**OPINION ENTERED: MARCH 1, 2013**

CLAIM NO. 201076594

PIKE COUNTY BOARD OF EDUCATION PETITIONER

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

CONNIE CANTRELL
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**AND**

CONNIE CANTRELL PETITIONER

V.
PIKE COUNTY BOARD OF EDUCATION
and HON. JONATHAN R. WEATHERBY,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

**OPINION**
**AFFIRMING**

* * * * * *

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

**SMITH, Member.** The Pike County Board of Education ("Pike County") and Connie Sue Cantrell ("Cantrell") appeal from the June 13, 2012 Opinion and Award rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge ("ALJ") and from the July 13, 2012 order ruling on Pike County's petition for reconsideration. On appeal, Pike County argues the ALJ erred in finding Cantrell sustained a permanent injury and enhancing benefits by the three multiplier pursuant to KRS 342.730(1)(c)1. Cantrell argues the ALJ erred in finding she did not suffer a psychological impairment as a result of her injury.

Cantrell, now age 57, filed a Form 101, Application for Resolution of Injury Claim, on November 15, 2011, alleging she injured her right arm and neck on September 24, 2010, when she bent down to pick up a piece of paper and fell on the bleachers. Cantrell also alleged she developed anxiety and depression as a result of the injury.

Cantrell testified by deposition on January 24, 2012 and at the formal hearing held April 25, 2012. Cantrell stated she was employed by Pike County as a custodian. Her duties included cleaning, sweeping, mopping and collecting trash. Her job also involved lifting boxes of toilet paper, paper towels, buckets of wax and moving books. Outside the school building, she pulled weeds and picked up trash at

least once a week. She also worked on weekends after ballgames and special events. On September 24, 2010, she was cleaning the bleachers when she turned to pick up a piece of paper and fell, injuring her right wrist, right shoulder, and neck.

Cantrell testified she has neck and shoulder pain radiating into her arm and hand with numbness and tingling. Her shoulder pain began after her fall. Cantrell testified she is able to bathe and dress with the assistance of her husband but can do little else. Cantrell testified she developed psychological problems following the accident that affect her relationship with her husband and grandchildren. She cannot return to her former work due to her pain and limitations, and she did not know of any work she could perform on a regular and sustained basis. She continues to treat with Dr. Gutti for pain management and is prescribed Neurontin, Lortab 10 and a muscle relaxer.

Cantrell submitted medical records from Dr. Sai Gutti, who evaluated her on February 15, 2011. Cantrell complained of low back, neck, and right arm pain with tingling and numbness. Dr. Gutti recommended electrodiagnostic studies of the upper extremities, cervical epidural steroid injection, and medication therapy.

A March 2, 2011 EMG/NCV revealed right C5–6 radiculopathy. On March 15, 2011, Dr. Gutti diagnosed neck pain; right arm radiculitis with paresthesia; MRI evidence of degenerative disc disease at C5–6 and C6–7 with right neural foraminal narrowing noted at C6–7 level; and electrodiagnostic evidence of right C5–6 radiculopathy. In a June 10, 2011 note, Dr. Gutti stated Cantrell was unable to do any gainful employment due to her condition. She could return to work once her cervical epidural steroid injection was completed. He recommended trigger point injection therapy which was performed on December 6, 2011. In addition to his diagnosis of neck pain, he also diagnosed cervicalgia, cervical degenerative disc disease at C5–6 and C6–7, along with radiculitis and neuropathy.

Cantrell submitted medical records of Dr. Keith Hall. On October 4, 2010, Cantrell complained of right wrist pain with numbness in the thumb and index finger and right shoulder pain. Dr. Hall had previously seen Cantrell for shoulder problems, but she stated her complaints had resolved prior to the fall at work. X-rays revealed a non-displaced distal radius fracture. Dr. Hall diagnosed right distal radius fracture and right shoulder pain and recommended conservative treatment with splinting of the wrist and physical therapy.

On October 25, 2010, Cantrell reported feeling better, but she continued to have numbness and pain radiating down her arm and into two digits. Dr. Hall noted decreased sensation in the C6 distribution. He diagnosed right distal radius fracture and cervical radiculopathy. Dr. Hall noted continued mild impingement in the shoulder and Cantrell underwent injection therapy. Dr. Hall believed Cantrell's symptoms were the result of a C6 radiculopathy. On December 15, 2010, Dr. Hall again opined Cantrell's problems were due to her cervical radiculopathy and he referred her to a neurosurgeon for further evaluation.

Cantrell submitted medical records of Dr. Michael Heilig, who noted a history of the fall on the bleachers, treatment of the wrist with a brace, and uneventful healing. He noted Cantrell continued to complain of cervical spine pain. An October 30, 2010 MRI revealed disc protrusions at C5–6 and C6–7. A March 2, 2011 EMG revealed right-sided C5–6 radiculopathy. Cantrell complained of persistent cervical pain with radicular symptoms into the right upper extremity including pain, weakness, and numbness into all five digits. Dr. Heilig diagnosed cervical disc protrusions with right upper extremity radiculopathy. He recommended permanent light duty work with no lifting greater than twenty pounds and no repetitive overhead activity. He placed Cantrell in

DRE Category III and assessed an 18% whole person impairment pursuant to the American Medical Association, Guides to the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

Cantrell submitted the medical records of Dr. Bobby Miller, who conducted a psychiatric evaluation on December 27, 2011. Dr. Miller noted Cantrell had been seen by a nurse practitioner for "nerves and night time sleep" and had been prescribed BuSpar and Elavil since 1992. Dr. Miller diagnosed major depressive disorder, moderate severity; panic disorder; borderline intellectual functioning; and personality disorder. Dr. Miller assessed a 12% psychiatric impairment pursuant to the AMA Guides, Second and Fifth Editions. He indicated Cantrell's prior "bad nerves" was now major depression complicated by panic attacks.

In a May 3, 2012 supplemental report, Dr. Miller indicated he had reviewed Dr. David Shraberg's report and disagreed with his findings. Dr. Miller again indicated Cantrell met the criteria for major depression and panic disorder which were directly related to an exacerbation of her previous psychiatric symptoms secondary to her work-related injury. He reaffirmed his 12% psychiatric impairment rating.

Cantrell submitted the report of Dr. Duane Densler, who evaluated her on referral from Dr. Hall on November 18, 2010. Cantrell complained of cervical and right upper extremity pain that was worse since the initial work injury. An MRI revealed degenerative disc disease and a disc herniation at C5-6. Dr. Densler recommended Cantrell proceed with physical therapy.

Cantrell submitted medical records of PMC Physical Therapy documenting treatment from October 19, 2010 until she was discharged on January 10, 2011. It was noted her goals were not achieved due to complaints of pain.

Pike County submitted medical records of Dr. Shraberg, who conducted a psychiatric evaluation on April 4, 2012. Dr. Shraberg noted Cantrell had been treated by Dr. J.P. Sutherland for stress, anxiety disorder, depression and chronic pain syndrome for the past twenty-seven years. Dr. Shraberg reviewed a brain scan which revealed significant arteriosclerotic vascular disease and probable previous strokes. Dr. Shraberg noted Cantrell continued to smoke. He noted Cantrell was exposed to an additional stressor when the family’s uninsured mobile home burned down. He noted new stressors included non-work-related issues. Dr. Shraberg diagnosed long-standing pre-September 24, 2010 history of post-hysterectomy, chronic menopausal syndrome

with anxiety, stress reaction, and depression with periodic chronic pain complaints due to degenerative disc disease; chronic tobaccoism; organic affective disorder associated with multiple strokes and cerebrovascular disease exacerbated by hypertension and tobaccoism; history of coronary artery disease; mood disorder associated with the above-mentioned general medical condition unrelated to slip-and-fall injury; slip and fall injury of September 24, 2010, recovered, with possible mild adjustment disorder associated with the decision to apply for Social Security Disability and leave the work force; possible cognitive impairment associated with cerebrovascular disease and multiple strokes; and elements of symptom magnification regarding the injury of September 24, 2010. Dr. Shraberg assessed a 0% psychiatric impairment pursuant to the AMA Guides and found no further treatment was needed.

Pike County introduced the report of Dr. Bart Goldman, who performed a utilization review of a proposed anterior cervical disc fusion at C5-7. Dr. Goldman noted Cantrell's original neurologic examination appeared to show a C6 radiculopathy on the right and one would expect her problem to be at C5-6. However, based on her MRI, she had more anatomic changes on the right at C6-7. Dr. Goldman stated there was nothing in the MRI report consistent with a

significant acute disc herniation. Dr. Goldman noted the most recent neurological evaluation was within normal limits. He recommended a trial of epidural steroid injections prior to approving surgical intervention.

Pike County introduced the report of Dr. Henry Tutt, who evaluated Cantrell on May 18, 2011. He noted Cantrell complained of neck, right wrist, and right shoulder pain. He reviewed MRI studies dated October 30, 2010 and March 31, 2011, which revealed identical findings and degenerative changes at C5-6 and C6-7 with narrowing of disc space but minimal foraminal narrowing bilaterally. Dr. Tutt diagnosed a healed hairline fracture, distal right radius and right arm pain, etiology un-established with no evidence of cervical radiculopathy. He opined Cantrell was physically capable of returning to the type of work she performed at the time of her injury. He stated her right arm complaints were not radicular in nature and no future medical treatment was needed. He also noted Cantrell was at maximum medical improvement ("MMI").

In an April 16, 2012 letter, Dr. Tutt indicated he reviewed Dr. Heilig's findings and disagreed with them. He stated Cantrell's March 31, 2011 MRI revealed long-standing degenerative changes at C5-6 and C6-7 with no recent structural alteration and no evidence of a soft disc

herniation. Dr. Tutt stated he found no true muscular weakness of her left biceps during examination. He found no evidence of a cervical radiculopathy based upon examination and imaging studies. He recommended Cantrell undergo another EMG/NCV before a diagnosis of cervical radiculopathy was accepted and before any cervical surgical intervention. Dr. Tutt reiterated Cantrell showed no evidence of any alteration of the structural integrity of her cervical spine due to her work injury. He further noted her non-displaced fracture of the wrist healed without incident and with no impairment.

Pike County submitted Cantrell's November 6, 2007 medical examination of school employees report. The report notes a history of degenerative disc disease, anxiety and depression. On examination, Cantrell was tender at L3, L4, L5 and S1 with decreased range of motion at the waist.

In the Opinion and Award, rendered June 13, 2012, the ALJ's findings relevant to this appeal are as follows:

> 15. The records detailing repeated visits to Dr. Gutti and the impairment rating offered by Dr. Hielig [sic] are the most persuasive regarding the extent and duration of the work related injury.
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> 16. Dr. Gutti's treatment records reflect a patient in constant pain over a significant period of time and makes clear that the pain is causally related to the work injury. Dr. Gutti's records

establish that there was an injury as that term is defined in the Act and that said injury was causally related to the work accident dated September 24th, 2010.

17. Dr. Hielig's [sic] opinion regarding the Plaintiff's 18% whole person impairment based upon the AMA Guides, 5th Edition, page 392, table 15-5 is also convincing to the ALJ.

18. Dr. Hielig's [sic] opinion regarding the impairment rating is convincing despite the opposing opinion of Dr. Tutt filed on behalf of the Defendant, Pike. Dr. Tutt disagrees with Dr. Hielig [sic] and recommends that the Plaintiff be evaluated by additional doctors of his choosing. Dr. Tutt's opinion does not alter the convincing nature of the records of the treating physician or of Dr. Hielig [sic] with respect to the impairment rating and restrictions. Dr. Tutt's opinion however regarding the date upon which maximum medical improvement was achieved, May 18, 2011, is credible and convincing.

19. Dr. Heilig assessed restrictions to the Plaintiff that prevent her from lifting over 20 pounds, restrict all overhead activity and assign her to permanent light duty.

20. The ALJ therefore finds that the Plaintiff is permanently partially disabled as a result of the work-related injury to the cervical spine and that she does not retain the ability to return to the type of work that she was performing at the time of the injury. Wherefore, the 3 multiplier found in KRS 342.730(1)(c)1 is applicable to the Plaintiff's claim. Further, Plaintiff is entitled to an additional factor of

> .4 due to her lack of completing an eighth grade education and a further additional factor of .2 as Plaintiff was over 50 years of age at the time of injury.
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> 21. The ALJ finds the report of Dr. Shraberg to be most convincing regarding the Plaintiff's psychological impairment. Dr. Shraberg listed numerous psychosocial and medical stressors other than the work-injury that may be contributing to stress for the Plaintiff and also noted significant symptom magnification with respect to the work injury.
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> 22. Dr. Shraberg concluded that the Plaintiff has 0% additional impairment due to the work injury and noted that no additional medications or treatment were needed as a result of the work injury from a psychological standpoint.
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> 23. The ALJ therefore finds that any psychological impairment that the Plaintiff has is not causally work-related and is therefore not compensable and dismissed.

Pike County filed a petition for reconsideration on June 25, 2012, seeking correction of the date permanent partial disability ("PPD") benefits would commence and raising essentially the same arguments it now raises on appeal. By order dated July 13, 2012, the ALJ corrected the beginning date for the PPD award but otherwise denied the petition for reconsideration.

On appeal, Pike County argues the evidence does not support a finding of a permanent cervical injury, nor does it support an award of the three multiplier. Pike County notes the reports of Dr. Tutt establish Cantrell had longstanding degenerative changes at C5-6 and C6-7 with no recent structural alteration and no evidence of a disc herniation. Pike County further cites evidence from Drs. Gutti, Goldman and Tutt in arguing Cantrell does not have a disc herniation as a result of the work injury, has no radiculopathy, and has normal neurological functioning.

Pike County contends Dr. Heilig's opinion does not constitute substantial evidence. Pike County notes Dr. Heilig based his finding of a right upper extremity radiculopathy on subjective complaints and an EMG, but did not personally review MRI films. Although he assigned an 18% impairment rating based upon DRE Category III, Pike County notes he did not provide an explanation or comment on how Cantrell fits within that category. Pike County contends Dr. Heilig was not aware Cantrell routinely received, prior to the work accident, medications for the same type of problems as she complains of now. Thus, pursuant to Cepero v. Fabricated Metals Corp., 132 S.W.3d 839 (Ky. 2004), Pike County argues his opinion is neither reliable nor probative.

Pike County argues substantial evidence does not support application of the three multiplier. Pike County notes Dr. Tutt stated Cantrell's wrist fracture has healed and she is capable of returning to her regular job without restrictions. Pike County contends Cantrell's complaints are exaggerated and any psychological condition is the result of pre-existing problems or symptom magnification.

Cantrell argues the ALJ erred in finding she did not suffer a psychological impairment as a result of her work-related injury. Cantrell states "the overwhelming evidence of substance in this case is that of Dr. Bobby Miller", who provided the most credible opinion regarding the psychological condition and whose examination was the most thorough. Cantrell notes Dr. Miller had numerous criticisms of Dr. Shraberg's assessment.

It is well established the claimant has the burden of proving each of the essential elements of her claim. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Cantrell was successful in proving she sustained a permanent injury and permanent disability as a result of the work accident. Thus, Pike County has the burden on appeal to show there was no substantial evidence to support the ALJ's determination. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986). Substantial evidence is defined as evidence of relevant

consequence having the fitness the induce conviction in the minds of reasonable persons. Smyzer v. B. F. Goodrich Chemical Co., 474 S.W.2d 367 (Ky. 1971). With regard to the psychological component, Cantrell's burden on appeal is to show the evidence compels a finding in her favor. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). Compelling evidence is defined as evidence that is so overwhelming no reasonable person could reach the same conclusion as the ALJ. REO Mechanical v. Barnes, 691 S.W.2d 224 (Ky. App. 1985).

As the fact-finder, the ALJ has the sole authority to determine the quality, character, and substance of the evidence. Square D Company v. Tipton, 862 S.W.2d 308 (Ky. 1993). The ALJ has the sole authority to determine the weight to be accorded and the inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997). The ALJ, as fact-finder, 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). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

The arguments of both parties on appeal are essentially an attempt to re-argue the merits of the claim. While Pike County is able to identify evidence that could support a finding in its favor regarding the permanency of Cantrell's injury and the impairment rating, there is substantial evidence to support the ALJ's findings on these issues. The ALJ was faced with conflicting evidence regarding whether the alleged injuries caused a harmful change or resulted in impairment. The ALJ considered all the medical opinions regarding Cantrell's physical injury and found the opinions of Drs. Gutti and Heilig more persuasive. Pike County's argument that the opinion of Dr. Heilig does not constitute substantial evidence is unpersuasive. Pike County cites to the fact Cantrell routinely received the same type of medication prior to the injury and Dr. Heilig's apparent lack of knowledge of that fact in arguing his opinions are based upon an inaccurate history and therefore do not constitute substantial evidence. Pike County identifies no medical record establishing the medication was prescribed for her cervical condition prior to the work injury. Significantly, the report of the school employee medical examination on November 6, 2007 notes tenderness from L3-S1 and makes no mention of the cervical spine. The record does not mandate a finding Dr. Heilig received an inaccurate

history concerning the cervical condition. Only when "it is irrefutable that the physician's history regarding work-related causation is corrupt due to it being substantially inaccurate or largely incomplete, an opinion generated by that physician on the issue of causation cannot constitute substantial evidence." Cepero v. Fabricated Metals Corporation, supra.

We find no error in the ALJ's selection of the impairment rating assessed by Dr. Heilig. Dr. Heilig clearly indicated he placed Cantrell within DRE Category III and assessed an 18% impairment pursuant to Table 15-5 of the AMA Guides. While Dr. Tutt disagreed with Dr. Heilig's rating, the ALJ was well within his authority as fact-finder in choosing Dr. Heilig's rating.

With regard to Cantrell's retained physical capacity, the ALJ accepted Dr. Heilig's restrictions of no lifting over twenty pounds and no overhead activity and limitation to permanent light duty work. Further, Cantrell testified she was unable to perform the duties of a custodian. The ALJ could reasonably conclude Cantrell did not retain the ability to return to her work as a custodian. Therefore, substantial evidence exists supporting application of the three multiplier pursuant to KRS 342.730(1)(c)1 and the ALJ's finding will not be disturbed.

The ALJ could have relied upon the opinion of Dr. Miller to award benefits for Cantrell's psychological condition. However, the ALJ found more persuasive Dr. Shraberg's opinion, which constitutes substantial evidence supporting the ALJ's finding regarding Cantrell's alleged psychological impairment. Dr. Shraberg noted a twenty-seven year history of treatment for anxiety and depression and prescriptions for the same psychological medications over that time. He further identified non-work-related stressors accounting for her condition. Thus, it cannot be said the evidence compels a finding Cantrell's psychological condition was caused by the work injury. Dr. Shraberg opined there was no objective evidence of an increase from her baseline condition as a result of the work injury. The ALJ considered all the medical opinions regarding Cantrell's psychological condition and, as was his right, found the opinion of Dr. Shraberg more persuasive.

Accordingly, the June 13, 2012 Opinion and Award rendered by Hon. Jonathan R. Weatherby, Administrative Law Judge, and the July 13, 2012 order ruling on Pike County's petition for reconsideration are **AFFIRMED**.

ALL CONCUR.

**COUNSEL FOR PIKE COUNTY BOARD OF EDUCATION:**

HON TODD KENNEDY
PO BOX 1079
PIKEVILLE, KY 41502

**COUNSEL FOR CONNIE CANTRELL:**

HON GLENN M HAMMOND
POB 1109
PIKEVILLE, KY 41502

**ADMINISTRATIVE LAW JUDGE:**

HON JONATHAN R. WEATHERBY
2780 RESEARCH PARK DRIVE
LEXINGTON, KY 40511