

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: October 24, 2014

CLAIM NO. 201192238

NORTHPOINT TRAINING CENTER

PETITIONER

VS. APPEAL FROM HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

QUINCY LENTZ
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING IN PART, VACATING IN PART,
AND REMANDING

* * * * *

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

STIVERS, Member. Northpoint Training Center ("Northpoint") seeks review of the May 20, 2014, Opinion and Award of Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") finding Quincy Lentz ("Lentz") sustained a work-related cervical spine injury on March 11, 2011, and he did not have an active impairment/condition immediately preceding

the injury. The ALJ awarded temporary total disability ("TTD") benefits, permanent partial disability ("PPD") benefits, and medical benefits. Northpoint also appeals from the July 18, 2014, Order ruling on the petitions for reconsideration filed by both parties.

The Form 101 alleges Lentz was injured on March 11, 2011, when he "tripped and fell on door frame and hit the floor" injuring his neck and left shoulder. He testified at his August 2, 2012, deposition and at the March 25, 2014, hearing. Lentz was employed by Northpoint as a correctional officer. In 2008, Lentz was involved in a non-work-related motor vehicle accident ("MVA") in which he injured his neck. Lentz underwent surgery on April 10, 2008, performed by Dr. Magdy El-Kalliny, a neurosurgeon. Dr. El-Kalliny's February 10, 2008, operative note reflects a pre-operative and post-operative diagnosis of right C6 radiculopathy due to C5-C6 disc herniation. As a result, a microsurgical anterior discectomy and fusion at C5-C6 with peak cage and anterior dynamic plate was performed. During his deposition, Lentz testified that after recovering from the 2008 surgery he was released by Dr. El-Kalliny to return to work without restrictions. He denied having any neck problems prior to the subject injury. Lentz explained he was injured on March 11, 2011, when he tripped over the

bottom facing of a door and fell hitting his left arm, left shoulder, and head on the floor. He immediately experienced pain in his left shoulder and neck. He called his supervisor and a report was completed that evening. Lentz was taken to the hospital where an x-ray and CT scan were performed. Lentz then saw his regular physician, Dr. Bentley O'Dell who referred him to Dr. El-Kalliny. When he saw Dr. El-Kalliny he was informed he needed another MRI and surgery.

At the time of his deposition, Lentz had not seen Dr. El-Kalliny a second time because the MRI had yet to be approved. He was taking Lortab and Cyclobenzaprine three times a day, neither of which he took before the subject injury. Lentz indicated he has constant pain and limited mobility of the neck. He also experienced occasional numbness, tingling, and pain in both arms, but more in the left arm. Physical therapy had not helped either his neck or shoulder. He denied experiencing any of his current symptoms before his first neck surgery.

The November 9, 2012, Benefit Review Conference ("BRC") Order and Memorandum reflects the contested issues were: "benefits per KRS 342.730; work-relatedness; causation; unpaid or contested medical expenses/surgery, exclusion for pre-existing disability/impairment; TTD; and

extent and duration and multipliers." It notes Northpoint was granted two additional weeks for proof time and the parties waived a formal hearing.

In a December 12, 2012, interlocutory opinion, based on the opinions of Dr. El-Kalliny, the ALJ concluded Lentz's "injury is not subject to exclusion or any credit for a pre-existing condition" and his injury and current impairment rating were causally work-related. Relying upon the opinions of Dr. El-Kalliny, the ALJ concluded Lentz could benefit from the surgery proposed by Dr. El-Kalliny and the surgery was reasonable, necessary, and work-related.¹ Consequently, the ALJ ordered Northpoint to be responsible for the treatment recommended by Dr. El-Kalliny and to pre-authorize payment for the recommended cervical fusion surgery. The claim was placed in abeyance pending maximum medical improvement ("MMI"), and Northpoint was directed to institute TTD benefits commencing from the date of surgery and continuing until Lentz obtained MMI.

Northpoint filed a petition for reconsideration. However, the only issue relevant to this appeal is Northpoint's assertion Dr. El-Kalliny's report did not

¹ The ALJ also accepted Dr. El-Kalliny's 28% impairment rating but, as noted by Dr. El-Kalliny, the ALJ stated he may improve following the surgery. Therefore, the ALJ concluded it was premature to determine the extent and duration of Lentz's injury. The ALJ determined the TTD benefits paid were appropriate.

directly attribute the 28% impairment rating solely to the March 11, 2011, injury. Rather, it noted Dr. El-Kalliny stated the impairment rating was a result of his injuries. Consequently, it argued since Lentz had not undergone fusion surgery due to the March 11, 2011, injury, the ALJ's finding of a 28% impairment rating due to the subject work injury is patent error and should be corrected. In an order entered January 5, 2013, except "to eliminate any reference to an impairment rating," the ALJ overruled the petition for reconsideration.

Northpoint introduced Dr. El-Kalliny's March 18, 2014, deposition. On March 25, 2014, a hearing was conducted. The March 12, 2014, Benefit Review Conference ("BRC") Order reveals the contested issues were benefits per KRS 342.730 and exclusion for pre-existing disability/impairment.

In the May 20, 2014, Opinion and Award, concerning the presence of a pre-existing active disability, the ALJ entered the following findings of facts and conclusions of law:

7. In order to be characterized as an active disability, an underlying pre-existing condition must be symptomatic and impairment ratable pursuant to the AMA Guidelines immediately prior to the occurrence of

the work-related injury. *Finley v. DBM Technologies*, 217 SW3d 261 (2007).

8. The Defendant maintains the burden of proving the existence of a pre-existing condition. *Wolf Creek Collieries v. Crum*, 673 SW2d 735 (Ky. App. 1984).

9. The ALJ has already opined in this matter that the opinions of Dr. El Kalliny regarding the existence of a pre-existing active condition are convincing and credible due to his greater experience in seeing the Plaintiff as a patient and due to his performing the surgeries on the Plaintiff. Dr. El Kalliny, in his deposition, has opined in response to direct questioning that the Plaintiff had a condition that was not symptomatic prior to the work injury. The ALJ has been convinced by this opinion and therefore finds that the Defendant is not entitled to any credit for pre-existing active impairment.

Regarding the impairment rating attributable to the work injury, the ALJ provided the following findings of fact and conclusions of law:

10. The ALJ further finds based upon the opinion of Dr. El Kalliny that the best method for rating the Plaintiff's impairment is the range of motion method which only Dr. Best employed. The ALJ therefore finds based upon the opinion of Dr. El Kalliny and the rating of Dr. Best that the Plaintiff has suffered a 19% whole person impairment as a result of the work injury as calculated using the range of motion method.

Relying upon Dr. Michael Best's opinion, the ALJ

found Lentz was capable of returning to his previous employment. Consequently, the ALJ calculated the award as follows:

13. The Plaintiff's weekly permanent partial disability benefits shall therefore be calculated as follows: $\$507.38 \times 66\% \times 19\% \times 1 = \64.27 .

The ALJ awarded TTD benefits already paid with PPD benefits commencing on March 12, 2011, to be interrupted by any period TTD benefits were paid.

Both parties filed petitions for reconsideration. In its petition for reconsideration, Northpoint asserted the opinion and award failed to list a period of TTD benefits paid from May 25, 2011, through August 31, 2011. Northpoint also sought reconsideration of the ALJ's determination it was not entitled to a credit for a pre-existing impairment arising from "the prior non-work-related fusion." It noted Dr. Best and Dr. El-Kalliny agreed Lentz had a 25% impairment rating following the 2008 fusion surgery. Since the 2008 fusion was not work-related, Northpoint argued that regardless of whether Lentz's cervical problems were actively symptomatic it is only liable for the portion of Lentz's current impairment rating caused by the work injury.

Finally, it noted that following the last fusion

surgery, Dr. Best performed an examination using the range of motion method and concluded Lentz's impairment had actually improved and his impairment rating is now 19%. It contends that giving Lentz the benefit of the doubt, Dr. Best concluded Lentz's condition fell within DRE Cervical Category IV and at most he had a 28% impairment rating following the second fusion surgery. Thus, the March 11, 2011, injury resulted in a 3% impairment rating.

In his petition for reconsideration, Lentz maintained after conducting an examination after the second surgery, Dr. Best assessed a 28% impairment rating. Since the ALJ erroneously concluded Dr. Best assessed a 19% impairment, the award of PPD benefits based on a 19% impairment rating was patent error as no physician assigned a 19% impairment rating. Lentz argued the award should be based on a 28% impairment rating multiplied by a 1.35 factor resulting in an award of \$127.73 per week.

In the July 18, 2014, Order ruling on both petitions for reconsideration, the ALJ set forth the periods of TTD benefits paid. However, in providing the periods during which TTD benefits were paid, the ALJ twice listed the benefits paid from January 18, 2013, through September 13, 2013. The ALJ reiterated his finding the opinion of Dr. El-Kalliny was persuasive and convincing

regarding the nature of Lentz's condition at the time of the March 11, 2011, injury. Similarly, the ALJ reiterated his finding based on Dr. El-Kalliny's testimony that Lentz's neck condition was asymptomatic prior to the work injury and only became symptomatic as a result of the work injury. Concluding Lentz was correct he had relied upon an incorrect impairment rating, the ALJ amended his calculation of the award in accordance with Lentz's request.

On appeal, Northpoint first contends there was no dispute the 2008 cervical fusion was required by a non-work-related condition. It asserts Dr. Best assessed a 28% impairment rating due to the 2008 fusion surgery, and Dr. El-Kalliny assessed a 25% impairment rating after the 2008 fusion surgery. Consequently, it is only responsible for the impairment the work injury caused and any impairment attributable to a non-work-related disability should not have been included in the award. Northpoint argues the ALJ erred in failing to grant it an offset for a pre-existing 25% impairment.

Alternatively, Northpoint contends the ALJ erred by amending the award of PPD benefits in the July 18, 2014, Order ruling on both petitions for reconsideration. It notes Dr. Best assessed a 19% impairment rating utilizing

the range of motion method. Therefore, the ALJ should not have changed the impairment rating attributable to the injury and the award of PPD benefits.

Finally, Northpoint argues there is a clerical error regarding the dates TTD benefits were paid. It represents the parties stipulated that TTD benefits were paid for three different periods, one of which was from May 25, 2011, to August 31, 2011. Northpoint notes on page two of the Opinion and Award the ALJ listed the periods TTD benefits were paid but failed to list the period spanning from May 25, 2011, to August 31, 2011. It notes that even though it sought correction of this error in its petition for reconsideration, in the order ruling on the petitions for reconsideration which provided additional findings of fact regarding the periods TTD benefits were paid, the ALJ listed the period from January 18, 2013, to September 13, 2013, twice. Consequently, Northpoint seeks remand for it to be given credit for all the periods TTD benefits were paid.

In rendering a decision, KRS 342.285 grants an ALJ as fact-finder the sole discretion to determine the quality, character, and substance of evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). 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). In that regard, an ALJ is vested with broad authority in deciding all questions before him. Dravo Lime Co. v. Eakins, 156 S.W. 3d 283 (Ky. 2003). 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, 708 S.W.2d 641 (Ky. 1986).

Concerning Northpoint's argument it is entitled to an offset for a pre-existing impairment, Dr. El-Kalliny first addressed the impairment rating attributable to the 2008 surgery in a May 30, 2012, letter, in which he noted after the 2008 surgery Lentz had significant improvement of his pain until approximately a year ago when he started having recurrent neck pain and pain radiating into his left arm. An MRI of the cervical spine showed Lentz had adjacent disc disease at C6-7 with disc osteophyte complex

causing severe left foraminal stenosis. Consequently, Dr. El-Kalliny diagnosed left C7 radiculopathy due to a C6-7 disc herniation osteophyte. Dr. El-Kalliny believed these symptoms were related to the accident. He also believed Lentz should undergo surgery consisting of C6-7 anterior cervical discectomy fusion. Dr. El-Kalliny stated Lentz had a 28% permanent impairment rating pursuant to the 5th Edition of the American Medical Association, Guides to the Evaluation of Permanent Impairment ("AMA Guides") as he fell within DRE Category IV as a result of *his injuries*. Unfortunately, Dr. El-Kalliny did not explain what he meant by his injuries. In a September 17, 2013, letter, Dr. El-Kalliny stated Lentz had undergone an anterior cervical discectomy fusion at C6-7 which helped relieve most of his arm pain. However, he still had significant residual neck pain. Lentz had reached MMI and would need intermittent physical therapy, muscle relaxants, anti-inflammatory and narcotic analgesics on an as needed basis. Dr. El-Kalliny assessed a 27% impairment rating pursuant to the AMA Guides as a result of his injuries. Lentz's condition fell within DRE Category IV due to the fusion and a large disc herniation.

Northpoint introduced Dr. El-Kalliny's March 18, 2014, deposition. In the course of that deposition, Dr.

El-Kalliny testified that after the 2008 surgery Lentz completely recovered from his pain and returned to work. He noted Lentz had some restrictions immediately after the surgery but if he did well no restrictions would be imposed. He acknowledged one could have cervical fusion and return to work without restrictions. Dr. El-Kalliny testified that due to the outcome from the 2008 surgery, he returned Lentz to work as a correctional officer without any restrictions. Because there was some concern about Lentz's involvement in physical altercations, Dr. El-Kalliny informed him he needed to be careful. Dr. El-Kalliny testified Lentz would automatically have an impairment rating after undergoing cervical fusion and Lentz's condition fell within DRE Category IV. Dr. El-Kalliny assessed a 25% impairment rating because Lentz had no residual arm or neck pain.

After releasing him in 2008, Dr. El-Kalliny did not see Lentz again until November 2011. At that time he noted Lentz had developed adjacent disc disease at the C6 level which required another anterior cervical discectomy fusion at that level. Dr. El-Kalliny assessed a 27% impairment rating because Lentz had no arm pain or radiculopathy but still had neck pain. Prior to the work-related injury, he believed Lentz's condition merited a 25%

impairment rating. Dr. El-Kalliny revised the impairment assessed earlier in his deposition stating since Lentz continues to have neck pain after the second surgery, his impairment rating should be 28%.

Dr. El-Kalliny agreed with Dr. Best that because Lentz underwent a second anterior cervical discectomy and fusion in the same spinal region the impairment rating must be calculated using the range of motion criteria contained in the AMA Guides. Although he agreed the range of motion method was the appropriate method to utilize, Dr. El-Kalliny did not obtain range of motion measurements. Given Lentz's surgical history and the outcome of his 2013 surgery, he did not believe Lentz should return to his same job. Dr. El-Kalliny explained since Lentz had residual neck pain he suspected adjacent disc disease. When he last saw Lentz he recommended another MRI be performed to ensure he did not have adjacent disc disease at C4-5. Dr. El-Kalliny explained the adjacent disc disease at C4-5 would potentially relate to both the 2008 and 2013 fusions.

Dr. El-Kalliny provided the following testimony regarding Lentz's neck condition prior to the 2011 work injury:

Q: Okay. So following the 2008 neck surgery, his neck was asymptomatic as far as you are aware. Do you agree with

that?

A: I agree with that.

Q: Okay. And the neck became symptomatic following the work injury of March 11, 2011. Do you agree with that?

A: I agree with that.

Q: The second surgery that you did was at the C6-C7 level?

A: Yes.

Q: At a different level?

A: Yes.

Q: Okay. So although he may have had a ratable condition following the 2008 surgery, he was not symptomatic with his neck until March 11 of 2011. Do you agree with that?

A: I agree with that.

In Finley v. DBM Technologies, 217 S.W.3d 261, 265, 266 (Ky. App. 2007), the Court of Appeals stated as follows:

It is well-established that the work-related arousal of a pre-existing dormant condition into disabling reality is compensable. *McNutt/Constr./First Gen. Servs. v. Scott*, 40 S.W.3d 854 (Ky. 2001). In its opinion, the Board correctly and succinctly set forth the law upon compensability of a pre-existing dormant condition:

What then is necessary to sustain a determination that a pre-existing condition is

dormant or active, or that the arousal of an underlying pre-existing disease or condition is temporary or permanent? To be characterized as active, an underlying pre-existing condition must be symptomatic and impairment ratable pursuant to the AMA *Guidelines* immediately prior to the occurrence of the work-related injury. Moreover, the burden of proving the existence of a pre-existing condition falls upon the employer. *Wolf Creek Collieries v. Crum*, 673 S.W.2d 735, 736 (Ky. App. 1984).

Alternatively, where the underlying pre-existing disease or condition is shown to have been asymptomatic immediately prior to the work-related traumatic event and all of the employee's permanent impairment is medically determined to have arisen after that event—due either to the effects of the trauma directly or secondary to medical treatment necessary to address previously nonexistent symptoms attributable to an underlying condition exacerbated by the event—then as a matter of law the underlying condition must be viewed as previously dormant and aroused into disabling reality by the injury. Under such circumstances, the injured employee must be compensated not just for the immediate physical harm acutely produced by the work-related trauma, but also for all proximate chronic effects corresponding to any contributing pre-existing condition, including any previously dormant problem strictly attributable solely to

congenital or natural aging processes, as it relates to the whole of her functional impairment and subsequent disability rating, including medical care that is reasonable and necessary pursuant to KRS 342.020.

. . . .

To summarize, a pre-existing condition that is both asymptomatic and produces no impairment prior to the work-related injury constitutes a pre-existing dormant condition. When a pre-existing dormant condition is aroused into disabling reality by a work-related injury, any impairment or medical expense related solely to the pre-existing condition is compensable. A pre-existing condition may be either temporarily or permanently aroused. If the pre-existing condition completely reverts to its pre-injury dormant state, the arousal is considered temporary. If the pre-existing condition does not completely revert to its pre-injury dormant state, the arousal is considered permanent, rather than temporary. With these legal principals in mind, we shall undertake a review of the ALJ's award.

In the case *sub judice*, in order to carve out the impairment attributable to the 2008 fusion, Northpoint had the burden of establishing that immediately before the March 11, 2011, injury Lentz's pre-existing condition was both impairment ratable and symptomatic. Clearly, Lentz's pre-existing condition was impairment ratable. However, Dr. El-Kalliny's testimony establishes his condition was not symptomatic. The ALJ concluded that as the treating

physician, Dr. El-Kalliny was in the best position to determine whether Lentz's pre-existing cervical condition prior to the March 11, 2011, injury was symptomatic. The fact Dr. El-Kalliny did not see Lentz after he released him from his care in 2008 until after the March 11, 2011, work injury and Lentz's testimony he returned to work at Northpoint performing his job without restrictions, supports Dr. El-Kalliny's opinion Lentz's pre-existing condition was not symptomatic prior to the subject work injury. Dr. El-Kalliny's opinion constitutes substantial evidence establishing Lentz's condition, although impairment ratable, was not symptomatic. Consequently, as the ALJ relied upon Dr. El-Kalliny's opinion in resolving the issue of the existence of a prior active condition, Northpoint failed in its burden of establishing Lentz had an active pre-existing condition meriting a carve out in the award of PPD benefits.

In relying upon Dr. El-Kalliny's opinions, the ALJ concluded Lentz's cervical condition was not active immediately before March 11, 2011, and the injury of that date aroused a pre-existing dormant condition into disabling reality. Therefore, any impairment or medical condition relating solely to the pre-existing dormant condition is compensable.

Because Dr. El-Kalliny's opinions constitute substantial evidence in support of the ALJ's determination Lentz did not have a pre-existing active condition, we find no error in the ALJ's refusal to carve out any portion of the award as being due to a pre-existing active condition.

That said, as previously noted, the ALJ is free to rely upon Dr. El-Kalliny's opinion in resolving one issue but rely on Dr. Best's opinion in resolving another issue. Here, Dr. Best obviously disagreed with Dr. El-Kalliny as to whether Lentz had a pre-existing active condition. That fact does not prohibit the ALJ from relying upon an impairment rating assessed by Dr. Best. In his November 19, 2013, report generated as a result of an examination conducted on October 10, 2013, Dr. Best stated as follows:²

Following the work-related injury of March 11, 2011, the patient would now be rated due to a second surgery and second anterior cervical discectomy and fusion in the same spinal region, an evaluation and rating under the range of motion criteria.

. . .

Therefore, with range of motion measurements, the patient has actually improved since his first surgery, going from a DRE Category IV, a 25% to 25%

² Dr. Best's report is dated November 19, 2012. However, his examination of Lentz took place on October 10, 2013.

impairment rating, now to a 19% impairment rating.

Therefore, under *The Fifth Edition AMA Guides*, an impairment rating would be provided under the DRE, again a 25% to 28% impairment for the single-level work-related fusion. Hence, even if we assume the impairment was 25% whole person for the nonwork-related condition and it is now 28%, the difference is a 3% whole person impairment rating for the work-related condition.

This method of apportionment is consistent with *The Fifth Edition AMA Guides*. Section 1.6b, page 12 indicates:

'In apportioning a spine impairment rating in an individual with a history of spine condition, one should calculate the current spine impairment. Then calculate the impairment from any preexisting spine problem. The preexisting impairment rating is then subtracted from the present impairment rating to account for the effects of the former.'

Using *The Fifth Edition AMA Guides*, the patient's permanent whole body impairment is 3%.

Clearly, Drs. Best and El-Kalliny believed since there was a second surgical procedure in the same spinal region, the range of motion criteria contained in the *AMA Guides* should be utilized in assessing Lentz's impairment rating. Utilizing the range of motion method, Dr. Best

concluded Lentz's impairment rating due to both surgeries had decreased from either 25% or 28% to 19%. As noted by Dr. El-Kalliny the range of motion method is the appropriate method due to the multilevel involvement. Significantly, only Dr. Best assessed an impairment rating utilizing this method. Since the 19% impairment rating was correctly assessed pursuant to the AMA Guides, the ALJ was free to rely upon that impairment rating. Lentz's representation in his petition for reconsideration that no physician assessed a 19% impairment rating is incorrect. In his November 19, 2012, report, Dr. Best provided two potential impairment ratings; one based on the range of motion method and the other based on the DRE method. Since Drs. Best and El-Kalliny agreed the range of motion method was the appropriate method in assessing an impairment rating, the ALJ erred in changing his decision in response to Lentz's petition for reconsideration.

In Frazier's Farmers Supply Company v. Jones, 2010-CA-002129-WC, rendered July 1, 2011, Designated Not To Be Published, the Court of Appeals stated:

Pursuant to KRS 342.281, when considering a petition for reconsideration, the ALJ "shall be limited in the review to the correction of errors patently appearing upon the face of the award ... [.]" The Kentucky Supreme Court has explained that this

language precludes the ALJ "from reconsidering the case on the merits and/or changing the findings of fact." *Garrett Mining Co. v. Nye*, 122 S.W.3d 513, 520 (Ky. 2003).

Slip Op. at 4.

In sustaining Lentz's petition for reconsideration, the ALJ impermissibly changed his prior factual finding concerning the impairment rating attributable to Lentz's March 11, 2011, injury. The parties presented conflicting evidence regarding this issue and the ALJ chose to rely upon Dr. Best's opinion regarding the impairment rating attributable to Lentz's work injury. Dr. Best's opinion constitutes substantial evidence supporting the award of PPD benefits based on a 19% impairment rating. Therefore, the ALJ exceeded his authority by sustaining Lentz's petition for reconsideration and recalculating the award of PPD benefits. Accordingly, the award of PPD benefits must be vacated and the claim remanded for reinstatement of the award of PPD benefits based on a 19% impairment rating.

Finally, we agree the award of TTD benefits must be revisited by the ALJ. The ALJ ordered Lentz would recover TTD benefits already paid. However, there was not a specific award of TTD benefits. In the May 20, 2014, Opinion & Award, the ALJ stated the parties stipulated to the payment of TTD benefits. At the March 25, 2014,

hearing, the ALJ requested Northpoint's counsel "enter the stipulations for TTD." Northpoint's counsel recited three periods TTD benefits were paid, one of which was the period from May 25, 2011, to August 31, 2011. This is further complicated by the fact that in the order ruling on the petitions for reconsideration, the ALJ twice listed TTD benefits paid from January 18, 2013, to September 13, 2013. This is an error. Therefore, on remand, the ALJ shall correct this error and specifically set forth the dates during which Lentz is entitled to TTD benefits. The award of PPD benefits shall be interrupted during any period TTD benefits are awarded. In addition, the award of PPD benefits should have commenced on March 11, 2011, not March 12, 2011, the day after the injury. See Sweasy v. Wal-Mart Stores, Inc., 295 S.W.3d 835 (Ky. 2009).

Accordingly, those portions of the May 20, 2014, Opinion & Award and the July 18, 2014, Order ruling on the petitions for reconsideration relating to the ALJ's determination Lentz did not have a pre-existing active condition immediately before the March 11, 2011, work injury and declining to carve out any portion of the award due to a pre-existing active condition are **AFFIRMED**. That portion of the July 18, 2014, Order ruling on the petitions for reconsideration amending the award of PPD benefits is

VACATED. The claim is **REMANDED** to the ALJ for entry of an amended opinion and award reinstating the award of PPD benefits set forth in the May 20, 2014, Opinion and Award and commencing the award of PPD benefits on March 11, 2011. The ALJ shall also enter a specific award of TTD benefits.

ALL CONCUR.

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