Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 4, 2013

CLAIM NO. 200972060

MTS AMBULANCE
(ACTION DELIVERY SERVICE) PETITIONER

VS. **APPEAL FROM HON. EDWARD D. HAYS, ADMINISTRATIVE LAW JUDGE**

BARBARA ZACUR
and HON. EDWARD D. HAYS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. MTS Ambulance (Action Delivery Service) ("MTS") seeks review of the Opinion, Award and Order rendered June 25, 2012 by Hon. Edward D. Hayes, Administrative Law Judge ("ALJ") awarding Barbara Zacur ("Zacur") temporary total disability ("TTD") benefits,

permanent partial disability ("PPD") benefits enhanced by a 3.4 multiplier pursuant to KRS 342.730(1)(c)1 and 3, and medical benefits. MTS also seeks review from the August 6, 2012 order overruling its petition for reconsideration. The sole issue on appeal is whether the ALJ correctly determined the application of the three multiplier pursuant to KRS 342.730(1)(c)1. We affirm.

Zacur filed a Form 101, Application of Resolution of Injury Claim, on July 29, 2011, alleging two injury dates while employed with MTS as an emergency medical technician ("EMT"). She alleges on November 19, 2008, she injured her right elbow while lifting a patient onto a cot. She also alleges on August 18, 2009, she injured her right and left elbow while lifting a patient. She indicated her job as an EMT required "frequent walking, bending, twisting, lifting patients in excess of 100 pounds, constant use of arms and hands." Zacur later amended the Form 101 to include a cervical spine injury as a result of the November 19, 2008 work-related incident.

MTS subsequently filed a medical fee dispute and motion to join medical provider on September 21, 2011 contesting the compensability and work-relatedness of carpal tunnel syndrome and cervical radiculopathy diagnoses made by Dr. Michael Goodwin, based upon the opinion of Dr. Bart

Goldman. It also denied a functional capacity evaluation ("FCE") requested by Dr. Goodwin as not medically necessary based on the report of Dr. Goldman.

It is undisputed Zacur sustained work-related injuries to her left and right elbows, as well as her cervical spine on November 19, 2008 and August 18, 2009. It is also undisputed Zacur returned to work following each injury date. The only issue on appeal concerns the applicability of the three multiplier. Therefore, we will only discuss the evidence relevant thereto.

Zacur testified by deposition on October 14, 2011 and at the hearing held on April 26, 2012. Zacur was born April 19, 1954 and resides in Flatwoods, Kentucky. She graduated from high school and attended a community college, earning a certificate in medical assisting. She also has an EMT license. Zacur worked as a medical assistant for various employers from 1997 through 2008. Zacur began working for MTS as an EMT in April 2008. Zacur was terminated in February 2010 and is unemployed.

As an EMT, Zacur testified she checked the ambulance in the morning, cleaned and restocked it with supplies. She was dispatched to pick up patients, either from a home or hospital, take them to appointments and then

return them. At the end of her shift, she would clean the ambulance and prepare reports for each run during her shift.

Zacur testified on November 19, 2008, she and her partner had loaded a patient onto a cot. They attempted to lift the cot, but the legs would not drop down and lock. After shaking the cot several times to get the legs to drop, Zacur testified she experienced stabbing, hot pain in her right elbow, down her right forearm and into her hand. Zacur initially went to King's Daughters Occupational Medicine, but did not receive any treatment due to a conflict. She then went to Dr. Lobach, who provided her a sling, ordered physical therapy and restricted her to light duty. Zacur testified physical therapy was unsuccessful. Zacur also had two chiropractic treatments, which likewise provided no relief. Dr. Lobach referred Zacur to Dr. Goodwin, who ordered additional physical therapy and administered two injections in her right elbow.

On November 20, 2008, Zacur returned to light duty, and was restricted from lifting more than ten pounds. She was eventually released to work without restrictions. She then resumed the EMT duties she performed prior to her injury until her second injury in August 2009.

On August 18, 2009, Zacur experienced immediate sharp, shooting pain in both elbows radiating down both

arms, into the outer edges of both hands after lifting a cot with a patient weighing over three hundred pounds. Zacur saw Dr. Goodwin, who eventually performed a left elbow ulnar nerve transfer on January 27, 2010 and a right elbow ulnar nerve transfer on July 14, 2010. Zacur also saw "Dr. Tuna" with Kleinert and Kutz, who administered an injection into her right elbow. Zacur underwent two EMGs, the most recent in 2011. Zacur testified she saw improvement in her left elbow subsequent to the left ulnar nerve transfer, but none in her right elbow following the right ulnar nerve transfer.

Zacur testified she did not miss any work following the second injury. She was placed on light duty and restricted from lifting over ten pounds. The weight limit was then raised to fifteen pounds, and then twenty pounds. She continued to work on light duty until her first ulnar nerve transfer. She was terminated because MTS could no longer accommodate her light duty restrictions. Following her termination, Zacur was hired as a CMT which she described to be similar to an EMT in August 2010 at King's Daughters. However, she was "let go" during orientation after they learned of her light duty restriction. She has not worked since.

Zacur testified at the deposition she began to have trouble with her neck when she was sent for an EMG on

her right arm in August or September 2011. She experienced "pain that shoots up on the sides from my shoulders up under my ears" when she turns her neck side-to-side too far. At the hearing, Zacur testified following the two ulnar nerve surgeries, she occasionally lost control of her arms and legs, but did not have neck pain.

Zacur began treating with Dr. Powell in August 2011 for her neck symptoms. Dr. Powell performed disc fusion surgery at two levels on September 12, 2011. Zacur testified since the surgery, she no longer loses control of her arms and legs.

At the hearing, Zacur testified her right arm "just doesn't have the strength that it used to" and complains of right elbow pain. Zacur testified her left arm and neck currently do not bother her. Zacur cannot do several daily chores she used to do, and has trouble driving due to right elbow pain and arm weakness.

Zacur does not think she is capable of performing her previous work at King's Daughters, "because of that pain in my elbow. It would involve pushing patients around on the beds and wheelchairs."

Extensive medical records were submitted by both parties. Zacur treated with Dr. Lobach at Our Lady of Bellefonte Outreach Center for her November 19, 2008 right

elbow injury from November 19, 2008 until May 5, 2009. Dr. Lobach diagnosed traumatic epicondylitis of the right elbow and ulnar nerve neuropathy. He recommended physical therapy, prescribed pain medication, restricted Zacur to light duty and eventually referred her to Dr. Michael Goodwin.

Medical records indicate Zacur treated with Dr. Goodwin for both elbows from March 3, 2009 until August 16, 2011. For her right elbow injury on November 19, 2008, Dr. Goodwin ordered physical therapy, administered two injections and subsequently released her to work without restriction on April 28, 2009.

Subsequent to her August 18, 2009 injury to both elbows, Dr. Goodwin restricted Zacur to lifting no more than twenty pounds at work. On January 12, 2010, Dr. Goodwin noted nerve studies confirmed significant left ulnar nerve entrapment at the elbow and medical epicondylitis, and subsequently performed submuscular ulnar nerve transfer of the left elbow on January 27, 2010. Dr. Goodwin later performed submuscular ulnar nerve transfer of the right elbow on July 14, 2010 and noted a diagnosis of right ulnar nerve cubital tunnel syndrome in the operative report. In several follow-up notes after the second procedure, Dr. Goodwin indicated the left elbow was doing well and

improving, but noted continued pain, numbness and tingling in her right elbow. On June 21, 2011, Dr. Goodwin noted an MRI demonstrated large stenotic areas at C5-6 and C6-7, which could be contributing to her numbness. He referred her to Dr. Powell for her cervical spine and noted "She can return to work. She has reached medical maximum improvement. We would like to get an FCE for her disability rating . . . we gave her a work release as she wants to try to return to work."

On August 16, 2011, Dr. Goodwin noted the FCE showed no significant long term disability with her hand and he did not assess an impairment rating for her range of motion. He stated her "work restrictions were light duty. . . . She tried to get a job at King's Daughters as a CMT and they wouldn't let her do it because of the work restriction." In a letter dated October 20, 2011, Dr. Goodwin opined Zacur reached maximum medical improvement ("MMI") on April 27, 2010 for her left elbow and August 16, 2011 for her right elbow. He could not relate Zacur's carpal tunnel diagnosis to either work injury and noted her neck complaints are outside his expertise.

The parties also submitted the medical records of Dr. James Powell, who treated Zacur's neck condition from August 2011 through March 15, 2012. The treatment records

indicate Zacur continuously complained of right elbow pain, as well as weakness, numbness and tingling in the right upper extremity. After physical therapy proved unsuccessful, Dr. Powell performed fusion surgery at C4-C5 and C5-C6 on September 12, 2011. The operative report indicated a post-operative diagnosis of cervical degenerative disc disease with myelopathy and radiculopathy with atrophy. Dr. Powell also performed a "revision of right ulnar nerve decompression at elbow" on November 28, 2011.

In a December 8, 2011 letter, Dr. Powell opined Zacur's neck condition is probably the result of a repetitive motion injury from lifting as an EMT. He further stated:

> I do not see her going back to work, based upon the process of the ongoing fusion. Even if the fusion takes, I do not believe she will be able to lift well enough to return to work. An FCE done in the summertime showed a 20-pound lifting restriction. It may be better than this now, but her elbow is currently limiting this. I still do not see her returning to full duties as an EMT.

In a letter to Dr. Goodwin dated December 8, 2011, Dr. Powell opined "I see her having no potential for return-to-work status as an EMT and have made a referral to Vocational Rehab . . . ." In a March 15, 2012 medical record, Dr.

Powell noted Zacur still experiences right elbow pain, which should resolve with physical therapy, and also noted her neck is now fused. He then stated, “I have released her from restrictions. . . . She can return to work effective April 29, 2012, to her job duties as an EMT.”

Various other medical records were filed by the parties including those from Our Lady of Bellefonte Hospital; Workplace Health Occupational Medicine Program; King’s Daughters Medical Center; Kleinert Kutz Hand Care Center; and Dr. Lesley Abbott of Bellefonte Family Medicine Associates. MTS also filed the October 30, 2009 Elecrodiagnostic Report by Dr. Vasudeva Iyer; the Electromyography studies from Our Lady of Bellefonte Hospital dated December 21, 2009 and April 15, 2011; the June 16, 2011 cervical MRI performed at Our Lady of Bellefonte Hospital; and the First Report of Injury and Incident Reports for both injury dates.

MTS submitted the report of Dr. Richard T. Sheridan, who evaluated Zacur on January 13, 2011. After noting the history of the two injury dates and reviewing various medical records, Dr. Sheridan diagnosed bilateral ulnar neuropathy. He opined Zacur “retains the physical capability to return to her job duties at her employer.” He further noted Zacur has reached MMI and does not need

further treatment or clinical testing. He opined Zacur does not qualify for an impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). The report does not address Zacur's neck condition.

MTS submitted the October 19, 2011 report of Dr. Ronald Burgess who noted the November 19, 2008 and August 18, 2009 elbow injuries, and the eventual cervical disc fusion surgery by Dr. Powell. Dr. Burgess opined Zacur is asymptomatic on the left side with normal motor and sensory exam. Regarding the right side, he opined the sensory and motor exams were normal, which was confirmed by an April 15, 2011 electrodiagnostic study on the right demonstrating a normal ulnar nerve. Regarding her upper extremities, Dr. Burgess opined Zacur reached MMI six months following the July 14, 2010 ulnar procedure and needs no further treatment. Pursuant to the AMA Guides, Dr. Burgess assessed a 0% impairment rating. He concluded Zacur did not have clinical carpal tunnel syndrome and any treatment for such condition would not be reasonable, necessary or related to her work injury. He also opined, "With regard to her upper extremity, no permanent restrictions are indicated and the patient would be able to physically return to her previous job duties."

In a supplemental report dated November 9, 2011, Dr. Burgess noted his disagreement with Dr. Bruce Guberman's assessment of impairment for the ulnar nerve. In a supplemental report dated December 28, 2011, Dr. Burgess reviewed the medical records of Dr. Powell and opined the proposed repeat transposition of the ulnar nerve was not reasonable and necessary. He further opined Zacur's "off-work condition would be based on the non-work-related cervical instability, separately treated by Dr. Powell."

MTS filed the March 12, 2012 report prepared by Dr. Timothy C. Kriss, who noted the November 19, 2008 and August 18, 2009 mechanisms of injury and treatment for Zacur's bilateral elbows. He noted Dr. Powell diagnosed a C5-C6 disc herniation causing spondylitic cervical myelopathy, and subsequently performed anterior cervical discectomy and fusion. He also noted Dr. Powell performed a re-exploration/revision of the right ulnar nerve transposition on November 28, 2011. He observed Zacur last worked in 2010 for MTS and was terminated because no further light duty was available. Zacur reported she applied for a job at King's Daughters as a certified medical technician, but was not allowed to start the job once they saw the restrictions from the FCE.

Dr. Kriss diagnosed status post anterior cervical discectomy and fusion surgery at C4-C6 levels for treatment of C5-C6 disk herniation, stenosis, and cervical spondylitic myelopathy. He opined Zacur did not have clinical cervical radiculopathy. He further determined the cervical condition to be non-work-related noting the lack of symptomatology or findings prior to August 4, 2011, and the fusion surgery was not causally related to Zacur's job. He diagnosed status post left ulnar nerve transposition, which completely resolved all left ulnar symptoms, status post right ulnar nerve transposition, status post re-exploration/revision right ulnar nerve transposition at right elbow and right medial epicondylitis. He noted a complete resolution of all left ulnar symptoms and ulnar neuritis. He also noted the right ulnar neuropathy has completed resolved, with no right ulnar atrophy or sensory symptoms. He believed the re-exploration/revision procedure was work-related and medically necessary.

In a supplemental report dated March 27, 2012, Dr. Kriss assessed a 4% impairment rating for Zacur's right ulnar neuropathy and 0% impairment rating for her left ulnar nerve pursuant to the AMA Guides. Dr. Kriss opined the right ulnar nerve condition is work-related and assigned all of the 4% impairment to the combination of the November 18,

2008 and August 18, 2009 injuries. In a supplemental report dated April 13, 2012, Dr. Kriss opined Dr. Powell's medical records indicate "a complete release from all restrictions" and apply to both the cervical and elbow conditions. He further opined Zacur does not require any permanent restrictions for both her neck or elbow conditions and noted Zacur "can return to her previous work as an [EMT]."

Zacur submitted the Form 107 medical report of Dr. Bruce Guberman dated September 20, 2011. He noted the November 19, 2008 and August 18, 2009 injury dates and mechanism, and provided the following diagnosis:

1. Post-traumatic epicondylitis of the right elbow
   a. ulnar neuropathy at the right elbow
   b. s/p submuscular ulnar nerve transfer at the right elbow

2. Post-traumatic epicondylitis of the left elbow
   a. ulnar neuropathy at the left elbow
   b. s/p submuscular ulnar nerve transfer at the left elbow

3. Post-traumatic cervical radiculopathy
   a. s/p anterior cervical discectomy and fusion at C4-5 and C5-6 on 9/12/2011

Dr. Guberman opined Zacur's injury is the cause of her complaints. He found the lifting injuries the cause of Zacur's post-traumatic epicondylitis and ulnar neuropathy at

the elbows, as well as her cervical radiculopathy. Pursuant to the AMA Guides, he assessed a 7% impairment rating for her right upper extremity and 25% impairment rating for her cervical spine, yielding a combined 30% impairment rating of the whole person. Dr. Guberman opined Zacur reached MMI on or before September 20, 2011. He noted at the time of her injury, Zacur described her job as an EMT physically required her to lift and carry stretchers with injured patients, and at times perform CPR. He imposed permanent restrictions of no heavy lifting, carrying, pushing or pulling, and no repeat activities with her right arm. Dr. Guberman noted Zacur does not retain the physical capacity to return to the type of work performed at the time of her injury.

MTS filed the job description for an EMT for MTS. Under the "physical demand" section, the description indicates an EMT is required to frequently stand, walk, sit, carry, push, pull, climb, balance, stoop, bend, kneel, crouch, reach and handle. An EMT is also required to frequently lift in excess of 125 pounds. It also noted lifting and transporting patients on and off stretchers and loading and unloading patients from ambulances each day is normally required.

Both parties submitted the FCE by Robert J. Hammond, OTR/L, from Premier Physical and Occupational Therapy dated July 13, 2011, who evaluated Zacur on July 12, 2011. He noted Zacur complained mainly of right elbow pain, as well as numbness and tingling in her right pinky finger. After administering several tests, Mr. Hammond stated Zacur's "results indicate the ability to function at the Light Level of work at this time."

In his June 25, 2012 Opinion, Award and Order, the ALJ found Zacur sustained work-related injuries on November 19, 2008 and August 18, 2009. He noted Zacur underwent a left ulnar transfer, a right ulnar transfer, and cervical spine fusion surgery. The ALJ found Zacur's cervical condition, resulting in the fusion surgery, to be work-related based primarily upon the opinions of Zacur's treating neurosurgeon, Dr. Powell. The ALJ stated as follows regarding impairment and the application of statutory multipliers:

> 8. The ALJ finds that Ms. Zacur has sustained a permanent impairment of 30% to the body as a whole, based on the AMA Guidelines, Fifth Edition. This finding is based on the opinion of Dr. Guberman, who assessed a 7% impairment for the right upper extremity and a 25% for the cervical fusion. Combining the impairments results in a 30% impairment to the body as a whole. Dr. Guberman agreed with Dr. Powell that the

cervical condition was causally related to the work injury. Dr. Guberman also believed the right upper extremity impairment was causally related to the work activities. The ALJ finds that all of this impairment results from the second work injury on August 18, 2009. Ms. Zacur did not cease working after the first injury. After a period of time on light duty she returned to full duty employment and was performing her regular job duties at the time of the second injury.

9. The next issue is whether or not claimant is entitled to any other statutory multipliers set forth in KRS 342.730 (1) (c). Under subparagraph (1), an employee that does not retain the physical capacity to return to the type of work being performed at the time of injury, the benefits shall be multiplied by 3x. Under subparagraph (3), an employee age 55 or older at the time of the injury is entitled to a multiplier of 0.4. The ALJ finds the 3.4 multiplier to be applicable in this case. Ms. Zacur testified she would not be able to perform the full duties of her job. A functional capacity evaluation performed July 13, 2011 indicated that claimant is limited to performing a light level of work only. Her job description required frequent lifting in excess of 125 pounds. Her functional capacity evaluation would not allow her to return to her former job or to any similar work. Further, Dr. Guberman opined she is not able to return to the type of work she was doing at the time of injury. The 2x multiplier provided for in subparagraph (2) is not applicable because at no time did the plaintiff ever return to her job at the same or greater wages following the second injury, which

> caused the impairment/disability in this case.

Finally, the ALJ resolved the medical fee dispute in Zacur's favor. The ALJ awarded TTD benefits from January 27, 2010 through January 25, 2011 and from December 8, 2011 to January 19, 2012. He also found MTS had underpaid TTD in the sum of 1.56 per week. The ALJ also awarded PPD benefits enhanced by the 3.4 multiplier and medical benefits.

MTS filed a petition for reconsideration requesting the ALJ reconsider the June 25, 2012 Opinion, Award and Order regarding the application of the 3.4 multiplier. This was summarily overruled by order dated August 6, 2012. MTS advanced the same arguments in its petition as it does on appeal.

On appeal, MTS argues the ALJ's finding Zacur lacks the physical capacity to return to her pre-injury position is not supported by substantial evidence since "it was not reasonable for the ALJ to ignore the very recent work release from Dr. Powell, in favor of much older evidence, some of which pre-dated the cervical fusion surgery." It notes Dr. Powell released Zacur to return to her pre-injury job as an EMT without restriction more than eight months after the July 13, 2011 FCE and almost seven months after Dr. Guberman's September 20, 2011 report.

MTS also points to Dr. Kriss' opinions, who agreed Dr. Powell's release to work cannot be read as being anything but a complete release from all restrictions. MTS asserts a reasonable person would be convinced, despite prior light duty restrictions, Zacur has reached a level of improvement such that her treating physician released her to return to her prior job. It argues:

> The ALJ's failure to follow the recent and most reasonable medical opinion of [Zacur's] treating physician does not meet the reasonable person standard, and therefore does not qualify as 'substantial evidence.'

MTS also argues Zacur's testimony regarding her current complaints and ability to work self-serving and directly contrary to the opinion of her treating physician.

As the claimant in a workers' compensation proceeding, Zacur had the burden of proving each of the essential elements of her cause of action including entitlement to statutory multipliers pursuant to KRS 342.730(1)(c)1. Burton v. Foster Wheeler Corp., 72 S.W.3d 925 (Ky. 2002). Since Zacur was successful before the ALJ regarding the applicability of the three multiplier, the question on appeal is whether there is substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, supra. "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).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the discretion to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/ Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The 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).

Although a party may note evidence supporting a different outcome than 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 ALJ's 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 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 which otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479, 481 (Ky. 1999).

With that said, we find substantial evidence of record supports the ALJ's decision regarding whether Zacur retains the physical capacity to return to her pre-injury position as an EMT. Therefore we cannot disturb the ALJ's finding the three multiplier is applicable. As noted by the ALJ, the job description submitted by MTS requires EMTs to frequently lift in excess of 125 pounds. He also noted lifting and transporting patients on and off stretchers and loading and unloading patients from ambulances each day is normally required. The July 13, 2011 FCE reflects Zacur is able to "function at the Light Level of work at this time." Also, Dr. Guberman imposed permanent restrictions due to her work-related injuries and found Zacur does not retain the

physical capacity to return to the type of work performed at the time of her injury in his September 20, 2011 report.

MTS impermissibly asks the Board to re-weigh and re-assess the evidence of record, and resolve the appeal in its favor. We acknowledge Dr. Powell released Zacur to return to unrestricted work in a March 2012 medical note, after the FCE and Dr. Guberman's report. However, this goes to the weight of the evidence. The ALJ did not "ignore" Dr. Powell's medical note releasing Zacur to work with no restrictions, and was free to accept or reject this notation. Acting within the scope of his discretion, he rejected this opinion and accepted other evidence not favorable to MTS. We also note conflicting medical opinions exist regarding Zacur's ability to return to her job as an EMT, and the ALJ simply found more persuasive Dr. Guberman's opinion.

We find no merit in MTS' argument that Zacur's testimony regarding her current complaints and ability to work is self-serving and directly contrary to the opinion of her treating physician. It is well established the claimant's own testimony is competent evidence as to whether a claimant retains the physical capacity to return to the type of work performed at the time of injury. Carte v.

Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000).

Accordingly, the Opinion, Award and Order rendered June 25, 2012 by Hon. Edward D. Hayes, Administrative Law Judge, and the Order on reconsideration rendered August 6, 2012, are hereby **AFFIRMED**.

ALL CONCUR.

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