Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: August 21, 2015

CLAIM NO. 201384955

MEDCOR, INC. PETITIONER

VS. **APPEAL FROM HON. STEVEN G. BOLTON, ADMINISTRATIVE LAW JUDGE**

LEIGHANNE STINES and
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING

* * * * * *

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

ALVEY, Chairman. Medcor Inc. ("Medcor") appeals from the Opinion, Award, and Order rendered May 20, 2015 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ"), and the order on reconsideration issued June 12, 2015, awarding temporary total disability ("TTD") benefits and temporary

medical benefits to Leighanne Stines ("Stines") for injuries she sustained on April 30, 2013. The period of TTD and medical benefits awarded was from May 7, 2013 through August 19, 2014.

On appeal, Medcor argues the award of additional TTD benefits is not supported by substantial evidence. Medcor also argues the ALJ failed to provide sufficient findings of fact to support the award of additional TTD benefits. We disagree and affirm.

Stines filed a Form 101 on October 20, 2014 alleging she injured her right knee on April 30, 2013 while stepping over a conveyor at work, and subsequently developed pain in her left foot. In the Form 104 filed with the claim, Stines stated her previous work includes employment as an LPN, Special Education teacher, fast food worker, and service as a medic in the Army National Guard.

Stines testified by deposition on February 3, 2015, and at the hearing held March 23, 2015. Medcor introduced Stines' previous testimony from her 2002 knee injury claim including her deposition taken November 6, 2003, and the hearing held March 12, 2004.

Stines[1] is a resident of Harlan County, Kentucky, and was born on April 19, 1972. She has not worked since the April 30, 2013 accident. She previously sustained a right knee injury on May 26, 2002 while working for Harlan ARH. She tripped over a fan cord and landed with her right foot under her right hip which caused her right knee to pop. She eventually underwent surgery and was subsequently awarded permanent partial disability ("PPD") and medical benefits. At the time of that accident, she was working as an LPN. She experienced a limitation of her ability to stand for lengthy periods of time so she did not believe she was able to return to work as an LPN. While that claim was pending, Stines completed a bachelor's degree in Special Education. Subsequent to obtaining her degree, she worked briefly as a Special Education teacher. She indicated her difficulty with the right knee eventually resolved to a point she could return to work as an LPN, which she did until July 6, 2010 when she began working for Medcor as a medical administrator.

She stated her job at Medcor involved managing work-related injuries, checking first aid kits, setting up

[1] Stines has remarried, and her last name is now LeQuire. Due to the fact the claim was never amended to include her current name she will be referred to as Stines throughout this opinion.

flu clinics, and administering flu shots and drug screens. She stated her job required her to lift up to forty pounds, the weight of her medical bag. On the date of the accident, she was walking along a catwalk and stepped over a conveyor. When she did, she noted pain and a tearing sensation in her right knee accompanied by a crunching noise. She was taken to an emergency room in Nicholasville, Kentucky. Dr. Scott Mair, her treating orthopedic surgeon, wanted to do surgery immediately; however, the workers' compensation insurer required her to complete a course of physical therapy first. When this failed she underwent surgery on August 9, 2013.

She stated she continues to experience periodic pain in her right knee, aggravated by climbing stairs and weather change, and has pain in her left foot which she attributes to over-compensation for her right knee pain. She also stated her right knee stiffens with prolonged driving.

Subsequent to her accident at Medcor, Stines was terminated. She has not worked since the accident. She testified she has applied for numerous jobs including as an LPN, clerical and unit secretary positions but has been unable to obtain employment. She stated physically she could do the work of an LPN or Special Education teacher.

In support of her claim, Stines filed treatment records from UK Healthcare. The July 25, 2013 note indicates she had previously sustained a right knee injury which required surgery. Included in the records is the August 9, 2013 operative note.

Stines also filed the report of Dr. Robert C. Hoskins who evaluated her at the request of her attorney on December 22, 2014. He noted the history of a previous right knee injury and surgery from which she eventually recovered with no continuing problems prior to her accident at Medcor. Dr. Hoskins diagnosed Stines with a history of right knee arthroscopy with patellar debridement with residual pain, and left 2nd metatarsalgia. He found the metatarsalgia was an indirect result of the altered movement following her right knee injury and surgery. He noted she continued to treat with Dr. Ronald Dubin in July and August 2014. He noted Dr. Dubin recommended a cortisone injection (which she declined), a shoe insert and prescribed Celebrex. He assessed a 2% impairment rating pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), of which he apportioned half to the right knee and half to the left foot. Dr. Hoskins opined Stines reached maximum medical improvement ("MMI") on August 19, 2014. He opined she

retains the physical capacity to return to the type of work she performed on the date of the injury.

In addition to Stines' deposition and hearing transcripts from her 2002 injury claim, Medcor filed the Form 107-I report of Dr. Charles Hieronymous dated October 8, 2013 and the report of Dr. Gregory Snider dated October 11, 2013. Dr. Hieronymous assessed a 10% impairment rating pursuant to the AMA Guides for the right knee injury and surgery. Dr. Snider assessed a 4% impairment rating pursuant to the AMA Guides. Medcor also filed the opinion of Chief Administrative Law Judge, Sheila C. Lowther, dated May 15, 2004 awarding TTD benefits, PPD benefits based upon the 10% impairment rating assessed by Dr. Hieronymous, and medical benefits.

Medcor also filed the March 13, 2015 report of Dr. David Muffly who evaluated Stines at its request. Dr. Muffly noted her complaints of right knee swelling and aching, with increased symptoms with stair climbing. He noted she continues to treat with Ibuprofen, and she uses a heating pad. He also noted her previous history of right knee arthroscopy in 2003 which was repeated in August 2013. He diagnosed right knee chondromalacia patella with a flare-up in April 2013. He did not find the left foot complaints related to the April 30, 2013 injury. He opined Stines

reached MMI nine months prior to the date of his examination. He attributed no impairment rating to either the right knee or left foot due to the April 30, 2013 work injury.

A benefit review conference ("BRC") was held on March 11, 2015. It was noted Medcor paid TTD benefits at the rate of $716.86 per week from May 7, 2013 through May 26, 2014. The issues preserved in the BRC order and memorandum include whether Stines retains the capacity to return to the type of work performed on the date of injury; benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses; injury as defined by the Kentucky Workers' Compensation Act; TTD; exclusion for prior active disability; vocational rehabilitation benefits; and extent and duration with multipliers. At the hearing held March 23, 2015, the same issues were identified as those listed in the BRC order.

In his decision rendered May 20, 2015, the ALJ noted Dr. Hoskins stated Stines reached MMI on August 19, 2014. He noted Dr. Muffly indicated she had reached MMI approximately nine months prior to the date of his evaluation. The ALJ found Stines suffered a work injury to her right knee on April 30, 2013. He found her left foot condition is not work-related. The ALJ determined Stines

did not sustain a permanent injury to the right knee. He determined she is entitled to an award of TTD benefits beginning May 7, 2013 through August 19, 2014, consistent with Dr. Hoskins' assessment. The ALJ specifically stated:

> The only physician who assigned a definite date upon which the Plaintiff reached MMI was Dr. Hoskins, who assigned August 19, 2014, which was approximately 1 year post surgery and approximately 4 months prior to his IME of the Plaintiff. An extended period of time for recovery does not seem to be unreasonable for Plaintiff's knee injury and Dr. Hoskins' date is within a reasonable period of time from Dr. Muffly's rough estimate of 9 months prior to his IME of March 13, 2015 (approximately June 2014). I therefore find Dr. Hoskins' opinion as to the date of MMI to be persuasive.
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> I further find that the Plaintiff was temporarily, totally disabled from the effects of her April 30, 2013 work incident. Her temporary total disability extended from the date of injury until she reached MMI on August 19, 2014 per Dr. Robert Hoskins, upon whose medical opinion I rely in making a finding on this issue.
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> Pursuant to KRS 342.730(1)(a), she is entitled to receive from the Defendant/ employer temporary total disability benefits at the rate of $712.48 per week beginning May 7, 2013 and continuing through August 19, 2014. The Defendant/ Employer is entitled to credit for all TTD previously paid.
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> Pursuant to KRS 342.020, she is entitled to the cost of medical treatment during

> the period of temporary total disability benefits.

The ALJ dismissed Stines' claim for vocational rehabilitation benefits.

Medcor filed a petition for reconsideration requesting the ALJ to provide additional findings of fact regarding the award of additional TTD benefits from May 27, 2014 through August 19, 2014. This request was denied by order dated June 12, 2015.

It is acknowledged an ALJ has wide range discretion in rendering a decision. 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). It is further acknowledged KRS 342.285 designates the ALJ as the finder of fact, and is granted the sole discretion in determining the quality, character, and substance of evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Likewise, 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).

In reaching his determination, the ALJ must provide findings sufficient to inform the parties of the basis for his 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); Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973). In this instance, the ALJ provided a sufficient basis for the award of TTD and medical benefits through August 19, 2014.

As both this Board and Kentucky Court of Appeals noted previously, temporary total disability is defined as the condition of an employee who has not reached MMI from an injury and has not reached a level of improvement permitting a return to employment. KRS 342.0011(11)(a). This definition has been determined by our courts to be a codification of the principles originally espoused in W.L. Harper Construction Company v. Baker, 858 S.W.2d 202, 205 (Ky. App. 1993), wherein the Court of Appeals stated generally:

> TTD is payable until the medical evidence establishes the recovery process, including any treatment reasonably rendered in an effort to improve the claimant's condition, is over, or the underlying condition has stabilized such that the claimant is capable of returning to his job, or some other employment, of which he is

> capable, which is available in the local labor market. Moreover, . . . the question presented is one of fact no matter how TTD is defined.

Both prongs of the test in W.L. Harper Const. Co., Inc. v. Baker, supra, must be satisfied before TTD benefits may be awarded. In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Court further explained, "[i]t would not be reasonable to terminate the benefits of an employee when he is released to perform minimal work but not the type that is customary or that he was performing at the time of his injury." In other words, where a claimant has not reached MMI, TTD benefits are payable until such time as the claimant's level of improvement permits a return to the type of work he was customarily performing at the time of the traumatic event.

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

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

> . . . .
>
> The second prong of KRS 342.0011(11)(a) operates to deny eligibility to TTD to individuals who, though not at maximum medical improvement, have improved enough following an injury that they can return to work despite not yet being fully recovered. In Central Kentucky Steel v. Wise, [footnote omitted] the statutory phrase 'return to employment' was interpreted to mean a return to the type of work which is customary for the injured employee or that which the employee had been performing prior to being injured. (Emphasis added)

Id. at 580-581.

In Double L Const., Inc. v. Mitchell, 182 S.W.3d 509, 513-514 (Ky. 2005), the Supreme Court elaborated as follows:

> As defined by KRS 342.0011(11)(a), there are two requirements for TTD: 1.) that the worker must not have reached MMI; and 2.) that the worker must not have reached a level of improvement that would permit a return to employment.
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> . . . .
>
> Central Kentucky Steel v. Wise, supra, stands for the principle that if a worker has not reached MMI, a release to perform minimal work rather than 'the type that is customary or that he was performing at the time of his injury' does not constitute 'a level of improvement that would permit a return to employment' for the purposes of KRS 342.0011(11)(a). 19 S.W.3d at 659.

Regarding Stine's entitlement to TTD benefits through August 19, 2014, we find the ALJ properly set forth the basis for his decision. He noted Dr. Hoskins provided the only medical opinion which set forth a specific date of MMI. He further noted the basis for his belief the award through that date was not unreasonable. In his report, Dr. Hoskins noted Stines' continued medical treatment for her work injury in July and August 2014. We note Dr. Hoskins was not cross-examined regarding his assessment of the date Stines reached MMI, nor was any evidence introduced which establishes a specific date Stines reached MMI, except for Dr. Muffly's report which states she reached MMI nine months prior to his examination. Because the ALJ's decision is supported by substantial evidence, and he clearly articulated the basis for his determination, his opinion will not be disturbed.

Accordingly, the decision rendered by Hon. Steven G. Bolton, Administrative Law Judge, on May 20, 2015 and the June 12, 2015 order on reconsideration, are hereby **AFFIRMED**.

ALL CONCUR.

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