Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: February 12, 2014

CLAIM NO. 201264841

KENTUCKY RIVER DISTRICT HEALTH PETITIONER

VS. **APPEAL FROM HON. WILLIAM J. RUDLOFF, ADMINISTRATIVE LAW JUDGE**

DONALD COLWELL,
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING IN PART
AND REMANDING

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

RECHTER, Member. Kentucky River District Health ("KRDH") appeals from the September 4, 2013 Opinion and Order, and the October 15, 2013 Order on Reconsideration rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"). It challenges the sufficiency of the findings made by the

ALJ in determining Donald Colwell ("Colwell") is permanently totally disabled. Because the ALJ failed to articulate his analysis of Colwell's present ability to work, we vacate and remand.

Colwell alleged two injuries to his back, occurring on October 7, 2011 and October 29, 2012. He was born on August 18, 1957 and finished the ninth grade. He earned a GED, but has completed no other vocational training. He performed maintenance and car detailing services for an auto dealer for over twenty years, before taking a position as a janitor with KRDH.

The KRDH offices occupy a two-story building and a separate five-room building, for which Colwell was the only maintenance employee. Consequently, he performed a variety of maintenance and janitorial tasks. The first injury occurred when he lost his balance as he carried a large box up some stairs. He fell backward down the step, and immediately experienced back pain.

He was treated with physical therapy and pain medication, and was released by his treating physician to return to work without restriction in December 2011. Upon returning to KRDH, Colwell restricted himself from heavy lifting and modified the remainder of his job duties. He

testified he did not feel completely healed following the October 7, 2011 injury, though his treatment had ended.

The second injury occurred on October 29, 2012 when Colwell was lifting a crate of copy paper. Again, he experienced sharp pain in his back. Following physical therapy, Colwell was released to return to light duty. He neither returned to KRDH, nor inquired as to whether light duty work was available at the time, instead he elected to take early retirement. At the final hearing, Colwell testified he feared further injury to his back if he returned to even light duty.

Dr. James Bean evaluated Colwell in 2011 and 2013. In 2011, Dr. Bean diagnosed a lumbar strain and recommended physical therapy. On January 28, 2013, he reviewed Colwell's lumbar MRI and diagnosed a lumbar sprain injury with pre-existent degenerative lumbar disc disease. He placed permanent restrictions against lifting over twenty pounds and repetitive bending, twisting or stooping. Referencing the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), Dr. Bean assigned a 5% whole person impairment rating.

Dr. James Owen examined Colwell on April 24, 2013, and reviewed his pertinent medical records. Upon

review of the MRI, Dr. Owen diagnosed persistent low back pain associated with dysmetria and muscle spasm, degenerative disc disease and bulging disc. He opined Colwell's first injury caused 50% of his present back condition, and was brought into disabling reality in its entirety by the second injury. He assigned a 7% impairment pursuant to the AMA Guides, and recommended restrictions similar to those suggested by Dr. Bean.

KRDH also filed the reports of Rick Pounds and Dr. Ralph Crystal. Mr. Pounds performed a functional capacity evaluation of Colwell, and concluded he could return to work with initial lifting restrictions of no more than 30 pounds. Dr. Crystal performed a vocational evaluation of Colwell. He opined Colwell has the ability to enter a wide range of present jobs, and possesses the intellectual functioning to successfully be trained for additional positions. Dr. Crystal concluded Colwell does not have a complete and permanent inability to perform any type of work due to his injuries.

The ALJ determined Colwell suffered two work-related injuries. He relied on the report of Dr. Owen to conclude Colwell's whole person impairment is 7%. In considering whether Colwell is permanently totally disabled as a result of the work injury, the ALJ explained:

> In the present case, I considered the severity of the plaintiff's work injuries, his age, his work history, his education, the credible and convincing testimony of the plaintiff, as summarized above in detail, and the specific medical opinions of Dr. Owen and Dr. Bean, as summarized in detail above, both of which described the plaintiff's physical limitations and occupational disability. Based upon all of those factors, I make the factual determination that the plaintiff cannot find work consistently under regular work circumstances and work dependably. I, therefore, make the factual determination that he is permanently and totally disabled.

KRDH petitioned for reconsideration, requesting the ALJ to provide further analysis regarding the determination Colwell is permanently totally disabled. The petition was denied by Order dated October 15, 2013. KRDH now appeals to this Board, again asserting the ALJ failed to provide sufficient justification for the award of permanent total disability benefits.

We agree the ALJ's findings are insufficient to permit meaningful appellate review. Through citation to Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), the ALJ identified the applicable law and appropriate standards to declare a claimant is permanently totally disabled. He then stated his reliance on the medical opinions of Dr. Owen, as well as Colwell's

testimony. Instead of identifying the particular portions of Colwell's testimony which he found persuasive, the ALJ referenced his summary. The ALJ's summary of Colwell's testimony is as follows:

> The plaintiff, Donald Colwell, testified that he sustained two back injuries, one on October 7, 2011 and the second on October 29, 2012. He stated that he worked as a maintenance tech for the defendant and that his job required a lot of lifting. He last worked for the defendant on October 29, 2012 and is not now employed. He stated that he took early retirement because he was afraid that he would further injure his back. He testified that he has pain in his low back, hips and right leg. He is being treated by Dr. Chaney and is taking prescription pain medication. He testified that he cannot return to work at his former job with the defendant.

Reading this summary of Colwell's testimony together with the ALJ's findings of fact, we are unable to discern the basis of the ALJ's decision. KRS 342.0011(b), (11)(c) and (34) require the ALJ to make an *individualized* determination of what the worker is and is not able to do. The required analysis "necessarily includes a consideration of factors such as the worker's post-injury physical, emotional, intellectual, and vocational status and how those factors interact." Ira A. Watson, 34 S.W.3d at 51.

Through reference to Dr. Owen's report and the physical restrictions recommended by both he and Dr. Bean, the ALJ has identified Colwell's post-injury physical status. However, the ALJ's opinion is devoid of any discussion whatsoever of Colwell's emotional, intellectual or vocational status, and how these factors contribute to Colwell's state of permanent total disability. While the doctors' opinions contain certain physical restrictions, the ALJ did not discuss how these restrictions prevent Colwell from performing his pre-injury duties at KRDH. Furthermore, though Colwell believed he could not perform his pre-injury work, there is no discussion of his ability to be trained for and to perform other jobs. In fact, the reports of Mr. Pound and Dr. Crystal suggest he could either return to his previous position or perform numerous other jobs. Under such circumstances, it is incumbent upon the ALJ to explain his reasoning.

The ALJ enjoys broad discretion in determining whether a claimant is permanently totally disabled. However, the ALJ must demonstrate, through articulated analysis, that discretion has been exercised. All parties are entitled to findings of fact which inform them of the basis for the ALJ's decision and permit meaningful appellate review. Kentland Elkhorn Coal Corp. v. Yates, 743

S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Min. Co., 634 S.W.2d 440 (Ky. App. 1982). In light of the totality of the evidence presented in this case, the ALJ has failed to provide a satisfactory explanation for his conclusions.

As a final matter, KRDH questions whether the ALJ considered only evidence in the record in reaching his decision. Indeed, the ALJ prefaced his findings of fact with the following: "As the Supreme Court of the United States stated in Watts v. Indiana, 338 U.S. 49 (1949), there comes a point where a court should not be ignorant of judges of which we know as men. That principle certainly applies in the case at bar." The Watts Court made this observation to explain why a lower court's specific finding of voluntariness is unnecessary when a criminal confession has been obtained through use of physical force. We disagree this maxim applies to Colwell's case, and believe this surplusage invites legitimate inquiry as to the basis of the ALJ's decision. That said, we do not believe the ALJ's prefatory reference to Watts, alone, indicates he considered evidence outside the record, as KRDH argues.

For the foregoing reasons, the award of permanent total disability benefits contained in the September 4, 2013 Opinion and Order and October 15, 2013 order

reaffirming the award of Hon. William J. Rudloff are **VACATED** and this case is **REMANDED** for further findings of fact as discussed herein.

ALL CONCUR.

COUNSEL FOR PETITIONER:

HON SARAH K MCGUIRE
PO BOX 351
PIKEVILLE, KY 41502

HON JEFFREY D DAMRON
PO BOX 351
PIKEVILLE, KY 41502

COUNSEL FOR RESPONDENT:

HON MCKINNLEY MORGAN
921 S MAIN ST
LONDON, KY 40741

ADMINISTRATIVE LAW JUDGE:

HON WILLIAM J. RUDLOFF
657 CHAMBERLIN AVENUE
FRANKFORT, KY 40601