

OPINION ENTERED: May 24, 2013

CLAIM NO. 201200930

MAKERS MARK DISTILLERY, INC.

PETITIONER

VS.

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

ROBERT CORBETT
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
VACATING AND REMANDING**

* * * * *

BEFORE: ALVEY, Chairman, and STIVERS, Member.

STIVERS, Member. Makers Mark Distillery, Inc. ("Makers Mark") seeks review of the December 17, 2012, opinion and order rendered by Hon. William J. Rudloff, Administrative Law Judge ("ALJ") finding Robert J. Corbett ("Corbett") totally occupationally disabled and awarding permanent total disability ("PTD") benefits and medical benefits.

Makers Mark also appeals from the January 23, 2013, opinion and order overruling its petitioner for reconsideration.

Corbett began working for Makers Mark in May 1987 and until September 20, 2006, had not sustained a significant work-related injury. On September 20, 2006, Corbett fell off a ladder fracturing his pelvis and left wrist. As a result, a settlement of the claim was approved by Hon. Sheila Lowther, Administrative Law Judge ("ALJ Lowther") on May 16, 2008. The Form 110 reflects Corbett's injuries were as follows: "Pelvis fracture, Left wrist fracture, and Low back pain." The agreement reflects surgery was only performed on the left wrist. The medical records attached to the agreement reflect Dr. Jeffrey Been, who performed the surgery, assessed a 6% impairment for the wrist injury and Dr. John J. Guarnaschelli assessed a 5% impairment for a lumbar spine condition.¹

Corbett testified at an October 9, 2012, deposition and at the December 14, 2012, hearing. He

¹ The December 11, 2007, report of Dr. Guarnaschelli reflects the impairment rating was assessed for a lumbar spine condition. In his report, Dr. Guarnaschelli noted Corbett had radiographic evidence of very minimal scoliosis and minimal hypertrophic degenerative changes of the lumbar spine. Dr. Guarnaschelli indicated he strongly advised Corbett not have surgery unless in the future he developed progressive neurologic dysfunction or a clear cut surgically significant disc herniation. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), he assessed a 5% impairment to the body as a whole.

testified he returned to work after the 2006 injury performing his regular duties, without restrictions, as a warehouse foreman. After the 2006 injury, Dr. John K. Garner, his family physician, continued to prescribe Ultram or Tramadol for pain.² Corbett saw Dr. Garner every six months thereafter. He denied having any symptoms in his legs or feet prior to January 2012. Corbett testified he sustained an injury on January 15 or 16, 2012, while pulling barrels. Thereafter, he experienced lower back symptoms at a different location than he experienced after the 2006 work injury. He also developed symptoms in his legs and feet. He denied having any type of injury in February 2012. Because of his increased symptoms, in March 2012, Corbett transferred to a position as a guard which was less physically stressful and resulted in a reduction of his yearly income of approximately \$25,000.00. He testified Dr. Garner took him off work in March 2012, and Corbett's last day of work for Makers Mark was March 17, 2012.

Corbett relied upon the August 8, 2012, medical report of Dr. Jerry Morris and an attached medical questionnaire completed by Dr. Morris also dated August 8, 2012.

²Tramadol is the generic name for Ultram.

Makers Mark relied upon Dr. Thomas Loeb's November 27, 2012, independent medical examination ("IME") report and addendum.³

As to whether Corbett sustained an injury as defined by the Act, in the December 17, 2012, opinion and order, the ALJ entered the following findings of fact and conclusions of law:

I saw and heard Mr. Corbett testify at the final hearing and found him to be a credible and convincing live witness. Based upon the totality of the evidence in the record, including the plaintiff's sworn testimony and all of the medical evidence, and particularly the credible, convincing and persuasive medical report from Dr. Morris, I make the factual determination that Mr. Corbett sustained cumulative trauma to his back due to his work activities while employed by Makers Mark. I make the factual determination that he sustained repetitive motion injuries to his back due to the strenuous physical activities required by his job for Makers Mark.

With respect to the issue of due and timely notice, the ALJ entered the following findings of fact and conclusions of law:

Based on the credible and convincing evidence from Mr. Corbett

³ Dr. Michael Best's IME report was also introduced by Makers Mark but his opinions were limited to the significance of the 2006 injury. Makers Mark also introduced the records of Dr. Charles Crawford, Dr. Guarnaschelli, Dr. Garner, Dr. Jeffrey Roberts, and Spring View Hospital.

that he notified his employer of his cumulative trauma injury as soon as he found out that he had sustained a work-related repetitive motion injury and that the claim here was filed on July 18, 2012 alleging work injuries on March 17, 2012, I make the factual determination that Mr. Corbett gave to his employer due and timely notice of his work injuries under KRS 342.185.

The ALJ determined Corbett's claim was not barred by the statute of limitations since his work injury became occupationally disabling on March 17, 2012, and his application was filed on July 18, 2012.

Regarding the extent of Corbett's occupational disability, the ALJ entered the following findings of facts and conclusions of law:

In the present case, I considered the severity of the plaintiff's work injury, his age, his work history, his education, the testimony of the plaintiff and Dr. Morris' specific opinions regarding his occupational disability. Based on 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.

The ALJ also determined Corbett had no pre-existing disability or impairment, finding and concluding as follows:

Based on the totality of the evidence in the record, including the plaintiff's sworn testimony and the totality of the medical evidence, particularly the persuasive medical report from Dr. Morris, I make the factual determination that at the time of the plaintiff's work-related injuries which manifested themselves on or about March 17, 2012, he did not have any pre-existing disability or impairment.

Accordingly, the ALJ awarded PTD benefits beginning on March 17, 2012, and medical benefits.

Makers Mark filed a petition for reconsideration making most of the same arguments it makes on appeal.

In the "Opinion and Order on Reconsideration" overruling the petition for reconsideration, the ALJ reaffirmed the December 17, 2012, opinion and order finding it discussed each of the contested issues raised by the parties in the benefit review conference ("BRC") order. Consistent with Makers Mark's request the ALJ noted when Dr. Michael Best examined Corbett on April 5, 2012, he opined Corbett had attained MMI, therefore the ALJ determined Corbett had reached MMI as of April 5, 2012. With respect to Dr. Morris' report, the ALJ stated as follows:

6. Dr. Jerry Morris examined the plaintiff on August 8, 2012 and the evidence from Dr. Morris is comprehensively covered in the original

Opinion and Order. Dr. Morris' medical report and questionnaire specifically state that in Dr. Morris' opinion, based on reasonable medical probability, Mr. Corbett will sustain a 10% permanent impairment to the body as a whole under the AMA Guides to the Evaluation of Permanent Impairment, Fifth Edition.

On appeal, Makers Mark challenges the ALJ's decision on nine grounds. First, Makers Mark argues the ALJ erred in finding Corbett sustained a cumulative trauma back injury.

Second, it contends the ALJ erred in relying on Dr. Morris' causation opinion since it is not reliable and probative evidence of an injury in January, February, or March of 2012.

Third, Makers Mark asserts there is no medical evidence indicating Corbett's pre-existing lumbar condition was aggravated or aroused into disabling reality. Although Dr. Morris assessed a 10% impairment for a pre-existing dormant condition, it maintains he did not state the alleged injury aroused the pre-existing dormant condition into disabling reality.

Fourth, Makers Mark argues the ALJ's finding Corbett sustained a work-related aggravation of a pre-existing dormant condition into disabling reality is not supported by substantial evidence as there is no medical

evidence such occurred. It asserts the ALJ incorrectly stated Dr. Morris assessed a 10% impairment due to the arousal of a pre-existing dormant condition into disabling reality.

Fifth, Makers Mark argues the ALJ erred in finding due and timely notice was given of an alleged injury as there is no evidence of due and timely notice given for a cumulative trauma or gradual injury. It points out Corbett pled and submitted medical proof only of an acute injury.

Sixth, Makers Mark argues the award of PTD benefits is arbitrary, capricious, and an abuse of discretion since there is no medical evidence of an impairment rating for aggravation of a low back condition into disabling reality.

Seventh, Makers Mark argues the ALJ erred by failing to make findings of fact and addressing the issue of the statute of limitations regarding a low back injury Corbett sustained on November 13, 2010, as it was a contested issue.

Eighth, the ALJ erred in failing to summarize and analyze Corbett's work prior to his alleged injury. It also contends the ALJ failed to note Corbett worked in March and April 2012 earning \$18,000.00.

Ninth, Makers Mark asserts the award of medical benefits based on Dr. Morris' causation opinion is arbitrary, capricious, and an abuse of discretion.

Corbett, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of his cause of action. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Corbett was successful in that burden, the question on appeal is whether there is substantial evidence of record to support the ALJ's decision. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Substantial evidence" is defined as evidence of relevant consequence having the fitness to induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971).

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). An ALJ may draw reasonable inferences from the evidence, reject any testimony, and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979);

Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). An ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000). In that regard, an ALJ is vested with broad authority to decide questions involving causation. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). Although a party may note evidence that would have supported a different outcome than that reached by an ALJ, such proof is not an adequate basis to reverse on appeal. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). Rather, it must be shown there was no evidence of substantial probative value to support the decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence that they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable inferences that otherwise could have been drawn

from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

Because the ALJ erred in finding Corbett sustained a cumulative trauma back injury and substantial evidence does not support the ALJ's determination Corbett is totally occupationally disabled, we vacate the opinion and order and the order ruling on the petition for reconsideration and remand.

In the Form 101, Corbett alleged "as a result of his job duties, a condition in his lower back became occupationally disabling on March 17, 2012." However, during his deposition testimony, Corbett described a specific injury occurring on January 15 or 16, 2012. He testified the injury occurred as follows:

A: I was a warehouse manager, and we filled barrels at the cistern room. My job function was to oversee filling and dumping of whiskey, and a lot of times the guys would get behind on filling and I would come out and help them inspect barrels and try to get them caught back up.

And I was pulling a barrel down out of a trailer, an empty - a new barrel which was empty, which weighed about 110 pounds, and I felt a pulling in my back and my legs. After that started, my right leg got to burning a little bit, and it just progressively got worse, with you know -

Q: And do you know when in January this happened, if it was toward the first of the month -

A: I was thinking it was more toward the middle of the month.

Q: Like the 15th or 16th?

A: The 15th or something of that nature.

Later in his deposition, Corbett again acknowledged he began having significant back problems in the middle of January 2012:

Q: Now I want to talk about the injury that you've alleged in March, but if I understand your testimony, you started having problems in January?

A: Yes, ma'am.

Q: Somewhere in the middle of January, 2012?

A: Yes.

On direct examination, Corbett testified that from the time he settled his 2006 injury claim in 2008 until January 2012, he continued to perform his regular job duties without restrictions. He then described the injury which occurred in January 2012 as follows:

Q: Now we come to January and mid-January for a lack of a better date or term at this point, somewhere around the 15th you were working with the whiskey barrels.

A: Yes, sir.

Q: And you felt a pain start. Okay? And then it got worse and went down into your leg?

A: Yes, sir.

Q: And the symptoms down in your leg have stayed with you?

A: Yes.

Corbett reaffirmed his deposition testimony at the hearing testifying as follows:

Q: And when I took your deposition, you told me that you started having back pain in January of this year?

A: Yes, ma'am.

Q: And you believe that was sometime in the middle of January?

A: Yes, ma'am.

[text omitted]

Q: And you said that that was as a result of lifting some barrels there at Maker's?

A: Pulling - I think I said we was pulling some barrels out of the trailer or something.

Q: And is it - is it your - is it your testimony that pulling those barrels is what caused your back pain?

A: Yes, ma'am.

Q: Okay. Now, you saw Dr. Jerry Morris in August of this year and we talked about him a little bit today. Do you recall seeing Dr. Morris?

A: Yes.

Q: And he noted a history of a work injury in February of 2012. Do you recall telling him that you injured your back in February of 2012?

A: No, I don't

Q: Okay. And as far as you're concerned, this injury to your back that you're alleging, it was in January of this year?

A: Yes, ma'am.

Similarly, the report of Dr. Morris reflects Corbett provided a history of an injury on February 17, 2012. The history Dr. Morris received from Corbett is as follows:

After 25 years of employment with this company and having underlying pain from previous injuries fully controlled with the prescription drug tramadol for many years prior to this incident, the injured employee was injured 6 hours into a shift the later part of February, around 02/17/2012. He was helping pull a 110 pound barrel of whisky off the top of a 3 stack on a shipping truck in the holding area of the company, holding it with both hands to stabilize it at head height, when he felt an intense right low back pain that radiated from the right iliac crest into the right knee. This was a distinct and new type of pain compared to anything that he had ever had before.

Dr. Morris' diagnoses are as follows:

1. Acute strain of the lower back particularly on the right.
2. Lumbar radiculopathy L4 and L5 right.
3. Aggravation of underlying degenerative joint disease and degenerative disc disease with the injury in February 2012.
4. Chronic narcotic induced hypoanabolic state.

With respect to causation and an explanation of causal relationship, Dr. Morris stated as follows:

CAUSATION

Within a reasonable degree of medical probability, this injured person's physical complaints are the direct results of the work-related injury.

EXPLANATION OF CAUSAL RELATIONSHIP

The forces experienced in the reaching and straining injury superimposed on the preexisting arthritic weaknesses were of sufficient amount and duration to cause this harm to his human organism.

Likewise, Dr. Loeb's November 27, 2012, report reflects Corbett told him he sustained a work injury on January 15, 2012, and Dr. Charles Crawford's October 1, 2012, report reveals Corbett provided a history of "pain started after pulling barrel at work."⁴

⁴ Dr. Crawford is with Norton Leatherman Spine Center. Corbett testified he was referred to Dr. Crawford by Dr. Garner, his family physician.

Significantly, Corbett testified at the deposition that he reported the injury to Pat O'Bryan ("O'Bryan"), the office manager, the next day.⁵ At the hearing, Corbett testified he told O'Bryan about the new injury two or three days after the injury.⁶ Corbett also testified he reported the injury to Brian Mattingly ("Mattingly"), the chief operations officer, a couple of days after talking to O'Bryan. Corbett told Mattingly he was in the trailer pulling barrels when he was injured.⁷ Corbett's testimony and the various doctors' reports establish Corbett did not sustain a cumulative trauma injury; rather, he sustained a specific acute trauma injury in January 2012. Thus, the ALJ erred in determining Corbett sustained a "cumulative trauma to his back due to his work activities while employed by Makers Mark." Similarly, the ALJ erred in determining Corbett's "work-related injuries" manifested "on or about March 17, 2012."

In Special Fund v. Clark, 998 S.W.2d 487, 490 (Ky. 1999), the Supreme Court defined a cumulative trauma injury as follows:

Our opinion in *Alcan Foil Products v. Huff* explained that in *Randall Co.*

⁵ See pages 17 and 18 of Corbett's October 9, 2012, deposition.

⁶ See pages 22 and 44 through 47 of the December 14, 2012, hearing transcript.

⁷ See pages 46 and 47 of the hearing transcript.

v. Pendland it had been recognized that because of the manner in which a gradual injury develops, the worker will not be aware that an injury has been sustained until it manifests itself in the form of physically and/or occupationally disabling symptoms. We noted that, unlike the case with KRS 342.316 which controls claims for occupational disease, the period of limitations set forth in KRS 342.185 is not tolled by continued employment after the worker becomes aware that a work-related gradual injury has been sustained. We pointed out that the notice requirement also arises with the manifestation of disability and that one of the purposes of the notice requirement is to give the employer an opportunity to take measures to minimize the worker's impairment and, hence, its liability. 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.

Here, the evidence firmly establishes there was no cumulative trauma and no manifestation of disability. Rather, there was an acute trauma injury which occurred in January 2012.

Further, we agree the ALJ could not rely upon Dr. Morris's opinion in determining Corbett had a 10% permanent impairment. Consequently, the ALJ erred in awarding PTD benefits since Dr. Morris' report reflects he did not

assess a permanent impairment rating as a result of his diagnosis of an acute injury. Although Dr. Morris stated Corbett's physical complaints were the direct result of the work injury, and the reaching and straining injury superimposed on the pre-existing arthritic weakness were sufficient to cause the harm to Corbett's human organism, he concluded Corbett did not have an impairment rating as he had not attained MMI. In his report, under the heading of "Impairment," Dr. Morris refused to assess an impairment rating and specifically stated Corbett was not at MMI. Likewise, in the "Medical Questionnaire," completed by Dr. Morris and attached to his report, for the third time, Dr. Morris stated, Corbett was not at MMI. At Corbett's request, after writing his diagnosis, Dr. Morris answered the questions set out below:

2. Absent an injury history to the contrary, do you believe more likely than not that my client's work related injury brought the condition into a disabling reality. **Yes.**

3. Do you feel my client has reached medical maximum improvement? **No.**

4. In your medical opinion and based upon reasonable medical probability, what is my client's resulting degree of permanent partial functional disability or impairment according to the **AMA Guides 5th Edition**? **0**

(a) If you feel it appropriate to apportion a part of my client's resulting functional impairment to a **pre-existing dormant condition**, please identify and provide the percentage attributable to the pre-existing dormant condition. **10%. Marked change in pain and dysfunction with second injury.**

(b) If you feel it appropriate to apportion a part of my client's resulting functional impairment to a **pre-existing active condition**, how much and attributable to what active condition? **0%. Was fully function [sic] with pre-existing disease.**

In answering the above questions, Dr. Morris unequivocally declined to assess an impairment rating since Corbett had not reached MMI. Based on the AMA Guides, Dr. Morris stated Corbett had a "0" impairment rating. Although he went on to state Corbett had a 10% impairment rating for a pre-existing dormant condition and that he had no pre-existing active condition, Dr. Morris never stated due to an arousal of a dormant non-disabling condition into disability reality Corbett had a 10% impairment rating. Although Dr. Morris marked "yes" in response to the question as to whether Corbett's work-related injury brought the condition into disabling reality, the question does not define or refer to the condition which was brought into disabling reality nor does it ask whether a dormant non-disabling condition was brought into disabling reality.

More significantly, even though Dr. Morris believed Corbett's work-related injury "brought the condition into disabling reality," he then specifically stated Corbett had no permanent partial functional disability or impairment. We also note Dr. Morris did not reference a chapter, table, and page of the AMA Guides, thus providing the basis for the 10% impairment rating. Consequently, as Dr. Morris stated Corbett had no impairment rating based on the AMA Guides and did not state there had been an arousal of a dormant non-disabling condition into disabling reality which, pursuant to the AMA Guides, resulting in a 10% impairment, the ALJ could not rely upon Dr. Morris' opinion in determining Corbett had a 10% permanent impairment.

Dr. Morris' refusal to assess an impairment rating is consistent with the mandates of the AMA Guides as it directs as follows:

2.4 When Are Impairment Ratings Performed?

An impairment should not be considered permanent until the clinical findings indicate that the medical condition is static and well stabilized, often termed the date of **maximal medical improvement (MMI)**. It is understood that an individual's condition is dynamic. Maximal medical improvement refers to a date from which further recovery or deterioration is not anticipated, although over time there may be some expected change. Once an

impairment has reached MMI, a permanent impairment rating may be performed. The *Guides* attempts to take into account all relevant considerations in rating the severity and extent of permanent impairment and its effect on the individual's activities of daily living.⁸

KRS 342.0011(11)(c) defines permanent disability as follows:

(c) "Permanent total disability" means 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, except that total disability shall be irrebuttably presumed to exist for an injury that results in:

. . .

Clearly, the above statutory definition mandates Corbett must have an impairment rating as a prerequisite to a determination of permanent total disability. In the case *sub judice*, Dr. Morris never assessed an impairment rating for a specific injury, and certainly did not assess an impairment rating for a cumulative trauma injury. Therefore, the ALJ could not award PTD benefits as there was no medical evidence Corbett had a "permanent disability rating" as a result of either a cumulative trauma or a

⁸ See page 19 of the AMA Guides.

specific injury. KRS 342.0011(11)(c). See Colwell v. Dresser Instrument Div., 217 S.W.3d 213 (Ky. 2006).

In his January 23, 2013, order, based on Dr. Best's opinion, the ALJ found Corbett attained MMI on April 5, 2012, and then relied upon Dr. Morris' opinion in determining Corbett had a 10% impairment rating. However, the fact remains Dr. Morris did not assess a 10% impairment rating for the injury he identified as occurring on February 17, 2012. Rather, he stated three times, Corbett was not at MMI. Because of that fact he declined to assess an impairment rating and the completed medical questionnaire clearly reflects Corbett had 0% impairment pursuant to the AMA Guides.

In addition, we conclude the ALJ erred in finding Corbett gave due and timely notice of a cumulative trauma. In the December 17, 2012, opinion and order the ALJ made a finding Corbett had notified Makers Mark of a cumulative trauma injury as soon as he learned he had sustained a work-related repetitive motion injury and the claim was filed on July 18, 2012, alleging work injuries on March 17, 2012. As previously determined, the record does not establish Corbett sustained a cumulative trauma injury. Rather, Corbett's testimony reveals he sustained a specific injury on January 15 or 16, 2012. Similarly, all the

medical evidence reflects Corbett provided a history of a specific injury. Further, there is no evidence which supports a finding Corbett ever "found out that he had sustained a work-related repetitive motion injury." Rather, all the evidence reveals Corbett immediately knew he sustained a work-related acute trauma injury. Thus, the ALJ should have decided the issue of whether Corbett sustained an acute trauma injury on January 15 or 16, 2012. Similarly, in resolving the issue of notice, the ALJ should have determined whether there was due and timely notice of a specific injury.

On remand, if the ALJ determines Corbett sustained a specific work injury as defined by the Act, he must then determine whether Corbett gave due and timely notice of the injury. There is substantial evidence in the record which supports a finding Corbett gave due and timely notice of the injury to Makers Mark.

Although the ALJ may not award permanent partial disability ("PPD") benefits or PTD benefits as there is no impairment rating in the record, he may award temporary income and medical benefits as a result of the acute injury occurring in January 2012. Therefore, the matter must be remanded to the ALJ for a finding as to whether an acute injury occurred in January 2012 and, if appropriate,

whether due and timely notice of the specific injury was provided by Corbett.

As we are vacating the award, Makers Mark's remaining arguments are moot. However, we feel compelled to briefly address two arguments made by Makers Mark in its brief. First, we have reviewed the ALJ's opinion and award and the order ruling on the petition for reconsideration. Contrary to Makers Mark's assertion, there was no finding by the ALJ of an aggravation or arousal of a pre-existing dormant condition into disabling reality. All of the ALJ's findings relate to whether Corbett sustained a cumulative trauma, provided notice of that cumulative trauma, and the extent and duration of any disability resulting from that cumulative trauma.

With respect to Makers Mark's assertion the ALJ failed to address the statute of limitations regarding an alleged November 13, 2010, injury, we find nothing in the record indicating Corbett alleged a November 13, 2010, injury. The BRC order merely identifies one of the contested issues as statute of limitations and does not state the statute of limitations issue relates to a November 13, 2010, injury. Thus, we conclude the issue of the statute of limitations barring Corbett's claim for a November 13, 2010, injury was not before the ALJ and the

ALJ was not required to address that issue. Stated another way, Corbett did not allege such an injury and we find nothing in the record regarding an issue of whether the statute of limitations bars Corbett's unasserted claim for a November 13, 2010, work injury.

Since the record reveals Corbett consistently testified he sustained a specific work injury in January 2012 and both parties introduced medical evidence regarding a 2012 work injury, this claim must be remanded to the ALJ for a determination whether Corbett sustained an acute trauma injury on January 15, 2012. On remand, the ALJ must determine whether Corbett sustained an injury as defined by the Act sufficient to justify an award of temporary income benefits. Further, the ALJ must also determine the extent of medical benefits, if any, to be awarded.

We emphasize the record does not support an award of PTD or PPD benefits as no impairment rating was assessed by any of the physicians in this case. Dr. Best did not offer an opinion regarding the alleged injury on January 15, 2012, or a cumulative trauma injury. Further, Dr. Loeb determined Corbett had no impairment rating as a result of a 2012 injury. As previously discussed, Dr. Morris' opinions cannot constitute substantial evidence Corbett had a permanent impairment rating as a result of the cumulative

trauma injury or an acute trauma injury. Therefore, the ALJ must determine whether Corbett sustained a work injury of temporary nature and, if appropriate, whether due and timely notice was given. If the ALJ determines Corbett sustained a temporary injury and provided due and timely notice of the injury, he shall determine the extent of the income and medical benefits to which Corbett is entitled.

Accordingly, with respect to the determination Corbett has a 10% permanent impairment as a result of a cumulative trauma injury, gave due and timely notice of a cumulative trauma injury, and is permanently totally disabled, the December 17, 2012, opinion and order and the January 23, 2013, opinion and order ruling on Corbett's petition for reconsideration are **VACATED**. Similarly, the award of income and medical benefits is also **VACATED**. This matter is **REMANDED** to the ALJ for entry of an amended opinion in conformity with the views expressed herein.

ALVEY, CHAIRMAN, CONCURS.

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