Commonwealth of Kentucky
Workers' Compensation Board

OPINION ENTERED: September 4, 2015

CLAIM NO. 201378271

REBECCA KRIST-WATKINS PETITIONER

VS. **APPEAL FROM HON. JANE RICE WILLIAMS, ADMINISTRATIVE LAW JUDGE**

MAGNA SEATING INC.,
EXPRESS EMPLOYMENT PROFESSIONALS, and
HON. JANE RICE WILLIAMS,
ADMINISTRATIVE LAW JUDGE RESPONDENTS

OPINION
AFFIRMING IN PART,
VACATING IN PART, & REMANDING

* * * * * *

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

ALVEY, Chairman. Rebecca Krist-Watkins ("Watkins")[1] appeals from the Opinion, Order, and Award rendered March 30, 2015 by Hon. Jane Rice Williams, Administrative Law Judge ("ALJ")

[1] At the time of the hearing, the Claimant had recently remarried and changed her last name to Hopkins. We will refer to the Claimant as Watkins throughout the opinion.

and the May 5, 2015 order denying her petition for reconsideration. In the March 30, 2015 opinion, the ALJ determined Watkins sustained temporary injuries on each of the four alleged injury dates. The ALJ awarded Watkins medical expenses for her temporary work-related strain of October 15, 2012, with Express Employment Professionals' obligation ending on October 22, 2012. The ALJ awarded medical expenses for "temporary work-related strains of December 4, 2012, March 26, 2013 and June 6, 2013" with Magna Seating Inc.'s ("Magna") obligation for payment of such expenses ending on November 18, 2013. The ALJ also awarded temporary total disability ("TTD") benefits to be paid by Magna from June 13, 2013 through July 31, 2013.

On appeal, Watkins argues the medical evidence compels a finding she sustained four work injuries while working for Magna warranting an award of permanent partial disability benefits. We disagree and affirm in part since substantial evidence supports the ALJ's determination and no contrary is compelled. However, we vacate and remand for resolution of the medical fee dispute filed by Magna on April 2, 2014.

Watkins filed a Form 101 on July 2, 2013 alleging injuries to her right shoulder, neck, and cervical spine and identified Magna as her employer. Watkins listed October

15, 2012, December 6, 2012 and March 26, 2013 as the dates of injury. She indicated her injuries were the result of "repeated micro-trauma at her assembly job" representing "a series of work related traumatic events including culumative (sic) trauma. . . ." The Form 101 was subsequently amended to correct the December 2012 date of injury to December 4, 2012; to add Express Employment Professionals as an additional employer; and to add a fourth date of injury, June 4 to 6, 2013.

A benefit review conference ("BRC") was held on November 6, 2014. The BRC order and memorandum reflect the parties stipulated Watkins sustained alleged work-related injuries on October 15, 2012, December 4, 2012, March 26, 2013 and June 6, 2013. The parties stipulated Magna paid TTD benefits from June 13, 2013 through July 31, 2013, and medical benefits for the December 4, 2012 injury. The following were identified as contested issues: benefits per KRS 342.730, work-relatedness/causation, unpaid or contested medical expenses, injury as defined by the Act, TTD (overpayment, rate and duration), and occurrence of the March 26, 2013 and June 6, 2013 injuries.

Watkins testified by deposition on October 9, 2013 and January 22, 2014, and at the hearing held January 28, 2015. Watkins was born in 1961. Watkins fractured her

lumbar spine in an unrelated motor vehicle accident in 2001, resulting in a surgery and placement of a lumbar bone stimulator.

Watkins began working at Magna through Express Employment Professionals on August 13, 2012. Following a ninety day period, Watkins was hired by Magna as a full-time employee on October 18, 2012. Therefore, Watkins was considered an employee of Express Employment Professionals at the time of the first alleged injury on October 15, 2012 and an employee of Magna at the time of the remaining three injury dates. At all relevant times, Watkins worked on the assembly line at Magna, a manufacturer of seats for Ford vehicles, rotating between three stations every hour. An undated and unsigned job description was introduced as an exhibit to the hearing. The document indicates a production assembler was required to frequently stand; stoop; bend; walk; sit; use hands to handle, manipulate or feel objects, tools or controls; reach with hands and arms; climb stairs; and occasionally lift and move up to fifty-two pounds. Watkins ceased working for Magna on June 6 or 7, 2013, and has not returned to any employment since.

Watkins testified the first station required her to push a cap onto a piece of metal which joined two sections of the seat. Watkins indicated this was a

difficult task because she had to hit the cap with the palm of her hand. The second station consisted of placing a plastic cover on the seat, and using a torque gun to secure bolts. The third station consisted of sitting in a spinning seat and using a torque gun to secure screws.

On October 15, 2012, while employed by Express Employment Professionals, she experienced an immediate onset of pain in her right shoulder and chest when she was forcing the cap onto a piece of metal. At the hearing, she indicated the shoulder pain radiated into her right arm and fingers. She notified her supervisor and was sent to Occupational Physician Services ("OPS") where she treated on two occasions. She was placed on light duty for a week, and then was released back to regular duty on October 22, 2012. Watkins returned to her regular job on October 22, 2012 and continued to work until her second injury on December 4, 2012. Watkins indicated her right shoulder had improved enough to allow her to work, and did not seek additional treatment until her second injury.

On December 4, 2012, Watkins was performing the same task when she again felt pain in her right shoulder radiating into her arm, as well as tingling. Watkins notified her supervisor and was sent to the emergency room at Jewish Hospital. She returned to OPS the following day,

and was referred to Dr. Frank Bonnarens who treated her for rotator cuff tendonitis and placed her on light duty for a period of time. He allowed Watkins to return to regular duty on February 23, 2012. She was later referred to Dr. Ellen Ballard.

On March 26, 2013, Watkins was installing a seat cushion onto a metal frame when she experienced right shoulder and elbow pain, as well as numbness in the fingers of her right hand. Watkins notified her supervisor and returned to the emergency room at Jewish Hospital. Watkins was referred to Dr. Kris Abeln, with whom she began treating on April 1, 2013. He administered cortisone injections to her right shoulder. Watkins testified she first noticed cervical pain after getting the injection in her shoulder, and admitted Dr. Abeln first diagnosed her with a cervical condition on April 22, 2013. Dr. Abeln restricted Watkins to light duty until May 31, 2013, and then allowed her to return to regular duty.

On June 6, 2013, Watkins requested to go to the emergency room due to her neck pain, but this request was denied by Magna. Watkins subsequently ceased working at Magna, and returned to Dr. Abeln, who restricted her from work. He referred her to Dr. Richard Holt to address her cervical complaints. Dr. Holt restricted her from work, and

prescribed a cervical traction kit and a soft-collared brace. He also ordered a cervical MRI, which was delayed due to concerns over her lumbar stimulator. The workers' compensation insurer denied the recommended treatment by Dr. Holt, and has denied all additional medical treatment. Watkins currently treats with a pain management physician in St. Charles, Missouri, where she currently resides. He has administered several cervical injections, and prescribes muscle relaxers for the right shoulder. To her knowledge, Watkins has not been released to return to work, and feels she is unable to return to her former job with Magna due to continued right shoulder and neck symptoms.

Watkins filed the records of OPS. On October 15, 2012, Watkins reported pain in her right shoulder, right arm and chest after pushing on a cap. Watkins was prescribed medication, restricted from lifting over five pounds and no overhead or repetitive work with her right arm, and diagnosed with right axilla strain and costochondritis. Watkins returned on October 22, 2012 reporting her right arm was pain free. She was returned to regular duty work and prescribed medication.

Watkins visited the emergency room on December 4, 2012, complaining of right shoulder pain while assembling seats at work. The following day she returned to OPS

complaining of right shoulder tingling and pain radiating down her arm and hand while pushing on a cap at work. OPS diagnosed her with a right shoulder strain, prescribed medication, restricted her from using her right arm, and referred her to Dr. Bonnarens.

Watkins treated with Dr. Bonnarens from December 10, 2012 through March 2013 for her right shoulder complaints. After ruling out a rotator cuff tear or labral pathology, Dr. Bonnarens diagnosed rotator cuff tendonitis, ordered physical therapy, and restricted Watkins from lifting over ten pounds and repetitive use of her right arm on December 28, 2012. On February 25, 2013, Dr. Bonnarens released Watkins to return to regular duty. On March 15, 2013, Watkins reported severe shoulder pain with tingling in her fingers. Following an examination, Dr. Bonnarens noted Watkins' pain was "far out of proportion" to any demonstrable pathology. He referred Watkins to Dr. Ballard and kept her on regular duty.

Watkins went to the emergency room at Jewish Hospital on March 26, 2013 complaining of a "work injury to rt. arm shoulder area unsure of injury may have been 3/23." She also reported right elbow pain, and hand numbness and tingling. Watkins began treating with Dr. Abeln on April 1, 2013, who noted she has had right shoulder pain since the

initial work injury in December, and exacerbated her right elbow complaints in March 2013. Dr. Abeln noted her pain extends from her neck to the shoulder, and down to her elbow. He performed an examination and reviewed radiographic studies. X-rays of her cervical spine showed mild arthrosis. Dr. Abeln ordered physical therapy. Return to work slips show Dr. Abeln released Watkins to return to regular duty on May 31, 2013. Watkins returned to Dr. Abeln on June 6, 2013 complaining of cervical pain after returning to work on June 4, 2013. Dr. Abeln prescribed Flexeril and Celebrex, and a home traction unit. He declined to assign restrictions to her work activities. On June 13, 2013, Dr. Abeln diagnosed unresolved neck pain, referred her to a spine surgeon, and restricted Watkins from work.

In an October 17, 2013 letter outlining his care for Watkins' right arm and neck, Dr. Abeln noted her injury occurred in December 2012 and was possibly exacerbated in March 2013. He noted Watkins reported her cervical symptoms have been present since her original injury. After summarizing her symptoms and treatment, Dr. Abeln agreed with Dr. Holt's recommendation of the removal of her bone stimulator to allow for a cervical MRI.

In her July 17, 2013 report, Dr. Ballard noted the October 2012, December 2012 and March 2013 work injuries,

and treatment. After reviewing the records and performing an examination, Dr. Ballard diagnosed a history of right arm and cervical spine pain, and previous history of lumbar fusion status post motor vehicle accident. Dr. Ballard recommended a cervical MRI or a CT myelogram to rule out a disc herniation. She further opined Watkins does not need to see a spine surgeon or neurosurgeon until the diagnostic study is complete.

Watkins treated with Dr. Holt from July 2013 through January 2014 for cervical pain radiating into her right shoulder and elbow. On July 23, 2013, Dr. Holt noted Watkins noticed her cervical pain after having her shoulder injected by Dr. Abeln in April 2013. After an examination, Dr. Holt diagnosed cervical degeneration at C5-6 and cervicalgia. Dr. Holt recommended cervical traction, a soft collar, and medication. He restricted her to sedentary work, and noted further diagnostic studies may be considered. When her neck pain did not improve, Dr. Holt recommended the removal of the stimulator so she can have a cervical MRI on August 6, 2013.

The December 3, 2013 MRI report was prepared by radiologist, Dr. Jonathan Eugenio. He found the MRI demonstrated a disc bulge with anterior impression on the thecal sac at C2-3, C3-4 and C6-7; mild anterolisthesis and

anterior disc bulge with anterior osteophytes at C4-5; and a posterior disc herniation with edematous changes abutting the spinal cord, moderate spinal stenosis, a disc bulge and mild left neural foraminal stenosis at C5-6. Dr. Holt agreed with Dr. Eugenio's interpretation of a C5-6 disc herniation in a letter dated January 9, 2014. Based upon Watkins' description of her job, Dr. Holt attributed the exacerbation of her symptoms from the C5-6 disc herniation to her work. He advised Watkins avoid overhead work or heaving lifting. He noted the possibility of a future nerve root block or fusion surgery at the C5-6 level.

Magna submitted a January 10, 2014 medical questionnaire completed by Dr. Bonnarens, who treated Watkins from December 2012 through March 2013. After reviewing the records, Dr. Bonnarens opined Watkins' right shoulder and neck conditions are not related to the October 15, 2012 work incident. He likewise opined the October 15, 2012 work accident did not result in a harmful change to the human organism as evidenced by objective medical findings with regard to Watkins' neck or right shoulder condition. He diagnosed Watkins with tendonitis which resolved by October 22, 2012 as a result of the October 15, 2012 work incident. He assessed a 0% impairment rating pursuant to the American Medical Association, Guides to the Evaluation

of Permanent Impairment ("AMA Guides"). Dr. Bonnarens found no need for permanent restrictions or future medical treatment.

Dr. Ballard prepared additional reports dated April 14, 2014 and July 23, 2014. In the April 2014 report, Dr. Ballard stated she reviewed the December 2013 MRI report and films, the reports of Dr. Richard Sexton and the January 9, 2014 letter from Dr. Holt. Dr. Ballard noted the "MRI is of very poor quality, but the only abnormality that I see on this disc is a small disc bulge at C5-6. Also, I would not agree with the other interpretations." Dr. Ballard opined Watkins sustained an injury as a result of the December 4, 2012 work accident, and diagnosed Watkins with a strain. Dr. Ballard stated there is no indication Watkins had a history of other accidents on March 26, 2013 or June 6, 2013. In the July 23, 2014 report, Dr. Ballard critiqued the opinions of Dr. Warren Bilkey.

Magna introduced several reports prepared by Dr. Robert Sexton dated November 7, 2013, November 18, 2013, February 19, 2014 and July 29, 2014. Dr. Sexton also testified by deposition on July 7, 2014. In the November reports, issued prior to the December 2013 cervical MRI, Dr. Sexton noted the October 2012, December 2012 and March 2013 work injuries, and the medical records. After performing an

examination, Dr. Sexton diagnosed Watkins with a resolved shoulder contusion. He also diagnosed chronic, mild cervical spondylosis without discopathy, radiculopathy, neuropathy or myelopathy attributable to the normal aging process. Dr. Sexton opined Watkins did not sustain a cervical injury as a result of either the October 2012, December 2012 or March 2013 work accidents. In support of his conclusion, Dr. Sexton noted Watkins did not complain of cervical symptoms following either the October or December 2012 work events. Watkins did not develop neck pain until after receiving a right shoulder cortisone injection, and it did not correspond to any work event. In addition, his examination demonstrated no objective indication of a cervical radiculopathy.

Dr. Sexton opined Watkins does not require any additional treatment or diagnostic testing for the cure or relief of the effects of her work accidents. He also stated Drs. Abeln's and Holt's recommendations her lumbar bone stimulator be removed in order to have a cervical MRI are "medically outrageous." Based upon the AMA Guides, he stated Watkins does not meet the criteria for a permanent impairment rating. Dr. Sexton opined Watkins has a marked discrepancy between her subjective complaints and objective findings in light of the fact she has no rotator cuff or

labral shoulder injury; no clinical evidence of radiculopathy, myelopathy, or discopathy; and has no industrial injury.

Dr. Sexton reviewed the December 3, 2013 MRI films and report by Dr. Eugenio and prepared a report dated February 19, 2014. He disagreed with Dr. Eugenio's findings. Dr. Sexton believed the MRI demonstrated normal alignment and morphology of all seven cervical vertebra; no evidence of disc herniation, fracture or subluxation at any level; normal appearance of bone and bone marrow; no indication of paravertebral spasm or loss of normal cervical lordosis; "very minor disc degeneration at C5-6 and C6-7 without any encroachment on the dural sac, the spinal cord, or emerging nerve roots;" and no spinal stenosis, facet arthropathy, osteophytes, or foraminal stenosis. Dr. Sexton concluded the MRI confirms and validates his opinions found in the November reports. Finally, in the July 29, 2014 report, Dr. Sexton critiqued and disagreed with the opinions of Dr. Bilkey.

Dr. Sexton's July 7, 2014 deposition testimony is consistent with his reports. He reiterated neither his examination nor the subsequent December 2013 MRI demonstrated objective evidence of cervical radiculopathy. He found the MRI essentially normal, showing only some "very

minor" and age appropriate disc degeneration at C5-6 and C6-7. His review of the MRI did not alter the opinions he expressed in his November reports. He disagreed with Dr. Holt's conclusion the MRI demonstrated a disc herniation at C5-6. Based on his examination and review of the records, Dr. Sexton believed none of the alleged work injuries on October 15, 2012, December 4, 2012 or March 26, 2013 caused a harmful change to the human organism or her degenerative disc disease to become symptomatic. Dr. Sexton stated Watkins did not relay to him any kind of event occurring in June 2013.

When questioned regarding the cause of Watkins' current symptoms, Dr. Sexton testified as follows:

> A: I would say that it's hard to conceive how because she was not doing any particularly stressful occupation, but that given her pre-existing degenerative changes at C5-6 and C6-7 she, in a positional manner, developed a cervical strain without any additional diskopathy, radiculopathy, myelopathy, or neuropathy.
>
> Q: Do you believe that that cervical strain condition has resolved or does it require further treatment?
>
> A: Actually, this is a myofibrous phenomenon that will take a varying length of time to resolve as much as it's going to, sometimes there's a permanent change, but there is no indication of when it developed. The most strong indication would suggestion

> that if such did it was a result of her injury in March of 2013 that she claims.

Dr. Sexton testified if Watkins did suffer a cervical strain as a result of the March 26, 2013 event, she would have attained maximum medical improvement ("MMI") by approximately June 2013, would not qualify for a permanent impairment rating, and he declined to assign restrictions.

When cross-examined by counsel for Express Employment Professionals, Dr. Sexton diagnosed Watkins with right shoulder contusion due to the October 2013 work event for which she attained MMI on October 22, 2013. Dr. Sexton opined the October 2012 work incident did not result in a harmful change to the human organism to the right shoulder or neck. He assessed a 0% impairment rating, and stated he would not assign permanent restrictions.

Watkins filed the December 4, 2013 and January 11, 2014 reports of Dr. John Lach, who also testified by deposition on February 20, 2014. In the December report, Dr. Lach identified four alleged dates of injury. He reviewed the medical records and performed an examination. Dr. Lach agreed with Drs. Ballard, Abeln and Holt, stating Watkins has signs and symptoms of a cervical disc herniation caused by overuse syndrome and strenuous repeated labor. He

recommended Watkins' bone stimulator be removed to facilitate a cervical MRI.

Subsequent to the December 2013 MRI, Dr. Lach prepared a January 11, 2014 report, noting he reviewed additional records, including the MRI. Dr. Lach noted the MRI evidenced a cervical spine injury, showing an antherolisthesis at C4-5 and a posterior disc herniation with edematous changes at C5-6. Dr. Lach diagnosed a herniated disc with radiculopathy and spondylolisthesis. He opined Watkins' work injuries were caused by "overuse syndrome and strenuous assembly line labor." He stated Watkins' injury "is a repetitive use injury and the result of all four injuries complained of by her" and has sustained a cervical spine injury as a result of her repetitive assembly line work. Dr. Lach assessed a 12% impairment rating pursuant to the AMA Guides, and stated Watkins has not attained MMI. Dr. Lach stated Watkins does not retain the physical capacity to return to the type of work performed at the time of injury and should remain off work pending treatment of her cervical work injury. Dr. Lach's deposition testimony is largely consistent with his opinions contained in the December 2013 and January 2014 reports.

Finally, Watkins submitted the July 8, 2014 report of Dr. Bilkey, as well as several addendums and rebuttal

reports. In his report, Dr. Bilkey identified four dates of injury and reviewed the treatment records. After performing an examination, Dr. Bilkey diagnosed "10/15/12 work injury with aggravation occurring on subsequent work injuries 12/4/12, 3/26/12 and June 4 thru 6, 2013. Cervical strain, aggravation of degenerative disc disease cervical spine, cervical radiculopathy. Ms. Krist also has acquired myofascial pain affecting the scapular and neck flexor musculature." Dr. Bilkey noted although the initial symptoms were restricted to the upper limbs, this does not rule out the cervical spine as the source to Watkins' problems. Dr. Bilkey stated Watkins' diagnoses are due to the above noted work injury dates. He opined Watkins has not attained MMI.

Dr. Bilkey explained the scapular muscle spasm problem, also referred to as scapular dyskinesia, should be treated first with home exercises. If unsuccessful, Dr. Bilkey agreed with the treatment recommendations by Dr. Holt, including the selective nerve root block, with the possibility of fusion surgery at C5-6, as well as medication. Dr. Bilkey opined his treatment recommendations are for the October 15, 2012 work injury with subsequent aggravation. Dr. Bilkey restricted Watkins to sedentary work with lifting restrictions, no overhead work or

repetitive right shoulder and neck motion. His restrictions prohibit Watkins from returning to her former job with Magna. Dr. Bilkey assessed an 8% impairment rating pursuant to the AMA Guides. He attributed the entirety of the rating to the October 2012 work event, with no apportionment to the subsequent aggravations. Dr. Bilkey provided five subsequent addendums and rebuttals critiquing the opinions of Dr. Sexton and Dr. Ballard.

After summarizing the medical evidence, the ALJ stated as follows in her March 30, 2015 opinion:

> After careful consideration and review of the conflicting medical evidence, it is found Plaintiff suffered only temporary injuries on all four occasions. Reviewing the medical evidence numerous times leads to the same conclusion – there is no credible evidence of a harmful change in a human organism. Watkins suffered significant prior injuries and may have arthritis as a result as indicated by Dr. Ballard, but persuasive evidence of a harmful change from her work activities is not found. On each occasion of injury, the various medical providers released her to full duty. The diagnostic evidence of degenerative changes relate to the cervical spine and not the shoulder, scapula, epicondyle area.
>
> The testimony of Dr. Bonnarens is found persuasive as is the opinion of Dr. Ballard. These physicians provided credible evidence of no harmful change and only temporary strains as a result of her work. Dr. Bilkey, Dr. Holt and

> Dr. Lach have all found work to be the cause of the cervical spine condition and the ALJ is not persuaded on this issue. The evidence is not found persuasive regarding her work activity and how that changed her cervical spine or how the pain she experienced in her shoulder and hand was connected to her cervical spine condition. The conditions from work were only temporary strains. Any permanent cervical spine condition, as stated by Dr. Ballard, was not caused by Watkins' work.

The ALJ therefore found permanent partial or permanent total benefits are inapplicable. With regard to TTD and medical benefits, the ALJ stated as follows:

> **C. TTD Benefits – overpayment as to rate and duration.**
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> Kentucky Revised Statute 342.0011(11)(a) states that: "'temporary total disability means the condition of an employee who has not reached maximum medical improvement from an injury and has not reached a level of improvement that would permit a return to employment." To qualify for TTD benefits the absence from work must be due to a work-related injury. *See, e.g., Aluminum v. Carkuff*, No. 2009-SC-68-WC, 2009 WL 3526558, at *3 (Ky. Oct. 29, 2009) ("Workers' compensation benefits are paid for the effects of work-related injuries.").
>
> With respect to TTD, a claimant is entitled to sixty-six and two-thirds percent (66-2/3%) of the employee's average weekly wage but not more than one hundred percent (100%) of the state average weekly wage and not less than twenty percent (20%) of the state

average weekly wage as determined in KRS 342.740 during that disability.

The issue preserved for a decision related to TTD is overpayment as to rate and duration. Even though other arguments are made in the briefs, no other TTD issues were preserved and, therefore, are not addressed.

Magna contends it should not have paid TTD from June 13, 2013 through July 31, 2013 and that no injury occurred on June 6, 2013. It argues this is the day Watkins voluntarily quit and that she was not injured. There is no evidence she attempted to return to work after June 6, 2013. Watkins argues this is the day the employer would not allow her to go to the doctor and she left on her own. She did not appeal her denial of unemployment benefits due to a voluntary quit.

Still, it is found herein that Defendant Employer is not entitled to reimbursement for the few weeks of TTD it paid. The events during the period following the June 6, 2013 injury date, as noted, are unclear. Plaintiff states Dr. Abeln placed Watkins at MMI on July 31, 2013. Although Dr. Ballard ultimately found no permanent injury as a result of employment, she evaluated Watkins on July 17, 2013 and did not place Watkins at MMI. For these reasons, the payment of TTD for this limited period is not found to be an overpayment as to rate or duration.

D. Unpaid or contested medical expenses.

KRS 342.020 mandates that the employer pay for the cure and relief from the effects of the injury as may reasonably be required at the time of the injury

> and thereafter during disability. Unlike KRS 342.0011(11) and KRS 342.730(1), KRS 342.020(1) does not state eligibility for medical benefits requires proof of a permanent impairment rating, of a permanent disability rating, or of eligibility for permanent income benefits. Moreover, it states clearly liability for medical benefits exists "for so long as the employee is disabled regardless of the duration of the employee's income benefits." See *FEI Installation, Inc. v. Williams*, 214 S.W.3d 313 (Ky. 2007). To be compensable, however, medical treatment must be reasonable and necessary.
>
> Even though it is found Watkins sustained nothing more than temporary strains from her work, she is entitled to payment of medical benefits to treat those symptoms. Express is responsible for payment of medical benefits related to the first injury date, October 15, 2012, and Magna the other three dates through the time she was seen by Dr. Sexton on November 18, 2013 and found to need no further treatment. The obligation to pay medical benefits is temporary, as are the injuries, and has now ceased.

The ALJ denied Magna's request for attorney fees. The ALJ awarded Watkins TTD benefits from June 13, 2012 through July 31, 2013 against Magna, and found it entitled to a credit for benefits already paid. The ALJ awarded Watkins medical expenses against Express Employment Professionals for the temporary work-related strain of October 15, 2012, with its obligation ending on October 22,

2012. The ALJ awarded Watkins medical expenses against Magna for the temporary work-related strains of December 4, 2012, March 26, 2013 and June 6, 2013 with its obligation ending November 18, 2013.

Watkins filed a petition requesting the ALJ reconsider her finding of no permanent injury and impairment, arguing Dr. Bonnarens only addressed the October 15, 2012 injury. In the order denying Watkins' petition for reconsideration, the ALJ made the following additional findings of fact supporting her determination:

> Plaintiff alleged four injury dates: October 15, 2012; December 4, 2012; March 26, 2013; and June 6, 2013. Following is the medical evidence supporting the ALJ's Opinion in a timeline form for the purpose of providing clarity.
>
> **October 15, 2012 alleged injury**
> **December 4, 2012 alleged injury**
>
> February 25, 2013 - Dr. Bonnarens released Watkins to full duty with no restrictions and discontinued physical therapy.
>
> On March 15, 2013, Dr. Bonnarens found Watkins' pain to be far out of proportion to any demonstrable pathology with no evidence of any surgical pathology present based on the CT arthrogram.
>
> January 10, 2014 – Dr. Bonnarens acknowledged his treatment on December 10, 2012 for the December 4, 2012 work injury, and noted Watkins had returned

to work at full duty. He did not find the right shoulder and neck condition due to the October 15, 2012 work incident. Dr. Bonnarens found 0% impairment for resolved tendonitis with no residuals and no need for treatment.

March 26, 2013 alleged injury
June 6, 2013 alleged injury

November 18, 2013 - Dr. Sexton diagnosed cervical spondylosis, without discopathy, radiculopathy, neuropathy or myelopathy, due to the normal aging process with no injury on any of the occasions of which she reported injuries: October 15, 2012; December 4, 2012 and/or March 26, 2013. He found 0% impairment noting a marked discrepancy between her subjective complaints and objective findings as the following: no rotator cuff or labral shoulder injury, no clinical evidence of radiculopathy, no clinical evidence of myelopathy or discopathy and no industrial injury. While Dr. Sexton indicated a 5% whole person impairment related to the cervical spine would be appropriate, the rating would not be related to the effects of the various work injuries.

February 19, 2014 - Dr. Sexton reviewed the December 9, 2013 MRI of Big A Chiropractic and did not change his opinion that there was no evidence of a trauma or work injury to the cervical spine.

April 14, 2014 - Dr. Ballard reviewed the MRI of the cervical spine from December 3, 2012, and noted the only abnormality was a small disc bulge at C5-6. Dr. Ballard diagnosed a strain beginning on December 4, 2012 related to her work but no history of other

accidents on March 26, 2013 or June 6, 2013.

July 17, 2014 - Dr. Ballard diagnosed a history of right arm cervical spine pain and a previous history of lumbar fusion status post motor vehicle accident (MVA). Dr. Ballard found the neck pain related, by history, to her work although she noted the history of the MVA. Watkins had not reached MMI and needed either an MRI or a CT scan to determine her ability to return to work. She noted records needed to be reviewed on the issue of preexisting problems of arthritis.

July 23, 2014 - Dr. Ballard disagreed with Dr. Bilkey's assessment of scapular dyskinesia. Dr. Ballard found Watkins at MMI and found further treatment not likely to have any significant effect on Watkins's symptomatology.

July 28, 2014 - Dr. Sexton reviewed IMEs of Dr. Ballard and Dr. Bilkey and stated the *AMA Guides to the Evaluation of Permanent Impairment, 5th Edition* necessary to a diagnosis of cervical radiculopathy were not present in Dr. Bilkey's examination of June 18, 2014 or November 7, 2013. The term employed by Dr. Bilkey (scapular dyskinesia) referred by definition to "impairment of power of voluntary motion". Dr. Sexton was not able to appreciate any serratus anterior spasm or dysfunction. Moreover, Dr. Ballard, a pain management and rehabilitation specialist like Dr. Bilkey, did not report any scapular dyskinesia or serratus anterior spams.

WHEREFORE, Based on the comprehensive opinions of Dr. Bonnarens, Dr. Ballard and Dr. Sexton,

> Plaintiff's Petition for Reconsideration is **DENIED.**

On appeal, after summarizing the medial evidence, Watkins states all of her treating physicians recognize she suffered from four different work injuries. She argues the ALJ's opinion contradict the overwhelming medical records. She also argues the opinions of Drs. Lach and Bilkey, as well as the records of her treating physicians outweigh the opinions of Dr. Sexton. Watkins requests this Board reverse the decision of the ALJ and direct the ALJ to enter a finding consistent "with the opinions of the treating physicians and the vast amount of medical records to the contrary."

As the claimant in a workers' compensation proceeding, Watkins had the burden of proving each of the essential elements of her cause of action, including the extent and duration of disability. Snawder v. Stice, 576 S.W.2d 276 (Ky. App. 1979). Because Watkins was unsuccessful in her burden, the question on appeal is whether the evidence compels a different result. Wolf Creek Collieries v. Crum, 673 S.W.2d 735 (Ky. App. 1984). "Compelling evidence" is defined as that which 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). The function of the Board in reviewing the ALJ's decision is limited to a determination of whether the findings made by the ALJ are so unreasonable under the evidence they must be reversed as a matter of law. Ira A. Watson Department Store v. Hamilton, 34 S.W.3d 48 (Ky. 2000).

As fact-finder, the ALJ has the sole authority to determine the weight, credibility and substance of the evidence. Square D Co. v. Tipton, 862 S.W.2d 308 (Ky. 1993). Similarly, the ALJ has the sole authority to judge all reasonable inferences to be drawn from the evidence. Miller v. East Kentucky Beverage/Pepsico, Inc., 951 S.W.2d 329 (Ky. 1997); Jackson v. General Refractories Co., 581 S.W.2d 10 (Ky. 1979). The ALJ may reject any testimony and believe or disbelieve various parts of the evidence, regardless of whether it comes from the same witness or the same adversary party's total proof. Magic Coal Co. v. Fox, 19 S.W.3d 88 (Ky. 2000); Whittaker v. Rowland, 998 S.W.2d 479 (Ky. 1999). Mere evidence contrary to the ALJ's decision is not adequate to require reversal on appeal. Id. In order to reverse the decision of the ALJ, it must be shown there was no substantial evidence of probative value to support his decision. Special Fund v. Francis, 708 S.W.2d 641 (Ky. 1986).

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

On review, we find Watkins' appeal to be nothing more than a re-argument of the evidence before the ALJ. Watkins impermissibly requests this Board substitute its judgment as to the weight and credibility of the evidence for that of the ALJ. This is not the Board's function. *See* KRS 342.285(2); Paramount Foods, Inc. v. Burkhardt, 695 S.W.2d 418 (Ky. 1985).

Since the rendition of Robertson v. United Parcel Service, 64 S.W.3d 284 (Ky. 2001), this Board has consistently held it is possible for an injured worker to establish a temporary injury for which temporary benefits may be paid, but fail to prove a permanent harmful change to the human organism for which permanent benefits are payable. In Robertson, the ALJ determined the claimant failed to prove more than a temporary exacerbation and sustained no permanent disability as a result of his injury. Therefore,

the ALJ found the worker was entitled to only medical expenses the employer had paid for the treatment of the temporary flare-up of symptoms. The Kentucky Supreme Court noted the ALJ concluded Robertson suffered a work-related injury, but its effect was only transient and resulted in no permanent disability or change in the claimant's pre-existing spondylolisthesis. The Court stated:

> Thus, the claimant was not entitled to income benefits for permanent partial disability or entitled to future medical expenses, but he was entitled to be compensated for the medical expenses that were incurred in treating the temporary flare-up of symptoms that resulted from the incident. Id. at 286.

In determining Watkins had sustained temporary injuries on each of the alleged four injury dates, the ALJ relied upon the opinions of Drs. Ballard, Sexton and Bonnarens. In reviewing the ALJ's findings of fact and analysis in both the opinion and order on Watkins' petition for reconsideration, we find the ALJ engaged in the proper analysis, and provided a sufficient basis for her ultimate determination. Since the opinions of Drs. Ballard, Sexton and Bonnarens constitute substantial evidence, and no contrary result is compelled, we affirm the ALJ in finding Watkins sustained temporary injuries on each of the alleged

injury dates, and sustained no permanent harmful change to the human organism warranting an award of PPD benefits.

Dr. Bonnarens began treating Watkins following her December 4, 2012 injury, from December 2012 through March 2013. After diagnostic studies were complete, Dr. Bonnarens diagnosed Watkins with rotator cuff tendonitis, ordered physical therapy, and placed restrictions on her activity. On February 25, 2013, Dr. Bonnarens released Watkins to return to regular duty and discharged her from physical therapy following a benign shoulder exam. On March 15, 2013, Dr. Bonnarens noted Watkins' continuing complaints of shoulder pain was "far out of proportion" to any demonstrable pathology, and referred Watkins to Dr. Ballard. In addition, Dr. Bonnarens completed a January 10, 2014 questionnaire in which he indicated Watkins had reported to him both the October 2012 and December 2012 work incidents. He also reviewed the OPS medical records and Watkins' deposition pertaining to the October 2012 work injury. Dr. Bonnarens opined Watkins' right shoulder and neck conditions are not related to the October 15, 2012 work incident. He likewise opined the October 15, 2012 work accident did not result in a harmful change to the human organism with regard to Watkins' neck or right shoulder condition. He diagnosed Watkins with tendonitis which

resolved by October 22, 2012 as a result of the October 15, 2012 work incident. He assessed a 0% impairment rating, found no need for either permanent restrictions or future medical treatment due to the October 2012 incident.

After Watkins underwent the MRI in December 2013, Dr. Ballard prepared additional reports dated April 14, 2014 and July 23, 2014. In the April 2014 report, Dr. Ballard interpreted the MRI as only showing a small disc bulge at C5-6. Dr. Ballard opined Watkins sustained an injury as a result of the December 4, 2012 work accident, and diagnosed Watkins with a strain. Dr. Ballard stated there is no indication Watkins had a history of other accidents on March 26, 2013 or June 6, 2013. In her subsequent July 23, 2014 report, Dr. Ballard noted she disagreed with Dr. Bilkey's assessment of scapular dyskinesia. She also stated "the cervical strain is not a reasonable assessment, and this patient is at [MMI] and further treatment is not likely to have any significant effect on the patient's symptomology." Dr. Ballard did not express an opinion on whether the injury was temporary or permanent, and did not offer an assessment of impairment for her alleged injuries due to the December 4, 2012 work injury.

Dr. Sexton performed an independent medical evaluation at the request of Magna, which generated several

reports. In the November 7 and 18, 2013 reports, Dr. Sexton provided a history of the October 2012, December 2012 and March 2012 work accidents and related treatment. He reviewed the medical records and performed an examination. Dr. Sexton diagnosed resolved shoulder contusion. Regarding her cervical complaints, Dr. Sexton diagnosed Watkins with chronic, mild cervical spondylosis without discopathy, radiculopathy, neuropathy or myelopathy attributable to the normal aging process. Dr. Sexton opined Watkins did not sustain a cervical injury as defined by the Act as a result of either the October 2012, December 2012 or March 2013 work accidents. In support of his conclusion, Dr. Sexton noted Watkins did not complain of cervical symptoms following either the October or December 2012 work events. Watkins did not develop neck pain until after receiving a right shoulder cortisone injection, and did not correspond to any work event. In addition, his examination demonstrated no objective indication of a cervical radiculopathy. Dr. Sexton opined Watkins does not require any further treatment or diagnostic testing for the cure or relief of the effects of her work accidents. Based upon the AMA Guides, he determined Watkins does not meet the criteria for a permanent impairment rating. Dr. Sexton found no objective indication of an occupationally disabling neck or shoulder

condition, noting she has no rotator cuff or labral shoulder injury; no clinical evidence of radiculopathy, myelopathy, or discopathy; and has no industrial injury.

Subsequently, Dr. Sexton reviewed the December 3, 2013 MRI films and report by Dr. Eugenio. Contrary to the findings by Dr. Eugenio, Dr. Sexton believed the MRI demonstrated only a “very minor disc degeneration at C5-6 and C6-7 without any encroachment on the dural sac, the spinal cord, or emerging nerve roots.” The MRI did not alter Dr. Sexton’s previous opinions found in his November 2013 reports.

Dr. Sexton testified neither his examination nor the subsequent December 2013 MRI demonstrated objective evidence of cervical radiculopathy. He found the MRI essentially normal, showing only some “very minor” and age appropriate disc degeneration at C5-6 and C6-7. Based on his examination and review of the records, Dr. Sexton believed none of the alleged work injuries on October 15, 2012, December 4, 2012, or March 26, 2013 caused a harmful change to the human organism or caused her degenerative disc disease to become symptomatic. Dr. Sexton stated Watkins did not relay to him any kind of event occurring in June 2013. At most, Dr. Sexton believed Watkins sustained a cervical strain without additional discopathy,

radiculopathy, myelopathy or neuropathy due to the March 26, 2013 work accident. He concluded if she indeed sustained a cervical strain, she would have attained MMI by approximately June 2013, would not qualify for a permanent impairment rating, and declined to assign restrictions. Dr. Sexton also testified Watkins sustained a right shoulder contusion due to the October 2012 work event for which she attained MMI on October 22, 2012. Dr. Sexton opined the October 2012 work incident did not result in a harmful change to the human organism to the right shoulder or neck. He assessed a 0% impairment rating, and stated he would not assign permanent restrictions.

The above cited evidence comprises substantial evidence to support the ALJ's determination Watkins sustained temporary strain injuries as a result of each work incident, entitling her to a limited period of medical expenses and TTD benefits. *See* Robertson v. United Parcel Service, supra, and FEI Installation, Inc. v. Williams, 214 S.W.3d 313 (Ky. 2007). Although Watkins is able to point to evidence supporting her position of permanent injuries, primarily the opinions of Drs. Bilkey and Lach, this is not an adequate basis for reversal on appeal.

With that said, this Board is permitted to *sua sponte* reach issues even if unpreserved but not raised on

appeal. KRS 342.285(2)(c); KRS 342.285(3); George Humfleet Mobile Homes v. Christman, 125 S.W.3d 288 (Ky. 2004). During the contentious litigation of this claim, Magna filed a medical fee dispute on April 2, 2014 disputing several invoices and charges for prescriptions it received by Watkins and attached various billings, invoices and receipts. Our review of the record does not show the dispute has been addressed by the ALJ by separate order or in her March 30, 2015 opinion or order on reconsideration. Therefore, the claim is remanded for the limited purpose of resolving the outstanding medical fee dispute filed by Magna.

Accordingly, the March 30, 2015 Opinion, Order and the May 5, 2015 Order denying the petition for reconsideration by Hon. Jane Rice Williams, Administrative Law Judge, are hereby **AFFIRMED IN PART, VACATED IN PART, and REMANDED** for resolution of the medical dispute filed by Magna.

ALL CONCUR.

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