OPINION ENTERED: May 17, 2013

CLAIM NO. 200871747

MARSHALL MINING COMPANY, INC. PETITIONER

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

JAMES KEVIN HUGHES;
MEDZONE PHARMACY;
ALAN HYDEN, M.D.;
and HON. WILLIMA J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

BEFORE: ALVEY, Chairman, and STIVERS, Member.

ALVEY, Chairman. Marshall Mining Company, Inc. ("Marshall") seeks review of the decision rendered December 10, 2012 by Hon. William J. Rudloff, Administrative Law Judge ("ALJ"), awarding James Kevin Hughes ("Hughes") temporary total disability ("TTD") benefits, permanent

total disability ("PTD") benefits and medical benefits. Marshall also appeals from the January 7, 2013 order on reconsideration.

On appeal, Marshall argues as follows:

> The ALJ exceeded his authority and abused his discretion by rendering a final decision on TTD, MMI[1], medical dispute, or on permanent and total disability issues, without identifying, discussing, and weighing the medical report from Dr. Timothy Kriss.

Dr. Kriss' report was addressed by the ALJ in the order on reconsideration, and because his determination is supported by substantial evidence, we affirm.

On August 4, 2009, Hughes, a resident of Ivel, Kentucky, filed a Form 101 alleging injuries to his head, neck, and back, in addition to headaches. He subsequently amended his claim to include the allegation of a psychological condition. Hughes stated he was shoveling around a belt-line on October 27, 2008, when a timber fell and struck him on the back and head.

Hughes testified by deposition on October 28, 2009, and at hearings held May 23, 2011, and December 7, 2012. Hughes completed the eleventh grade, and has no specialized vocational training. His work history includes

[1] Maximum Medical Improvement ("MMI").

primarily working as an underground coal miner, but he has also worked for a company which steam cleaned mining equipment, and for a tree trimming service. He described all of his previous work as labor intensive requiring heavy lifting in excess of one hundred pounds, and crawling or walking in a stooped manner.

Hughes stated a timber fell, striking him in the back and neck on October 27, 2008. He was taken to the St. Joseph of Martin emergency room, and has not returned to work since. Hughes stated the mine superintendent prevented him from returning to work after the emergency room visit, encouraging him to seek additional medical treatment. The workers' compensation insurer subsequently referred him to Dr. Alan Hyden, who prescribed pain medication, muscle relaxers, Xanax, and ordered an MRI. Dr. Hyden referred Hughes to Dr. Norman Mayer, a neurosurgeon in Pikeville, Kentucky, who eventually performed a cervical fusion, and has never released Hughes to return to work.

Hughes stated he cannot perform his past work. He stated the surgery provided little, if any, relief. He continues to complain of headaches, neck pain and back pain. He also complains of numbness in his hands. Hughes also experiences depression, anxiety, and difficulty with

memory. No treating physician has ever released him to return to work.

Hughes and Marshall submitted reports and records from twenty-two medical providers, mental health providers, physical therapists and vocational rehabilitation experts. The medical evidence includes the reports of Drs. Gregory Gleis and Steven Glassman who performed university evaluations.

Hughes submitted the emergency room records from St. Joseph of Martin, where he presented on October 27, 2008 with complaints of upper back, neck and head pain. X-rays revealed some straightening of the cervical spine but no acute process.

Hughes treated at the Mountain Medical Center on October 30, 2008. He provided a history of being struck by a support timber, but did not lose consciousness. He was diagnosed with acute cervical and thoracic radiculopathy with an acute trapezius strain, and dextroscoliosis. He subsequently treated at that facility on November 13, 2008, and November 26, 2008, for complaints of lumbar and cervical spasms, and pain in the spine and neck.

Dr. Hyden began treating Hughes on January 20, 2009. His treatment records through July 12, 2010 were filed as evidence. Dr. Hyden treated Hughes for chronic

neck and upper back pain with disc herniation at C5-6, resulting from the work injury. Treatment included medications, imaging studies, and referral to a neurosurgeon. His notes also reflect Hughes was restricted from working during the treatment period.

Dr. Mayer first treated Hughes on March 10, 2009. He noted the cervical MRI ordered by Dr. Hyden was of poor quality, and he ordered a repeat MRI. On March 24, 2009, he noted the repeat MRI demonstrated a herniated disc with annular tear at C5-6, and he recommended surgery. On May 10, 2012, Dr. Mayer noted Hughes had an onset of neck pain two years previous. He stated Hughes had reached MMI, and assessed a 28% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

Hughes submitted the MRI report dated February 24, 2009, prepared by Dr. Joseph Skeens, with Medical Imaging Group, LLC. Dr. Skeens stated the MRI revealed a right sided herniation at C5-6, and minimal bulging at C4-5 and C6-7.

Hughes submitted Dr. Charles Kenney's report of the brain MRI performed August 14, 2012, who stated he observed no acute abnormality. Dr. Kenney noted some scatter frontal white matter.

Dr. David Herr performed an evaluation at Hughes' request on June 12, 2009. In his report, Dr. Herr diagnosed cervical and thoracic contusions, and a herniated nucleus pulposus at C5-6. Dr. Herr opined Hughes is a candidate for a cervical fusion, and had not reached MMI. He stated subsequent to surgery, Hughes may warrant an 18% impairment rating pursuant to the AMA Guides.

Treatment records from the Pikeville Medical Center from March 10, 2009 through February 9, 2012, were submitted. Those records reflect treatment with Dr. Mayer, the operative report for the cervical fusion, and post-surgical care. The discharge summary dated August 22, 2011 reflects treatment for a herniated cervical nucleus pulposus, and history of intractable neck pain and cervical radiculopathy.

Dr. Daniel D. Primm, Jr., an orthopedic surgeon, evaluated Hughes on September 14, 2012. Dr. Primm stated Hughes had pre-existing degenerative changes of the cervical spine with a history of super-imposed injury and C5-6 disc injury. He noted Hughes was status post C5-6 discectomy and fusion. He assessed a 28% impairment rating pursuant to the AMA Guides. Dr. Primm also stated it is doubtful Hughes can return to work as an underground coal miner, and he does not retain the capacity to return to the

work performed at the time of the injury. He would limit Hughes to lifting no more than twenty-five to thirty pounds occasionally, and ten to fifteen pounds frequently.

Hughes submitted the physical therapy report prepared by Mr. Franklin Stumbo from the evaluation performed July 13, 2012. Mr. Stumbo stated Hughes could perform light work with a maximum lifting of twenty-two and a half pounds occasionally, and could frequently lift ten pounds. He noted Hughes could stand or walk two hours per day for only twelve minutes at a time. He stated Hughes could sit for thirty minutes at a time for a total of four hours throughout the workday. He further stated Hughes could only occasionally climb, balance, stoop, crouch, kneel, crawl, reach, handle, feel, push, or pull.

Hughes also submitted the June 16, 2009 psychological report prepared by Mr. Phil Pack. Mr. Pack noted Hughes' chief complaint was chronic pain and he diagnosed a pain disorder. He assessed a 10% impairment rating pursuant to the AMA Guides, Second Edition, caused by the work accident. He did not believe Hughes could return to the type of work he performed at the time of the injury.

Finally, Hughes submitted the August 29, 2012 report prepared by Dr. Robert Granacher, a neuro-

psychiatrist, who diagnosed a cognitive disorder due to a work-related traumatic brain injury, and noted a probable counter coupe injury to the frontal lobes. He also determined Hughes was functionally illiterate with a borderline intellectual capacity. He stated Hughes' GAF, or global assessment of function was in the range of 31-40. He concluded Hughes lacks the mental capacity to engage in any work for which he was trained, educated, or had the experience to perform. In a follow up note dated November 25, 2012, Dr. Granacher stated he disagreed with Dr. Ruth's assessment, and stood by his previous report.

Dr. Glassman performed a university evaluation on January 27, 2011. He noted Hughes complained of pain with range of motion of the neck. He stated, "Certainly, this is not something that demands surgical treatment, but I think given his prolonged symptoms and radiographic findings that consideration for ACDF at C5-6 would certainly be reasonable." He also stated if surgery was rejected, Hughes would be considered to have reached MMI.

In his report dated March 22, 2011, subsequent to a university evaluation, Dr. Gleis diagnosed head and neck contused by a falling mine timber; cervical contusion with axial pain; right side disc herniation and to a lesser degree osteophyte formation; and foraminal narrowing, right

greater than left. He stated the C5-6 cervical decompression was reasonable. He opined the injury was the cause of the complaints with no active condition. Dr. Gleis assessed temporary restrictions of twenty pounds lifting, pushing, and pulling. He indicated Hughes was temporarily unable to return to the type of work performed at the time of the injury.

Marshall submitted the May 5, 2009 report of Dr. Henry Tutt, a neurosurgeon. Dr. Tutt noted the history of persistent neck pain after being struck by a falling roof support timber. He stated Hughes had a normal musculoskeletal and neurologic evaluation. An MRI revealed some spondylitic changes at C5-6, which he believed were longstanding, and unassociated with any recent structural alteration. He opined Hughes had sustained only a soft tissue strain, for which he had reached MMI, and surgery was not recommended. Dr. Tutt determined Hughes had sustained only a transient myofascial injury, and needed no additional treatment. He indicated Hughes could lift twenty-five to fifty pounds frequently and over one hundred pounds occasionally. In a supplemental report dated September 6, 2009, Dr. Tutt stated he had reviewed the March 24, 2009 MRI, and his opinions had not changed from his prior report.

Dr. Daniel Wolens performed a records review. In his report dated March 31, 2009, he stated a fusion surgery was not recommended. He stated Hughes had no radicular symptoms, and there was no evidence of radiculopathy.

Marshall filed the medical records review report of Dr. Shelly Freimark, a neurosurgeon from Holland, Michigan, dated October 11, 2012. She noted Hughes had spondylitic changes with a disc herniation at C5-6. She also noted the ACDF performed August 9, 2011, after which he continued to complain of neck and back pain. She stated the referral to a pain clinic would be reasonable.

Dr. Timothy Kriss evaluated Hughes on November 12, 2012. He opined Hughes had reached MMI on February 27, 2009. He stated there is no reason Hughes could not return to work as a coal miner. He noted Hughes complained of pain in his neck, and from the top of the head to the shoulder with intermittent spontaneous numbness in four fingers of the left hand. He noted the presence of several Waddell's signs. Dr. Kriss diagnosed a contusion of the head, neck and upper back on October 27, 2008, with a component of musculoskeletal strain. He noted a small disc herniation at C5-6. He diagnosed chronic pain syndrome, complete with massive symptom magnification. He assessed a 25% impairment rating pursuant to the AMA Guides, due to

the cervical fusion which he stated was neither reasonable nor necessary. He stated the basis for the surgery may or may not have been caused by work. Dr. Kriss found no basis to assess restrictions.

Hughes submitted Mr. Rick Pounds' August 7, 2012 functional capacity evaluation. Mr. Pounds noted Hughes was deconditioned, but demonstrated the ability to perform medium work.

Dr. David Shraberg, a psychiatrist, evaluated Hughes on October 9, 2009. He stated, "I believe that adaptability and social functioning is well within normal limits, militating against a mild or even 10%, apparently based on a pain disorder." Dr. Shraberg assessed 0% impairment pursuant to the AMA Guides. He stated Hughes had recovered from the October 27, 2008 cervical sprain/ strain. Dr. Shraberg also stated Hughes exhibited elements of symptom magnification. He assessed a GAF of 85.

Dr. Douglas Ruth, a psychiatrist, evaluated Hughes on October 25, 2012. He diagnosed a reading disorder, and assessed a 2% impairment rating pursuant to the AMA Guides, Second Edition, but opined Hughes had no impairment due to the work injury. Dr. Ruth stated no restrictions should be imposed.

Dr. Ralph Crystal performed a vocational evaluation on September 18, 2012. Hughes advised him the surgery did not help. He noted Hughes takes medication for pain, anxiety and depression. Dr. Crystal stated Hughes retains the cognitive ability to perform the same job he was able to perform prior to the accident. He noted Hughes needs to obtain a GED, but retains the intellectual ability to perform a wide range of entry level activities. Dr. Crystal also stated, "He can perform his usual and customary as well as related and other work physically and mentally without a loss of employability or earnings capacity as indicated."

A Benefit Review Conference ("BRC") was held November 16, 2011. The BRC order and memorandum reflects the issues for determination included a medical dispute, when Hughes reached MMI, PTD benefits, benefits per KRS 342.730, TTD, and exclusion for pre-existing active disability.

In a decision rendered December 10, 2012, the ALJ noted the following evidence:

> The plaintiff gave a deposition and testified at the hearing. The plaintiff filed the following evidence: Report of Phil Pack, M.S, report of Dr. David Herr, records of Dr. Norman Mayer/Pikeville Medical Center, Dr. Alan Hyden, Mountain Medical Care

> Center, St. Joseph of Martin, East Kentucky Physical therapy & Sports Clinic, FCE of Franklin Stumbo, MRI report 8-24-12, and reports of Dr. Robert Granacher and Dr. Daniel Primm, and pharmacy and medical bills. The defendant filed as evidence the following: Deposition of plaintiff, reports of Dr. Henry Tutt, Dr. Daniel Wolens, Dr. David Shraberg, Dr. Rick Pounds, Ralph Crystal, Dr. Douglas Ruth and Dr. Shelley Freimark and wage records.
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> The Administrative Law Judge has carefully reviewed and considered all of the above evidence.

The ALJ proceeded to find as follows:

> **A. Temporary total disability.**
>
> KRS 342.0011(11)(a) defines "temporary total disability" to mean the 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 parties have stipulated that Mr. Hughes was paid temporary total disability benefits in the amount of $360.06 per week from October 31, 2008 to May 7, 2009 and again from January 27, 2011 to May 13, 2012, in the total amount of $34,145.29. I make the factual determination that the payment of those temporary total disability benefits was appropriate for Mr. Hughes.
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> **B. Maximum medical improvement.**
>
> I have read the medical record of Dr. Norman Mayer dated May 10, 2012. I note that Dr. Mayer states in his

medical record that at that time Mr. Hughes was relating that he had back pain, including bone and joint symptoms and muscle weakness, and also neck stiffness. Dr. Mayer, as the plaintiff's treating physician, stated that as of May 10, 2012 Mr. Hughes had reached maximal medical improvement according to the AMA Guides and that under Table 15-4 Mr. Hughes was at DRE Cervical Category IV, producing a 28% whole person permanent impairment. I make the factual determination that Dr. Mayer was obviously qualified to give the opinion that Mr. Hughes reached maximum medical improvement on May 10, 2012, and I adopt Dr. Mayer's medical record and his medical opinion as contained in that record.

C. Exclusion for pre-existing disability/impairment.

The correct standard regarding a carve-out for a pre-existing active condition is set forth by the Court of Appeals in *Finley v. DBM Technologies*, 217 S.W.3d 261 (Ky. App. 2007). In *Finley*, *supra*, the Court instructed in order for a pre-existing condition to be characterized as active, it must be both *symptomatic* and *impairment ratable* pursuant to the AMA Guides immediately prior to the occurrence of the work-related injury. The burden of proving the existence of a pre-existing active condition is on the employer. *Finley v. DBM Technologies*, *supra*.

I again note that in Dr. Primm's Form 107 Medical Report, he specifically stated that Mr. Hughes did not have an active impairment prior to his work injuries on October 27, 2008. I adopt Dr. Primm's opinion and make the factual determination that at the time and place of Mr. Hughes' work injuries

while employed by the defendant on October 27, 2008 he did not have any pre-existing, active impairment or disability.

D. Benefits per KRS 342.730 and permanent and total disability.

In rendering a decision, KRS 342.285 grants the Administrative Law Judge as fact-finder the sole discretion to determine the quality, character, and substance of evidence. *AK Steel Corp. v. Adkins*, 253 S.W.3d 59 (Ky. 2008). In this case I find very persuasive the medical opinions of Dr. Primm and find that as a result of the plaintiff's work accident on October 27, 2008 he will sustain a 28% whole person permanent impairment as a result of his physical injuries. Pursuant to Dr. Granacher's medical evidence, Mr. Hughes will sustain a 20% permanent impairment under the AMA Guides, Fifth Edition, all of which is due to his psychological component resulting from his physical injuries on October 27, 2008.

"'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 . . . ." Kentucky Revised Statutes (KRS) 342.0011. To determine if an injured employee is permanently totally disabled, an ALJ must consider what impact the employee's post-injury physical, emotional, and intellectual state has on the employee's ability "to find work consistently under normal employment conditions . . . . [and] to work dependably[.]" *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48,

51 (Ky. 2000). In making that determination,

> "the ALJ must necessarily consider the worker's medical condition . . . [however,] the ALJ is not required to rely upon the vocational opinions of either the medical experts or the vocational experts. A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured."

Id. at 52. (Internal citations omitted.) See also, *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979).

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 Drs. Primm and Granacher and their opinions regarding Mr. Hughes' 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.

E. Medical dispute.

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

> The defendant raised a medical dispute regarding the recommended treatment of Mr. Hughes for both his neck and his back, for which he was referred to a pain clinic. I note that in the plaintiff's Form 101 he stated that as a result of the work injuries on October 27, 2008 he sustained injuries to his head, back, neck, including headaches, and an emotional component. I note that in Dr. Mayer's medical record of May 10, 2012 he lists that Mr. Hughes had complaints of back pain, bone and joint symptoms and muscle weakness, as well as neck stiffness. I note that Dr. Primm in his Form 107 Medical Report states that Mr. Hughes was complaining of pain in his lower back and that he also voiced neck symptoms.
>
> Based on all of the above evidence, I make the factual determination that Mr. Hughes is entitled to medical treatment, including treatment at a pain clinic, for his work-related painful symptoms to both his neck and his low back, and that the defendant and its workers' compensation insurance carrier shall pay for that medical treatment.

Both Hughes and Marshall filed petitions for reconsideration. Hughes asserted the ALJ's award of TTD benefits was incorrect, and should have included additional dates. He also argued the award of medical benefits should be revised. Marshall argued the ALJ erred in failing to consider Dr. Kriss' report. Marshall also argued the ALJ erred in finding treatment for Hughes' low back compensable.

In an order regarding the petitions for reconsideration issued January 7, 2013, the ALJ determined the following:

> 4. The Opinion and Order in this case dated December 10, 2012 lists as the expert witnesses whose evidence were filed by defendant to include Dr. Henry Tutt, Dr. Daniel Wolens, Dr. David Shraberg, Rick Pounds, Dr. Ralph Crystal, Dr. Douglas Ruth and Dr. Shelley Freimark. Due to a clerical oversight, the name of Dr. Timothy Kriss was not included in that list of the defendant's expert witnesses. However, the Administrative Law Judge emphasizes that the report of Dr. Timothy Kriss was carefully reviewed and considered before the Opinion and Order of December 10, 2012 was rendered. In light of this clerical oversight, the summary of evidence in Section IV of the original Opinion and Order dated December 10, 2012 is corrected and amended to specifically state that the Administrative Law Judge did carefully review and consider the report of Dr. Timothy Kriss.
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> 5. The defendant raised a medical dispute regarding treatment of the plaintiff for low back complaints based upon the fact that there is no evidence from any doctor that the plaintiff sustained permanent impairment due to his low back injury. The Administrative Law Judge accepts that statement by the defendant. However, based upon the evidence from the plaintiff's treating physician, Dr. Mayer, that Mr. Hughes related that he had back pain and also the statement from Dr. Primm that Mr. Hughes had low back pain, I make the factual determination that Mr. Hughes is

entitled to recover for medical bills and expenses relating to treatment of his back, including pain management treatment, and the original Opinion and Order is so amended. In addition to the medical evidence from Dr. Mayer and Dr. Primm, I rely on the modern Supreme Court decision in *United Parcel Service v. Montgomery*, 2006 WL 2708532 (Ky. 2006), where Judge Cowden determined that the plaintiff sustained a work injury that entitled her to medical expenses and temporary total disability benefits, but did not award her any permanent partial disability benefits. On appeal, the Kentucky Supreme Court held that the plaintiff, who had reached maximum medical improvement without a permanent impairment, was entitled to an award of reasonable and necessary future medical treatment for the effects of her work injury. I have awarded to the plaintiff temporary total disability benefits and also find that the plaintiff is entitled to recover medical benefits for his back injury, although this will not prevent the employer from disputing the reasonableness and necessity of any proposed treatment for the work injuries to the plaintiff's back at a future time. I rely on the persuasive decision of the Kentucky Supreme Court in *United Parcel Service v. Montgomery* in reaching that factual determination.

6. The plaintiff argues in his Petition for Reconsideration that in addition to the benefits awarded to the plaintiff of temporary total disability for the period October 31, 2008 to May 7, 2009 and again for the period January 27, 2011 to May 13, 2012, Mr. Hughes is also entitled to recover temporary total disability benefits of $360.06 per week for the period May 7, 2009 to and including January 27, 2011.

> Based on the medical evidence from Dr. Mayer, the plaintiff's treating physician, I make the factual determination that Mr. Hughes is also entitled to recover temporary total disability benefits for the period May 7, 2009 to and including January 27, 2011. In light of that fact, the Opinion and Order dated December 10, 2012 is amended and corrected to entitle the plaintiff to those additional periods of temporary total disability benefits.
>
> WHEREFORE, in light of the above findings of fact and conclusions of law, the Petitions for Reconsideration filed by the plaintiff and by the defendant are overruled and denied, with the specific exceptions noted hereinabove.

The crux of this appeal concerns whether the ALJ's determination of PTD is supported by substantial evidence. Authority has long acknowledged in making a determination granting or denying an award of PTD benefits, an ALJ has wide ranging discretion. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). KRS 342.285 designates the ALJ as the finder of fact. Therefore, the ALJ has the sole discretion to determine the quality, character, and substance of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). The ALJ, as fact-finder, may choose whom

and what to believe and, in doing so, 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 party's total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15, 16 (Ky. 1977); Pruitt v. Bugg Brothers, 547 S.W.2d 123 (Ky. 1977). Because the outcome selected by the ALJ is supported by substantial evidence, we are without authority to disturb his decision on appeal. *See* KRS 342.285; Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

After reviewing the evidence of record, we believe the ALJ applied the appropriate legal standard for determining whether Hughes is permanently totally disabled in accordance with the Supreme Court's holding in Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

Taking into account Hughes' age, education and past work experience, in conjunction with his post-injury physical status, the ALJ was persuaded due to the effects of the work-related injury, he is totally disabled. We cannot say the outcome arrived at by the ALJ finding Hughes entitled to an award of PTD benefits is so unreasonable under the evidence the decision must be reversed.

In support of its assertion the ALJ erred by awarding PTD benefits, Marshall argues the ALJ failed to consider records Dr. Kriss' report in his opinion. We acknowledge in the opinion, the ALJ did not list Dr. Kriss' report in the evidence reviewed. However, in the order on reconsideration, the ALJ noted this failure was a mere oversight. He stated he had indeed reviewed Dr. Kriss' report in reaching his determination. The mere oversight of failing to list a medical report is an insufficient basis for setting aside the ALJ's determination, especially where there is no dearth of evidence upon which a decision could be made. More importantly, the ALJ asserted he had in fact reviewed the report in making his determination.

The parties are entitled to findings sufficient to inform them of the basis for the ALJ's decision to allow for meaningful review. Kentland Elkhorn Coal Corp. v. Yates, 743 S.W.2d 47 (Ky. App. 1988); Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). We are cognizant of the fact an ALJ is not required to engage in a detailed discussion of the facts or set forth the minute details of his reasoning in reaching a particular result. The only requirement is the decision must adequately set forth the basic facts upon which the ultimate conclusions were drawn so the parties are

reasonably apprised of the basis of the decision. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). We also find the holding of the Kentucky Supreme Court in New Directions Housing Authority v. Walker, 149 S.W.3d 354 (Ky. 2004), to be instructive. There the Court remanded the claim to the ALJ "for further consideration, for an exercise of discretion, and for an explanation that will permit a meaningful review." Id. at 358.

In this instance, the ALJ acknowledged he had reviewed all of the evidence, including Dr. Kriss' report. He also stated he based his decision on the opinions rendered by Drs. Primm and Granacher, as well as Hughes' testimony. It was within his discretion to do so. Although the ALJ provided only a *de minimus* analysis, it was sufficient and his decision will not be disturbed.

Accordingly, the decision rendered December 10, 2012, and the order on reconsideration issued January 7, 2013, by Hon. William J. Rudloff, Administrative Law Judge, are hereby **AFFIRMED**.

STIVERS, MEMBER, CONCURS.

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