Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 2, 2015

CLAIM NO. 201292724

MURAKAMI MANUFACTURING USA, INC. PETITIONER

VS. **APPEAL FROM HON. R. SCOTT BORDERS, ADMINISTRATIVE LAW JUDGE**

CHERYL STOTTS and
HON. R. SCOTT BORDERS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, & REMANDING

* * * * * *

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

ALVEY, Chairman. Murakami Manufacturing USA, Inc., ("MMU") seeks review of the Opinion, Order, and Award rendered May 8, 2015 by Hon. R. Scott Borders, Administrative Law Judge ("ALJ"), awarding Cheryl Stotts ("Stotts") temporary total disability ("TTD") benefits from May 29, 2012 through April 25, 2014, permanent partial disability ("PPD") benefits and

medical benefits for a right upper extremity injury due to cumulative trauma manifesting on March 5, 2012 and an acute trauma left shoulder injury which occurred on June 6, 2012. MMU also seeks review of the Order overruling its petition for reconsideration issued June 16, 2015.

On appeal, MMU argues the ALJ erred in relying upon the 5% impairment rating assessed by Dr. Warren Bilkey for the upper right extremity injury because it was rendered prior to Stotts' surgery and her subsequent attainment of maximum medical improvement ("MMI"). Likewise, MMU argues the ALJ erred in relying upon the 2% impairment rating assessed by Dr. Bilkey for the left shoulder injury since Stotts testified her condition had resolved. MMU also argues the ALJ erred in awarding TTD benefits from August 1, 2012 through October 31, 2012 and October 1, 2013 through April 25, 2014. We affirm the ALJ's reliance on Dr. Bilkey's assessment of impairment for the left shoulder condition since his opinion constitutes substantial evidence. However, we vacate and remand for a determination of permanent partial disability for Stotts' right upper extremity following her surgery and subsequent attainment of MMI, and for a more detailed analysis regarding her entitlement to TTD benefits during the time periods in question.

Stotts filed a Form 101 alleging she experienced pain, numbness and tingling in her right arm, wrist, elbow and hand which manifested on March 5, 2012, while she was working on the assembly line at MMU. Stotts also alleged a left shoulder overuse injury on June 6, 2012 due to working while on light duty.

Stotts testified by deposition on June 24, 2013, and at the first hearing held September 30, 2013. Stotts began working for MMU as a temporary employee on February 23, 2011, and later became a permanent full-time employee on April 4, 2011. Stotts continued to work for MMU following both injuries until she was terminated on March 1, 2013.

MMU assembles exterior mirrors for the automotive industry. Prior to her injuries, Stotts had worked on the Nissan line, which contained seven or eight jobs. She typically rotated positions every two hours. All of the positions required standing and repetitive, fine manipulation of both hands and fingers. In early March 2012, Stotts began experiencing sharp elbow pain. Her symptoms worsened as she continued to work. She later developed additional symptoms in her right hand and wrist, including numbness and tingling in her fingers, and difficulty opening her hand. By March 5, 2013, her symptoms were “full blown.” Stotts began treating with a nurse

practioner at Springview Occupational Health on March 9, 2012. Stotts was referred to Dr. Yorell Manon-Matos of Kleinert Kutz Hand Care Center, who treated her conservatively and restricted her to light duty. Stotts continued to treat with Dr. Manon-Matos through and following her June 6, 2012 injury.

While on light duty for her right arm, Stotts performed sweeping duties with her left arm and occasionally helped stock the line with parts. On June 6, 2012, Stotts was sweeping with her left arm when she noticed pain and limited mobility in her left shoulder, left wrist and elbow. She returned to the nurse practitioner, who again referred her to Dr. Manon-Matos. Dr. Edward Tillett also treated her left shoulder with injections and physical therapy.

At the time of the September 2013 hearing, Stotts stated she had not worked anywhere since her termination from MMU on March 1, 2013. She expressed her desire for the right elbow surgery recommended by Dr. Manon-Matos, which had been denied by workers' compensation. Stotts did not believe she could return to her previous position held at MMU.

Stotts continued to work light duty at MMU following her March 5, 2012 injury. She primarily swept with her left arm and occasionally helped stock the line

with parts. Following her June 2012 injury and through August 2012, Stotts remained on light duty but could not recall specifically the job tasks she performed. Stotts stated she did different things such as picking up trash in the parking lot, sweeping, and sorting printed tickets for parts. From August 2012 to October 2012, Stotts worked regular duty on the assembly line, stating as follows:

> A: I went back out on assembly possibly around the first of August.
>
> Q: Okay.
>
> A: Because I know Dr. Manon-Matos, he was waiting for the referral to be approved to the spine specialist, and so he was going to release me off my restrictions. He told me that when the spine specialist saw me, they would put me back on their restrictions. But it never was approved, so I stayed back out on regular duty until I had to go back to see him again.
>
> Q: Which would have been when?
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> A: Around October. I think it was around October.
>
> Q: Okay.
>
> A: I started having some - - I was - - the shoulder pain was getting worse, and then I was getting - - I got a sharp pain in one of my fingers. It felt like a bee sting. And they said it was something due to a nerve. But they took me off - - Lee took me off subassembly - - that’s what it’s called, the assembly line. But he took me off that and put me back on light duty until they got me

> another appointment, which I had another appointment coming up anyway the next week with Dr. Manon-Matos. It was already prescheduled.
>
> Q: Okay.
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> A: He put me back on restrictions when I went back to him.
>
> . . .
>
> Q: Okay. Then from August 2012 through October 2012, you're back on full duty as an assembly line worker?
>
> A: Yeah.
>
> Q: And then beginning in October 2012, you're back on light duty?
>
> A: Uh-huh.

Once she was placed back on light duty in October 2012, Stotts stated she "pretty much sat. They didn't have me doing much of anything" until she was terminated on March 1, 2013. During this time she also "manned the break room when they did recyclables and made sure people threw them in the right trash cans and stuff and kind of sorted through that a little bit." Stotts also testified she received unemployment benefits following her termination from MMU.

In support of her claim, Stotts filed the treatment records from Springview Occupational Health and Dr. Manon-Matos. Stotts received conservative treatment at Springview Occupational Health for her right upper extremity

from March 9, 2012 through April 27, 2012, and was then referred to Kleinert Kutz. Nurse practitioner Dana Logsdon restricted Stotts to light duty work throughout this time period. Stotts returned to Ms. Logsdon on June 6, 2012 for left elbow and shoulder pain. Ms. Logsdon diagnosed left tennis elbow and left shoulder impingement and referred Stotts to Kleinert Kutz on June 21, 2012.

Stotts began treating with Dr. Manon-Matos on May 1, 2012 for her right upper extremity complaints. He diagnosed right cubital tunnel syndrome, right carpel tunnel syndrome and thumb triggering. He restricted Stotts to light duty beginning on May 29, 2012. In July 2012, Stotts began complaining of symptoms in her left upper extremity. On August 1, 2012, Dr. Manon-Matos referred Stotts to a spine specialist and released her to return to regular duty. On the following visit on October 31, 2012, Stotts was again placed on light duty. In a record dated January 8, 2013, Dr. Manon-Matos diagnosed right cubital tunnel syndrome and left frozen shoulder. He noted Stotts' left shoulder condition had improved with therapy, and referred her Dr. Tillett for additional treatment. He noted Stotts' had maximized all conservative treatment for her right cubital tunnel syndrome, and would benefit from a right cubital

tunnel release with possible transposition. Dr. Manon-Matos continued Stott's light duty restrictions.

MMU filed the December 5, 2012 report of Dr. Timir Banerjee and the January 29, 2013 report of Dr. Thomas Gabriel. Dr. Banjeree diagnosed soft tissue pain with stiffness. He did not feel Stotts was a surgical candidate for her right upper extremity. Dr. Banerjee recommended medication and additional physical therapy. Dr. Banerjee felt Stotts reached MMI on December 24, 2012. He opined Stotts could not return to her job with MMU due to reasons unrelated to her alleged work injuries.

Dr. Gabriel diagnosed numbness of the right hand, possible cubital tunnel syndrome, and adhesive capsulitis of the left shoulder. Dr. Gabriel opined neither the cubital tunnel syndrome nor the left shoulder adhesive capsulitis was work-related. He also opined neither his nor Dr. Manon-Matos' diagnoses require additional medical treatment, especially in the form of surgical intervention. Dr. Gabriel opined Stotts had reached MMI for her work injuries and released Stotts to fully duty without restriction. In a supplemental report dated August 12, 2013, Dr. Gabriel assessed a 0% impairment rating for Stotts' right upper extremity and stated she had the physical capacity to return to her position as an assembly line worker with MMU. He

specifically found the recommended right elbow surgery by Dr. Manon-Matos unreasonable, unnecessary or not work-related. Regarding the left shoulder, Dr. Gabriel stated he did not assess an impairment rating since he felt the condition was not even indirectly related to the alleged work injury. He also stated Stotts has the capacity to return to work at light duty performing sweeping duties but declined to recommend treatment since the condition was outside his area of expertise.

Stotts filed the June 3, 2013 report of Dr. Bilkey. Following a review of the record and performing an examination, Dr. Bilkey diagnosed, "3/6/12 work injury right elbow strain, cubital tunnel syndrome" and "left shoulder strain onset 6/6/12 with adhesive capsulitis." He noted Stotts has residual chronic pain in her right elbow and left shoulder, as well as mild limitation of motion in the shoulder. He found the diagnoses were due to the March 6, 2012 and June 6, 2012 work injuries. He specifically found the cubital tunnel syndrome due to work-related cumulative trauma, and the frozen shoulder due to compensating for the injured right upper extremity and sweeping motion. Regarding MMI, Dr. Bilkey stated as follows: ". . . Stotts is at MMI from the procedural standpoint because no further treatment has been allowed her. Medically, I agree with the

recommendation of Dr. Manon-Matos that she should have the surgery to relieve the right ulnar nerve at the cubital tunnel. In this respect medically I don't think she is at MMI." Dr. Bilkey did not recommend additional treatment for Stotts' left shoulder condition. Dr. Bilkey assigned permanent restrictions which would preclude Stotts from returning to her prior position with MMU. Pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides"), Dr. Bilkey assessed a 5% impairment rating for right cubital tunnel syndrome and a 2% impairment rating for the left shoulder condition.

In an Interlocutory Opinion rendered November 13, 2013, the ALJ found Stotts sustained a work-related injury to her right upper extremity as a result of cumulative trauma manifesting on March 5, 2012, and an acute left shoulder strain and adhesive capsulitis as a result of the June 6, 2012 work incident based upon her testimony and the opinion of Dr. Bilkey. In addressing the recommended right elbow surgery, the ALJ found, based upon the opinions of Drs. Bilkey and Manon-Matos, Stotts "has not achieved maximum medical improvement, and the proposed right cubital tunnel release surgery recommended by Dr. Matos is reasonable, necessary, and related treatment for the

Plaintiff's diagnosed right cubital tunnel syndrome." Therefore, the ALJ ordered MMU to pre-certify and pay for the recommended surgery by Dr. Manon-Matos. The ALJ placed the claim in abeyance and ordered MMU to commence TTD benefits at a rate of $306.73 from the date of the opinion and continuing until the achievement of MMI. No petition for reconsideration was filed.

Subsequent to the opinion, Stotts underwent the recommended surgery in March 2014 by Dr. Manon-Matos. The ALJ removed the claim from abeyance after Dr. Manon-Matos found Stotts had attained MMI on April 25, 2014, and set a new proof schedule. MMU then filed additional records from Dr. Manon-Matos. In a work status report dated April 25, 2014, he returned Stotts to regular duty. He noted Stotts had reached MMI, did not anticipate an impairment rating, and released her to return as needed. In a letter dated May 19, 2014, Dr. Manon-Matos assessed a 0% impairment rating for Stotts' right wrist and elbow condition.[1]

At the final hearing held March 12, 2015, Stotts testified she had undergone the recommended surgery by Dr. Manon-Matos on March 10, 2014. Subsequent to the September

[1] Stotts also filed treatment records for a subsequent left wrist injury sustained on May 24, 2014 while working for a different employer. She fractured her left wrist, and required surgical correction. This injury is unrelated to the present claim and therefore we will not discuss the medical records pertaining to it.

2013 hearing, she began working for G4S Security Solutions where she continues to work. Stotts estimated she earns the same, if not greater, wages than she did at MMU. Stotts is responsible for screening Amazon employees as they pass through metal detectors. Stotts checks personal belongings and monitors the plant for any unusual or suspicious behavior. Three months following the March 2014 surgery, Stotts fell while at work for G4S Security Solutions, fracturing her left wrist.

Stotts testified she had a good result from the March 2014 surgery, and has not treated for her right elbow since May 2014. Stotts still experiences minor issues with her right elbow when she is driving or on the computer. By the time of her March 2014 surgery, her left shoulder condition had resolved following a course of therapy and injections. Stotts does not believe she can return to her former position with MMU.

The parties stipulated as follows at the benefit review conference held March 12, 2015: MMU paid TTD benefits from November 11, 2013 through May 23, 2014; Stotts last worked for MMU on March 1, 2013 and returned to work for a different employer in October 2013; benefits per KRS 342.730; work-relatedness/causation; unpaid or contested medical expenses; injury as defined by the Act; credit for

unemployment benefits; and TTD (overpayment of TTD as to duration).

In the opinion rendered May 8, 2015, the ALJ adopted his findings as set forth in the November 13, 2013, interlocutory opinion. After summarizing the evidence, the ALJ stated as follows regarding TTD benefits:

> The first issue remaining to be determined is whether Plaintiff is entitled to additional TTD benefits or whether there was an overpayment of benefits as to duration. It is undisputed and the parties agree that Plaintiff achieved maximum medical improvement on April 25, 2014, and therefore TTD benefits should have been stopped at that time. However they were paid through May 23, 2014, creating an overpayment as to the duration of benefits.
>
> However, the Plaintiff argues that she is entitled to additional TTD benefits going back to May 29, 2012, and continuing through April 25, 2014. The Plaintiff argues that the two-pronged test for establishing entitlement to TTD benefits under KRS 342.0011 (a) have been met as (1) maximum medical improvement had not been reached and (2) the injury had not reached the level of improvement that would permit a return to employment. In the case of Central Kentucky Steel vs. Wise, 19 SW3d 657 (Ky. 2000) the Supreme Court held that TTD benefits are to be continued so long as the injured worker remains disabled from his customary work or the work he was performing at the time of the injury.

> In this specific instance, the Administrative Law Judge finds that Plaintiff has met her burden of proving that she was not at maximum medical improvement and had not been released to perform her customary work or the work she was performing at the time of the injury and therefore was temporarily and totally disabled from May 29, 2012, through April 25, 2014, and shall receive TTD benefits payable at the rate of $306.60. The Defendant/Employer shall be entitled to credit for benefits previously paid and specifically for the overpayment of TTD benefits as to duration.

The ALJ found MMU entitled to a credit for unemployment benefits paid during the period Stotts received TTD benefits.

Regarding benefits pursuant to KRS 342.730, the ALJ found Dr. Bilkey's opinions persuasive and relied upon them in finding Stotts retains a 5% impairment rating for her right upper extremity and a 2% for her left shoulder condition. The ALJ found Stotts was not entitled to multipliers set forth in KRS 342.730(1)(c)1 or 2. The ALJ awarded Stotts TTD benefits from May 29, 2012 through April 25, 2014 with MMU taking a credit for benefits previously paid and overlapping unemployment benefits. The ALJ provided two awards of PPD benefits based upon the 5% impairment rating for her March 5, 2012 injury and based

upon the 2% impairment rating for her June 2012 injury. The ALJ also awarded medical benefits for both injuries.

MMU filed a petition for reconsideration raising the same arguments it now raises on appeal. The ALJ summarily denied its petition in an order dated June 16, 2015.

On appeal, MMU does not challenge the ALJ's findings of injuries as defined by the Act, or causation. Rather, MMU argues the ALJ cannot rely upon the impairment rating assessed by Dr. Bilkey in the June 13, 2013 report for Stotts' right upper extremity since it was rendered prior to her March 2014 surgery and subsequent attainment of MMI on April 25, 2014. MMU also argues the ALJ cannot rely upon the impairment rating assessed by Dr. Bilkey for Stotts' left shoulder in the same report since it is inconsistent with her hearing testimony that the condition has completely resolved.

MMU also argues the ALJ erred in awarding TTD benefits from August 1, 2012 through October 31, 2012 and from October 1, 2013 through April 25, 2014. MMU asserts during the first challenged time period, the medical records and Stotts' testimony establish she was working full duty on the assembly line without restriction, and therefore the second mandatory prong for TTD benefits had not been met.

It asserts Stotts was working for a different employer full duty earning her regular wages during the second challenged time period. MMU argues it is entitled to a credit for the wages she earned from October 1, 2013 through April 25, 2014.

As the claimant in a workers' compensation proceeding, Stotts had the burden of proving each of the essential elements of her cause of action, including entitlement to TTD benefits and benefits pursuant to KRS 342.730. *See* KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Stotts was successful in her burden, the question on appeal is whether substantial evidence existed in the record supporting 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).

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 decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to the weight and credibility to be afforded the evidence or by noting reasonable inferences that otherwise could have been drawn from the record. Whittaker v. Rowland, supra. So long as the ALJ's ruling with regard to an issue is supported by substantial evidence, it may not be disturbed on appeal. Special Fund v. Francis, supra.

The ALJ relied upon Dr. Bilkey's opinion in assessing an impairment rating for both the right upper extremity and left shoulder. With regard to the right upper

extremity, the ALJ erred in relying upon the 5% impairment rating assessed by Dr. Bilkey in the June 3, 2013 report. In the May 8, 2015 opinion, the ALJ found Stotts reached MMI on April 25, 2014, and noted this date is not in dispute. MMI has been defined by the Supreme Court of Kentucky, and "refers to the time at which a worker's condition stabilizes so that any impairment may reasonably be viewed as being permanent." Tokico (USA), Inc. v. Kelly, 281 S.W.3d 771, 775-776 (Ky. 2009). The Court also found "the need for additional treatment does not preclude a finding that a worker is at MMI." Id. at 776. In that case, the Court was not convinced the evidence compelled the ALJ to determine the physician prematurely rated impairment or that conflicting evidence was more credible. Id.

It is undisputed Stotts attained MMI from her right upper extremity injury on April 25, 2014. However, Dr. Bilkey's assessment of impairment was rendered nearly a year prior on June 3, 2013. Dr. Bilkey also opined Stotts had attained MMI from the procedural standpoint, but not from a medical standpoint. Dr. Bilkey recommended she undergo the cubital tunnel release surgery as recommended by her treating physician. Subsequently, in the November 13, 2013 interlocutory opinion, the ALJ specifically found Stotts had not reached MMI for her right upper extremity,

and found the proposed surgery reasonable, necessary, and related to treatment for her right cubital tunnel syndrome. The ALJ placed the claim in abeyance pending MMI from the surgical procedure and awarded Stotts TTD benefits from the date of the opinion until MMI is achieved. The surgery was subsequently performed on March 10, 2014, and her treating physician found she attained MMI on April 25, 2014. Dr. Bilkey did not re-evaluate Stotts following the surgery.

By virtue of the November 13, 2013 interlocutory order and resultant March 2014 cubital tunnel release procedure, as well as Dr. Bilkey's opinion, it is clear she had not reached MMI from a medical standpoint and recommendation of the proposed surgery by her treating physician, Stotts could not have reached MMI from her condition until after her surgery. By finding in favor of Stotts regarding the compensability of the cubital tunnel release surgery in the interlocutory opinion, the ALJ also determined she had not attained MMI from her injury. In fact, the ALJ noted it was undisputed Stotts attained MMI on April 25, 2014. Therefore, Dr. Bilkey's assessment of impairment on June 3, 2013, rendered prior to the interlocutory opinion, the subsequent surgery and attainment of MMI on April 25, 2014, could not be relied upon. On remand, the ALJ is instructed to assess an impairment rating

rendered after Stotts reached MMI from her surgery on April 25, 2014, based upon the evidence in the record.

Unlike the assessment of impairment for the right upper extremity, we find the ALJ could properly rely upon the impairment rating assessed by Dr. Bilkey for Stotts' left shoulder condition. In the June 3, 2013 report, Dr. Bilkey noted the June 6, 2012 injury, and her subsequent treatment with Dr. Manan-Matos and Dr. Tillett. He noted Dr. Tillett had injected the shoulder and ordered physical therapy which proved helpful and she had good recovery of motion and decrease in pain. His own examination revealed mild orthopedic abnormalities. Dr. Bilkey then stated Stotts had not attained MMI since the recommended right upper extremity procedure had not been performed, but was silent as to the left shoulder. Dr. Bilkey did not recommend additional treatment for the left shoulder condition. He assigned permanent restrictions as the result of both injuries, and assessed a 2% impairment rating for the shoulder condition for loss of active range of motion. In light of the above, we find Dr. Bilkey's assessment of impairment for the left shoulder condition constitutes substantial evidence upon which the ALJ could rely upon. The fact Stotts later testified her left shoulder condition

has resolved does not render the opinion unsubstantial, but goes to the weight of the evidence.

Finally, the ALJ did not provide sufficient findings of fact and an explanation which allow for meaningful review of his award of TTD benefits. Big Sandy Community Action Program v. Chafins, 502 S.W.2d 526 (Ky. 1973); New Directions Housing Authority v. Walker, 149 S.W.3d 354 (Ky. 2004). KRS 342.0011(11)(a) defines temporary total disability as 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 above definition has been determined by our courts of justice 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.

In Central Kentucky Steel v. Wise, 19 S.W.3d 657, 659 (Ky. 2000), the Kentucky Supreme Court further explained that "[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 that 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 in Magellan Behavioral Health v. Helms, supra, stated:

> 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.

Id. at 580-581.

In Double L Const., Inc. v. Mitchell, 182 S.W.3d 509, 513-514 (Ky. 2005), with regard to the standard for awarding TTD, 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. *See* Magellan Behavioral Health v. Helms, 140 S.W.3d 579, 581 (Ky. App. 2004). In the present case, the employer has made an 'all or nothing' argument that is based entirely on the second requirement. Yet, implicit in the Central Kentucky Steel v. Wise, supra, decision is that, unlike the definition of permanent total disability, the definition of TTD does not require a temporary inability to perform 'any type of work.' *See* KRS 342.0011(11)(c).
>
> . . .
>
> 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.

In the case *sub judice*, MMU paid TTD benefits from November 11, 2013 through May 23, 2014, pursuant to the interlocutory opinion, but the ALJ found Stotts entitled to TTD benefits from May 29, 2012 through April 25, 2014, the undisputed date of MMI. In support of his determination, the ALJ merely concluded Stotts had proven "she was not at [MMI] and had not been released to perform her customary work or the work she was performing at the time of the injury and therefore was temporarily and totally disabled from May 29, 2012, through April 25, 2014" without further explanation. In its petition for reconsideration, MMU argued in part Stotts was not entitled to TTD benefits while she worked full duty for MMU from August 1, 2012 through October 31, 2012 and after she returned to work for a different employer in October 2013. The ALJ summarily denied MMU's petition by order dated June 16, 2015.

In light of Stotts' testimony regarding her work duties following her injuries at MMU and her return to a different employer in October 2013, as well as the medical records of Dr. Manon-Matos, we conclude the ALJ's one

sentence analysis is insufficient. The ALJ must provide adequate findings of fact based on the evidence in order to advise the parties and this Board of the basis for her decision. Shields v. Pittsburgh and Midway Coal Min. Co., supra; Big Sandy Cmty. Action Program v. Chaffins, supra. On remand, the ALJ must engage in the two prong analysis outlined herein during the time periods in question, and support his ultimate conclusion of whether Stotts was able to return to the type of work which is customary for her or which she had been performing prior to her injuries from the evidence of record.

Accordingly, the May 8, 2014 Opinion, Order, and Award and the June 16, 2015 Order on petition for reconsideration by Hon. R. Scott Borders, Administrative Law Judge, are hereby **AFFIRMED IN PART, VACATED IN PART, AND REMANDED** for additional findings and entry of an amended opinion and award in conformity with the views expressed herein.

ALL CONCUR.

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