OPINION ENTERED: December 7, 2012

CLAIM NO. 201197994

MORNINGSTAR FOODS, LLC PETITIONER

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

NANCY TECKENBROCK
and HON. WILLIAM J. RUDLOFF,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING
* * * * * *

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

STIVERS, Member. Morningstar Foods, LLC ("Morningstar") seeks review of the April 12, 2012, opinion and order of Hon. William J. Rudloff, Administrative Law Judge ("ALJ") finding Nancy Teckenbrock ("Teckenbrock") sustained work-related injuries on January 19, 2011, and awarding temporary total disability ("TTD") benefits, permanent total disability ("PTD") benefits, and medical benefits.

Morningstar also appeals from the May 4, 2012, Interlocutory Opinion and Order on Reconsideration overruling its petition for reconsideration and the July 9, 2012, agreed order ordering the Interlocutory Opinion and Order on Reconsideration to be a final order.[1]

Since this appeal concerns whether the ALJ could rely upon Teckenbrock's account of the injury in determining she sustained a work-related injury, we will only recount the evidence related to causation.

On January 19, 2011, while working for Morningstar, Teckenbrock fell and injured her head and left shoulder. There is no dispute that on that date Teckenbrock fractured her skull, experienced a seizure, and injured her left shoulder which had to be surgically repaired. The sole issue raised on appeal relates solely to the cause of Teckenbrock's fall.

Teckenbrock testified at a November 21, 2011, deposition and the March 22, 2012, hearing. At the deposition, Teckenbrock testified that on the night of the

[1] Because the parties were attempting to settle the claim, the parties agreed the ALJ would not enter a final order on the petition for reconsideration until settlement was explored. Therefore, in the May 4, 2012, order the ALJ ordered the order was not final and appealable. The parties then tendered an agreed order signed by the ALJ on July 9, 2012, ordering the Interlocutory Opinion and Order on Reconsideration to be a final order and Morningstar's time for filing an appeal shall run from July 9, 2012.

injury she was being trained as a palletizer operator by David Caldwell ("Caldwell").[2] She described the job as follows:

> A: You would take pallets of aerosol cans – they were empty aerosol cans – off a trailer truck. They would be loaded and wrapped to hold them together from falling apart. You'd take them off that and – with a forklift and put them on a conveyor and they would roll that into a machine. You had a panel that you would push the button. I have to picture this because I had just started it. I have to – its' been almost a year. You had a panel that you pushed buttons to move them down this conveyor thing to push them into the machine. And you have to get a pole to help hold the cans on the – the – because they would shake as you – as you pushed them down with the machine – to hold them on the conveyor to keep from falling off to kind of balance them. And you push one in at a time and as – as that would push on down, you would eject that one into another – it's hard for me to describe this – eject it into another empty –

Teckenbrock explained she remembered "pushing a pallet in" and bending over to get a "pole down in the crack" and as she was "coming up" she hit her head "so hard on something." She was unable to identify the item upon which she hit her head. She testified the pole she was bending

[2] Since Caldwell's statement and deposition testimony reflect the machine is called a depalletizer we will refer to it as a depalletizer machine.

down to get resembles a push broom handle and is used to keep the cans from falling off the conveyor. Teckenbrock testified that after she struck her head “it hurt so bad.” After that, she was trying to get her bearings and became sick to her stomach. During this time, Caldwell was on a forklift “waiting for [her] to push one in.” The next thing she remembered was being in the ambulance when she was told she had “two skull fractures and a brain bleed.”

Teckenbrock explained she began to remember what had occurred in bits and pieces within days after the accident when she got home from the hospital. She believes she began remembering when the strong narcotics she was taking “started coming out of [her] system.” She did not remember being on the floor or if she had the pole in her hand. Teckenbrock explained she remembered hitting her head on something, standing up, trying to shake it off, and then falling backwards. She testified that after she hit her head she fell “right away.” Only she and Caldwell were present at the time of the injury.

Teckenbrock testified she has a history of depression since her “forties” and had been diagnosed with a bipolar disorder. She testified she had a psychological evaluation on January 5, 2011, performed by Dr. Christopher Adams at which time he prescribed Wellbutrin. She

acknowledged Dr. Adams told her Wellbutrin could potentially cause seizures. Teckenbrock testified she felt Wellbutrin was safe because she had two children who were bipolar and take Wellbutrin. Teckenbrock testified at the time of the injury she was on numerous medications which she listed. After she came out of ICU she was seen by Dr. Theodore Davies who prescribed seizure medication.

Teckenbrock testified she had a "psychological break down from the seizure over-dosage medication" prescribed by Dr. Davies. After tests were performed she was told she was having a reaction to the seizure medication. She was subsequently seen by Dr. Siva, a neurologist, and Dr. Riley Love, for pain management. Teckenbrock testified no physician told her she experienced a seizure which resulted in her fall.

At the hearing, Teckenbrock described the injury as follows:

> Q: Okay. Would you please describe to the Judge exactly how you sustained your injuries?
>
> A: That's – that's the night I got hurt. I was pushing a pallet in and I was bent over into the – put a pallet in – was going to put a pallet in and I bent over to pick up my pole – had just got a pallet in to push it in and as I was raising up, I struck my head on something as I was raising up. It hurt

> really bad and I took a couple of steps back and that's all I can remember.

Teckenbrock explained because the pole was kept on the floor she had to bend down in a "real awkward position" to pick it up and as she was raising up she took a step backwards and struck her head. She again testified she started to recall the events in bits and pieces after she got home from the hospital.

On cross-examination, Teckenbrock testified she remembered having the pole in her hand at the time she hit her head. Teckenbrock was shown the three-page questionnaire she had completed for the Social Security Administration. The following exchange then took place between Teckenbrock and Morningstar's counsel:

> Q: You filled out some Social Security documents that I have placed into evidence by pleadings, and this is one of the documents. This is – let me just show you this three-page document that you signed on March 31st, 2011. Do you see your signature there?
>
> A: Yes, I do.
>
> Q: And you filled this out for Social Security, didn't you?
>
> A: Yes.
>
> Q: And you told them that this was the first seizure you had had? 'I felt okay, woke up in the ambulance vomiting and didn't remember what happened, right.'

> A: (No response.)
>
> Q: That's what you told Social Security?
>
> A: (No response.)
>
> Q: Its' right here – 'and didn't remember what happened.'
>
> A: Okay.
>
> Q: And then they asked you how many have you had in the past and on March 31st you said: I had one bad spell causing skull fracture. So you told Social Security you had a seizure and caused – which caused you a skull fracture on March 31st, 2011?
>
> A: I had two skull fractures.
>
> Q: Why didn't you tell Social Security you hit your head and fell? Why did you tell them you had a seizure which caused you to have a skull fracture?
>
> A: I'm not a doctor. I – I was told so many different things.

When asked if she told Dr. Adams in August 2011, she was just starting to remember bits and pieces; Teckenbrock responded she did not know what she told him. She acknowledged Dr. Adams told her Wellbutrin can lower the threshold for seizures. Teckenbrock was again asked if she had told Social Security she had a seizure within two weeks of Dr. Adams starting her on Wellbutrin which was a drug he informed her could cause a seizure. Teckenbrock

responded that she felt her “two skull fractures” caused her seizures. When again confronted with the fact that explanation is not what she told Social Security she responded as follows:

> A: I was – I went – was going through a really difficult time and I was told so many different things. I was so confused and I just – I was I just was doing the very best I could at what I thought happened.

The January 9, 2012, deposition of Caldwell was introduced by Teckenbrock. Caldwell testified on January 9, 2012, he was training Teckenbrock and was approximately six to eight feet from her. He described what he observed:

> Q: Okay. Can you tell what you witnessed that night, please?
>
> A: Okay. I was on the forklift, and I had just backed out of a trailer with a pallet of cans. And I had positioned myself to put the pallet of cans on the track, but I had to wait for Nancy Teckenbrock to advance her pallet and to put a pallet on the lift.
>
> And when I looked over at Nancy, she was shaking her head side to side like she was really angry. The best way I could describe it, like she was pissed off at the machine. And she took a step or two back, and then she fell straight back and hit her head on the concrete.
>
> Q: Okay. What happened after she hit her head on the concrete?

> A: After she hit her head on the concrete, her whole body was just shaking violently, just part of – you know, her arms would slam into the floor, her legs – she was like drawing up, and she was just shaking all over uncontrollably.

Caldwell testified when Teckenbrock fell, she hit her head first and her head "bounced off the concrete." After observing her fall he became sick to his stomach and began crying and screaming. Caldwell ran to get his supervisor, Daren Pingel, who was in the next room.[3] Caldwell testified that prior to Teckenbrock's fall, aside from her head, he did not notice any other part of Teckenbrock's body convulsing or shaking.

Caldwell explained the poles Teckenbrock used in performing her job lean against the side of the depalletizer. He explained the pole is a "broomstick or squeegee stick" and is used to brace the cans as they advance on the line. Teckenbrock would be in a bent position holding the pole maneuvering the pallet inside the track. The following exchange then took place:

> Q: Now, have you ever hit your head or struck your head while using one of these poles?

[3] Pingel's deposition was introduced. Since he did not witness Teckenbrock's fall and could only recount what he observed after being called to the scene of the accident his testimony will not be summarized.

> A: Yeah. I've never – I've never hit it hard enough to knock me out, but I've – I've bumped my head before where I actually saw white for one or two second. But I've never hit it, you know, had enough to knock me out or make me fall.

On cross-examination, Caldwell testified that prior to the fall Teckenbrock was not shaking her head unnaturally. He explained he only saw the back of her head and before she fell it appeared as if she was saying no to someone. Caldwell was shown his written statement signed and dated January 22, 2011, which did not mention Teckenbrock having a pole. Caldwell testified at the time he saw her shaking, Teckenbrock had a pole in her left hand when she "fell back." When asked about his statement "Nancy began convulsing very bad in her upper body and head area," Caldwell explained he used the word convulsing because Teckenbrock "was shaking like she was real mad." Caldwell testified he thought "convulsing was like to shake violently." When asked about his reference to Teckenbrock's upper body and head area, he explained he meant her head was shaking. Caldwell testified that while on the ground Teckenbrock's body was drawn up and twitching and shaking. Caldwell explained Teckenbrock's movement of her head from side to side before she fell was different from the movement he observed when she hit her head on the

concrete floor. He characterized Teckenbrock's movement on the floor as "definitely unnatural." Caldwell explained when he saw Teckenbrock shaking her head before the fall he thought "she was mad as hell."

Teckenbrock submitted the December 13, 2011, independent medical evaluation ("IME") report of Dr. Warren Bilkey. After reviewing the medical records and conducting a physical examination, Dr. Bilkey diagnosed the following:

> 1. Traumatic brain injury, post concussion headache, loss of smell sense.
>
> 2. Left shoulder strain, labrum tear, impingement syndrome. Ms. Teckenbrock has undergone arthroscopic surgery including distal clavicle resection. There is residual contracture, pain and impairment.
>
> 3. Aggravation of bipolar disorder with severe depression.

Dr. Bilkey stated that although the medical records discuss the seizure causing her fall, according to the medical history, Teckenbrock "struck her head on an item within the plant after having stooped forward to pick something up" which caused her fall. He noted Teckenbrock struck her head hard on the floor sustaining a skull fracture and traumatic brain injury. She also injured her left shoulder and strained her back. Due to the associated time off, financial stress, and losing her job, Dr. Bilkey believed

Teckenbrock's pre-existing bipolar condition was aggravated by severe depression requiring inpatient treatment. He believed Teckenbrock has "persisting severe problems affecting her left shoulder and psychiatric status along with her ongoing post-traumatic headaches." Dr. Bilkey stated his diagnoses are due to the work injury. Concerning the issue of causation, Dr. Bilkey stated as follows:

> The issue of causation regarding her injury appears to be a significant issue here. There is documentation in the record that Ms. Teckenbrock had a seizure leading to her fall and subsequent head injury. It appears however, from the medical history and review of the medical records, that the fall occurred not as a result of the seizure, but instead when she struck her head on an item within the plant, after having stooped forward for something. This opinion is based upon the medical history from Ms. Teckenbrock herself, the absence of a documented pre-existing seizure condition. There is no evidence of that being diagnosed or that being treated prior to 1/19/11. Finally, the post work injury 1/19/11 EEG is negative for seizure disorder. If there is no seizure disorder now after the head injury, there would not have been a seizure disorder prior to the head injury. This means that the fall is more likely not due to the seizure disorder and that the initial medical documentation is actually wrong. For these reasons, the above diagnoses are fully work injury related.

Even though Dr. Bilkey did not believe Teckenbrock was at maximum medical improvement ("MMI") for any of the diagnoses, he assessed a 19% whole person impairment due to the injury to the left shoulder and the traumatic brain injury, pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"). He recommended reassessment of the permanent impairment after Teckenbrock attains MMI.

Teckenbrock introduced the medical records of Western Baptist Hospital which reflected a "clinical indication" of a basilar skull fracture. The MRI of the brain without contrast reflected she had a history of a skull fracture and seizures.

Morningstar introduced the medical records from Lourdes Hospital and Dr. Adams. Those records reflect Dr. Adams conducted a psychiatric evaluation on January 5, 2011, and prescribed Wellbutrin. His notes reflect Teckenbrock's previous medications were Paxil, Cymbalta, Lexapro, Trazondone, Zoloft, and Prozac. Dr. Adams also listed her current medication. In the initial treatment plan, Dr. Adams indicated he would continue the Prozac and add Wellbutrin for depression. Dr. Adams' April 21, 2011, note states that a couple of weeks after he saw Teckenbrock in January "she had a seizure episode, ultimately fell, had

a skull fracture." As a result, she was hospitalized for a significant period of time.

Morningstar introduced the Social Security Administrations' "Questionnaire for Epilepsy, Headaches, and/or Similar Disorders" filled out by Teckenbrock. In that questionnaire, Teckenbrock indicated she first had a seizure on January 20, 2011. She stated she felt "she was okay before and woke up in the ambulance later vomiting and didn't remember what happened." In response to the question "how many have you had in the past twelve months?," she wrote: "1 bad spell causing skull fracture and ICU – also had hemorrhaging of brain in 2 places."

Morningstar introduced the February 27, 2012, deposition of Dr. Joseph L. Zerga. Dr. Zerga testified minor head trauma can cause seizures. He testified because of Teckenbrock's seizure and brain trauma she would not have remembered anything about the event. Based on Caldwell's statement and deposition, and the medical records, Dr. Zerga concluded Teckenbrock's seizure was the initiating factor. He testified Wellbutrin will lower the threshold for having a seizure. Dr. Zerga testified Caldwell, in his statement, describes a grand mal seizure. Dr. Zerga later denied saying minor head trauma can cause

seizures. During the deposition the following exchange took place between Dr. Zerga and Teckenbrock's counsel:

> Q: Doctor, let's assume that Nancy's testimony about remembering hitting her head on the obstruction at her station is true. Let's assume that for a minute. Could Nancy standing up and hitting her head, could hat have caused her to have a seizure?
>
> A: Well, I'm going to pursue this hypothetical with you as long as you agree that it's a hypothetical.
>
> Q: I agree that it's a hypothetical. Assuming Nancy's testimony is true, assuming that what she said during the deposition that she stood up, remember striking her head on something.
>
> A: I would think that the most likely scenario that that would have happened would have been this: That she struck her head, that it caused her to have pain, that the pain caused what we call a vasovagal reaction which dropped her blood pressure, that the drop in blood pressure caused her to fall and hit her head, and the fall caused the brain hemorrhage, and the subsequent irritating blood in the brain caused the seizure, okay, if you want to pursue that hypothetical.
>
> What I'm trying to say is I don't think the blow itself would have caused the seizure. We see that sometimes. I've seen some patients with relatively – you know, a blow that will have seizures, but it's usually very unlikely.

Dr. Zerga's report of February 22, 2012, attached to his deposition as exhibit 1, mirrors his deposition testimony.

Morningstar introduced the March 15, 2012, deposition of Dr. Robert Granacher and his February 28, 2012, report as an exhibit to his deposition. Dr. Granacher testified Teckenbrock had a “window of amnesia around the event of the seizure itself.” She had a fully functional memory prior to and after the seizure. He explained that people who have seizures cannot describe their seizure to a doctor. Dr. Granacher stated Wellbutrin can lower the seizure threshold and cause an individual with no evidence of prior seizures to have a seizure. Teckenbrock sustained a moderate brain injury that caused an “altercation of consciousness.” Dr. Granacher testified either the seizure or the brain injury or both can keep a person from remembering. He stated it was unreasonable to believe Teckenbrock had flashbacks of hitting her head before she fell. Dr. Granacher testified Teckenbrock’s claim of “recovered memory” is “highly susceptible to fabrication, alteration, and misunderstanding.” He stated it is not believable Teckenbrock remembered what happened later. In fact, Teckenbrock told him she did not remember what happened.

Dr. Granacher indicated he had reviewed Caldwell’s deposition and statement and believed Caldwell had mischaracterized what he saw. Dr. Granacher believed

Teckenbrock had a seizure which rendered her incapable of maintaining her posture and as a result she fell. He did not believe Teckenbrock hit her head, fell, and then had a seizure. Dr. Granacher testified Prozac can lower the seizure threshold and Teckenbrock was on twice the average daily dose of Prozac. He explained Prozac does not lower the seizure threshold in the same manner as Wellbutrin. Dr. Granacher stated the fact Teckenbrock was on two anti-depressants dropped the seizure threshold dramatically. He believed Teckenbrock's seizure threshold dropped to the point that she had a grand mal seizure. Dr. Granacher opined Prozac lowered the threshold and Wellbutrin lowered it even further causing Teckenbrock's seizure. Dr. Granacher also noted bipolar patients are at a "bit of an increased risk for seizures."

Dr. Granacher believed Teckenbrock suffered a seizure before she fell and hit her head due, in part, to the combination of her age, her bipolar status, the Prozac, and Wellbutrin. He stated the imaging studies confirm Teckenbrock had a "brain injury in the tissue." He testified Teckenbrock had substantial brain trauma and most people with "that level of trauma are amnesic for impact and the events immediately before and after impact." Based on the injuries Teckenbrock sustained, Dr. Granacher did

not believe she could remember the event. He explained she had an altered mental state by virtue of the seizure and brain trauma and could not "store the memory." Further, based on the test results his office staff administered, Dr. Granacher believed Teckenbrock was giving false information. He explained her memory scores did not clinically correlate with her injury which was a probable sign of malingering. Dr. Granacher again stated Teckenbrock had no memory of events, and if she claimed otherwise she was either confused or lying. Dr. Granacher then read the following portion of his written report:

> Thus, in my opinion, she had a brain shrinkage prior to injury, the addition of a second antidepressant, which reduced her seizure threshold and caused her to have a seizure at work, and the seizure at work led to her falling backwards striking the back of her head and producing brain injury in the frontal parts of her brain. I do not believe anything at work caused her to have a brain injury.

On cross-examination, Dr. Granacher testified he was unable to state how long Teckenbrock's amnesia period lasted before and after the seizure. He explained he was unable to provide the length of an amnesia period "in a single person" because "the variance is too great." The following exchange took place between Dr. Granacher and Teckenbrock's counsel:

Q: Well, let’s talk about that for a minute. Can you sustain a seizure or experience a seizure as a result of traumatic head injury.

A: Yeah, serious blunt force trauma, sure.

Q: Now, you talked about all of these different factors that lowered Nancy’s threshold for a seizure. Does that also lower the threshold, I guess, for the amount of force in a head trauma that’s necessary to cause a seizure?

A: I don’t think so. But I’m going to have to defer on that because the experts for the biomechanics of blunt force trauma are neurosurgeons. And I am not a neurosurgeon. Most of that literature is in the neurosurgical literature and I am not a board certified neurosurgeon. You are going to need a neurosurgeon expert if you want to answer that question is what I’m saying.

Q: The only reason I’m asking is because you have given today a lot of opinions about causation of seizures so I’m just trying to follow-up on whether or not you believe –

A: Wait a minute. I gave a lot of opinions on causation of seizures by lowering seizure threshold with antidepressants in a brain shrinkage bipolar patient.

Q: Right.

A: I did not give you opinions on blunt force biomechanical trauma.

After summarizing the lay and medical testimony, the ALJ entered the following findings of fact and conclusions of law:

> **1. Did the plaintiff sustain a work related injury on January 19, 2011?** The plaintiff argues that she struck her head, resulting in seizure, fracture and permanent brain injury. The defendant argues that the plaintiff's seizure resulted from her psychiatric medication and caused the fall, and therefore her injury is not work-related.
>
> When an unexplained fall occurs in the workplace, a rebuttable presumption arises that such a fall is work-related. *Vacuum Depositing, Inc. v. Dever*, 285 S.W.3d 730 (Ky. 2003). The employer therefore bears the burden of proof to show that the subject fall was not work-related. *Id*.
>
> The defendant relies on Dr. Granacher's interpretation of the observations by the lay witness Mr. Caldwell. The lay witness's testimony and his written statement are not entirely consistent. Moreover, as the lay witness, his testimony regarding the plaintiff's medical state and symptoms is not entirely reliable. The plaintiff testified at one point that she did not remember the events of the day, and she testified at another time that she did remember some of the events.
>
> KRS 342.0011(1) defines "injury" as any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which is the proximate cause producing a harmful

> change in the human organism evidenced by objective medical findings. The radiographic evidence in this case indicates that the plaintiff sustained a harmful change to the human organism. I therefore find that she did sustain an injury.
>
> The evidence does not convince this ALJ that the plaintiff had an idiopathic seizure prior to falling and fracturing her skull. Both lay witnesses testified within their expertise, that is, what they saw: the plaintiff lying on the floor seizing, with blood coming from the back of her head. Moreover, Mr. Caldwell testified that he had struck his own head on the very piece of metal that the plaintiff described. Based on all the evidence, I find that the plaintiff sustained a head injury and brain injury as a result of striking her head then falling. I find insufficient the defendant's argument that the plaintiff's combination of psychotropic medications could have placed her at greater risk for having a seizure. For these reasons I find that the plaintiff sustained injuries causally related to her job for the defendant.

The ALJ determined Teckenbrock was totally occupationally disabled.

Morningstar filed a petition for reconsideration asking the ALJ to reconsider his opinion in light of the unrebutted testimony of Dr. Granacher and Dr. Zerga that because of her seizure it was medically impossible for Teckenbrock to have any memory of the event. Morningstar

requested the ALJ to reconsider his opinion "with regard to [Teckenbrock's] testimony that she remembered the event." It argued Teckenbrock's testimony establishes she did not remember the event. It maintained during her discovery deposition, Teckenbrock admitted she did not remember holding the pole but at the hearing she stated she did remember holding the pole. Morningstar asserted the unrebutted medical proof establishes it is impossible to have a memory of the event. Therefore, it requested the ALJ make a specific finding as to what medical proof supports the conclusion Teckenbrock is now able to remember the event.

On May 4, 2012, the ALJ rendered an interlocutory opinion and order on reconsideration stating, in part, as follows:

> 4. I saw and heard the plaintiff Teckenbrock testify at the hearing on March 22, 2012. She was a credible and convincing witness. She testified that while working for defendant on January 19, 2011 and bending down to pick up an object on the floor, when she raised up she struck her head on a fixture very hard, rendering her unconscious. She fell to the floor and also injured her left shoulder. She next remembered waking up in an ambulance.
>
> 5. The plaintiff filed the comprehensive medical report of Dr. Warren Bilkey. He recited the plaintiff's history of her work injury

and reviewed her medical records. He stated that it was his opinion that Ms. Teckenbrock's January 19, 2011 work injury resulted in the following:

(a) Traumatic brain injury, post-concussion headache, loss of small sense.

(b) Left shoulder strain, labrum tear, impingement syndrome. Ms. Teckenbrock has undergone arthroscopic surgery including distal clavicle resection. There is residual contracture, pain and impairment.

(c) Aggravation of bipolar disorder with severe depression.

Dr. Bilkey also stated that due to Ms. Teckenbrock's work injuries she has not been able to resume her usual work duties and that she should remain on off-work status. Dr. Bilkey further stated that as a result of Ms. Teckenbrock's functional impairment and limitation, it is more likely than not that she is now medically deprived from returning to her pre-injury work activities. I found Dr. Bilkey's evidence to be credible and convincing.

6. Based upon the totality of the evidence in the record, specifically including the sworn testimony of the plaintiff and the medical evidence from Dr. Bilkey, I made the factual determination that Ms. Teckenbrock's testimony as to how her work injuries occurred and the evidence from the plaintiff and Dr. Bilkey regarding Ms. Teckenbrock's physical and psychological inability to return to her pre-injury work duties was credible and convincing. I also relied on the decisions of Kentucky's highest court in *Ira A. Watson Department Store*

> *v. Hamilton*, 34 S.W.3d 48 (Ky.2000) and *Hush v. Abrams*, 584 S.W.2d 48 (Ky.1979) in concluding that this lady is permanently and totally disabled.

On appeal, citing extensively to the testimony of Drs. Zerga and Granacher, Morningstar argues the ALJ committed an abuse of discretion in believing Teckenbrock's account of this injury since the unrebutted medical proof establishes she could not possibly remember the event due to her brain seizure.

Morningstar contends the fact Teckenbrock does not remember the event is borne out by her statement to the Social Security Administration and her impeached testimony at the hearing that she remembered holding the pole. It asserts Teckenbrock's deposition testimony reflects she does not remember holding the pole. Morningstar also cites to Dr. Granacher's testimony that Teckenbrock told him she could not remember the event. Morningstar asserts "this combination of medical proof and prior testimony" clearly establish Teckenbrock either consciously or unconsciously changed her story and could not possibly have a memory of the event. Accordingly, since the uncontradicted testimony of Drs. Zerga and Granacher substantiate Teckenbrock could not possibly have a memory of the event the ALJ should have accepted their testimony and dismissed her claim.

Teckenbrock, as the claimant in a workers' compensation proceeding, had the burden of proving each of the essential elements of her cause of action, including causation. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Teckenbrock 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).

The ALJ, as fact-finder, has the sole authority to determine the weight, credibility, substance and inferences to be drawn from the evidence. Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985). Furthermore, the ALJ has the absolute right to believe part of the evidence and disbelieve other parts, whether it comes from the same witness or the same parties' total proof. Caudill v. Maloney's Discount Stores, 560 S.W.2d 15 (Ky. 1977). It is not enough to show there was some evidence which would support a contrary conclusion. McCloud v. Beth-Elkhorn Corp., 514 S.W.2d 46 (Ky. 1974). So long as the ALJ's

opinion is supported by any evidence of substance, ordinarily we may not reverse. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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). 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, supra.

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).

In this instance, we believe it was reasonable for the ALJ to infer from the lay and medical testimony that Teckenbrock's injuries were caused by her work activities at Morningstar. In Dravo Lime Co. v. Eakins, supra, the Supreme Court stated: "o[u]r courts have also held that a fact finder may, in piecing together the entirety of the testimony, conclude that causation has been established by viewing the totality of the circumstances, including the history related by the injured worker." Id. at 6. Hence, depending on the unique circumstances of the case, the work history provided by the injured workers alone may be competent evidence sufficient to support a finding of work-related causation. Cf. Scorpio Coal Co. v. Harmon, 864 S.W. 2d 882 (Ky. 1993); Brown Foreman Corp. v. Rice, NO 2003-CA-001532-WC, 2004 WL 406088 (rendered March 5, 2005, and designated not be published).

Teckenbrock testified she remembered hitting her head on some object, shaking her head like she was addled, and falling backwards. At the hearing, she testified she was holding a pole when she fell. Caldwell confirmed Teckenbrock's testimony. He testified Teckenbrock was

shaking her head and holding a pole in her left hand when she fell. He testified he has previously hit his head while operating the depalletizer, and as a result had actually seen white for one or two seconds. Regardless of the opinions of Drs. Granacher and Zerga, the ALJ is permitted to believe Teckenbrock's testimony in resolving the issue of causation. In this case, the ALJ relied upon Teckenbrock's testimony which was corroborated to a large extent by Caldwell. In addition, relying on Teckenbrock's account of what occurred, the absence of a prior history for seizures, and the January 19, 2011, EEG reflecting no seizure disorder, Dr. Bilkey expressed the opinion all of Teckenbrock's injuries were work-related. The testimony of Teckenbrock and Caldwell and the opinions of Dr. Bilkey are substantial evidence supporting the ALJ's finding regarding causation.

While the contrary opinions pertaining to causation expressed by Drs. Granacher and Zerga may have been articulated in much greater detail, such testimony represented nothing more than conflicting evidence compelling no particular outcome. Copar, Inc. v. Rogers, 127 S.W. 3d 554 (Ky. 2003).

In the opinion and award, based on Teckenbrock and Caldwell's testimony, the ALJ concluded Teckenbrock

sustained a work-related injury. However, the ALJ provided an additional reason for his finding Teckenbrock sustained a work-related injury in the order ruling on the petition for reconsideration stating he relied upon Teckenbrock's credible testimony and the "comprehensive medical report of Dr. Bilkey."

We point out even Dr. Zerga acknowledged minor trauma can cause a seizure. Although Dr. Zerga later retreated from that statement, in answering a hypothetical question he subsequently provided a scenario where minor trauma given Teckenbrock's medical condition could have caused her seizure at work. Significantly, on cross-examination Dr. Granacher refused to offer an opinion regarding the extent of the head trauma necessary to cause a seizure. He specifically stated he would defer to a neurosurgeon. Thus, the ALJ could conclude the testimony of Drs. Zerga and Granacher was not unrebutted and their testimony was hardly unequivocal.

Contrary to Morningstar's assertions, the ALJ was permitted to disregard Teckenbrock's answers to the Social Security questionnaire and Dr. Adams' records. Likewise, within his discretion, the ALJ may accept Teckenbrock's explanation of what occurred on January 19, 2011, and her testimony concerning the Social Security questionnaire.

Whether the blow to Teckenbrock's head caused the seizure, fall, and fractured skull, or the blow to the head caused her to fall, strike her head on the concrete causing the fractured skull and seizure, the effects of Teckenbrock's work injury are compensable.

In light of the whole record, we find the ALJ's determination of causation to be supported by substantial evidence. So long as the ALJ's determination is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

Accordingly, the April 12, 2012, opinion and order, the May 4, 2012, interlocutory opinion and order on reconsideration, and the July 9, 2012, order are **AFFIRMED**.

ALL CONCUR.

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