

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: November 8, 2013

CLAIM NO. 201173224

MOSEN KHANI

PETITIONER

VS. APPEAL FROM HON. OTTO DANIEL WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

ALLIANCE CHRIOPRACTIC
and HON. DANIEL OTTO WOLFF, IV,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING

* * * * *

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

ALVEY, Chairman. Mosen Khani ("Dr. Khani") seeks review of the opinion and order rendered March 19, 2013 by Hon. Otto Daniel Wolff, IV, Administrative Law Judge ("ALJ") finding he did not sustain "injuries" as defined by the Act and dismissing his claim. Dr. Khani also seeks review of the

May 15, 2013 order overruling his petition for reconsideration.

On appeal, Dr. Khani argues the ALJ erred by characterizing him as a lay witness rather than an expert, finding his injuries did not meet the definition of injury as defined by the Act and by failing to award temporary total disability ("TTD") and medical benefits for a temporary injury. We disagree and affirm, finding substantial evidence in the record supports the ALJ's determinations and no contrary result is compelled.

Dr. Khani filed a Form 101 alleging he sustained work injuries on February 28, 2011, August 22, 2011 and August 23, 2011 to "both hands, arms, shoulders, neck, lower back, left lower extremity and dental bridge" while moving or assisting patients in his capacity as a chiropractor.

Dr. Khani testified by deposition on April 19, 2012 and at the hearing held December 18, 2012. He was born on March 12, 1961 and resides in Louisville, Kentucky. Dr. Khani has a bachelor's degree and is a Doctor of Chiropractic. He has been a chiropractor since 1989, and is the sole owner/operator of Alliance Chiropractic, LLC, ("Alliance"), a practice he started in May 2000. Dr. Khani testified due to his work injuries, he sees fewer patients,

works fewer hours, and is actively trying to sell his practice.

Dr. Khani testified he experienced immediate neck pain on February 28, 2011 radiating down into his left arm while performing manipulations on a patient. Dr. Khani waited approximately three weeks before seeking medical treatment with Dr. Ghias Arar, a neurologist, who ordered neck and shoulder EMGs and MRIs and prescribed medication. At his deposition, Dr. Khani testified he experienced pain in his wrists, rib cage and low back subsequent to the February 2011 work event.

On August 22, 2011, Dr. Khani experienced low back and left leg pain when he prevented a heavy patient from falling. Despite his pain, Dr. Khani returned to work the following day and experienced bilateral shoulder pain during the course of performing manipulations on a patient. Subsequent to these two events, Dr. Khani returned to Dr. Arar who ordered lumbar and bilateral shoulder MRIs. Dr. Khani treated with Dr. Gupta for his wrist and shoulder complaints, and also saw Dr. Warren Bilkey. Dr. Khani was then referred to Dr. Terry Hill, a chiropractor, and Dr. Mark Smith. At his deposition, Dr. Khani also attributed a dental bridge injury to his work accidents.

Dr. Khani testified he previously experienced neck and arm pain due to a 1988 motor vehicle accident. His symptoms resolved following three to four months of treatment and had no more problems until February 2011. Dr. Khani later admitted he received treatment for neck "aches and pains" following the 1988 accident and confirmed Dr. Rouben had suggested a cervical fusion in 2006. Likewise, he sought treatment for low back "aches and pains" in 2006 from which he fully recovered. Dr. Khani denied previous injuries or treatment for his left shoulder. Dr. Khani received treatment for right shoulder pain in 2006 or 2007 and stated he was mostly asymptomatic prior to 2011. Dr. Khani previously fractured his left hand in 1996 requiring an open reduction procedure. He suffered a right fibula fracture in 2006 or 2007 and a left patella fracture in 2009. Dr. Khani was diagnosed with carpal tunnel syndrome by Dr. Joseph Kutz in 2004 or 2005. Generally, Dr. Khani acknowledged previous symptoms in the same parts of his body he now attributes to the 2011 work events, but "the frequency, intensity, and duration of pain . . . have been different."

Alliance filed voluminous medicals records and diagnostic studies pre-dating the February and August 2011 work injuries from various facilities including Norton

Immediate Care Center, Kleinart & Kutz, Drs. Kittie George, David Rouben, Vasudeva Iyer and Michael Moskal, Stonestreet Medical Imaging,.

Dr. Khani filed the October 6, 2011 note of Dr. Warren Bilkey who stated Dr. Khani had no prior history of significant injuries affecting the neck, back or shoulders. Dr. Bilkey diagnosed work-related injuries with bilateral shoulder strain, developing adhesive capsulitis; cervical strain with cervical radiculopathy on the left; lumbar strain with lumbar radiculopathy on the left; bilateral carpal tunnel syndrome confirmed by electrodiagnostic evaluation; contusion to the right wrist; and bilateral wrist pain. Dr. Bilkey referred Dr. Khani to a neurosurgeon, orthopedist and chiropractor for further evaluation and treatment.

In a May 16, 2012 report, Dr. Bilkey diagnosed a February 28, 2011 work injury cervical strain and radiculopathy; August 22, 2011 work injury lumbar strain; and August 23, 2011 work injury bilateral shoulder pain. Dr. Bilkey noted the complexity of Dr. Khani's case due to his long history of pain resulting from the nature of his work in a cumulative fashion, in addition to the work injuries subject to this claim. Dr. Bilkey acknowledged Dr. Khani had experienced chronic neck pain. He found clear

evidence of a progression in an EMG evaluation warranting a new diagnosis as a result of the February 28, 2011 work injury. Dr. Bilkey found no evidence of lumbar radiculopathy and noted Dr. Khani has not had adequate evaluation and treatment of his bilateral shoulder pain.

Regarding the February 2011 and August 22, 2011 work injuries, Dr. Bilkey concluded Dr. Khani had reached maximum medical improvement ("MMI"), recommended no additional treatment, and declined to assign work restrictions. However, he noted "his days are numbered as a treating chiropractor." He assessed a 12% impairment rating for Dr. Khani's work-related neck injury and a 2% for his work-related lumbar spine condition pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"). Regarding the August 23, 2011 bilateral shoulder injury, Dr. Bilkey noted Dr. Khani had not yet attained MMI, and recommended he pursue an orthopedic assessment. He declined to assess a permanent impairment rating for that condition.

In a December 13, 2012 addendum, Dr. Bilkey noted he had been provided additional medical records and re-examined Dr. Khani regarding his bilateral shoulder complaints. He diagnosed an August 23, 2011 work injury, chronic bilateral shoulder pain due to shoulder strain

injuries with work activities, and bilateral impingement right shoulder labrum tear with rotator cuff tear affecting the supraspinatus tendon. Dr. Bilkey opined Dr. Khani's shoulder injury is a combination of a strain injury occurring on August 23, 2011, superimposed on a gradually progressive cumulative problem which occurs with his adjustment procedures. He found Dr. Khani had attained MMI, recommended he continue home exercises and pursue an orthopedic follow-up. Dr. Bilkey assessed a 14% impairment rating pursuant to the AMA Guides resulting in a combined 26% impairment rating for Dr. Khani's work-related injuries.

Alliance submitted the August 29, 2011 report and September 13, 2011 addendum of Dr. Michael Best. Dr. Best concluded Dr. Khani has "significant preexisting conditions" prior to the February 28, 2011 work event. Dr. Best stated a March 10, 2011 EMG/NCV showed no new findings compared to one taken on March 24, 2006, therefore there is no objective evidence of a worsening of the conditions demonstrated on the March 10, 2011 EMG/NCV which revealed bilateral carpal tunnel syndrome, chronic C6 and C7 radiculopathy and right axonal peroneal nerve neuropathy. Likewise, Dr. Best stated a May 5, 2011 cervical spine MRI revealed nearly identical findings present in previous cervical spine MRIs. Dr. Best noted Dr. Amitava Gupta's diagnoses of cervical

radiculopathy, right rotator cuff tear, bilateral carpal tunnel syndrome and "TFCC" tear are all pre-existing conditions. Although not in possession of any radiographic studies, Dr. Best concluded the materials to date "would not be consistent with a new or harmful change that occurred directly and casually related to the effects of February 28, 2011."

In the September 13, 2011 addendum, Dr. Best stated he reviewed numerous MRI studies and radiographic studies which he opined provided no objective evidence of work-related conditions. Dr. Best further stated:

. . . . I simply cannot find a cause-and-effect relationship established (especially since none of these conditions were ever reported as work injuries). Therefore, I do feel the patient is at [MMI]. I can find no permanent impairment due to these effects that must now be considered simply the 'natural aging process.' Obviously, the patient requires no restriction to work activities in that he continues to perform his full and unrestricted duties, even at the present.

Alliance submitted the April 4, 2012 report of Dr. Ronald Fadel, who evaluated Dr. Khani's left wrist, hand, shoulder, neck and lumbar spine. He concluded Dr. Khani sustained temporary sprain injuries to his neck, shoulder and lumbar spine as a result of his mishaps at work. Dr.

Fadel declined to assess a permanent impairment or restrictions rating due to the February and August 2011 work injuries, noting Dr. Khani has a protracted history of axial and appendicular joint problems with objective imaging findings of lumbar and cervical spondylopathy and discopathy as far back as 2006. Dr. Fadel noted the current objective findings are not substantively different than those previously exhibited. Dr. Fadel stated Dr. Khani's treatment for the work-related sprain injuries should have lasted only eight to twelve weeks.

In an addendum dated January 26, 2013, Dr. Fadel reviewed additional medical records and reports. He reiterated the history, objective study findings and medical records "fail in every regard to support a conclusion of permanent injury or alteration to the human organism" arising from the February 28, 2011, August 22, 2011 or August 23, 2011 work events. He stated Dr. Khani's bilateral shoulder, cervical and lumbar problems are well documented as pre-existing. He further disagreed with Dr. Bilkey's assessment of impairment and again declined to assess a permanent impairment rating for Dr. Khani's work-related injuries.

Alliance submitted the sixty-two page records review report of Dr. Russell Travis, dated October 21, 2012.

Dr. Travis reviewed medical records, diagnostic studies, imaging studies and reports from 1998 and 2006 through 2012, as well as Dr. Khani's deposition testimony. Regarding Dr. Khani's diagnosis relevant to the February 28, 2011 and August 20, 2011 incidents, Dr. Travis concluded as follows:

It is clear that any symptoms of neck and upper extremity discomfort experienced by Dr. Khani were not only not reported as a specific incident on 2/28/11 but were clearly pre-existing and identical complaints and symptoms and actually had been evaluated and recommended to have an ACDF by Dr. Rouben for the same neck and upper extremity discomfort and the same problems on the MRI at C5-6 and C6-7 in 2006. Identical changes were seen on subsequent MRI's and as my digital images subsequently will point out had not changed in any way as a result of the 2/28/11 and/or 8/22/11 alleged incidents.

As to the lumbar spine, it is also clear that Dr. Khani again did not report any injury on 2/28/11 or 8/22/11 as it relates the lumbar spine. Likewise his complaints of the lumbar spine did not appear to be of any significance

Dr. Travis further noted a July 21, 2006 lumbar spine MRI was not significantly different from one taken on September 2, 2011 and a review of the medical records show Dr. Khani's low back complaints have been pre-existing. Dr. Travis opined there was no permanent injury to the spine as defined by KRS 342.0011(1) arising out of the February 28, 2011 or

August 22, 2011 work accidents, and an impairment rating is not warranted for either the cervical or lumbar spine. Dr. Travis noted any current impairment ratings to Dr. Khani's lumbar and cervical spine or for his radicular complaints would be 100% attributed to pre-existing conditions dating as far back to 2006. Dr. Travis further disagreed with several aspects of Dr. Bilkey's October 6, 2011 and May 16, 2012 opinions.

In a January 15, 2013 addendum, Dr. Travis addressed the findings in an October 13, 2011 right shoulder MRI were present as early as December 13, 2007, and he noted a chronic history of right shoulder pain. He disagreed with Dr. Bilkey's assessment of impairment, finding the medical records show Dr. Khani did not suffer any significant additional injuries to his shoulders on February 28, 2011, August 22, 2011 or August 23, 2011. Dr. Travis concluded as follows:

If one does a meticulous review of the medical records, which I have done on more than one occasion now, it is clear that there is no added impairment justified in the case of Dr. Mosen Khani. There is no clear indication of a specific injury to the left shoulder, and the right shoulder has a clear history of significant complaints, rotator cuff tear dating back as far as 2006, as confirmed on MRI and difficulties with the right shoulder not

related to the injuries of 2/28/11, 8/22/11 or 8/23/11.

In a forty page opinion and order rendered March 19, 2013, the ALJ stated in relevant part as follows:

An "injury" is statutorily defined in KRS 342.0011 (1) as meaning, "any work-related traumatic event or series of traumatic events, including cumulative trauma, arising out of and in the course of employment which proximately causes a harmful change in the human organism evidenced by objective medical findings.

"Objective medical findings" is defined in KRS 342.0011 (33) as information gained through direct observation and testing of a patient, applying objective or standardized methods.

In Gibbs v. Premier Scale Company, 50 S.W.3d 754 (Ky., 2001) the Kentucky Supreme Court held that a diagnosis of a harmful change may comply with the requirements of KRS 342.0011 (1) and (33) if it is based upon symptoms which are documented by means of direct observation and/or testing applying objective or standardize methods.

Objective medical evidence must support a harmful change diagnosis. Staples, Inc. v. Konvelski, 56 S.W.3d 412 (Ky., 2001).

. . . .

The undersigned had an opportunity to observe and hear Plaintiff testify at his Final Hearing of December 18, 2012. Plaintiff appeared to be generally credible, but did, at times, seem evasive and contrived, trying to think of the best answer to help his cause.

Overall, his testimony was not always persuasive.

In addressing whether Plaintiff sustained "injuries" as defined in the Act, it is appropriate to determine which medical expert provides the most credible and persuasive evidence - Plaintiff's Dr. Bilkey, Defendant's Dr. Best, Defendant's insurer KEMI's Dr. Travis, or Defendant/employer's Dr. Fadel.

Plaintiff is a chiropractor, and, in his discovery deposition and Final Hearing testimony, he often utilized medical terms, provided medical explanations, and gave what would be considered medical opinions regarding the cause of his alleged injuries and resulting limitations. It is noted Plaintiff is not considered an expert witness herein, but is considered to be only a lay witness.

After summarizing the medical evidence in detail, the ALJ stated as follows:

There are multiple issues listed to be determined, but the threshold issue is whether each of Plaintiff's three alleged injuries constitute "injuries" as defined in KRS 342.0011 (1). The statutory definition of an "injury" consists of several elements, it is Plaintiff's burden of proof to present sufficient persuasive evidence to convince the ALJ that each element of the definition is present.

The first component of the term "injury" to be considered is whether Plaintiff has proven with persuasive evidence, he has, as a result of his alleged 2011 work incidents, sustained "a harmful change in the human organism

evidenced by objective medical findings."

The input of KEMI's medical expert Dr. Russell Travis, Neurosurgeon, who, at KEMI's request, provided a 62-page records-review report dated October 21, 2012 and a January 15, 2013 supplement, provides impressive and persuasive input. Dr. Travis did not conduct a hands-on examination of Plaintiff, but did review Plaintiff's extensive medical records starting with an October 1998 record from Kleinert and Kutz and continuing through Dr. Bilkey's December 13, 2012 IME report supplement. Dr. Travis documented reviewing over 50 pieces of pre-2011 medical information regarding Plaintiff. Dr. Travis also read and documented significant testimony given by Plaintiff in his April 19, 2012 deposition. Dr. Travis also reviewed and set forth the findings of imaging studies, the first study was dated 4/28/2006 and continued onto Plaintiff's 5/5/2011 cervical MRI report. No other participating medical expert reviewed so many pre-2011 records, post-2011 injury records, diagnostic test results and studied Plaintiff's deposition testimony.

. . . .

Having reviewed so many of Plaintiff's pre-2011 and a substantial amount of medical records and reports prepared following Plaintiff's alleged 2011 injuries, Dr. Travis is the most qualified to render expert medical opinions comparing Plaintiff's pre-2011 medical status to Plaintiff's post-2011 medical status.

Usually the evidence provided by an expert medical witness who has not examined the injured worker carries less

weight than the evidence provided by the physician who examined the injured worker, but in this particular case the focus is on the role Plaintiff's pre-2011 medical status played in determining his post-2011 work-injuries medical status. This determination is best made by the medical expert who is most familiar with the pre- and post-injury medical status of the injured worker, and in this claim, the most persuasive proof is from Dr. Travis.

. . . .

CONCLUSION

Plaintiff has not met the required burden of proof as set forth under Snawder, supra on the issue of whether he has sustained a harmful change in the human organism. The most persuasive evidence in this claim comes from KEMI's Dr. Travis. His input is most persuasive, in this particular case, because of the depth of his knowledge regarding Plaintiff's pre-2011 medical history and his apparent accurate understanding of such. He was afforded the greatest opportunity to review and compare diagnostic test results, which would seem to be the best way to determine whether Plaintiff experienced a physical structural change as a result of his three 2011 alleged work injuries.

Because Plaintiff has not met his burden of proof on this issue, he has not proven compensable "injuries" as that term is defined in the Act. Therefore, his claim regarding the three (3) 2011 work incidents shall be dismissed with prejudice in its entirety. This will be a final and appealable order.

Dr. Khani filed a petition for reconsideration arguing the ALJ erroneously required proof of a structural change for there to be an "injury" as defined by the Act. He also argued the ALJ erred by not providing any analysis as to whether his injuries were temporary, permanent or work-related. In the May 15, 2013 order overruling Dr. Khani's petition, the ALJ stated as follows:

The first issue Plaintiff seeks to have reconsidered was described by Plaintiff, "The assigned ALJ has misinterpreted the medical evidence in holding that the Plaintiff's injuries do not meet the definition of "injury." There is absolutely no requirement for any "structural change" for there to be any "injury" as defined by the Act."

A[sic] overabundance of medical proof was introduced in this claim, but as determined by the ALJ, the persuasive medical evidence came from Defendants' medical experts. As noted on page 5 of the Opinion, Defendant's Dr. Best opined there was no objective evidence to document a work-related injury or condition, and, at page 8 of the Opinion, it was noted, "Dr. Travis wrote, "If one does a meticulous review of the medical records, which I have done on more than one occasion now, it is clear that there is no added impairment justified in the case of Dr. Mosen Khani."

The undersigned did not require Plaintiff to prove a "structural change" before it could be said Plaintiff sustained an "injury" as that term is defined in KRS 342.0011 (1). As the undersigned well knows, to prove an

"injury" under the Act, a worker must present persuasive proof that he sustained a harmful change in the human organism. There is no requirement that the "harmful change" be a "structural change."

The ALJ did not require Plaintiff to prove a "structural change" before it could be determined Plaintiff sustained an "injury." This fact is made abundantly clear in the first sentence in the Conclusion section (page 39) of the Opinion, where the ALJ wrote, "Plaintiff has not met the required burden of proof as set forth under Snawder, supra on the issue of whether he has sustained a harmful change in the human organism." This sentence clearly identified the standard the ALJ relied upon when determining whether Plaintiff Mosen Khani sustained an "injury" - "whether he has sustained a harmful change in the human organism."

Because Plaintiff's Petition for Reconsideration of this issue does not involve an error patently appearing on the face of the Opinion, Plaintiff's Petition for Reconsideration of this first issue is overruled.

The second issue on which Plaintiff seeks reconsideration, is to have the ALJ determine, "Whether the injuries were then temporary, permanent or work related." There is no need for the ALJ to consider whether Plaintiff's "injury" was of a temporary nature, or of a permanent nature or whether the "injury" was work related, because the ALJ determined there was no "injury" at all. Having determined there was not an "injury," there was no need to proceed.

In addition to the argument made in his petition for reconsideration, on appeal, Dr. Khani argues the ALJ erred by characterizing his testimony as a lay witness, rather than an expert. Dr. Khani notes he is a licensed chiropractor, and meets the definition of "physician" in Kentucky. Dr. Khani also argues his expert opinions are entitled to be considered irrespective of whether he is also the claimant. Dr. Khani requests this Board to remand the claim, directing the ALJ to fully consider the expert opinions of Dr. Khani and to provide an analysis based upon the entirety of the medical evidence. This specific argument was not raised in his petition for reconsideration.

Authority has long established the claimant in a workers' compensation case bears the burden of proving each of the essential elements of her cause of action before the ALJ, including whether he sustained an "injury" as defined by the Kentucky Workers' Compensation Act. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Dr. Khani was unsuccessful in his burden, the question on appeal is whether the evidence is so overwhelming, upon consideration of the record as a whole, as to compel a finding in his favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as evidence so overwhelming no reasonable person could reach the same

conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his or her decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

We find Dr. Khani's argument the ALJ erroneously required proof of a structural change for there to be an injury as defined by the Act without merit. KRS 342.0011(1) defines "injury" as "any work-related traumatic event or

series of traumatic events . . . 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." KRS 342.0011(33) defines "objective medical findings" as "information gained through direct observation and testing of the patient applying objective or standardized methods." In Gibbs v. Premier Scale Co./Indiana Scale Co., 50 S.W.3d 754 (Ky. 2001), the Court recognized in addition to objective diagnostic tools such as x-ray, CT scan, EMG/NCV or MRI, there is a wide array of standardized laboratory tests and tests of physical and mental function available to the medical practitioner. Therefore, the Court held the existence of a harmful change can be established indirectly, through information gained by direct observation, and/or by testing which applies objective or standardized methods demonstrating the existence of symptoms of such a change. Id. at 762.

A review of the March 19, 2013 opinion and order demonstrates the ALJ utilized the correct legal analysis in determining whether the alleged work events produced a harmful change in the human organism evidenced by objective medical findings. Pursuant to this analysis, the ALJ found Dr. Travis' opinion most persuasive in finding Dr. Khani

failed to prove he sustained an "injury" as defined by the Act. A review of Dr. Travis' report reveals he primarily relied upon the comparison of diagnostic studies and images in determining the alleged work events did not produce a harmful change in the human organism regarding his lumbar and cervical spine or bilateral shoulder conditions. In addition, the ALJ specifically addressed Dr. Khani's argument in the May 15, 2013 order overruling his petition for reconsideration. The ALJ emphasized there is absolutely no requirement for any "structural change" for there to be any "injury" as defined by the Act and likewise did not require Dr. Khani to prove a structural change. We therefore find the ALJ committed no error in his analysis regarding whether Dr. Khani met his burden in proving he sustained an injury as defined by KRS 342.0011 (1) and (33).

We likewise find substantial evidence supports the ALJ's determination Dr. Khani failed to prove he sustained an injury as defined by the Act, and no contrary result is compelled. In making this determination, the ALJ was faced with the opinions of Drs. Bilkey, Travis, Best and Fadel, Dr. Khani's testimony and the voluminous records regarding previous medical treatment. The ALJ ultimately determined Dr. Travis to be the most persuasive and provided a detailed explanation as to why. As fact-finder, the ALJ is vested

with the authority to weigh the medical evidence, and has the discretion to choose which physician's opinion to believe. See Jones v. Brasch-Barry General Contractors, 189 S.W.3d 149, 153 (Ky. App. 2006).

We find unpersuasive Dr. Khani's argument the ALJ failed to provide any analysis as to whether his injuries were temporary, permanent or work-related. We acknowledge an injured worker may establish a temporary injury for which only TTD benefits and temporary medical benefits may be awarded, but not meet his or her burden of proving a permanent harmful change to the human organism for which permanent benefits are authorized. See Robertson v. United Parcel Service, 64 S.W.3d 284, 286 (Ky. 2001). However, an obvious requirement warranting such an award would be a finding of any injury, temporary or permanent. In this instance, the ALJ clearly found Dr. Khani failed to prove he sustained any injuries, permanent or temporary, in his opinion and in the order on reconsideration. Therefore, the ALJ was not required to determine whether Dr. Khani sustained a temporary or permanent or work-related injury.

Finally, we find the ALJ did not commit a reversible error in stating "Plaintiff is not considered an expert witness herein, but is considered to be only a lay witness." It is unclear from the March 19, 2013 opinion and

order whether the ALJ's characterization of Dr. Khani as a lay witness prevented him from considering any portion of his testimony. In addition, the ALJ specifically touched upon Dr. Khani's credibility in the March 19, 2013 opinion. He noted although Dr. Khani appeared generally credible, he at times seemed evasive and contrived, trying to think of the best answer to help his cause.

Unfortunately, Dr. Khani did not request further findings of fact or additional explanation regarding this issue in his petition for reconsideration. Therefore, on questions of fact, the Board is limited to a determination of whether there is substantial evidence contained in the record to support the ALJ's conclusion. Stated differently, inadequate, incomplete, or even inaccurate fact-finding on the part of an ALJ will not justify reversal or remand if there is substantial evidence in the record that supports the ultimate conclusion. Eaton Axle Corp. v. Nally, 688 S.W.2d 334 (Ky. 1985).

In light of Dr. Khani's failure to request additional findings/explanations regarding this issue in his petition, the ALJ's clear reliance upon Drs. Travis' and Best's opinions and his doubt in Dr. Khani's credibility, we find substantial evidence in the record supports the ALJ's ultimate determination and no contrary result is compelled.

Accordingly, the March 19, 2013 opinion and order, and the May 15, 2013 order overruling Dr. Khani's petition for reconsideration rendered by Hon. Otto Daniel Wolff, IV, Administrative Law Judge, are hereby **AFFIRMED**.

ALL CONCUR.

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