> ‘Same as category A or B above, but individual requires part time use of cane or crutch.’
>
> A: Correct. Those are assistive devices.
>
> Q: And that gives a 15 percent; is that correct?
>
> A: Correct.
>
> . . .
>
> Q: Okay. And just if you look at the sheer language set out here where they have that paragraph that says ‘Except as otherwise noted, the percentages given in 17-5 are for full-time gait derangements of persons who are dependent on assistive devices,’ that would appear to indicate, would it not, that this not –- that Table 17-5 should not be used for somebody without any assistive devices?
>
> A: That statement would tend to indicate that some of –- yes, and that some of the impairments on Table 17-5 are, indeed, a contradiction to what is stated above that.

The assessment of impairment for the purposes of arriving at a disability rating in a workers’ compensation claim is a medical question solely within the province of the medical experts. Kentucky River Enterprises Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003). Furthermore, a fact-finding authority does not extend to interpreting the AMA Guides. George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). Although assigning a permanent

impairment rating is a matter for medical experts, determining the weight and character of medical testimony and drawing reasonable inferences therefrom are matters for the ALJ. Knott County Nursing Home v. Wallen, 74 S.W.3d 706 (Ky. 2002). Moreover, authority to select an impairment rating assigned by an expert medical witness rests with the ALJ. *See* KRS 342.0011 (35) and (36); Staples, Inc. v. Konvelski, 56 S.W.3d 412 (Ky. 2001).

Because Dr. Bilkey is a licensed physician, it was appropriate for the ALJ to assume his expertise in utilizing the AMA Guides was comparable or superior to any other expert medical witnesses of record. The ALJ, as fact-finder, has no responsibility to look behind an impairment rating or meticulously sift through the AMA Guides to determine whether an impairment assessment harmonizes with that treatise's underlying criteria. Except under compelling circumstances where it is obvious even to a lay person that a gross misapplication of the AMA Guides has occurred, the issue of which physician's AMA rating is most credible is a matter of discretion for the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

That said, we are cognizant of the Kentucky Supreme Court's recent holding in Central Baptist Hospital

v. Hayes, 2012-SC-000752-WC, rendered August 29, 2013, Designated Not To Be Published, in which it stated:

> Usually an ALJ may not question a medical expert's interpretation of the *Guides,* but may only determine which expert's findings he finds to be most credible. [citation omitted]. But once an ALJ is presented with overwhelming evidence that the impairment rating calculated by the medical expert is in contravention of the *Guides,* he has the responsibility to assign a different rating.
>
> As previously noted, any impairment rating assigned by an ALJ must be in compliance with the *Guides.* KRS 342.0011(35); KRS 342.730(1)(b). In this matter, Central Baptist provided sufficient evidence to show that the combined 10% impairment rating assigned to Hayes was erroneous and not in compliance with the *Guides.* Table 17–2 and Section 17.2c of the *Guides,* state that an impairment rating for gait derangement may not be combined with an impairment rating for arthritis. No medical analysis or expertise is necessary to come to this conclusion. Thus, Dr. Nicholls should not have combined the two different impairment ratings, and Hayes cannot be assigned the combined 10% impairment rating.

Slip Op. at 2.

Based on our review of the report and testimony of Dr. Bilkey, Dr. Schiller's report, and Table 17-5 of the AMA Guides, we conclude the case *sub judice* is not one where the ALJ was presented with overwhelming evidence that the impairment rating calculated by Dr. Bilkey was in

contravention of the AMA Guides. On page 529 of the AMA Guides 17.2c entitled "Gait Derangement" reads, in relevant part, as follows:

> Except as otherwise noted, the percentages given in Table 17-5 are for full-time gait derangements of persons who are dependent on **assistive devices**.

Table 17-5 styled "Lower Limb Impairment Due to Gait Derangement" under mild severity reads as follows:

Individual Signs

> a. Antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes of hip, knee, or ankle.
>
> b. Positive Trendelenburg sign and moderate to advanced osteoarthritis of hip.
>
> c. Same as category a or b above, but individual requires part-time use of cane or crutch for distance waking but not usually at home or in the workplace.
>
> d. Requires routine use of short leg brace (ankle-foot orthosis [AFO]).

The whole person impairment rating for a. is 7%, b. is 10%, c. is 15%, and d. is 15%. We disagree that Table 17-5 is only applicable when the claimant is required to use an assistive device. Cooperage fails to note the prefacing language in the last sentence of Table 17.2 located immediately above Table 17-5 which reads "except as otherwise noted." Clearly, Table 17-5 a. does not require

the use of an assistive device in order for the 7% impairment to be assessed. That section requires an antalgic limp with shortened stance phase and documented moderate to advanced arthritic changes of hip, knee, or ankle. Significantly, on appeal Cooperage does not challenge Dr. Bilkey's opinion that dormant non-disabling arthritic conditions were aroused into disabling reality by the injury of January 24, 2013. More importantly, Cooperage does not contend the elements of a. are not present.

In addition, we note Table 17-5 b. permits a 10% impairment rating when there is positive Trendelenburg sign and moderate to advanced osteoarthritis of the hip. Table 17-5 b. does not require the use of an assistive device. The first impairment rating which requires the use of an assistive device of some type is contained in Table 17-5 c., and it merely requires the part-time use of a cane or crutch for distance walking but not usually at home or in the workplace. Since Dr. Bilkey appropriately relied upon Table 17-5 in assessing an impairment rating, the ALJ could rely upon his impairment rating. This is not a situation where there is overwhelming evidence that the impairment rating calculated by Dr. Bilkey is in contravention of the AMA Guides. In fact, Table 17-5 reveals Dr. Bilkey

correctly assessed a 7% impairment rating based on an antalgic limp and documented advanced arthritic changes of the knee. Accordingly, that portion of the ALJ's decision determining Mattingly has a 7% impairment rating shall be affirmed.

Concerning Cooperage's argument the ALJ erred in enhancing the income benefits by the two multiplier, we note Mattingly's deposition testimony reveals he had been working as a maintenance worker for twenty-three years for Cooperage performing preventative maintenance in the heading department and repairing machines which were broken down. Mattingly testified the surgery immediately helped, and he had no problems with his knee for a long time. He was unsure when his problems began to bother him. During his deposition, Mattingly recounted the events leading to his termination:

> A: Well, I -– I usually was there at 4:30 in the morning, and so when I went in I had three or four machines down and it wasn't long until the supervisor came in and he was fussing about this was down, this was down, I said, 'Yeah, I know,' I said -– he said, 'Well, what we got -– we got to do something about it.' So I told him, I said, 'Listen,' I said, 'I' -– I -– which my knee was hurting me real bad that morning. I said, 'Just put -– put me down for vacation day,' because my vacation I could only take a day or two at a time, you know, I couldn't get a vacation

> like everybody else. So I told him, I said, 'Just put me down for a vacation day,' and I said, 'let me go home and you all take care of it.' And he said, if –- he told me and his very words were, 'If you walk out that door you sure as hell ain't coming back.'
>
> Q: And so were you taking a vacation day for your knee, is that what you're saying?
>
> A: Yes.
>
> Q: Had you taken other vacation days because of your knee before that?
>
> A: Yes.
>
> Q: Okay.
>
> A: So when he said that I just –- I took him up on it as he fired me.
>
> Q: Okay. And did you get a letter or anything from the cooperage telling you you were fired?
>
> A: No, no. No, I don't –- you know, not that I can recall.

Mattingly also explained he told Glazer he had all these machines down, but Glazer continued to stay in his face and "fuss" about all the machines being down. Mattingly testified the machines were down because the second shift did not repair them before leaving. Mattingly acknowledged he had not responded in the friendliest way to Glazer, his supervisor. As noted by Cooperage, Mattingly also testified as follows:

> Q: Uh-huh. Now if you hadn't had your altercation with this man that day, with Mr. Glazer, you probably would have continued working there for some period of time?
>
> A: Yes.
>
> Q: Okay. Would you maybe be working there now?
>
> A: Probably, yes.
>
> Q: Alright. Had you had problems with Mr. Glazer before?
>
> A: No.
>
> Q: Had you had trouble with anyone else at the company?
>
> A: No.

Mattingly testified he liked his job, missed it, and he would come back to work if he could. His knee condition is such that he will have good days and bad days. He agreed that on a good day he could perform his previous job.

At the hearing, Mattingly testified he continues to have problems with his knee and again recounted what took place on January 24, 2013. He testified he had felt pressure from Cooperage since the surgery, and in the past Cooperage had allowed him to take a vacation day when he experienced knee problems.

Cooperage countered with the testimony of Glazer regarding the exchange which took place during his

encounter with Mattingly. Glazer testified Cooperage's electrical engineer, Michael Joseph ("Joseph") had noted a couple of bad injuries had occurred on the back line which is located in the heading department and had made suggestions for fixing the problem. When Glazer mentioned to Mattingly what Joseph recommended, Mattingly snapped and cussed him and Joseph. According to Glazer, Mattingly said "'f' you" and requested a vacation day and left. Glazer told Mattingly he could not talk like that. He also testified Mattingly could have returned with a "good apology." Glazer believed the problem could have been worked out. He explained that Mattingly and Joseph did not get along and when he first spoke with Mattingly, he had gotten on the radio and was hollering at Joseph that he would "f" him and "whoop his ass." Glazer testified Joseph did not hear this because he did not have his radio on. As a result, Glazer sent a text message to Joseph not to come to the heading department. Glazer denied Mattingly complained of knee pain and told him why he wanted to go home. Glazer estimated the conversation lasted a minute or less and denied firing Mattingly. Although he denied firing Mattingly, Glazer testified he told Mattingly if he left he could take his toolbox because "it'd done got to that point." As a result, Mattingly took his toolbox.

Further, Glazer was aware that before he got there, Mattingly was upset about something.

Glazer testified Mattingly could have been moved to a less physical job earning the same or greater wages within the plant. Glazer acknowledged that since the injury and before his termination, Mattingly had occasionally come to work to fix a machine and then clocked out using a vacation, personal, or sick day.

Cooperage also introduced the deposition of its plant manager, Shewmaker. Although Shewmaker initially testified he conducted an exit interview with Mattingly after the incident, he later acknowledged Eric Daugherty conducted the interview, and he only heard portions of the interview.[1] Shewmaker indicated that during his conversation with Mattingly, his only request was that Cooperage not protest his application for unemployment benefits, which he granted. Shewmaker testified since Mattingly had been a long time employee and a good worker, if he wanted to continue with Cooperage he would have been eligible, with the understanding he would have faced disciplinary action. Mattingly would have had the opportunity to move to a less stressful job earning the

[1] The interview occurred on the Friday following the confrontation between Mattingly and Glazer.

same or greater income. A copy of the exit interview was attached to Shewmaker's deposition. That document reflects Mattingly gave the following details: "Employee asked for the rest of the day off after having a bad start up. Supervisor denied and told employee that if he left to take his tools with him. Employee left with tools and cussing supervisor along the way." Significantly, Mattingly was asked if his job duties and responsibilities were what he expected, to which he responded "[a] whole lot more."

In Chrysalis House v. Tackett, supra, concerning the applicability of the two multiplier, the Kentucky Supreme Court instructed as follows:

> KRS 342.730(1)(c)2 appears at first blush to provide clearly and unambiguously for a double benefit during a period of cessation of employment at the same or a greater wage "for any reason, with or without cause." It is, however, a subsection of KRS 342.730(1), which authorizes income benefits to be awarded for "disability" that results from a work-related injury. We conclude for that reason that, when read in context, KRS 342.730(1)(c)2 permits a double income benefit during any period that employment at the same or a greater wage ceases "for any reason, with or without cause," provided that the reason relates to the disabling injury.

Id. at 674.

The ALJ expressly relied upon Mattingly's testimony over the testimony of Cooperage's employees, concluding Mattingly's knee discomfort/pain caused him to seek to leave work early. The ALJ concluded when Cooperage did not allow Mattingly to take a vacation day and Mattingly subsequently left work, it terminated him because he had walked off the job due to physical problems he was currently experiencing with his knee.

Even though Mattingly may have testified he might still be employed had it not been for the confrontation, the fact remains the ALJ concluded the discussion between Mattingly and Glazer occurred as a direct result of right knee symptoms Mattingly experienced on June 21, 2013, which directly affected his work productivity. Although Mattingly acknowledged he did not address his supervisor in a friendly manner, there is nothing indicating his language prior to being discharged was as described by Glazer.[2] Mattingly consistently testified the machinery was not working, he was having physical problems, and because of his problems with his knee and an unsympathetic supervisor, he asked to take off the rest of the day. Even though part of the reason Mattingly sought to take off work was due to

[2] We note the exit interview states Mattingly used profanity as he was leaving.

his disagreement with Glazer, it is clear from Mattingly's testimony that his knee symptoms were the primary reason he sought to leave work early. Mattingly's testimony, if believed, establishes he was terminated for reasons relating to his disabling injury, i.e. the knee pain he was experiencing on that day. Since Mattingly's testimony constitutes substantial evidence supporting enhancement of his PPD benefits pursuant to KRS 342.730(1)(c)2, the ALJ's determination to enhance his benefits by the two multiplier must be affirmed.

Accordingly, the December 11, 2014, Opinion, Award, and Order and the January 20, 2015, Order denying the petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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