

OPINION ENTERED: FEBRUARY 22, 2013

CLAIM NO. 201101196

LEXINGTON-FAYETTE URBAN COUNTY GOV.

PETITIONER

VS.

APPEAL FROM HON. ROBERT L. SWISHER,
ADMINISTRATIVE LAW JUDGE

FRANKLIN BRIGHT
and HON. ROBERT L. SWISHER,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

SMITH, Member. Lexington-Fayette Urban County Government ("LFUCG") appeals from the August 3, 2012 Opinion, Award and Order rendered by Hon. Robert L. Swisher, Administrative Law Judge ("ALJ"), and from the September 4, 2012 order on petition for reconsideration. LFUCG argues the ALJ erred in granting Franklin Keith Bright ("Bright") temporary total disability ("TTD") benefits from July 29, 2011 through February 15, 2012, and permanent partial

disability ("PPD") benefits based upon a 15% impairment rating enhanced by the two multiplier pursuant to KRS 342.730(1)(c)2. We disagree and affirm.

Bright, now age 51, is a resident of Nicholasville, Kentucky, where he lives with his wife. He filed a Form 101, Application for Resolution of Injury Claim, on August 31, 2011, alleging an injury to his back and elbow, as a result of a June 29, 2011 slip and fall.

Bright testified by deposition on October 31, 2011 and at the formal hearing on June 6, 2012. He indicated he was still employed by LFUCG, but was not on the payroll. He has not returned to regular duty since the injury. Bright worked in the electronics recycling warehouse where he was required to lift electronic devices and appliances, stacking them on pallets and wrapping them to be stored and ultimately loading them on a truck.

Bright stated he was injured when he slipped and fell on a wet floor as he was getting ice for a water cooler. When he returned to the warehouse, he was aching, his elbow was bleeding and he had sharp pain through his right buttocks. Bright went to the Urgent Treatment Center where he was treated and placed on light lifting restrictions.

Bright testified his pain increased upon bending and he could sit for only thirty minutes. He stated he could

stand "for a while" and walk a half block before he had to sit down. He stated the longer he sat, the greater the pain. He was under restrictions from Dr. Dirk Franzen of no lifting over ten pounds and no prolonged standing or sitting. He indicated he was not able to do his regular job.

At some point after his injury, Bright was called to the office of James McCarty ("McCarty"), public service supervisor for the Division of Waste Management for LFUCG, and suspended without pay for 128 hours as a result of leaving the worksite without permission. A week later, he was arrested for terroristic threatening based on a voicemail he left on McCarty's telephone. Before the suspension, he had worked on light duty for several weeks. Bright stated he never returned to his regular duties, but was performing modified work.

Bright testified at the formal hearing held June 6, 2012. He stated he continues to have sharp pain in his lower back, especially when it is cold, raining, or when he is lifting and bending. Dr. Franzen had taken him off regular duty work for six or seven months and released him on February 15, 2012. He stated his work following the accident was not any lighter than his normal job. He testified LFUCG would not allow anyone to help him and he

had to turn people away on weekends because he could not lift anything by himself.

Bright was not working at the time of the formal hearing but was looking for employment. He stated he was willing to do the light duty work he had been given prior to the suspension, but he was not allowed to return to that work.

On cross-examination, Bright stated he was still considered to be on leave and had not been suspended or terminated. He was receiving unemployment benefits. LFUCG offered him another job working on a garbage truck, which he was unable to perform. He stated he was not given the opportunity to return to his job at the recycling center. However, considering the condition of his back, Bright did not believe he could do so.

Bright filed treatment records from the Urgent Treatment Center showing treatment of an elbow contusion and lumbar sprain. He was first seen on June 29, 2011 and given a restriction of no lifting over ten pounds. He was prescribed medication and instructed to use ice. He returned to the Urgent Treatment Center on July 6, 2011 and was referred to physical therapy. On July 15, 2011, the weight restriction was increased to fifteen pounds.

Bright submitted a Form 107 of Dr. James C. Owen, who examined him on October 12, 2011. Dr. Owen diagnosed persistent back pain with two-level minor vertebral body fractures and chronic pain attributed to the work injury. Dr. Owen assigned a 15% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment 5th Edition ("AMA Guides"). He noted Bright was at maximum medical improvement ("MMI") and was unable to return to his previous work. Dr. Owen noted it was too near the time of injury "to make this a permanent impairment restriction."

Bright submitted treatment records from Dr. Franzen, who initially evaluated him on August 16, 2011. Dr. Franzen reviewed an August 2, 2011 MRI, which showed some mild degenerative changes, focal area of edema involving the L2, L3 and L4 vertebral bodies and spondylotic changes in the mid to upper lumbar spine with minimal bulging from L1-2 through L3-4. Dr. Franzen noted some slight compression of the anterior lip of L2 with some edema. There was a focal edema within the disc and adjacent to it on both sides going above and below the respective endplates. Dr. Franzen's impression was status post fall and he felt Bright may have a very mild fracture of the superior lip of L3 and endplate fractures of L2 and L3. No

surgical intervention was indicated. He returned Bright to sedentary work.

LFUCG submitted the February 15, 2012 office note from Dr. Franzen, including the results of a functional capacity evaluation ("FCE") performed on February 6, 2012. Dr. Franzen noted the FCE found considerable invalid results with symptom magnification and submaximal effort. Dr. Franzen indicated Bright was at MMI and could return to work without restrictions. Dr. Franzen assigned a 5% impairment rating pursuant to the AMA Guides, but did not anticipate a need for further medical treatment.

Dr. Franzen testified by deposition on December 7, 2011. He stated an MRI revealed slight compression of the endplates at L2 and L3 which could fit with the mechanism of injury and Bright's complaints. On close examination of the MRI, it appeared there were fractures of the endplates which appeared to be more acute than degenerative. He saw Bright again on September 13, 2011 and observed he remained neurologically intact. Bright indicated his pain was not as bad as it had been at the previous visit. Dr. Franzen placed Bright on light duty with a twenty pound lifting limit. Dr. Franzen felt Bright should be able to return to his regular work, including performing medium to heavy duty work. Dr. Franzen confirmed, based on his review of the

MRI, Bright had small compression fractures at the endplate at L2 and L3 attributable to the work injury.

LFUCG submitted the report of Dr. Gregory T. Snider, who evaluated Bright on November 11, 2011. Dr. Snider diagnosed sprain/strain, possible mild L2 compression or contusion and low back pain. Dr. Snider stated he did not have a good explanation for Bright's ongoing complaints of severe pain. He recommended a ten pound lift/push/pull limit with no repetitive bending or lifting and felt Bright could return to restricted duty work. Dr. Snider observed no objective evidence of an anatomic change that would warrant permanent restrictions. He opined Bright would be at MMI within thirty days. Based upon the assumption of a slight L2 compression fracture, he stated Bright would have a 5% impairment rating under DRE lumbar category II of the AMA Guides.

McCarty testified by deposition on April 26, 2012, stating he had been Bright's supervisor since April 2011 and was also in charge of overseeing employee records. He stated Bright had disciplinary action forms regarding the unauthorized use of a city vehicle and leaving work without authorization on June 3, 2011. McCarty testified Bright was absent from work without explanation resulting in a 128 hour suspension.

McCarty testified he saw Bright returning from another building on the date of the alleged injury. Bright informed him of the slip and fall incident. McCarty accompanied Bright to the Urgent Treatment Center and offered to drive him home. McCarty completed an accident report. McCarty indicated he knew Bright was restricted from lifting more than five pounds and no standing for long periods of time. Arrangements were made for Bright to work within those restrictions and another employee was brought in to help him. McCarty testified there were always other workers available to help with lifting. Bright failed to follow his restrictions and was witnessed lifting a five gallon water cooler estimated to weigh approximately forty pounds.

McCarty stated he received a voicemail containing a threatening message in which he could hear someone loading a cartridge or a pistol. The voice on the message stated "you're next" and in the background he could hear someone "hollering" at Joe Anderson ("Anderson"). The police investigated the matter and a criminal complaint was filed against Bright for terroristic threatening. Bright was placed on administrative leave. McCarty thought Bright was being paid but he was unable to confirm or deny it.

Anderson, the operations manager of LFUCG's E-waste facility, testified by deposition on April 26, 2012 that Bright was suspended as a result of the unauthorized use of a vehicle and being involved in an accident. Anderson stated he met with Bright and informed him of the suspension. Bright became angry, left the office, and sat in his car for a short time before leaving. Anderson stated he was aware Bright called McCarty and left a voice message around 9:15 a.m. that morning. When he listened to the message, Anderson recognized it as Bright making the call from the parking lot after the meeting. Anderson heard a clicking sound in the voicemail that sounded like a gun, although he acknowledged it could have been many things.

In the Opinion, Award and Order rendered August 3, 2012, the ALJ found Bright sustained a work-related injury to his lumbar spine when he slipped and fell on June 29, 2011, and stated the following regarding impairment:

Having reviewed the medical evidence in detail, the ALJ is persuaded that the impairment rating assigned by Dr. Owen, 15%, is the most authoritative and consistent with the AMA Guides. While Dr. Franzen, plaintiff's treating orthopedic surgeon, assigned a 5% rating under the Guides, he did not specify the section of the Guides from which he took his rating nor did he indicate whether the rating was based on the DRE model or

range of motion model. Dr. Snider, while assigning a 5% rating, felt that the plaintiff qualified only for a DRE Lumbar Category II rating based on a possible endplate fracture at the L2 vertebra. Dr. Franzen, however, clearly testified that plaintiff had sustained endplate fractures at both L2 and L3 which he attributed to the work fall. As such, plaintiff's injury involved more than one level and the DRE method for assessment of impairment is, therefore, inapplicable. Only Dr. Owen calculated impairment by reference to the range of motion method which clearly provides that a compression fracture of a lumbar vertebral body of 0% to 25% results in a 5% whole person impairment rating, further providing that fractures "if several vertebrae are combined using the combined values chart. [sic]" In addition, impairment based on range of motion assessment is combined with the ratings assigned under Table 15-7 due to specific spine disorder. Based on a finding that the plaintiff had compression fractures of two vertebral bodies, plaintiff is entitled to a 5% impairment rating for each fracture with a combined value of 10%. The 5% impairment rating with respect to limitation of range of motion is combined with the 10% fracture rating for a total of 15% as Dr. Owen found. The ALJ finds and concludes, therefore, that Dr. Owen is the only physician who has correctly utilized the AMA Guides in calculating plaintiff's permanent impairment rating. Based on Dr. Owen's opinion and report, the ALJ finds that the plaintiff has sustained a 15% permanent impairment rating as a result of his lumbar spine injury and, therefore, plaintiff has a permanent disability rating of 15% as well.

The ALJ determined Bright was not entitled to application of the triple multiplier found in KRS 342.730(1)(C)1. Regarding the two multiplier, the ALJ found in pertinent part as follows:

Given the parties' stipulation that the plaintiff returned to work at a weekly wage equal to or greater than his average weekly wage at the time of injury, consideration must be given as to the application of the double multiplier pursuant to KRS 342.730(1)(c)2. In order to qualify for the double multiplier, plaintiff must have returned to work at a weekly wage equal to or greater than the average weekly wage at the time of the injury with a subsequent cessation of employment provided that the cessation relates to the disabling injury. *Chrysalis House v. Tackett*, 283 S.W.3d 671 (Ky. 2009). The evidence submitted by the parties including the plaintiff's testimony as well as the deposition testimony of James McCarty and Joe Anderson establish beyond question that plaintiff's employment was initially suspended for disciplinary reasons having to do with plaintiff's conduct and having nothing to do with the disabling effect of the work injury. Plaintiff testified, however, that his suspension was for 128 hours initially for leaving the worksite without permission. At the Formal Hearing he testified he was still considered on leave and had not been suspended or terminated but was not being paid by the defendant. He acknowledged that he had been offered a job by the defendant working on the back of a garbage truck but he declined that because he felt he was unable to perform that work. The ALJ infers that that offer was made to

the plaintiff once he was released without restrictions by Dr. Franzen as of February 15, 2012. Up until that time, plaintiff had been assigned restrictions which limited the work that he is able to do. The ALJ infers, therefore, that the cessation of employment at wages equal to or greater than the average weekly wage at the time of injury is attributable to the plaintiff's subjective assessment of his ability to work in light of his ongoing back symptoms.

The question becomes, then, whether the cessation of employment relates to the disabling injury. Although it is somewhat counterintuitive to relate the cessation or non-continuation of employment with an injury which produced no permanent restrictions, the ALJ notes that the plaintiff's testimony that he was offered an alternate employment position but turned it down because he feels he is physically unable to perform that as a result of his work injury is unrebutted. Based on the plaintiff's unrebutted testimony, therefore, the ALJ finds that the present cessation of the plaintiff's employment "relates" to the disabling injury even if only tenuously so. The ALJ notes that even as construed by the Supreme Court in *Chrysalis House*, the statute provides for a double benefit when there is a cessation of employment and the weekly wage equal to or greater than the weekly wage at the time of the injury with or without cause (so long as the cessation relates to the disabling injury). Accordingly, the ALJ finds that the plaintiff is entitled to the application of the double multiplier per KRS 342.730(1)(c)2 for the period beginning the day his initial suspension for disciplinary reasons ended.

The ALJ addressed the TTD issues stating:

Temporary total disability is defined in KRS 342.0011(11)(a) as a condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement which would permit a return to employment. The "return to employment" factor has been further defined as a return to the employee's customary work or the work that he was performing at the time of the injury. *Central Kentucky Steel v. Wise*, 19 S.W.3d 657 (Ky. 2000). In reviewing Dr. Franzen's office reports and testimony, the ALJ is persuaded that Dr. Franzen had the plaintiff on light or modified duty work restrictions from the first time he saw him, August 16, 2011, up until the time that he pronounced him at maximum medical improvement and released him to work with no restrictions, February 15, 2012. Prior to being treated by Dr. Franzen, plaintiff was treated at the Urgent Treatment Center and records with respect to that course of treatment reflect that plaintiff was initially placed on work restrictions with no bending, climbing or stooping, rarely pushing or pulling, occasionally walking, standing and sitting, and not lifting more than 10 pounds. Based on the plaintiff's description of his job duties and activities, the undersigned infers that plaintiff was required to stand on a fairly constant basis throughout the course of the workday and lift far in excess of 10 pounds. Even when plaintiff was last seen at the Urgent Treatment Center he was still on work restrictions and never released to full duty. The ALJ finds, therefore, that between July 27, 2011, the date which his employment was suspended for non-injury-related issues up until his full duty released by Dr. Franzen on

February 15, 2012, the plaintiff did not reach a level of improvement which would have allowed a return to his regular and customary duties at the E-waste facility with the defendant and that the plaintiff is, therefore, entitled to an award of temporary total disability benefits from July 27, 2011 through February 15, 2012, at the rate of \$327.20 per week.

LFUCG filed a petition for reconsideration on August 20, 2012, mainly seeking reconsideration of the ALJ's ruling regarding Dr. Owen's impairment, the application of the two multiplier, and award of TTD benefits. In his September 4, 2012 order, the ALJ overruled LFUCG's argument regarding Dr. Owen's impairment rating as an impermissible request to reweigh the evidence. Regarding the two multiplier, the ALJ found as follows:

While the defendant is correct in that the ALJ did not find the plaintiff to be a particularly credible witness with respect to his actual residual physical capacity, nevertheless, the evidence establishes that the cessation of plaintiff's employment at wages equal to or greater than the average weekly wage at the time of the injury is attributable to plaintiff's own subjective assessment of his ability to work in the light of ongoing back symptoms, even if that assessment is, based on the medical evidence, faulty. Cessation of employment, in other words, relates to the disabling injury in that the plaintiff's perception of the effects of the injury is the reason he has not returned to his pre-injury job. The ALJ agrees with the defendant that

the connection is tenuous, it is a connection nonetheless, and the ALJ sees no reason to disturb his finding that the cessation of employment "relates" to the disabling injury. This aspect of the defendant's petition for reconsideration is, therefore, **OVERRULED**.

Regarding the TTD issue, the ALJ ruled as follows:

Regardless of the fact that the plaintiff had returned to work at light or modified duty prior to the suspension for disciplinary reasons, at the time he was suspended, July 27, 2011, he had not reached maximum medical improvement and had not reached a level of improvement which would have allowed a return to his full regular duties with the defendant. Thereafter plaintiff was restricted against working his full regular duties by Dr. Franzen until he issued a full duty release on February 15, 2012. The undersigned finds no error, therefore, in the award of temporary total disability benefits for the period awarded even though the plaintiff had returned to work prior thereto at modified duty. This aspect of the defendant's petition for reconsideration is, therefore, **OVERRULED**.

On appeal, LFUCG argues the ALJ erred in awarding TTD benefits from July 27, 2011 through February 15, 2012 since Bright does not qualify for TTD benefits pursuant to KRS 342.0011(11)(a) or Central Kentucky Steel v. Wise, 19 S.W.3d 657 (Ky. 2000). LFUCG contends the ALJ misconstrued the law and incorrectly presumed the phrase "a return to employment" requires a return to work to the exact duties

performed at the time of the injury. Even though Bright was performing duties with medical restrictions, LFUCG asserts the work he was performing was customary because he was still minding the electronics warehouse, the very type of job he performed prior to the injury. LFUCG notes Bright testified he performed basically the same duties he was performing prior to the work injury because the employer allegedly did not properly accommodate his restrictions.

The employer, on the other hand, testified Bright ignored the restrictions exhibiting an ability to work beyond the restrictions assessed by Dr. Franzen. LFUCG notes it did not create a position for Bright, did not shorten his hours, and did not place him in another department or position within the same department. Rather, he returned to the warehouse with the medical instruction to avoid lifting beyond ten pounds and later to avoid lifting greater than twenty pounds. LFUCG asserts Bright did not cease working at that position because of his restrictions, but rather because he was suspended for misconduct pending an investigation of his terroristic threatening charge.

LFUCG next argues the ALJ erred in awarding the two multiplier based on Bright's testimony regarding his residual functional limitations since the ALJ had previously found he lacked credibility regarding his residual

functional limitations. It notes Drs. Owen, Snider and Franzen assessed no permanent restrictions and the FCE Dr. Franzen relied upon determined Bright was purposefully misrepresenting his physical abilities. LFUCG contends once the ALJ determined Bright's testimony was unbelievable concerning his subjective limitations with regard to application of the three multiplier, it was arbitrary, capricious and unreasonable and therefore erroneous for the ALJ to find the same testimony credible regarding the award of the two multiplier.

Finally, LFUCG argues the ALJ erred in awarding PPD benefits based on the 15% impairment rating assessed by Dr. Owen. LFUCG contends his rating does not constitute substantial evidence since he failed to follow the directives of the AMA Guides regarding application of the range of motion model. LFUCG contends the ALJ, at most, could have awarded benefits based on a 10% impairment rating pursuant to the AMA Guides after the 5% assigned for restricted range of motion is excluded.

In a workers' compensation case, the claimant bears the burden of proof and risk of non-persuasion regarding every element of his claim. See Durham v. Peabody Coal Co., 272 S.W.3d 192 (Ky. 2008). If the party with the burden of proof before the ALJ was successful, the sole

issue on appeal is whether the ALJ's findings are supported by substantial evidence. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979).

KRS 342.0011(11)(a) defines TTD as follows:

[T]he condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment.

The above definition has been determined by our Courts to be a codification of the principles originally espoused in W.L. Harper Const. Co., Inc. v. Baker, 858 S.W.2d 202, 205 (Ky. App. 1993), wherein the Court of Appeals stated:

TTD is payable until the medical evidence establishes the recovery process, including any treatment reasonably rendered in an effort to improve the claimant's condition, is over, or the underlying condition has stabilized such that the claimant is capable of returning to his job, or some other employment, of which he is capable, which is available in the local labor market. Moreover . . . the question presented is one of fact no matter how TTD is defined.

In Central Kentucky Steel v. Wise, supra, the Supreme Court further explained:

"[i]t would not be reasonable to terminate the benefits of an employee when she is released to perform minimal work but not the type that is customary or that she was performing at the time of his injury."

Id. at 659.

In other words, where a claimant has not reached MMI, TTD benefits are payable until such time as the claimant's level of improvement permits a return to the type work he was customarily performing at the time of the traumatic event.

In Magellan Behavioral Health v. Helms, 140 S.W.3d 579 (Ky. App. 2004), the Court of Appeals instructed that until MMI is achieved, an employee is entitled to a continuation of TTD benefits so long as he remains disabled from his customary work or the work he was performing at the time of the injury. The Court in Helms, supra, stated:

In order to be entitled to temporary total disability benefits, the claimant must not have reached maximum medical improvement and not have improved enough to return to work.

Id. at 580-581.

Here, the ALJ clearly stated the correct standard in determining whether Bright was entitled to TTD benefits. The evidence established Bright had significant restrictions for the period in question. He testified the work he performed after his injury was not within his restrictions and he was not able to perform all duties expected during that employment. As noted by the ALJ, Bright remained under restrictions until Dr. Franzen granted a release to full

duty on February 15, 2012. The ALJ could reasonably conclude work within Bright's restrictions was not available during the period in question.

We find no error in the ALJ's reliance on the impairment rating assessed by Dr. Owen. We have stated on numerous occasions the proper procedure to challenge a physician's impairment rating pursuant to the AMA Guides is to either take the doctor's deposition or offer the opinion of another physician disputing the impairment. LFUCG has done neither. Thus, the ALJ was left with conflicting medical evidence and the discretion to choose which doctor to believe rests exclusively with the ALJ. See Staples, Inc. v. Konvelski, 56 S.W.3d 412 (Ky. 2001); Square D Company v. Tipton, supra; Pruitt v. Bugg Brothers, Ky., 547 S.W.2d 123 (1977).

Dr. Owen stated his impairment rating was assessed pursuant to the AMA Guides and explained his methodology. The assessment of an impairment rating is a medical question. Kentucky River Enterprises, Inc. v. Elkins, 107 S.W.3d 206 (Ky. 2003). Where there are conflicting opinions from medical experts as to the appropriate percentage, it is the ALJ's function as fact-finder to weigh the evidence and select the rating upon which permanent disability benefits, if any, will be awarded. See Knott County Nursing Home v.

Wallen, 74 S.W.3d 706, 710 (Ky. 2002). Based upon the record, the ALJ could properly find Bright had a 15% impairment rating.

KRS 342.730(1)(c)2, pertaining to application of the two multiplier, states as follows:

If an employee returns to work at a weekly wage equal to or greater than the average weekly wage at the time of injury, the weekly benefit for permanent partial disability shall be determined under paragraph (b) of this subsection for each week during which that employment is sustained. During any period of cessation of that employment, temporary or permanent, for any reason, with or without cause, payment of weekly benefits for permanent partial disability during the period of cessation shall be two (2) times the amount otherwise payable under paragraph (b) of this subsection. This provision shall not be construed so as to extend the duration of payments.

In Chrysalis House, Inc. v. Tackett, 283 S.W.3d 671 (Ky. 2009), the Supreme Court narrowed the applicability of KRS 342.730(1)(c)2, holding 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.

Here, as noted by the ALJ, Bright's testimony that he was offered alternate employment but turned it down because he did not feel he was physically capable to perform that job as a result of the work injury is unrebutted. While Bright returned to work at the same or greater wage and initially ceased to earn the same wage as a result of a suspension, as noted by the ALJ, the suspension was for 128 hours. Bright remained under restrictions until February 15, 2012 and was not offered a position again until that time. Thus, the evidence supports a finding that, following the suspension, there was a period of time when Bright was not earning the same or greater wage as a result of his injury until his release on February 15, 2012. When alternate work was offered following the release, Bright believed his work-related condition precluded him from performing the proffered employment. As recognized by the ALJ, Bright enunciated a reason related to his injury.

The holding in Chrysalis House, supra, requiring the reason for the cessation of employment to be related to the disabling injury does not negate the phrase "with or without

cause" in KRS 342.730(1)(c)2. In the unpublished decision in Family Dollar Stores, Inc. v. Hatton, 2012-CA-000949, WL 5990228, rendered November 30, 2012, the Court of Appeals agreed with the Board that the holding in Chrysalis House did not obviate the "with or without cause" language of KRS 342.739(1)(c)2, but simply required that the reason for the cessation be related to the disabling injury. In addition, we may not interpret a statute at variance with its stated language. Commonwealth v. Allen, 980 S.W.2d 278 (Ky. 1998). We may not add to nor subtract from the given language of the statute. Commonwealth v. Reynolds, 136 S.W.3d 442 (Ky. 2004). Our ultimate goal is to implement the intent of the legislature. Wesley v. Nicholas County Bd. of Educ., 403 S.W.2d 28 (Ky. 1966).

Accordingly, the August 3, 2012 Opinion, Award and Order rendered by Hon. Robert L. Swisher, Administrative Law Judge, and the September 4, 2012 order on petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

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