

Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: January 15, 2016

CLAIM NO. 201177038

PRESOTECH INDUSTRIES

PETITIONER

VS.

APPEAL FROM HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

LAVOY RANDLE and
HON. STEVEN G. BOLTON,
ADMINISTRATIVE LAW JUDGE

RESPONDENTS

OPINION
AFFIRMING
* * * * *

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

ALVEY, Chairman. Presotech Industries, Inc. ("Presotech") appeals from the Opinion, Award and Order rendered June 15, 2015 by Hon. Steven G. Bolton, Administrative Law Judge ("ALJ") awarding Lavoy Randle ("Randle") permanent total disability ("PTD") and medical benefits for a work-related right foot injury. Presotech also appeals from the August 4, 2015 order denying its petition for reconsideration.

On appeal, Presotech argues the ALJ erred in awarding total disability benefits during the time period Randle returned to work. Presotech also argues the ALJ's determination of PTD is not supported by substantial evidence. Because the ALJ's determination of PTD is supported by substantial evidence, and he performed an appropriate analysis pursuant to Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000), City of Ashland v. Taylor Stumbo, 461 S.W.3d 392 (Ky. 2015), and Gunderson v. City of Ashland, 701 S.W.2d 135 (Ky. 1985), we affirm.

Randle filed a Form 101 alleging she tore her right Achilles tendon on August 19, 2011 when she caught her right leg in scrap material while changing a roll in the machine she was operating. Randle began working for Presotech in September 1989.

Randle testified by deposition on December 1, 2014 and also at the hearing held March 22, 2015. Randle was born on June 29, 1950, and resides in Louisville, Kentucky. She graduated from high school and attended cosmetology school. Her work history includes employment at several daycare centers, in shipping and receiving for a wallpaper company for two years, and cleaning offices for a janitorial company from 1990 to 2006.

Presotech manufactures plastic and Styrofoam parts for GE and Toyota. Randle initially worked in general production for Presotech. There, she was required to catch products off of machines and scrap defective parts. Randle was promoted to machine operator in the 1990s and continued to work in that position at the time of the August 19, 2011 work injury. At that time, Randle primarily operated two machines. She described the Bruno as a large machine requiring lifting and loading of heavier parts. She also ran plastic parts on a Four-Poster machine. She occasionally loaded and caught parts from the machine. Her job required lifting heavy boxes filled with parts and required her to walk.

On August 19, 2011, Randle was operating the Four-Poster machine. As she walked away to retrieve more material, her right foot caught in scrap material on the floor. Randle experienced immediate pain and she sought treatment later that afternoon with Dr. Vipul Patel, a podiatrist with Commonwealth Foot and Ankle Center. Prior to the work accident, Randle actively treated with Dr. Benjamin Schaffer, who works with Dr. Patel, for bone spurs. Dr. Patel surgically repaired her torn Achilles tendon on September 2, 2011. Randle subsequently began treatment with Dr. Ramsey Majzoub at Baptist Hospital East

Wound Care Clinic ("the Clinic") in November 2011 because her surgical incision would not close. Dr. Majzoub oversaw dressing management and ordered hyperbaric oxygen therapy. Dr. Majzoub performed surgeries in March 2012, September 2012, and July 2013. Randle also treated with Dr. Rodney Chou for pain management. Randle was released from Dr. Majzoub's care in January 2014 and from Dr. Chou's care in February or March 2014 without restrictions. Randle no longer receives medical treatment for her right foot.

Following her work accident on August 19, 2011, she was off work until January 2013. She returned to work for Presotech from January 2013 through May 2013. She initially returned to limited duty on four hour shifts for two weeks, and did light cleaning around the plant. She was then placed in general production where she was required to stand and do scrapping. She occasionally operated a machine after which she returned to general production. Randle was paid a higher wage when she operated a machine.

Randle testified her wound re-opened after her return to work: once in February or March 2013, then in March or April 2013, and again in either April or May 2013. Randle indicated the wound was successfully closed following the first two re-openings, but did not do so

following the third. She left Presotech in May 2013 following the third wound re-opening, and has not returned to any work since. Randle resumed treatment with Majzoub, who eventually performed surgery on July 8, 2013. Randle is currently drawing Social Security disability benefits.

Randle testified she has continued pain and swelling in her right foot. Her right foot swells after walking a half a block. She sometimes uses a cane to help with her balance, and can perform only limited housework. She elevates her right foot on a daily basis, and does not believe she is capable of returning to any work, including her position at Presotech, due to ongoing problems with her foot.

Randle attached voluminous medical records to her Form 101. She treated with Dr. Schaffer on three occasions in 2011 for bilateral Achilles tendonitis and bone spurs. Randle returned to Commonwealth Foot and Ankle Center on August 19, 2011 for her work-related right foot injury which was treated by Dr. Patel. Following an MRI, Dr. Patel stated she had a tendon rupture of the right Achilles tendon. On September 2, 2011, Dr. Patel performed an Achilles debridement with reattachment to calcaneus with suture anchor on the right foot. After several follow-up visits, Dr. Patel referred Randle to the Clinic for a

dehiscenced surgical wound on October 26, 2011. Subsequently, Randle continued to see Dr. Patel until August 2012, who primarily documented treatment provided by the Clinic. Throughout his course of treatment, Dr. Patel advised Randle to remain non-weight-bearing with use of crutches or a knee walker. The last office visit record is dated August 30, 2012, at which time Dr. Patel advised Randle to continue treatment with the Clinic, and remain off work.

The Clinic records indicate Randle treated with Dr. Majzoub on over thirty occasions from November 2, 2011 through December 4, 2012 for surgical wound dehiscence, subsequent infection, and right leg ulcer. His treatment included multiple debridements, wound care management, hyperbaric oxygen therapy, physical therapy, antibiotic treatment, and an Alpligraf. On March 16, 2012, Dr. Majzoub performed a debridement of Achilles ulcer and tendon; removal of foreign body from Achilles tendon; and dual layer closure of right Achilles tendon injury/leg wound. On September 20, 2012, Dr. Majzoub performed an exploration and removal of a foreign body consisting of both a bone anchor and the polyester suture. Dr. Majzoub restricted Randle from work through the end of 2012. On November 6, 2012, Dr. Majzoub allowed Randle to perform light duty sit-down work if available and indicated she

would need three additional weeks of work hardening in preparation for returning to full-duty work. In the last record dated December 4, 2012, Dr. Majzoub stated Randle will need to continue her work conditioning, noting she had completed one week of up to three weeks of conditioning. The parties filed no additional treatment records from Dr. Majzoub.

Randle also treated with Dr. Chou for right leg pain beginning on January 21, 2013. Dr. Chou diagnosed pain in the limb with Achilles tendon rupture and prescribed Naproxen. He noted Randle had returned to work for four hours per shift and weight-bearing was tolerated. Following an examination, Dr. Chou allowed Randle to return to work "with shifts not more than 6 hours for 1 week then 8 hours for 1 week then RTC." On February 4, 2013, Dr. Chou stated Randle had reached maximum medical improvement ("MMI") and could return to work without restrictions. On December 19, 2013, a right ankle MRI was ordered and Randle was restricted to a sit down job. On January 7, 2014, Dr. Chou noted the MRI showed no evidence of osteomyelitis. He allowed Randle to return to work with no prolonged standing or walking more than forty-five minutes without a five minute break. On February 4, 2014, Dr. Chou allowed Randle to work without restrictions other than no shifts over

eight hours. On March 18, 2014, Dr. Chou stated Randle had reached MMI. In a letter dated April 17, 2014, Dr. Chou assessed a 7% impairment rating pursuant to the American Medical Association, Guides the Evaluation of Permanent Impairment, 5th Edition ("AMA Guides").

In support of her claim, Randle filed the October 22, 2014 report of Dr. Warren Bilkey, who also testified by deposition on January 13, 2015. He diagnosed a 8/19/11 work injury, Achilles tendon rupture in the right lower extremity. He noted Randle underwent surgical repair but had complications with wound dehiscence, followed by difficulties with wound closure and subsequent surgeries. Dr. Bilkey noted the presence of chronic residual right ankle pain, limitation of motion, weakness, and impaired gait. Dr. Bilkey opined the diagnoses are due to the August 19, 2011 work injury. He found the pre-existing bilateral Achilles tendonitis and heel spurs unrelated to the work injury. He opined Randle had reached MMI and he recommended a home exercise program. He also assessed a 10% impairment rating pursuant to the AMA Guides. He restricted Randle from standing more than thirty minutes at a time, and did not believe she is capable of standing for more than half a work day. Dr. Bilkey stated the

restrictions are due to the work injury and preclude her from returning to her former job.

Dr. Bilkey testified Randle reached MMI on April 4, 2014. He emphasized the restrictions he assigned are based on Randle's symptoms, his physical examination findings and a review of her records, and are attributable to the work injury, subsequent surgeries and residual weakness.

Presotech filed the January 30, 2015 report of Dr. Daniel Primm, Jr. He diagnosed chronic pre-existing bilateral Achilles tendinitis and posterior heel spurs; acute on chronic Achilles tendon rupture; and status post right partial Achilles tendon tear repair, complicated by a wound infection and dehiscence, requiring prolonged wound care. Dr. Primm stated Randle's injuries caused her complaints. He found Randle attained MMI on March 18, 2014 and assessed a 6% impairment rating pursuant to the AMA Guides. Dr. Primm restricted Randle from activities requiring regular squatting or climbing of ladders or steps. He opined Randle retains the physical capacity to return to her job as a machine operator.

Presotech also filed the December 17, 2014 functional capacity evaluation ("FCE") performed by Rick Pounds. Mr. Pounds concluded the test data demonstrated

Randle has the ability to work at the sedentary and light physical demand levels, with most of her performance into the medium physical demand level.

The April 22, 2015 Benefit Review Conference order and memorandum indicates the parties stipulated Presotech voluntarily paid temporary total disability ("TTD") benefits from August 20, 2011 to January 8, 2013 and again from May 8, 2013 through January 29, 2014 at a rate of \$397.77 for a total of \$44,777.52, in addition to medical expenses. The parties stipulated to an average weekly wage of \$631.58. The parties identified the contested issues as benefits per KRS 342.730 including extent and duration with multipliers, exclusion for pre-existing disability/impairment, TTD, and PTD versus permanent partial disability ("PPD").

In the June 15, 2014 opinion, the ALJ summarized the lay and medical evidence. He found Randle suffered a work-related injury which she timely reported. He concluded there was no pre-existing active right ankle condition. He relied upon Dr. Bilkey in finding Randle reached MMI on April 4, 2014. Regarding TTD benefits, he stated as follows:

As to the TTD issue, based on the Average Weekly Wage stipulated by the parties, Ms. Randle would have been

entitled to TTD benefits in the sum of \$421.05 per week from and after August 19, 2011 rather than the \$397.77 she actually received. As I am awarding her permanent total disability benefits, those payments will be absorbed into PTD. Nonetheless, the Defendant/Employer is entitled to credit for TTD paid in the amount of \$397.77 per week from August 20, 2011 to January 8, 2013 and May 8, 2013 to January 29, 2014.

After noting Dr. Chou, Dr. Primm and Dr. Bilkey all assessed an impairment rating, the ALJ made the following findings of fact supporting his determination of permanent total disability:

Dr. Patel last saw the Plaintiff on August 30, 2014. Although Dr. Patel did not assign formal restrictions on that date (probably because he thought he would see her again), he still had her on a "knee walker" or a cane. She was to stay off work and return in 3 weeks. She apparently made the decision not to continue in his care.

Dr. Majzoub last saw Ms. Randle on December 4, 2012. She was still off work, but in "work hardening". He did not address future permanent restrictions.

Dr. Chou last saw the Plaintiff on March 8, 2014. She was released from treatment. Permanent work restrictions were not addressed, although he noted a mildly severe gait derangement in assigning a 7% WPI. He also stated that she was expected to wear her compression garment.

Dr. Bilkey recommended that Ms. Randle not be standing for more than 30 minutes at a time. He further opined that she is incapable for practical purposes of standing for any more than half a work day. He does not believe that she can return to the full spectrum of work duties she was performing at the time of her injury.

Dr. Primm opined that she would need to avoid activities that would require regular squatting or regular climbing of ladders or steps. he [sic] did note however that his WPI rating was based on range of motion of her ankle that would account fro [sic] her mild residual limp.

The Plaintiff herself testified as recently as the hearing of April 22, 2015 that she doesn't believe she is capable of going back to work due to her right foot and ankle. Her right foot hurts and starts to swell when she walks more than ½ a block. She will use her cane on occasion to help her balance. She has to limit her housework because her foot will start to swell and she'll have to sit down and elevate it. Sitting for periods of time causes her foot to start throbbing. A worker's testimony is competent evidence of his physical condition and of his ability to perform various activities both before and after being injured. *Hush v. Abrams*, 584 S.W.2d 48 (Ky. 1979).

Assuming that the claimant is credible (and I do so find) she has a good understanding of her medical condition. "A claimant, like any lay witness, may not undertake to make a prognosis, but he may state facts concerning his condition and these facts may be of such a nature as to enable the Board to determine *the extent and duration of*

the disability even in the absence of medical testimony." See *Johnson v. Skilton Const. Corp.*, 467 S.W.2d 785, 788 (Ky. 1971), quoting *Yocum Creek Coal Co. v. Jones*, 214 S.W.2d 410, 412 (Ky. 1948)(emphasis added).

In *Ruby Construction v. Curling*, 451 S.W.2d 610 (1970), the Court of Appeals, then the highest court of the Commonwealth, explained that an adjudicator is not confined to the medical evidence, but can consider the testimony of the claimant and other lay witnesses in assessing that claimant's ability to perform tasks essential to his or her occupational classification. As the court stated:

.....[T]o hold otherwise would relegate all claimants in workmen's compensation cases to the magnanimous findings, or the lack of magnanimity, of the many practicing, examining, and surgical practitioners attending the hurts and wounds of workmen and working women. We are not blind to the fact that we are living in a computerized society where numbers, by some people, sometimes count for more than individual identity, but we do not believe that medical science has advanced to the point that it can be determined that a well-trained physician or surgeon can ascertain feelings and pain in percentage points. We adhere to the position that a claimant can know as a fact if he is in pain, as well as he can know when it hurts to

perform certain physical activities. He is entitled to tell, and our court will give credence and weight to such testimony.

By extension, the claimant can know if treatment is effective in the cure and relief of his symptoms. In compensation proceedings, a claimant's testimony concerning his condition is competent and has probative value. *James v. Elkhorn Piney Coal Mine Co.*, 127 S.W.2d 823 (Ky. 1939). A worker's testimony is competent evidence of his physical condition. *Ira A. Watson Dept. Store v. Hamilton*, 34 S.W.3d 48 (Ky., 2000). In such instances, it is well-settled law that a claimant's own testimony may be relied upon by the fact finder in deciding questions involving post-injury physical capacity. *Hush v. Abrams*, (Supra); *Ruby Construction Company v. Curling*, 451 S.W.2d 610 (Ky. 1970).

Based on the evidence taken as a whole, and having considered the factors mandated by the holdings in *Ira A. Watson Dept. Store v. Hamilton*, Ky. 34 SW3d 48 (2000) and *McNutt Construction Co. v. Scott*, Ky. 40 SW3d 854 (2001) I am persuaded that the Plaintiff is permanently totally disabled.

In making that finding, I am persuaded by a number of evidentiary factors.

First, as to the Plaintiff's current ability to perform factory work, I rely on the Plaintiff's testimony and the medical opinion of Dr. Bilkey, which I find to be persuasive. By those measures, the Plaintiff could not work a standard shift anywhere within the scope of her previous work experience.

Second, I note the FCE of Mr. Rick Pounds. Mr. Pounds found the Plaintiff to be unable to function in the work world in anything other than the Sedentary or Light categories. Mr. Pounds found the Plaintiff to be "extremely pleasant and cooperative." He never noted an apparent lack of effort or attempt to dissemble. He noted subjective complaints of discomfort for her right foot, without any opinion that she demonstrated lack of effort or symptom magnification.

Third, I note Ms. Randle's age. She will be 65 on June 29, 2015 and is currently collecting a modest amount of Social Security Disability payments.. It is unrealistic to think that she is going to be able to readily readjust to a new work environment or be susceptible to retraining, even if someone in a competitive economy is going to hire a 65 year old woman on disability.

Finally, I note Ms. Randle's lack of education and vocational training. Her cosmetology training is far behind her and it is unlikely that she could stand on her feet long enough to perform that job, even if she could be retrained. Otherwise, she is suitable only for factory or general janitorial work by her life experience, which she could not physically perform with her age and physical restrictions.

. . .

6. The critical issue is whether or not the claimant has suffered a complete and permanent inability to perform any type of work as defined above. The Supreme Court of Kentucky has stated in Ira A. Watson Dept. Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000)

that the principles set forth in Osborne v. Johnson, 432 S.W.2d 800 (Ky. 1968) must be weighed in determining if a claimant fits within the definition of total disability. Factors to be considered include the claimant's post injury physical, emotional, intellectual, and vocational status, and whether or not there is a likelihood the claimant will be able to find work consistently under normal employment conditions or in a competitive economy. See also McNutt Construction/First General Services v. Scott, 40 S.W.3d 854 (2001).

7. The claimant is 65 years of age and has a 12th grade education. She has no specialized vocational training or skills other than cosmetology in which she has not worked for many years. Her work history includes 28 years working in factories either as a janitor or doing machine work. When asked at the hearing to describe her current symptoms, plaintiff testified she doesn't believe she is capable of going back to work due to her right foot and ankle. Her right foot hurts and starts to swell when she walks more than ½ a block. She will use her cane on occasion to help her balance. She has to limit her housework because her foot will start to swell and she'll have to sit down and elevate it. Sitting for periods of time causes her foot to start throbbing. During the hearing held before the undersigned ALJ, the plaintiff testified in detail in response to the questions. I found her to be credible and sincere. The claimant's work history consists primarily of factory work. She has no education, training, or experience for any type of sedentary or light duty work. It is not likely that she will

be capable of obtaining regular work in a competitive economy.

The ALJ awarded PTD benefits from and after August 20, 2011, as well as medical benefits. The ALJ found Presotech was entitled to a credit for the TTD benefits it had voluntarily paid.

Presotech filed a petition for reconsideration asserting the same arguments it now makes on appeal. In the August 4, 2015 order denying its petition, the ALJ first provided a summary of the law regarding entitlement to TTD benefits and noted KRS 342.730 does not establish a credit for wages paid. He then stated, "Here, the claimant was temporarily totally disabled during the disputed period because the record clearly reveals that had she not continued to work her wound would not have reopened and she would not have again been rendered temporarily totally disabled." He also declined to alter the award of PTD benefits, noting he considered Randle's age, her education and her work experience, reviewed her restrictions and took into account her credible testimony that she did not believe she could return to any type of substantial, gainful employment.

On appeal, Presotech argues the ALJ's finding of PTD is not supported by substantial evidence. Presotech

also argues Randle is not entitled to total disability benefits during the time period she returned to work from February 2013 through May 2013.

As the claimant, Randle had the burden of proving each of the essential elements of her cause of action, including the extent of her disability. See KRS 342.0011(1); Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Since Randle was successful in that burden, the question on appeal is whether there is substantial evidence of record to support 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).

Presotech has challenged the ALJ's determination of PTD as not supported by substantial evidence. Authority has long acknowledged in making a determination granting or denying an award of PTD benefits, an ALJ has wide ranging discretion. Seventh Street Road Tobacco Warehouse v. Stillwell, 550 S.W.2d 469 (Ky. 1976); Colwell v. Dresser Instrument Div., 217 S.W.3d 213, 219 (Ky. 2006). 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). Although a party may note evidence supporting a different outcome than 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).

The function of the Board in reviewing an ALJ's decision is limited to a determination of whether the findings made are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, supra. The Board, as an appellate tribunal, may not usurp the ALJ's role as fact-finder by superimposing its own appraisals as to weight and credibility or by noting other conclusions or reasonable

inferences that otherwise could have been drawn from the evidence. Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999).

We find the ALJ's determination Randle is permanently totally disabled is in accordance with the Kentucky Supreme Court's holding in Ira A. Watson Department Store v. Hamilton, supra, and the factors set forth in City of Ashland v. Taylor Stumbo, supra. Taking into account Randle's age, education and past work experience, in conjunction with her post-injury physical status, the ALJ was persuaded due to the effects of the work-related injury, she is totally disabled. While Presotech introduced evidence expressing a different point of view, the ALJ's determination is sufficiently supported by the record. Because the outcome selected by the ALJ is supported by substantial evidence, we are without authority to disturb his decision on appeal. See KRS 342.285; Special Fund v. Francis, supra.

The ALJ first considered Randle's current ability to perform factory work. Based upon Dr. Bilkey's restrictions and his opinion Randle could not return to her job performed at the time of her injury, as well as Randle's own testimony, the ALJ concluded Randle could not work a standard shift within the scope of her previous work experience. The ALJ also considered the FCE by Mr. Pounds,

who found Randle is limited to sedentary or light work. The ALJ also considered Randle's age of 65, and lack of education and vocational training. He ultimately concluded Randle's age and physical restrictions preclude her from physically performing her prior jobs, which consists primarily of a 28 year work history in a factory or janitorial setting.

The ALJ relied upon Randle's testimony in determining she is permanently totally disabled. Randle testified about her current symptoms and her belief she can longer perform any work due to the effects of her right foot condition. Randle's testimony regarding her post-injury ability to work and her symptoms is substantial evidence, as an injured worker's credible testimony is probative of her ability to labor post-injury. See Hush v. Abrams, 584 S.W.2d 48 (Ky. 1979); See also Carte v. Loretto Motherhouse Infirmary, 19 S.W.3d 122 (Ky. App. 2000).

The above testimony and opinions constitute substantial evidence supporting a determination of PTD in accordance with Ira A. Watson Department Store v. Hamilton, supra. The ALJ acted well within his discretion and we will not disturb his decision.

Presotech also challenges the ALJ's award of total disability benefits, whether in the form of TTD or

PTD benefits, during the time period Randle returned to work from January 2013 through May 2013. Since the ALJ awarded PTD benefits and medical benefits, we think the proper question is whether the ALJ erred by awarding PTD benefits during her return to work.

Gunderson v. City of Ashland, supra, stands for the proposition that when regular employment is not available in the kind of work a claimant is customarily able to perform, he may be found totally disabled despite the fact that limited work was made available due to the generosity of the employer. Our courts have repeatedly held that a return to employment following an injury, whether full-time or part-time, does not necessarily constitute a return to "work" for purposes of KRS Chapter 342 and, under certain circumstances, an employee can be permanently totally disabled and immediately entitled to indemnity benefits even though he or she continues to be gainfully employed. *Cf.* Gunderson v. City of Ashland, supra; R.C. Durr Co., Inc. v. Chapman, 563 S.W.2d 743 (Ky. App. 1978); Yocom v. Yates, 566 S.W.2d 796, 797 (Ky. App. 1978). The measure in such circumstances is the claimant's post-injury earning capacity based on normal employment conditions, as opposed to actual wages received, and whether the claimant's work was "undistorted by such

factors as business boom, sympathy of a particular employer or friends, temporary good luck, or the superhuman efforts of the claimant to rise above his [or her] handicaps." Gunderson v. City of Ashland, 701 S.W.2d at 136.

The ALJ briefly addressed this issue in the order on petition for reconsideration by stating as follows: "Here, the claimant was temporarily totally disabled during the disputed period because the record clearly reveals that had she not continued to work her wound would not have reopened and she would not have again been rendered temporarily totally disabled."

Randle testified she returned to light duty, working four hour shifts for two weeks cleaning the plant. She was then placed in general production. Randle also occasionally operated a machine when needed during this time frame. However, during her return to work, Randle consistently testified her wound re-opened twice between February and April 2013, but was able to close both times. However, her wound re-opened a third time in April or May 2013 and Randle ceased working. She resumed treatment with Dr. Majzoub, who performed surgery in July 2013. Randle's testimony supports the ALJ's determination she remained permanently and totally disabled during the time she

returned to work, and is consistent with Gunderson v. City of Ashland, supra.

Accordingly, the June 15, 2015, Opinion, Award and Order and the August 4, 2015 order on petition for reconsideration by Hon. Steven G. Bolton, Administrative Law Judge, are **HEREBY AFFIRMED**.

ALL CONCUR.

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