

OPINION ENTERED: July 10, 2012

CLAIM NO. 201085694

PERRY COUNTY FISCAL COURT/
PERRY COUNTY ROAD FUND

PETITIONER

VS.

APPEAL FROM HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

JOHN CAUDILL
and HON. JOHN B. COLEMAN,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

**OPINION
AFFIRMING**

* * * * *

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

ALVEY, Chairman. Perry County Fiscal Court/Perry County Road Fund ("Perry County") seeks review of the opinion and award rendered January 24, 2012 by Hon. John B. Coleman, Administrative Law Judge ("ALJ"), awarding permanent total disability ("PTD") benefits and medical benefits to John Caudill ("Caudill"), for a work-related injury occurring

June 14, 2010. Perry County also appeals from the February 28, 2012 order denying its petition for reconsideration.

On appeal, Perry County argues the ALJ's failure to make a finding of fact concerning the specific injury mechanism resulting in Caudill's PTD and/or the inconsistencies in the manner in which Caudill stated he was injured, amount to reversible error. Perry County also argues the ALJ's reliance on the opinions of Dr. Herr, who was provided an incorrect/false history regarding the mechanism of injury, constitutes reversible error. Perry County also argues the ALJ erred by making inadequate findings of fact regarding inconsistencies pertaining to leg pain, work activities, and psychological problems prior to the June 14, 2010 incident. Finally, Perry County argues the record does not support a finding that Caudill is permanently disabled pursuant to KRS 342.0011. We affirm.

Caudill filed a Form 101 on June 23, 2011, stating that on June 14, 2010 as he was driving a company vehicle, he reached to close the driver's door which had opened, and felt a sharp pain in his back. As a result of this incident, he alleged low back and left leg pain. He later amended his claim to include a psychological component.

Caudill, a resident of Viper, Kentucky, testified by deposition on September 13, 2011, and again at the hearing held November 29, 2011. Caudill completed the eighth grade. He later took a three month course in mining technology. Caudill's work history includes working as a laborer, truck driver, delivery driver, and crew supervisor. He began working for Perry County in 1999, and worked there until his June 14, 2010 injury.

Caudill testified he injured his low back previously in 2006 while working for Perry County. He settled that claim based upon a 5% impairment rating. He subsequently returned to work for Perry County. Prior to the 2006 injury, he worked as a laborer. Following the 2006 injury, Caudill's duties were supervisory in nature. He had a crew of one to three laborers who worked with him. His work consisted of advising and supervising the construction of small concrete bridges.

Caudill testified he drove a pick-up truck owned by Perry County. He stated the driver's door was defective and would not stay closed. At the time of the accident, he was driving around a sharp curve when the door came open causing him to shift to the left. He was caught by the seatbelt as he attempted to close the door. He testified he experienced immediate low back and left leg pain.

Subsequent to the accident, he reported the incident to the Perry County Judge-Executive, for whom he worked, and completed a written accident report. Caudill testified he has not worked since the date of the accident, and he was unaware of any jobs he would be able to perform. Caudill testified his low back continued to hurt after the 2006 injury, and he continued to see Dr. Stacey Johnson every three months for treatment. He further testified the June 14, 2010 accident caused a significant increase in low back and left leg pain, tingling and numbness. He also testified he has difficulty with his left leg giving way and sexual dysfunction since the June 14, 2010 accident.

Caudill sought treatment with Dr. Johnson on June 17, 2010. She eventually referred him to Dr. Karin Schwartz, a neurosurgeon at the University of Kentucky Medical Center. Caudill testified he has never had back surgery, but Dr. Schwartz advised him to return if he later desires to have surgery performed.

Caudill was taking Hydrocodone prior to June 14, 2010, but his dosage has increased since that time. He also takes Tramadol, blood pressure medication, Flexeril and Neurontin. He also stated he has developed psychological problems since June 14, 2010 for which he treats with Prozac, which has provided some relief.

Caudill supported his claim with records of Dr. Stacey Johnson who first saw him relative to his June 14, 2010 accident on June 17, 2010. She noted he had acutely worse low back pain due to an accident at work. She followed up with him on June 23, 2010; July 2, 2010; July 6, 2010; August 6, 2010; September 1, 2010; September 16, 2010; November 3, 2010; January 4, 2011; and March 24, 2011. He later supplemented his filing with the office notes from September 15, 2011, and June 21, 2011, both of which noted continued treatment for chronic low back pain with degenerative disk disease and radiculopathy. In an undated note, Dr. Johnson stated the following:

Sustained an injury at work around 6/17/10 which resulted in a left far lateral diffuse disk bulge of the L3-L4 disc which displaces the L3 nerve root. These findings were not present on previous imaging obtained by MRI in September 2006. These injuries were secondary to the accident that occurred in June 2010.

Caudill also filed the MRI report from Kentucky Mountain Radiology dated June 24, 2010. The MRI interpretation noted far left lateral diffuse bulging of the L3-L4 disk, displacing the left L3 nerve root. The radiologist also noted Caudill should see a neurosurgeon.

Caudill was seen by Dr. Schwartz on August 2, 2010. Dr. Schwartz stated Caudill had baseline chronic low

back pain with which he was functional, but sustained a work-related injury on June 14, 2010, with severe low back and left leg pain. She noted this was suggestive of an L3 radicular distribution. She stated a pain management consultation was appropriate, and physical therapy was an option. Caudill also submitted records from Hazard Appalachian Regional Hospital.

Caudill was evaluated by Dr. David Herr on March 3, 2011. Dr. Herr noted an injury history of June 14, 2010 in which Caudill was driving a company pick-up truck when the door swung open on a curve. Caudill reported he slid to the left, causing his body to twist. He pulled himself back into the cab of the truck and shut the door. Dr. Herr further stated the following:

This incident produced a severe torsional stretching and bending injury to the thoracolumbar spine resulting in severe back pain, worse than the chronic back pain that he had previously treated for, and new onset of left radicular symptoms in the distribution of the L3 dermatome, and for a while into the L4 dermatome with pain along the anteromedial left thigh and lateral leg initially.

Regarding the previous injury Caudill sustained in 2006, Dr. Herr stated:

Mr. Caudill was involved in one prior reported work injury for which he received treatment. During the period

between August 18, 2006, and August 23, 2006, he developed severe low back pain during the course of his employment with Perry County Fiscal Court. The prior injury occurred while he was working on a concrete project around the Perry County swimming pool. During the period between August 18, 2006, and August 23, 2006, as a result of heavy physical labor, he developed severe low back pain for which he was treated by Dr. Stacey Johnson beginning on August 23, 2006.

Following the August 2006 work-related back injury, he had complaints of back pain and numbness and weakness of the left lower extremity. Mr. Caudill was sent to physical therapy for several weeks. His back pain moderated in November 2006, and the numbness, weakness, and left lower extremity pain resolved and he was then allowed to return to work.

Subsequent to August 2006, Mr. Caudill was treated by Dr. Stacey Johnson on a regular basis for chronic low back pain that did not interfere with his ability to work after December 28, 2006. Notwithstanding his return to work at full duty, Mr. Caudill continued to receive analgesic and adjunctive medications for chronic low back pain on a continuing and regular basis from August 2006 to the present time, and was on analgesic medications for chronic back pain at the time of the work injury on June 14, 2010.

Dr. Herr diagnosed multi-level degenerative disk disease of the lumbar spine; herniated nucleus pulposus, L3-L4, far left lateral; and SI joint dysfunction on the

left. He opined Caudill had reached maximum medical improvement ("MMI") on March 31, 2011. He assessed a 31% impairment rating pursuant to the American Medical Association Guides to Evaluation of Permanent Impairment, 5th Edition ("AMA Guides"), of which he apportioned 5% to the 2006 injury, and the remainder to the June 14, 2010 injury.

Dr. Herr further opined Caudill had no reasonable expectation of returning to work. He indicated Caudill should be restricted from no jarring of the back; no twisting; no repetitive or prolonged bending; no climbing, squatting, crouching, crawling or kneeling; no prolonged repetitive or heavy lifting, pushing or pulling; no overhead work or reaching on a prolonged or repetitive basis; no standing or walking three hours in an eight hour work day, nor over forty-five minutes at any one time; and, no lifting or carrying over thirty-five pounds occasionally, ten pounds frequently, or five pounds continuously.

In a supplemental report dated November 28, 2011, Dr. Herr disagreed with the conclusions of Dr. Zerga. He also noted the impairment rating was 32% pursuant to the AMA Guides, of which 5% was due to the 2006 injury.

Caudill also submitted the report of Dr. Eric Johnson, a psychologist, who evaluated him on May 24, 2011. Dr. Johnson noted Caudill had no previous psychological or psychiatric evaluations. He diagnosed Caudill with major depressive disorder, in partial remission, due to the June 14, 2010 injury. He noted Caudill's condition had improved with the use of Prozac. He found Caudill was not at MMI, but anticipated he would qualify for a 12% impairment rating based upon the AMA Guides, 2nd Edition.

Caudill was evaluated by Dr. Henry Tutt, a neurosurgeon from Lexington, on December 2, 2010, at Perry County's request. Dr. Tutt noted a work event occurring on June 14, 2010. Caudill reported constant low back pain, and intermittent left leg symptoms consisting of weakness, numbness, "pins and needles", cramping and hurting. He noted the history of chronic low back pain since the 2006 injury. He further noted Caudill's condition improved with physical therapy. Dr. Tutt stated his opinion regarding a diagnosis was deferred. He believed Caudill had either sustained a transient exacerbation of symptoms relative to a long-standing pre-existing degenerative osteoarthritic condition, or he was symptomatic from a left L3-L4 lateral disk protrusion. He recommended weight reduction, weaning from use of a cane, and a self-directed program of core

back strengthening exercises and lumbar flexion exercises. He further opined Caudill had no increase in impairment rating since 2006.

In an addendum dated February 25, 2011, Dr. Tutt noted Caudill has longstanding degenerative changes in the lumbar spine, which show little, if any, change based on studies compared from 2006 and 2010. He noted no objective evidence of lumbar radiculopathy or nerve root compression. Based upon this, he opined Caudill experienced only a transient exacerbation of symptoms of his degenerative disk disease on June 14, 2010. He believed Caudill to have reached MMI, and could return to work at his usual job, with no additional impairment.

Dr. Joseph Zerga, a neurologist, evaluated Caudill, and testified by deposition on November 23, 2011. He noted Caudill reported a "funny feeling in his proximal leg anteriorly". His primary complaint was a sharp aching pain in the low back, to the left of mid-line at L4-L5. Caudill reported prolonged sitting or standing aggravated his low back pain. Dr. Zerga reported no abnormalities on physical examination, and noted Caudill refused EMG/NCV testing. He noted the previous EMG/NCV was normal. Dr. Zerga noted no anatomical change subsequent to the June 24, 2010 event. He stated he believed Caudill had a transient

radiculopathy at L3-L4, with no evidence of contributing radiculopathy, which has resolved. He opined Caudill qualifies for a 5% impairment rating pursuant to the AMA Guides, none of which is due to the June 14, 2010 incident. Likewise he stated Caudill would not have any restrictions greater than those previously in effect for the 2006 injury. He stated the June 14, 2010 incident caused an exacerbation of his prior condition with no anatomical change. Likewise, he did not believe Caudill required any treatment in the form of medication due to the June 14, 2010 incident. He stated he was unable to review all of the films Dr. Tutt reviewed.

Perry County also filed records from Dr. James Bean, a neurosurgeon, who treated Caudill in 2006. The records include office notes from September 25, 2006; October 22, 2006; and, November 27, 2006. Dr. Bean noted Caudill had disk bulges at L3-L4 and L4-L5 with no herniation. He also noted a positive straight leg raising test on the left. On November 27, 2006, Dr. Bean stated Caudill had reached MMI, assessed a 5% impairment rating based upon the AMA Guides, and imposed restrictions of no lifting over ten to fifteen pounds, and no repetitive bending or twisting.

Perry County also filed the February 14, 2011 electromyography report of Dr. Andrew Schneider, a neurologist. Dr. Schneider reported the testing was normal. He specifically stated, "[n]o abnormality was seen in mid-lumbar paraspinous muscles. No electrodiagnostic evidence of left lumbar radiculopathy."

Perry County filed additional records from Dr. Johnson. Those records indicate Dr. Johnson continued to treat Caudill for low back pain from August 23, 2006 through May 11, 2010. She last noted radiculopathy, or symptoms in the left leg, on September 28, 2006.

Dr. Robert Granacher, a neuropsychiatrist, evaluated Caudill at Perry County's request on October 11, 2011. He noted Caudill has depression in partial remission, and assessed a 5% impairment rating pursuant to the AMA Guides, 2nd Edition due to the June 14, 2010 injury. He stated Caudill had 0% impairment due to psychiatric conditions prior to June 14, 2010. He diagnosed mood disorder (major depression) due to chronic pain associated with a chronic back condition, partial remission.

In the opinion and award rendered August 19, 2011, the ALJ found as follows:

This is an interesting claim wherein the defendant first argues the plaintiff has failed to prove causation

and work relatedness of his physical and mental health conditions. The defendant also argues the plaintiff's condition is caused by a pre-existing active condition. The evidence in the file is clear that the plaintiff was previously assessed with a 5% impairment by Dr. James Bean and that he actually settled a prior claim for benefits wherein the plaintiff was injured with the same employer on August 18, 2006. After that event the plaintiff was placed on work restrictions but was able to return to employment with the defendant at a lighter duty job as a bridge foreman rather than his prior work as a laborer which required him to do a lot more heavy lifting and labor. The plaintiff's treating physician, Dr. Swartz, indicated in her report that the plaintiff had been at base line for chronic low back pain but was functional until the injury of June 2010 after which he continued to have chronic low back pain with an L-3 radiculopathy. This is a clear indication from Dr. Swartz that the plaintiff suffered additional injury in June of 2010. Dr. Tutt indicated his believe[sic] that the plaintiff only suffered a temporary exacerbation of his chronic pre-existing condition. However, this opinion overlooks the fact that the plaintiff's own credible complaints indicate he has been unable to return to his employment since the events of June 2010. Dr. Herr evaluated the plaintiff and while he carved out a pre-existing active impairment for the plaintiff's prior low back condition for which he was actively seeking treatment, he also felt the plaintiff suffered additional impairment based upon reduced range of motion and additional symptoms, including the radicular symptoms, since June of 2010.

Credibility is added to the plaintiff's statements that the event of June 14, 2010 caused him to suffer additional impairment and disability by the fact that both treating mental health experts felt the plaintiff had a mental health impairment causally related to the plaintiff's inability to labor and earn money since the event of June 2010. In Finley v. DBM Technologies, 217 S.W.3d 261 (Ky. App. 2007), the Court dealt with the situation wherein an individual's pre-existing scoliosis made her more likely to suffer injury. The Court noted the Administrative Law Judge must determine whether the pre-existing condition was permanently or temporarily aroused by the work injury and further noted that to be characterized as an active condition, an underlying pre-existing condition must be symptomatic and have impairment pursuant to the AMA Guidelines immediately prior to the occurrence of the work-related injury. In order to qualify [sic] or permanent partial disability under KRS 342.730, the claimant is required to prove not only the existence of a harmful change as a result of the work related traumatic event, but also required to prove that the harmful change resulted in a permanent disability as measured by an AMA impairment. Where no permanent disability or change is caused by the injury the claimant is entitled to medical expenses that were incurred while treating the temporary flare-up of symptoms or temporary total disability benefits that resulted from the incident. See[sic] Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001). In this instance, while I recognized that Dr. Tutt believed the plaintiff suffered only a temporary impairment, I am more convinced that while the plaintiff had an active

impairment immediately prior to the subject injury, that condition made the plaintiff more likely to suffer additional injury which he did on June 14, 2010. This is clearly outlined by the treating physician as well as the report of Dr. Herr as well as both mental health opinions in the record which have assessed the plaintiff with an impairment for major depression. Therefore, I find for the plaintiff on the issue of work relatedness and causation but do note that he had a prior active impairment and disability for the lumbar spine condition.

The next issue is whether the plaintiff's condition was caused by his unreasonable failure to follow medical advice. The defendant argues the plaintiff's return to work violated the provisions of KRS 342.035(3). K.R.S. 342.035(3) provides that no compensation shall be payable for a death or disability of an employee if his death is caused, or if or in so far as his disability is aggravated, caused, or continued, by an unreasonable failure to submit to or follow any competent surgical treatment or medical aide or advice. The defense of failure to follow reasonable medical advice is an affirmative defense which places the burden of proof on the employer to show both a failure to follow medical advice and that such failure was unreasonable. Teague v. South Central Bell 585 S.W.2d 425 (Ky., App 1979). In this instance, the plaintiff was placed under restrictions by Dr. Bean following his 2006 injury. Dr. Bean's restrictions included a lifting restriction of lifting no more than 10-15 pounds with no repetitive twisting or bending. He noted that the plaintiff's job as a laborer required him to lift as much as 75 pounds.

However, according to the plaintiff's un rebutted testimony he did not return to that type of work. Instead, the plaintiff returned to work as a bridge foreman performing more of a supervisory role only assisting in some lighter duty carpentry work such as cutting plywood. In addition, I note that the medical evidence does not indicate that the plaintiff's current condition is related to any violation of those restrictions. The facts of the accident do not indicate the plaintiff was lifting more than 10-15 pounds or engaging in twisting or bending when he suffered his new onset of low back pain with radiculopathy. Therefore, KRS 342.035(3) is not a defense to this action.

The next issue which must be discussed is the issue of extent and duration of disability including the amount of any carve out for the prior active condition. The plaintiff is a 58 year old man with an 8th grade education. His past relevant work has been as an underground coal miner and as a laborer for the defendant employer. His recent work allowed him to work as a bridge foreman and was the job he was performing at the time of his most recent injury. The plaintiff's treating physician, Dr. Swartz, has indicated that he now suffers from chronic low back pain with an L-3 radiculopathy secondary to the work injury of June 14, 2010. The plaintiff has permanent work restrictions including no jarring of his back, no twisting; no repetitive or prolonged bending, no climbing, no swatting, no crouching, no crawling or kneeling, no prolonged or repetitive heavy lifting, pushing or pulling, no overhead work or reaching on a prolonged or repetitive basis, no standing or walking greater

than 3 hours in an 8 hour day or no more than 45 minutes continuously with no lifting or carrying greater than 5-10 pounds. The plaintiff's own testimony was credibly given that he cannot return to even the lighter duty job as a bridge foreman as he cannot stand for lengthy periods of time on the terrain necessary to perform those job duties. Permanent total disability is defined in KRS 342.0011(11)c as the condition of an employee who, due to an injury, has a permanent disability rating and has a complete and permanent inability to perform any type of work as a result of an injury. Work is defined as meaning providing service to another in return for remuneration on a regular and sustained basis in a competitive economy. KRS 342.0011(34). In determining whether a worker is totally disabled, an Administrative Law Judge must consider several factors including the worker's age, education level, vocational skills, medical restrictions, and the likelihood that he can resume some type of "work" under normal employment conditions. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky., 2000). When I consider the plaintiff's age of 58 along with his 8th grade education level, vocational skills, the medical restrictions as outlined above along with his own credible testimony, I am convinced he now has a complete and permanent inability to perform any type of work as a result of this injury on a regular and sustained basis. Therefore, he meets the definition of permanent total disability as outlined above. While the plaintiff meets the definition of permanent total disability he does have a pre-existing active impairment and disability as was clearly noted in the report of Dr. Herr and Dr. Swartz. The plaintiff had a

prior impairment of 5% and was under medical restrictions at the time this incident rendered him permanently and totally disabled. The prior incident was the result of a work related injury which occurred on August 18, 2006. The work related injury resulted in the 5% impairment as well as restrictions which prevented the plaintiff from returning to his regular duty employment. Therefore, the plaintiff had a prior active impairment of 3.25% under KRS 342.730 and was entitled to a modifier of 3.2 pursuant to the provisions of KRS 342.730(1)(c)(1) and (3). This results in a prior active impairment and disability which would create a credit of \$46.94 against the plaintiff's current award of permanent total disability benefits. Since the work injury resulting in the plaintiff's permanent total disability occurred during the 425 week period wherein the plaintiff was suffering from a prior active work related impairment and disability, the defendant at the time of the second injury is responsible for the payment of the permanent total disability but is entitled to credit during the overlapping period of disability for the remainder of the 425 week period from the prior injury. In this instance, the prior 425 week period began on December 22, 2006. As of the date of this work injury of June 14, 2010 the plaintiff had 243.715 weeks remaining on his prior claim for which he had received a lump sum settlement. Therefore, the defendant is entitled to credit in the amount of \$46.94 per week for the first 243.75 weeks of the plaintiff's permanent total disability wherein he receives permanent total disability at the rate of \$451.48. Therefore, for the first 243.715 weeks of the permanent total disability award

the defendant's responsibility for permanent total disability benefits is reduced by \$46.94 to the amount of \$404.54 per week. Thereafter, the benefits shall be increased to the full \$451.48 per week until the benefits are terminated pursuant to KRS 342.730(4), (5), (6) or (7).

There is also an issue reserved as to unpaid medical expenses. The plaintiff has been found to have suffered a work related low back injury causing an L-3 radiculopathy as well as major depressive disorder. He is entitled to reasonable and necessary medical expenses for these conditions pursuant to KRS 342.020. The defendant employer is ordered to pay such expenses pursuant to the statute.

Perry County raised numerous issues in its petition for reconsideration filed on February 7, 2012. In the order dated February 28, 2012, the ALJ acknowledged he had erred in the application of multipliers regarding credit pursuant to the 2006 injury, and made the appropriate correction. He denied the remainder of the petition for reconsideration.

As we have noted numerous times in the past, the ALJ's discretion is broad. The crux of the numerous issues raised by Perry County on appeal appears to concern that discretion. Since Caudill was successful before the ALJ, the question on appeal is whether the ALJ's finding concerning causation is supported by substantial evidence.

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).

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). The 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, causation and the work-relatedness of a condition are factual questions to be determined within the sound discretion of the ALJ, and the ALJ, as fact-finder, is vested with broad authority to decide such matters. Dravo Lime Co. v. Eakins, 156 S.W.3d 283 (Ky. 2003); Union Underwear Co. v. Scearce, 896 S.W.2d 7 (Ky. 1995); Hudson v. Owens, 439 S.W.2d 565 (Ky. 1969). In addition, the Act does not require causation to be proved through objective medical findings. See KRS 342.0011(1);

Staples, Inc. v. Konvelski, 56 S.W.3d 412, 415 (Ky. 2001). Although a party may note evidence supporting 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).

It is uncontroverted Caudill experienced an acute onset of low back and left leg pain on June 14, 2010 as he was attempting to close a defective door in a truck he was driving. Even Drs. Tutt and Zerga who evaluated Caudill on Perry County's behalf, describe a transient injury, which occurred as he twisted to close the truck door.

Evidence of record exists which could have supported a result contrary to that reached by the ALJ. However, despite Perry County's assertions, Dr. Herr's opinions rise to the level of substantial evidence sufficient to support the outcome selected by the ALJ. Kentucky Utilities Co. v. Hammons, 145 S.W.2d 67, 71 (Ky. App. 1940); Smyzer v. B. F. Goodrich Chemical Co., supra; and Special Fund v. Francis, supra. Upon consideration of the ALJ's analysis, we are likewise satisfied the proper legal standard was utilized in deciding the contested

issues, and the ALJ made adequate findings of facts sufficient to apprise the parties of the basis for her decision. Shields v. Pittsburgh and Midway Coal Mining Co., 634 S.W.2d 440 (Ky. App. 1982). Hence, we find no error.

Perry County's argument regarding Dr. Herr's credibility and his understanding of Caudill's previous medical history is without merit. Dr. Herr specifically recited his understanding of the prior injury on page two of his report. This is also reflected in his apportionment of a 5% impairment rating pursuant to the AMA Guides for the 2006 injury.

The ALJ applied the appropriate legal standard for determining PTD in accordance with the Supreme Court's holding in Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000). After considering the evidence, the ALJ was persuaded Caudill is permanently totally disabled due to the effects of the June 14, 2010 injury. Substantial evidence of record exists to support that conclusion. For that reason, we cannot say the ALJ's decision is so unreasonable under the evidence the decision must be reversed as a matter of law.

Accordingly, the ALJ's decision rendered January 24, 2012, and the order on reconsideration entered February 27, 2012 are hereby **AFFIRMED**.

ALL CONCUR.

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