Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 29, 2014

CLAIM NO. 201301196 & 201301195

LONE MOUNTAIN PROCESSING, INC. PETITIONER

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

STEVE W. SIZEMORE
and HON. JONATHAN WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
VACATING IN PART AND REMANDING
* * * * * *

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

STIVERS, Member. Lone Mountain Processing, Inc. ("Lone Mountain") appeals from the March 28, 2014, Opinion and Award and the April 30, 2014, order on reconsideration of Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ"). In the March 28, 2014, Opinion and Order, the ALJ found Steve W. Sizemore ("Sizemore") totally occupationally

disabled and awarded permanent total disability (“PTD”) benefits of $721.97 per week and medical benefits.

The Form 101, Claim #2013-01195, alleges Sizemore sustained cumulative trauma injuries to his neck, back, and right shoulder due to repetitive use which manifested on September 28, 2011.

A Form 103, Claim #2013-01196, was also filed which alleges Sizemore sustained hearing loss damage, manifesting on September 28, 2011, due to repetitive exposure to loud noise in the work place.

The claims were consolidated by order dated December 9, 2013, with all future pleadings ordered to be filed under Claim #2013-01196.

The Forms 101 and 103 allege Sizemore was employed by Lone Mountain from February 28, 1994, through September 2011, and Manalapan Mining from August 1993 through February 1994.

In the January 14, 2014, Benefit Review Conference ("BRC") order, the parties’ stipulated Sizemore sustained a work-related injury on September 28, 2011. Whether the stipulated injury is Sizemore's alleged hearing loss, neck, back, or right shoulder cumulative trauma injuries is not specified. The contested issues listed on the BRC order are as follows: benefits per KRS 342.730;

unpaid or contested medical expenses; injury as defined by the Act; application of multipliers; and benefits per KRS 342.7305.

In the March 28, 2014, Opinion and Award, the ALJ provided the following:

> 1. The following facts were stipulated or proven by the parties:
>
> A. The parties elected coverage under the Workers' Compensation Act.
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> B. An employment relationship existed between the Plaintiff and the Defendant at all times herein relevant.
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> C. Plaintiff sustained a work-related injury or injuries on September 28, 2011, with the Defendant having received due and timely notice of Plaintiff's injury. September 28, 2011, is also the last date of exposure for the purposes of the Plaintiff’s hearing loss claim.
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> D. Plaintiff's average weekly wage was $1,500.00.
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> E. Plaintiff was born on June 18, 1959, and he is a high school graduate with no specialized or vocational training.
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> 2. The Plaintiff testified by deposition on October 29, 2013, and at the Formal Hearing on January 28, 2014. He stated that he has worked as an underground coal miner for the last 34 years and that he began employment with the Defendant on February 28, 1994. He said that he has performed almost all job titles for the Defendant but last worked as a general laborer and that

his duties included loading rock dust into the dusters, putting waterlines together, busting ice off the slope belt and drift mouth, and anything else with busting, lifting, and packing. He said that he worked 58 hours per week earning $25.50 per hour and that he was always exposed to high frequency noises while working.

The Plaintiff testified that he went to the Hearing Aid Center and found out that he was losing his hearing. He said that he believed the hearing loss to be gradual. He said that he has worn two sets of hearing aids while employed by the Defendant and that his hearing aids were paid for by the company per his health benefits. He stated that his hearing was very important to his job, especially for safety purposes because he used a mine phone and radio and needed to be able to hear instruction and understand communication. He stated that he worked in 40 inches to 12 feet of coal and that sometimes he worked on buggies while other times he had to bend and walk. He added that it was a very strenuous job.

He recalled having neck and back problems the last year of his employment with the Defendant and was being seen by Dr. Echeverria. He said that Dr. Echeverria prescribed Tramadol and Lortab for his complaints and that one week before his last day, he had a [sic] tightness in his chest and went to the emergency room. Thereafter, Dr. Damaa scheduled a stress test which revealed blockage. The Plaintiff informed the company he was retiring due to Dr. Damaa’s orders and applied for retirement on April 1, 2012. The Plaintiff last worked for the Defendant on September 28, 2011, due to heart problems and drew short-term disability

benefits. Thereafter, he drew long-term disability benefits and then applied for and received social security disability benefits as of July 16, 2013. The Plaintiff stated that he did not believe he could return to work for the Defendant due to his back, knees and hearing loss.

On cross examination, the Plaintiff stated that he was working 10 hours per day for six days a week and that he has worn hearing aids since 2004. He agreed that he last worked on September 28, 2011 but didn't file his claim until August 5, 2013. He said that he has been a patient of Dr. Echeverria since 2003. He agreed that he has not attempted to return to any type of employment since working for the Defendant and added that he received approximately $7,000 in short and long term benefits.

3. The medical records attached to Plaintiff's Form 101 and 103 were introduced into evidence on behalf of the Plaintiff. The Hon. John Hunt Morgan informed the Defendant by certified mail on June 7, 2012 that the Plaintiff was filing a cumulative trauma claim due to repetitive medium to heavy manual labor while working for the Defendant. The Defendant was also given notice in the same letter that the Plaintiff would be filing a coal workers pneumoconiosis claim and hearing loss claim as they were the last employer of the Plaintiff. The medical records of Stone Mountain Health Services dated August 17, 2012 were attached to Plaintiff's Form 103 and revealed the Plaintiff had moderate to profound hearing loss in both ears. The records of Chad Morgan, chiropractor, were attached to Plaintiff's Form 101 and dated July 23,

2013, revealing his complaints of neck, back, and shoulder pain were due to his work duties in a questionnaire. Dr. Morgan diagnosed pain in joint, [sic] hand; migraine; lumbago; lumbosacral neuritis/radiculitis; cervicalgia; muscle spasm; cervical subluxation; and lumbar subluxation.

4. The medical records of Dr. Arthur Hughes were introduced into evidence on behalf of the Plaintiff. The Plaintiff was seen for an independent medical evaluation on August 28, 2013. After performing a physical examination and reviewing medical records including diagnostic studies, Dr. Hughes diagnosed lower back pain with bilateral radiculopathy, neck pain without radiculopathy, bilateral shoulder pain and restricted range of motion, left carpal tunnel syndrome, and status post right carpal tunnel release. He found that the cause of the Plaintiff's complaints was due to cumulative trauma sustained over 34 years as an underground coal miner. Dr. Hughes assessed a 25% whole person impairment pursuant to the AMA Guides (10% to lumbar, 5% cervical, 4% left shoulder, 4% right shoulder, 6% left carpal tunnel syndrome) but determined that the Plaintiff had no active impairment. He added that the Plaintiff has had no treatment and is therefore not at maximum medical improvement. However, he opined that if no therapy is approved, the Plaintiff was at maximum medical improvement as of that date. Dr. Hughes concluded that the Plaintiff does not retain the physical capacity to return to the type of work performed at the time of his injury and that he should avoid situations where he is unable to stand or sit as needed, avoid working above shoulder level on either

side, avoid lifting more than 15 pounds frequently and 25 pounds on occasion, avoid bending and twisting of the lumbar spine and bending and twisting of the cervical spine.

5. The medical records of Dr. Raleigh Jones and Dr. Trey Cline were filed as part of the university evaluation process. The Plaintiff was seen for a hearing loss evaluation on November 19, 2013. Dr. Jones found the Plaintiff has an occupational related noise induced hearing loss and assessed a 12% impairment pursuant to the AMA Guides. He also determined that the Plaintiff's hearing loss is due to repetitive exposure to hazardous noise over an extended period of time. He believed that the Plaintiff would benefit from bilateral hearing aids and told him to wear proper hearing protection when around loud noises in the future. Dr. Jones recommended that the Plaintiff undergo a yearly audiogram to following [sic] his hearing.

6. The medical records and deposition dated December 19, 2013, of Dr. Gregory Snider were introduced into evidence on behalf of the Defendant. The Plaintiff underwent an independent medical evaluation on December 5, 2013 and demonstrated a fairly good grip strength and normal examination. Dr. Snider found no objective evidence in his examination to explain why the Plaintiff would be limping. After performing a physical examination and reviewing medical records including diagnostic studies, Dr. Snider diagnosed coronary artery disease, status post stent placement x 2; neck pain; back pain; and right shoulder pain. The Plaintiff did not relate any specific injury that occurred during the course of his employment with the

Defendant and indicated that he ceased employment on September 28, 2011, due to symptoms related to a heart attack. Dr. Snider found that no specific treatment is required for Plaintiff's complaints besides over the counter medications, home exercise and a stretching program. He found no need for regular use of Tramadol or Lortab other than for flare ups that may occur. He noted that the Plaintiff was seen by Dr. Echeverri who referred him to Dr. Bean who opined that the Plaintiff was not a surgical candidate for his back complaints. Dr. Snider believed that the Plaintiff could return to his prior employment without any restrictions and added that there was no evidence that his complaints were causing him to leave work at the time of his cardiac problems. Dr. Snider found no evidence of an acute or cumulative injury to the shoulder or cervical spine but noted that the lumbar spine revealed degenerative changes which were somewhat more advanced than one would expect for his age. Dr. Snider assessed a DRE Lumbar Category II 5% whole person impairment pursuant to the AMA Guides and apportioned 2.5% to his vocational activities. Dr. Snider disagreed with Dr. Hughes' findings and impairment rating and found that there was no radiculopathy and normal strength, reflex, and sensation.

7. The medical records and deposition dated December 10, 2013, of Dr. David Jenkinson were introduced into evidence on behalf of the Defendant. The Plaintiff underwent an independent medical evaluation on September 11, 2013. He did not report a specific injury when giving a history of his work injury and stated that he ceased employment due to cardiac problems.

After performing a physical examination and reviewing medical records including diagnostic studies, Dr. Jenkinson found that the Plaintiff had no work-related injury to either his neck, back, or any other body part and believed that the Plaintiff's complaints were due to age related degenerative changes with no specific abnormality in any of the body parts. The Plaintiff demonstrated full range of motion of both shoulders and no impingement signs or weakness. Dr. Jenkinson found no impairment rating for the right shoulder. He also found that the Plaintiff had complaints of back and neck pain with slightly decreased range of motion apparently limited by pain. Dr. Jenkinson found no evidence of either an acute or cumulative work injury and believed that some of the Plaintiff's complaints were age-related degenerative changes with no contribution from occupational exposure. Dr. Jenkinson found that the Plaintiff has no work-related impairment for either his lumbar or cervical spine and issued no impairment rating as there was no evidence of a work related cumulative trauma. He concluded that the Plaintiff retained the physical capacity to return to the type of work performed at the time of his injury. In his deposition, Dr. Jenkinson reviewed Dr. Hughes' IME of the Plaintiff and disagreed with the findings. Dr. Jenkinson found that the Plaintiff had no radiculopathy and no injury but only subjective complaints. The Plaintiff did not complain about his hands at his evaluation and his application did not include carpal tunnel as part of his cumulative trauma claim. On cross examination, Dr. Jenkinson agreed that the Plaintiff could have been complaining more of pain on the date of Dr. Hughes evaluation.

> 8. The medical records of Dr. George Damaa were introduced into evidence on behalf of the Defendant. These voluminous records were reviewed and considered into evidence.
>
> 9. The Defendant was informed on August 20, 2013, by Patty Austin, Claims Adjustor, that there were no records of the Plaintiff from Dr. Echeverria.

The ALJ set forth the following findings of fact and conclusions of law:

> 10. The Plaintiff has testified that he has been treating with Dr. Escheverria for his neck and back problems and has been prescribed Lortab and Tramadol. The Defendant has asserted that the voluminous treatment records in its possession contain no reference to neck or back injuries and that no records were received from Dr. Echeverria upon request. The ALJ points out that the Defendant's request for records and brief contain the incorrect date of birth for the Plaintiff. The ALJ therefore finds that the Plaintiff was truthful regarding his treatment with Dr. Echeverria for the neck and back condition.
>
> 11. The Plaintiff has credibly testified to his many years of work in the coal mines as an outby which required him to perform constant lifting, crouching, scoop operation and the loading of rock dust. The ALJ finds that this description lends credibility to the medical report of Dr. Hughes who thoroughly described how these activities have contributed to the

Plaintiff's lower back pain, right heel pain, and right knee pain.

12. The ALJ also notes that Dr. Snider opined in his examination that the Plaintiff's imaging studies revealed degenerative changes that were somewhat in excess what would be expected. He then said in his deposition that the Plaintiff had results that were not totally out of line for his age. The ALJ therefore finds that the opinion of Dr. Snider is less credible than that of Dr. Hughes in this matter.

13. Based upon the opinion of Dr. Hughes as supported by the testimony of the Plaintiff, the ALJ finds that the Plaintiff has suffered an injury as that term is defined in the Act.

14. The ALJ finds that the Plaintiff has suffered a 25% whole person impairment pursuant to the credible opinion of Dr. Hughes.

15. Permanent total disability is defined in KRS 342.0011(11)(c) as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. *Hill v. Sextet Mining Corporation*, 65 SW3d 503 (KY 2001).

16. "Work" is defined in KRS 342.0011(34) as providing services to another in return for remuneration on a regular and sustained basis in a competitive economy. The statutory definition does not require that a worker be rendered homebound by his injury, but does mandate consideration of whether he will be able to work reliably and whether his physical restrictions will interfere with his

vocational capabilities. *Ira A. Watson Department Store v. Hamilton*, 34 SW3d 48 (KY 2000). In determining whether a worker is totally disabled, an Administrative Law Judge must consider several factors including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. *Id.*

17. The ALJ notes that the Plaintiff has been employed in the coal mining industry for 34 years, is 54 years of age and has a high school diploma but with no other specialized or vocational training. The Plaintiff has been restricted by Dr. Hughes to avoid any work where he cannot sit or stand as needed, has a lifting restriction of 15 pounds, and was advised to avoid bending and twisting of the lumbar or cervical spine. The ALJ finds that with a 34 year work history of coal mining, the Plaintiff is unlikely to be able to provide services to another in return for remuneration on a regular and sustained basis in a competitive economy. The ALJ finds that the Plaintiff is therefore permanently and totally disabled.

18. It is the employer's responsibility to pay for the cure and relief from the effects of an injury or occupational disease the medical, surgical, hospital treatment, including nursing, medical and surgical supplies and appliances as may reasonably be required at the time of injury and thereafter during disability…KRS 342.020.

19. The ALJ therefore finds based upon the foregoing that the Plaintiff is entitled to compensable medical

> treatment for the work related injuries found herein.
>
> **Benefits Per KRS 342.7305**
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> 20. Pursuant to KRS 342.315(2), the clinical findings of the designated evaluator in the university review process is to be afforded presumptive weight by administrative law judges and the burden to overcome such findings and opinions shall fall on the opponent of that evidence.
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> 21. The university evaluator in this matter, Dr. Raleigh Jones, has assessed a 12% impairment to the whole person due to the work-related noise exposure and the record lacks any evidence sufficient to overcome the presumptive weight afforded this assessment.
>
> 22. The ALJ finds that the Plaintiff has suffered a 12% whole person impairment as a result of his work-related hearing loss and is entitled to compensable medical benefits associated with said hearing loss.

On appeal, Lone Mountain asserts the findings of a 25% impairment and total disability due to cumulative trauma injuries are clearly erroneous and not supported by substantial evidence. It points to the fact Dr. Hughes' 25% impairment rating encompasses injuries to body parts not alleged in Sizemore's Form 101. Additionally, it asserts there is no reliable, probative, and material evidence in the record which supports the commencement of income

benefits on September 28, 2011, as this is when Sizemore ceased working due to a cardiac condition.

Sizemore introduced the August 28, 2013, Independent Medical Examination ("IME") report of Dr. Arthur L. Hughes. His diagnosis is as follows:

> 1. Lower back pain with bilateral radiculopathy. 2. Neck pain without radiculopathy. 3. Bilateral shoulder pain and restricted range of motion. 4. Left carpal tunnel syndrome. 5. Status post right carpal tunnel release.

Regarding causation, Dr. Hughes opined Sizemore's "injury" is the cause of his complaints stating as follows:

> Within reasonable medical probably [sic], Mr. Sizemore's neck pain, lower back pain and bilateral shoulder pain and bilateral carpal tunnel syndrome are consequences of repetitive injuries and cumulative trauma sustained over 34 years as an underground miner.

Dr. Hughes further explained as follows:

> Mr. Sizemore's occupation has led to multiple pains and limitation in function of various parts of the body as described above. Underground mining is well recognized to lead to multiple small injuries due to the nature of the work. This has limited his ability to sit, stand, walk, lift, and do household tasks as well as recreational activities.

Dr. Hughes assessed a 25% impairment rating pursuant to the 5th Edition of the American Medical

Association, Guides to the Evaluation of Permanent Impairment which was broken down in the following manner:

> Lower back pain with radiculopthy 10%
> Neck pain 5%
> Left shoulder pain and restricted range of motion 4%
> Pain and restricted range of motion of the right shoulder 4%
> Left carpal tunnel syndrome 6%

Dr. Hughes concluded Sizemore does not retain the physical capacity to return to the type of work he performed at the time of the injury and imposed the following restrictions:

> Mr. Sizemore should avoid situations which would prevent him from standing or sitting as needed. He should avoid working above shoulder level on either side. He should avoid lifting more than 15 pounds frequently and 25 pounds on occasion. He should avoid bending and twisting of the lumbar spine and bending and twisting of the cervical spine.

Sizemore was deposed on October 29, 2013. He testified his last day of work was September 28, 2011, when Dr. George Damaa, a cardiologist in Harlan, Kentucky, took him off of work. Sizemore testified regarding events occurring on that date:

> Q: What happened on September 28th of 2011?

> A: They gave me a stress test and found blockages.
>
> Q: Now, were you scheduled for that stress test prior to September 28th of 2011?
>
> A: Yes.
>
> Q: Had you had problems with your heart prior to that date?
>
> A: Just the day at work that it happened.
>
> Q: Okay. What happened at work?
>
> A: Just had a tightening in my chest and passed out.
>
> Q: Were you taken from work to the hospital at Harlan?
>
> A: I drove myself.
>
> Q: Did you complete the shift that day?
>
> A: No ma'am.
>
> Q: Okay. When did you have this incident with the tightness?
>
> A: I ain't [sic] good with dates but it was like, had to be a week before.

At the January 28, 2014, hearing, Sizemore affirmed he stopped working at Lone Mountain due to a heart condition.

Because the ALJ’s decision is not in conformity with the evidence and applicable case law, we vacate the award of PTD benefits and remand.

On remand, the ALJ must first determine the date of manifestation for all of Sizemore's alleged cumulative trauma injuries. September 28, 2011, cannot be the date of manifestation for Sizemore's alleged cumulative trauma injuries, as Sizemore's deposition and hearing testimony firmly establish he was taken off of work on that date due to a heart-related condition. Also, we note the ALJ failed to expressly provide the date of manifestation of Sizemore's work-related hearing loss injury which is the date of last injurious exposure to hazardous noise at work. He must do so on remand.

It is important to note a cumulative trauma injury must be distinguished from an acute trauma injury where a single traumatic event causes the injury. In Randall Co. v. Pendland, 770 S.W.2d 687, 688 (Ky. App. 1989), the Kentucky Court of Appeals adopted a rule of discovery with regard to cumulative trauma injuries holding the date of injury is "when the disabling reality of the injuries becomes manifest." In Special Fund v. Clark, 998 S.W.2d 487 (Ky. 1999), the Supreme Court of Kentucky defined "manifestation" in a cumulative trauma injury claim as follows:

> In view of the foregoing, we construed the meaning of the term 'manifestation of disability,' as it was used in

> Randall Co. v. Pendland, as referring to physically and/or occupationally disabling symptoms which lead the worker to discover that a work-related injury has been sustained.

Id. at 490.

A cumulative trauma injury manifests when "a worker discovers that a physically disabling injury has been sustained [and] knows it is caused by work." Alcan Foil Products v. Huff, 2 S.W.3d 96, 101 (Ky. 1999). A worker is not required to self-diagnose the cause of a harmful change as being a work-related cumulative trauma injury. *See* American Printing House for the Blind v. Brown, 142 S.W.3d 145 (Ky. 2004). Rather, a physician must diagnose the condition and its work-relatedness. Thus, on remand, the ALJ must determine the date of manifestation for Sizemore's alleged cumulative trauma injuries to his neck, back, and right shoulder. The ALJ must also explicitly state the date of manifestation of Sizemore's work-related hearing loss injury.

In addition, while in claims for hearing loss KRS 342.7305 causes liability to fall on the last employer, such is not the case with non-hearing loss cumulative trauma injury claims. In Southern Kentucky Concrete Contractors, Inc. v. Campbell, 662 S.W.2d 221, 222 (Ky. App. 1983), the claimant's pre-existing condition was found

to be attributable to “his hard manual labor” with multiple employers over the years of his work life. It was determined that the last employer– Southern Kentucky Concrete – could not be held liable to the extent the claimant’s condition was work-related and pre-existed his employment at Southern Kentucky Concrete. The Court remanded the matter with the following directions:

> We are therefore of the opinion that this case should be remanded to the Workers' Compensation Board with directions to determine the percentage of Campbell's disability attributable to the work performed by him while employed by Southern, and Southern is to be liable to that extent. Absent evidence to the contrary, Southern shall be liable for that percentage of Campbell's disability which is equal to the percentage of Campbell's worklife spent with Southern. The remainder of his disability is the responsibility of the Special Fund.

Id. at 222-223.

On remand, in an amended opinion and order, as required by Southern Kentucky Concrete, supra, the ALJ must determine whether Sizemore sustained cumulative trauma injuries to his neck, back, and right shoulder during his employment with Lone Mountain, and if so, whether all, a portion, or none of the impairment rating assessed for each alleged injury is directly attributable to his employment with Lone Mountain. In doing so, the ALJ must cite the

medical proof that establishes Sizemore's work at Lone Mountain contributed to his overall cumulative trauma injury or injuries and denote to what degree it contributed. Simply because Sizemore was last employed by Lone Mountain does not impose liability on Lone Mountain for all of Sizemore's resulting occupational disability. There must be specific findings establishing Sizemore's work activities performed during his period of employment at Lone Mountain contributed to his overall permanent condition, producing some degree of harmful change to the human organism.

On remand, the ALJ shall specifically define each work injury he may determine Sizemore suffered. Although the ALJ accepted Dr. Hughes' impairment rating, he failed to delineate the specific parts of the body which were encompassed within the cumulative trauma injuries.

In the amended opinion and order, the ALJ must also set forth specific findings demonstrating an appropriate understanding of the medical evidence, specifically the components of Dr. Hughes' 25% impairment rating. Dr. Hughes' August 28, 2013, IME report indicates the 25% impairment rating includes impairment ratings for injuries to body parts not alleged in Sizemore's Form 101, including left carpal tunnel syndrome and left shoulder

pain and restricted range of motion.[1] On remand, the ALJ may only consider those portions of Dr. Hughes' opinions and impairment ratings attributable to the cumulative trauma injuries alleged in Sizemore's Form 101 when conducting the requisite analysis concerning Sizemore’s alleged occupational disability.

In the event the ALJ determines Sizemore is only entitled to permanent partial disability ("PPD") benefits for any or all of the alleged cumulative trauma injuries, he shall award PPD benefits for Sizemore's hearing loss to begin on the date of manifestation which shall be the date of last exposure to hazardous work-related noise.

Finally, we note Lone Mountain requested several additional findings in its petition for reconsideration that were not addressed in the April 30, 2014, Order on Petition for Reconsideration. In fact, the April 30, 2014, Order on Petition for Reconsideration is the order Sizemore submitted with his Response to Petition for Reconsideration. We strongly urge the preparation of orders which specifically respond to the parties' petitions for reconsideration and provide additional findings when appropriate.

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[1] Although Dr. Hughes diagnosed right carpal tunnel release, he did not provide an impairment for right carpal tunnel syndrome.

Accordingly, the award of PTD benefits and medical benefits for Sizemore's cumulative trauma injuries is **VACATED.** This claim is **REMANDED** to the ALJ for a determination of whether Sizemore sustained cumulative trauma injuries to his neck, back, and right shoulder during his employment with Lone Mountain. The ALJ shall also determine the date of manifestation of any such cumulative trauma injury. In the event the ALJ determines such injury or injuries occurred he shall then determine the extent of Sizemore’s occupational disability.

Finally, in the event the ALJ determines Sizemore is not totally occupationally disabled as a result of a cumulative trauma injury or injuries, since Lone Mountain does not contest the determination of work-related hearing loss, he shall also award PPD benefits for Sizemore’s hearing loss injury to begin on his last date of exposure to hazardous work-related noise.

ALL CONCUR.

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